

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	Objection received regarding the making of The Southampton (Woolston Infant School) Tree Preservation Order 2023
DATE OF DECISION:	21 st November 2023
REPORT OF:	David Tyrie – Head of City Services

<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY

NONE

BRIEF SUMMARY

To consider the objections received in relation to the making of the Tree Preservation Order.

RECOMMENDATIONS:

(i)	To confirm The Southampton (Woolston Infant School) Tree Preservation Order 2023.
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REASONS FOR REPORT RECOMMENDATIONS

1.	A staff member at the school informed tree officers from the City Council that there is a possibility that they may fell 4 or 5 of the large mature trees within the school grounds as they are cracking the surface of the playground and impacting a boundary wall.
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ALTERNATIVE OPTIONS CONSIDERED AND REJECTED
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2.	Not protecting the trees. With no formal protection of these trees, the landowner can fell the trees and can do so with no notification or any formal notice or permission. This would not only have a negative impact to the local street scene, it would also negatively impact the environmental and ecological benefits that the trees provide to the wider location.
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DETAIL (Including consultation carried out)
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3.	11 th May 2022 – An email was sent by a member of staff of the school to the council's tree team in which they identified that ' <i>The roots are taking over the playground and are now beginning to be a serious trip hazard and I think it's only a matter of time before they effect the back wall more</i> '. (Appendix 1)
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4.	23 rd May 2022 – A tree officer met with a member of staff from the school to review the damage to the hard surface of the playground.
5.	At this visit, two possible options were given. One option was to remove the damaged area of tarmac and fill the area with sharp sand to raise this above the roots, then relay tarmac, however this would leave an uneven surface. The other option given was to remove the damaged tarmac and to install TigerMulch® around the tree.
6.	TigerMulch® is a branded name for a system whereby recycled waste HGV and bus tyres are shredded to produce a bark like material. This comes in a variety of colours, depending on what the customer is wishing to achieve and conforms to the British and European standards for children’s play surfaces. The proposal of the product for this location appears suitable as it can flex, unlike tarmac.
7.	The member of the staff commented on this proposal and informed the officer that the cost to purchase and install this product will be very much budget dependent.
8.	6 th June 2022 – A telephone conversation was held between a tree officer and a member of the school trust. In this conversation, the cost element of the repair was discussed. In this conversation, it was highlighted to the tree officer that another option being considered was the complete removal of two large mature trees that are causing the damage. The member of the trust wished to consider all options and would like information regarding repairs before a is reached.
9.	29 th November 2022 – A site meeting was held and in attendance were two council tree officers, an operations manager from landscape and play from the City Council, three members of school staff and a member of the Hamwic trust.
10.	During this meeting, the damage to the hard surface was discussed and the school wished to have a quotation to repair the playground surface. Also, at this meeting it was made clear that one option being considered was to remove trees. It was indicated that this would be two large trees on the rear boundary (T5 & T6) two alders near an enclosed play area (T2 & T3) and ideally a third tree to prevent damage in the future (T4) The school proposed planting replacement trees in the grassed area to the east of the school building. This location appears to be the only enclosed grassed area that children can play and may not be suited for multiple tree planting of large canopy tree species as it would restrict its use.
11.	The benefits of trees were highlighted to the school by the tree officers, such as the shade they give to the classrooms and the play area due to these trees sitting almost directly to the south of these areas. The school suggested that they could erect a shelter for the children to use during the summer months, so they have an area out of direct sunlight.
12.	Another point put forward by the school to support the felling of the trees was that many children at the school live in high-rise apartment blocks or other areas where they do not have an outdoor area to play. The school playground may be the only area they are able to run around and play sports.
13.	The officers did understand this position but again highlighted the benefits of retaining the trees and working toward a successful resolution whereby the trees remain and the play area open to its full capacity.
14.	It was also highlighted to the school staff that by removing the trees, due to an issue that they produce, rather than working around it and retaining the trees,

