

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	Objection received regarding the making of The Southampton (102 Botany Bay Road) Tree Preservation Order 2023.
DATE OF DECISION:	12 th December 2023
REPORT OF:	David Tyrie – Head of City Services

<u>CONTACT DETAILS</u>			
Executive Director	Title	Executive Director Place	
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Author:	Title	City Tree Officer	
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STATEMENT OF CONFIDENTIALITY	
NONE	
BRIEF SUMMARY	
To consider the objection received in relation to the making of The Southampton (102 Botany Bay Road) Tree Preservation Order 2023.	
RECOMMENDATIONS:	
	(i) To confirm The Southampton (102 Botany Bay Road) Tree Preservation Order 2023.
REASONS FOR REPORT RECOMMENDATIONS	
1.	A precautionary tree preservation order was made as another order was served on a nearby address
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
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.
DETAIL (Including consultation carried out)	
3.	10 th of July 2023 – A site visit was carried out to assess a tree in a nearby neighbouring property for suitability of a tree preservation order. In some instances, if an officer notices a tree of high value at another nearby property, they may decide to apply a tree preservation order as a precaution.
4.	The assessing officer noted the prominent Chilean Pine tree in the front garden of 102 Botany Bay Road. In addition to this was a maturing Silver Birch with both trees offering amenity to the local street scene. (Appendix 1)

5.	A TEMPO form was completed (Tree Evaluation Method for Protection Orders) which is an industry accepted form of evaluating the suitability of protecting trees. The score attained on this assessment demonstrated that making and serving a tree preservation order would be appropriate and supported. (Appendix 2)
6.	12 th July 2023 – The Southampton (102 Botany Bay Road) Tree Preservation Order 2023 was served on the appropriate properties. (Appendix 3)
7.	13 th July 2023 – An email was received which outlined the reasons put forward by the tree owner regarding the protection status of the trees.
8.	The objection originated from a Southampton City Council email account; however, the objection is being considered to have been made from the property owner and is not the opinion of Southampton City Council
9.	The objection put forward was due to the desire of the property owners to remove a section of the soil bank at the front of the property to create off road parking, which is alleged to require the trees to be felled. (Appendix 4)
10.	13 th July 2023 – The officer emailed the objector and highlighted that as their objection related to the requirement to fell trees to be able to excavate to create additional parking, the officer felt that there is little that can be said to remove the objection, therefore advised that the objection would be best placed to be reviewed at a Planning & Rights of way panel. (Appendix 5)
11.	If the resident of the property wished to remove the soil bank and install a retaining wall to create off road parking, then this would require approval via a planning application.
12.	If the trees had not been felled prior to the submission of a planning application, it would have been at this point that the requirement to fell the tree would have been highlighted, and a tree preservation order would have been applied at this stage.
13.	The dimensions of the off-road parking area are not known, therefore the impact on the trees is also an unknown.
14.	During a construction where trees are implicated, there is a theoretical minimum area of roots that a tree needs to maintain healthy growth. This is known as a root protection area, or sometimes referred to as a construction exclusion zone.
15.	This is calculated by taking a diameter measurement of the main stem of a single stemmed tree, which is taken at 1.5 metres above ground level, and then multiplying this figure by 12. Therefore, a diameter of 400cm would equate to a 4.8 metre RPA / CEZ. This is measured out from the stem of the tree and creates a circle around the entire tree. This is a simplified version of calculating a root protection area as there are factors that should be considered which may alter the tree's root morphology and result in a modified RPA. Therefore, the above information is given as general guidance and is not applied to this, or any future case involving these trees.
16.	It may be that the calculated root protection area falls outside of the extent of the excavations required to create the parking and therefore the trees can easily be retained.
17.	As planning permission is required for this work, the assessment of the possible harm can be reviewed during the application process.

18.	The officer invites the members to consider the value that the trees provide to the local amenity and to weigh this against the reason that has been put forward to support the removal of the tree preservation order.
19.	Given the relative scarcity and unusual nature of the Chilian Pine, with the addition of the maturing Silver Birch, the officer requests that the members approve the confirmation of the order to retain the trees for current and future amenity.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
	Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.
<u>Property/Other</u>	
	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	
<u>Statutory power to undertake proposals in the report:</u>	
	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.
<u>Other Legal Implications:</u>	
	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.	Site Photos
2.	TEMPO
3.	Tree Preservation Order
4.	Objection Received
5.	Officers' response to objection
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.	Yes/No
Data Protection Impact Assessment	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes/No
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.	