

DECISION-MAKER:	The Planning and Rights of Way Panel
SUBJECT:	Objection received to the making of The Southampton (27 Highfield Crescent) Tree Preservation Order 2024
DATE OF DECISION:	
REPORT OF:	HEAD OF CITY SERVICES- DAVID TYRIE

<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
There is a confidential appendix (Appendix 9) attached to this report, the confidentiality of which is based on Category 1 of paragraph 10.4 of the Council's Access to Information Procedure Rules. It is not in the public interest to disclose this.
BRIEF SUMMARY
<p>A public request was received to protect three trees within the garden of 27 Highfield Crescent. An assessment of the trees was undertaken and two of the three were found to be suitable for protection, their loss would have a negative impact on the local area amenity. At the same time as assessing the trees, an Officer spoke with the owner of the property and was informed that the house would likely be changing ownership soon. To protect the long-term amenity and benefits to the local area from these trees, a Tree Preservation Order was made.</p> <p>Two objections were received on behalf of the property owners, one from a Tree Consultant and the second from the owners Daughter. Following correspondence, it was agreed that the Council response would be directed through a single point of contact, that being the objector's Daughter.</p> <p>Officers have been unable to overcome objections made.</p> <p>Members are requested to consider the objection received and to decide whether it is expedient, in the interests of public amenity and having regard to the representations, to confirm 'The Southampton (27 Highfield Crescent) Tree Preservation Order 2024'.</p>
RECOMMENDATIONS:

	(i)	To confirm The Southampton (27 Highfield Crescent) Tree Preservation Order 2024
REASONS FOR REPORT RECOMMENDATIONS		
1.	The Council has assessed the suitability of the trees and the potential impact to amenity if they were not protected and consider it expedient, in the interests of amenity, to confirm 'The Southampton (27 Highfield Crescent) Tree Preservation Order 2024'.	
2.	The Council is satisfied that the placing of the Tree Preservation Order does not disproportionately interfere with the rights of the landowners, under the Human Rights Act 1998.	
3.	The Council considers that there are no other means of ensuring the trees and associated amenity value are protected. With no formal protection the owners, or future owners may fell the trees.	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
1.	Not protecting the trees. With no formal protection of these trees, the landowner can fell the trees without any notification or formal 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)		
1.	<p>31st May 2024 – The Council received a request from a member of the public, asking that three trees at 27 Highfield Crescent be protected by a Tree Preservation Order. The reason given for the request is</p> <p><i>'These trees form part of both a wildlife corridor for birds moving from the green valley between Highfield Crescent and Highfield Lane and are a natural break in an otherwise sparsely green street for pedestrians traversing from Portswood to the University via Highfield Crescent.</i></p> <p><i>The trees have all been exceptionally well maintained by the landowners over a period of more than 30 years and are a landmark feature of the road.'</i></p> <p>(Appendix 1)</p>	
2.	<p>2nd July 2024 – A visit was made to assess the trees suitability for inclusion to a Tree Preservation Order. Two trees on site met the criteria to be suitable, one tree is found to be unsuitable. The tree officer speaks with the property owner during this visit and is told that the house will likely be sold soon.</p> <p>Details of site visit, conversation with homeowner plus photos of the trees and TEMPO forms are included in the Objection response at (Appendix 6)</p>	
3.	<p>2nd July 2024 – Tree Evaluation Method for Preservation Orders (TEMPO) forms are completed for both trees and both indicate the trees are suitable for protection.</p> <p>(Appendix 6)</p>	
4.	<p>9th July 2024 - 'The Southampton (27 Highfield Crescent) Tree Preservation Order 2024' is made and served on the required properties. The Order includes two individual trees, T1 Oak and T2 Oak.</p>	

	(Appendix 2)
5.	<p>A new Tree Preservation Order has a provisional validity of 6 months from the date of being made and will expire at the 6-month point unless the order is confirmed by the council.</p> <p>Any objections that cannot be resolved and are not withdrawn 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 decide whether to confirm the Tree Preservation Order.</p>
6.	<p>2nd August 2024 – A formal objection and tree report is received from ‘Technical Arboriculture’ on behalf of the property owners. The summary points of objection are:</p> <ol style="list-style-type: none"> 1. Amenity assessment – That the trees are either: not suitable for protection, do not have sufficient public amenity; or both. 2. Expediency – no immediate or foreseeable threat to the trees exists. <p>(Appendix 3)</p>
7.	<p>5th August 2024 – A formal objection is received from a member of the property owner’s family and on their behalf. The summary points of objection are:</p> <ol style="list-style-type: none"> 1. The trees are not suitable for a TPO under the Regulations and relevant government guidance and therefore the Council does not have lawful authority to confirm the TPO. 2. The Council could achieve its objective through less intrusive means. 3. Confirmation of the TPO, on grounds connected to the ‘age and health’ of the objectors, would be a disproportionate interference with human rights under Article 8 and Article 1 of Protocol 1 of the European Convention on Human Rights as incorporated into UK law by the Human Rights Act 1998. 4. That the presence of the TPO may negatively impact the value of the property and the likely timescales for a sale to be completed. <p>(Appendix 4)</p>
8.	<p>8th August 2024 – As both objections are made on behalf of the property owners, the council seek clarification of whether both objections should be dealt with via a single point of contact.</p>
9.	<p>27th August 2024 –The property owners Daughter confirms they are to act as the single point of contact, in which to address both objections.</p> <p>(Appendix 5)</p>
10.	<p>20th September 2024 – Initial response to objections is sent via email and a request made for the objector to indicate if they wish to uphold the objection.</p> <p>(Appendix 6)</p>
11.	<p>The Councils response is based on four key elements which are detailed separately below, the four elements are:</p>