	<p>may give a negative impression to the young children and parents of the school. Given that the school had already highlighted that some of the children have no access to outdoor space, it is the officer's opinion that the school play area should therefore include elements of the natural environment, rather than a featureless area of tarmac.</p>
15.	<p>Due to the heightened possibility that the trees may be removed, it was considered expedient in the interest of amenity that the trees required protection by a Tree Preservation Order.</p>
16.	<p>22nd December 2022 – The Southampton (Woolston Infant School) Tree Preservation Order 2022 was made and served on the required properties.</p>
17.	<p>The order consists of 8 individual trees, identified within the order as T1 through to T8. Two tree groups, identified as G1 and G2 and a small, wooded area, identified as W1.</p>
18.	<p>A new Tree Preservation Order has a provisional validity of 6 months from the date of creation and if there are objections received that the tree team are not able to resolve, then the order will expire at the 6-month point. Any objections that cannot be resolved require the matter to be referred to the Planning & Rights of Way panel whereby members, after considering the objections received and the reason for making the order, can give the approval to confirm the Tree Preservation Order.</p>
19.	<p>The original order, which was referenced as T2-757 and had the title 'The Southampton (Woolston Infant School) Tree Preservation Order 2022' had objections from neighbours and the school. The officer dealing with the case was not able to resolve the objections, therefore the matter required to be reviewed at a Planning & Rights of Way meeting. Unfortunately, due to other work commitments, the matter was not able to be presented to the members of a Planning & Rights of Way meeting in time before the order would naturally expire on the 22nd of June 2023.</p>
20.	<p>Due to the expiration of this order, on the 23rd of June 2023, a new Tree Preservation Order was created and served on the relevant properties. This order protected the same trees as the previous, and has the same name as before, however the year the order was made has changed from 2022 to 2023. The new order has reference number T2-771 and has the title 'The Southampton (Woolston Infant School) Tree Preservation Order 2023'. (Appendix 2)</p>
21.	<p>23rd June 2023 – Objection email received from resident highlighting the concerns over the damage to the playground surface and the wall. The issues raised in the objection email were the following: -</p> <ol style="list-style-type: none"> 1. They 'fail to see how the loss of any of these trees would have a " detrimental impact on the amenity of the area and the enjoyment by the public " being a school ground, with no access for the public. 2. 'The damage caused by some of these trees to the surrounding walls and play areas for the children are also not being taken into account'(Appendix 3)
22.	<p>This objection received was a repeat to one received from the resident in relation to the original order. At that time, emails were sent to the resident to outline the reason the order was made and to give a response to the issues</p>

	<p>raised. The resident chose to uphold their objection; therefore, it was the officers view that the objection received to the making if this new Tree Preservation Order, on the same grounds as previous, is not likely to be able to be resolved. On this basis it was decided to take the matter to a PROW meeting and inform the resident the date and time of the meeting, should they wish to attend and make a representation.</p>
23.	<p>The officer can provide members with a response that covers the two points of the objection.</p> <ol style="list-style-type: none"> 1. The impact that the trees will have to the local amenity is subjective. Amenity within the Tree Preservation Order legislation has not been defined; therefore, amenity can extend beyond what can be seen. It is the officer's opinion that the loss of the trees would have a detrimental impact to the local visual amenity, combined with the loss to the local ecology and environmental benefits that trees provide. 2. The damage to the wall and play surfaced have been given consideration. The council open spaces team have been in discussion with the school regarding a resolution to the issues with the tarmac. The damage to the wall can be assessed by a suitable expert and to review construction methods that can be employed to safely retain the wall.
24.	<p>30th June 2023 – The Council received an objection letter from the head of Woolston Infant School. The objection was not against the entire Tree Preservation Order, but was raised against trees T2, T3, T5 and T6 within the order.</p> <p>The issues raised in the objection letter were the following: -</p> <ol style="list-style-type: none"> 1. Tarmac impacting the hard surfaces in the playground and footpath resulting in a detrimental impact on the way that the playground is used. 2. All trees have been effectively managed by the school without the requirement for a Tree Preservation Order and that nothing has changed on this point and that the additional control is not necessary. 3 The 'blanket' TPO places an 'unreasonable burden' on the owners of the site and additional costs in managing the land/site. 4. The damage to the boundary wall puts the school at risk due to the potential for it to fail. (Appendix 4)
25.	<p>As with the resident objection in paragraph 21, the school objected to the previous order and the officer was not able to resolve the issues raised. Therefore, it was the officers view that it is highly unlikely that the school would remove their current objection. On this basis it was decided to take the matter to a PROW meeting and inform the school member of staff the date and time of the meeting, should they wish to attend and make a representation.</p>
26.	<p>The officer can provide members with a response that covers the four points of the objection.</p> <ol style="list-style-type: none"> 1. The councils open spaces team have been working with the school to advise on possible solutions on how the playground surface can be repaired and offer a longer-term solution. With the correct method employed, the trees can remain to

	<p>provide a great benefit to the play area as well as the school building. The trees sit to the south of the school and currently give protection from the direct sunlight entering the school during periods of the year, thus keeping it cooler during the summer months. The trees also provide essential shade to the young children playing in the open area during hot sunny days. Both attributes should be viewed as a benefit that help the school and protect children and not to be considered as a negative asset due to the issues relating to the play surface and wall.</p> <p>2. The protection of these trees was regarded as necessary due to the comments made by school staff members in which several of the largest trees on site were deemed to be at threat of felling. Without formal protection, the school would be permitted to fell any of the trees on the site.</p> <p>3. The placement of a Tree Preservation Order, in the officer's opinion, will not make the management of the trees an 'unreasonable burden' or make the management of the site more costly. The application process for trees subject to a Tree Preservation Order is free of charge and can be submitted electronically or via the post. If the application, in part or in full, is refused, the applicant has a right to appeal this decision and can submit an appeal to the Planning Inspectorate. Currently this appeal process to the inspectorate is free of charge. A tree owner is not required to select from a list of tree surgeons who specialise in work on trees protected by a Tree Preservation Order. Any tree surgeon can carry out agreed works, however, will be subject to conditions, such as being completed to the British Standard for tree works, BS3998 and completed within 12 months of the date of the decision notice.</p> <p>It is for these reasons, that the officers view that the 'burden' is not 'unreasonable' and is same requirement for any person within England who have a tree subject to a Tree Preservation Order.</p> <p>4. The damage to the boundary wall is visible, however at the time of making the original Tree Preservation Order, the area was covered by an area of wooden decking. This has now been removed and damage is visible. It is the officers view that regardless of whether the tree is removed or remains, there will be a requirement to undertake some form of repair or replacement of a section of the wall. Therefore, the consideration should be to retain the tree and look at how a wall or fence can be installed in the damaged section whilst incorporating the tree roots. Taking this step is likely to be less costly than the approach of having both trees felled with the additional cost of repairing or replacing the wall.</p>
27.	<p>It is clear to the officer that there are issues, and that it is probable that the damage to the wall and playground surface is root related is attributed to the trees. However, it is also the officer's opinion that all available options need to be explored with the removal of the trees being the very last option to consider (Appendix 5)</p>
28.	<p>It is the officer's opinion that the preferred approach from the school was to fell the trees as this represented the best long-term option. A staff member from the Hamwic trust however, stated that the trust will consider all options, but it may still result in the removal of the trees.</p>

29.	This is a difficult case as damage can be seen, however, it is the officers view that the trees should remain protected, and options explored. Removing the Tree Preservation Order, has the probable result of the trees being felled. This would have a detrimental impact to the local visual amenity, ecology, and environment.
30.	The officer invites the members to consider all parts of this case, in order that they be able to form a view as to whether they feel that the benefits of retaining the trees, given all of the points raised in this report, outweighs the justification to fell.

RESOURCE IMPLICATIONS

Capital/Revenue

Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.

Property/Other

If the order is confirmed, compensation may be sought in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the TPO or of the grant of such consent which is subject to condition. However, no compensation will be payable for any loss of development or other value of the land, neither will it be payable for any loss or damage which was not reasonably foreseeable.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

In accordance with the Constitution, the officer has delegated power to make, modify or vary, revoke, and not confirm Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990; and to confirm such orders except where valid objections are received. If objections are received, then the Planning and Rights of Way Panel are the appropriate decision-making panel to decide whether to confirm the order or not.

Other Legal Implications:

The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy their possessions but it can be justified under Article 1 of the First Protocol as being in the public interest (the amenity value of the trees, tree groups and woodlands) and subject to the conditions provided for by law (the Town and Country Planning Act 1990) and by the general principles of international law

RISK MANAGEMENT IMPLICATIONS

NONE

POLICY FRAMEWORK IMPLICATIONS

NONE

KEY DECISION?	Yes/No
WARDS/COMMUNITIES AFFECTED:	
<u>SUPPORTING DOCUMENTATION</u>	

Appendices	
1.	Email from school regarding damage caused by tree
2.	Tree Preservation Order
3.	Objection received from neighbouring property
4.	Objection received from Woolston Infant School
5.	Site photographs

Documents In Members' Rooms

1.	
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
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Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	No
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	
2.	