	<ol style="list-style-type: none"> 1. Are the trees suitable for protection? 2. Is it expedient to protect them? 3. Can the Council achieve its aims through less intrusive means? 4. Does the placing of a TPO disproportionately impact the human rights of the landowners?
12.	<ol style="list-style-type: none"> 1. The suitability of the trees is based on professional Arboricultural opinion. The submitted tree report questions the amenity value of both trees, arguing that: T1 is of fair condition and has poor form. T2 is of fair condition, has limited public visibility and is located far from the road. <p>The tree officer found that despite some noted imperfections in form and structure, T1 is prominent when viewed from Highfield Crescent and contributes to streetscape through this. There were no identified defects that would limit its retention and any works required to keep the canopy clear of the highways should be considered 'usual maintenance' and in line with industry standards of pruning.</p> <p>T2's visibility is somewhat limited when seen directly from the front and this is in part due to the gradient of the land, the distance from the road and the overgrown nature of the other vegetation on site. It is expected that the hedge spanning the front will in due course be cut, which would increase this view. When approaching the property, along Highfield Crescent, however, T2 is more prominent and can be seen standing out against the skyline. The tree is apparently healthy and free from defects that would limit its retention.</p> <p>Note - Under the Planning Practice Guidance for TPOs, even partial visibility from significant vantage points (e.g., from Highfield Crescent) can justify TPO protection if the tree contributes to local amenity or environment.</p>
13.	<p>Tree Evaluation Method for Protection Orders (TEMPO) - Both the tree report and the tree officer have used TEMPO forms as an industry recognised method for evaluating the trees. The tree officer's assessment based on this is that:</p> <p>T1 - is visible from the road, has a fair condition, and contributes to the streetscape. Its form and need for management are not disqualifying but are factored into the retention span and condition scores. The retention span of 20-40 years aligns with moderate-term tree protection goals.</p> <p>T2 - is less visible but still provides ecological and environmental value, particularly in a residential area, and there is potential for future visual amenity if other vegetation within the property were to be pruned or removed or should the site be developed. While proximity to the dwelling may require future management, it does not invalidate the protection, especially given the 40-100 year lifespan.</p> <p>The TEMPO forms also consider the expediency of the Order, which are detailed at point 2.</p>

(Appendix 6)	
14.	<p>2. Expediency – When assessing the expediency of TPO we must look at the suitability of the tree and what, if any, threat it may be under for its removal or poor management; and the impact to the public from this.</p> <p>The objectors have maintained that there is no threat to these trees, that they have been responsibly cared for, for many years. The Council does not refute this and can see the garden has been loved, this is further highlighted in the original request to protect these trees and on-site conversation with the owner. However, a change in land ownership can present a legitimate reason for a perceived threat. A decision not to protect these trees may lead to future owners carrying out works that could remove the benefits they currently offer.</p> <p>The intention to sell the property has been confirmed within this objection and with it an increased perceived risk that future owners may not act as responsibly with the trees management.</p>
15.	<p>3. Can the Council achieve its aims through less intrusive means?</p> <p>To ensure the long-term retention of trees, a mechanism must be in place that recognises this. Planning applications may carry conditions that ensure trees are considered and may also take account of a Biodiversity Net Gain assessment, though this is not a requirement for single dwelling residential sites. These processes are only engaged when a planning application is submitted and do not serve to protect the trees if new owners simply lived at the property and decided to remove or prune the trees.</p> <p>The right way to ensure legal protection is via a Tree Preservation Order.</p>
16.	<p>1. Does the placing of a TPO disproportionately impact the human rights of the landowners?</p> <p>The Council have been asked to consider the impact to the Human Rights on grounds connected to the ‘age and health’ of the objectors, whether the TPO may affect the value and likely timescales for a sale to be completed and the impact of this on the objectors, specifically under:</p> <ul style="list-style-type: none"> a. Article 8: Right to Private and Family Life; and b. Article 1 of Protocol 1: Right to Property.
17.	<p>In relation to Article 8 the interference can be justified as it is ‘for the protection of the rights and freedoms of others’ to enjoy the benefits provided by these trees, both visually and environmentally.</p> <p>In relation to Article 1 of Protocol 1, it is justified in the public interest that the trees amenity value is preserved.</p>

	<p>It is the officer's conclusion that the Council have demonstrated that the trees are suitable for protection, that it is expedient to do so and that there are no means of adequately doing so in a less intrusive way. Taking account of that and of the specific circumstances with this case, it is also the Officers conclusion that the placing of a TPO does not disproportionately impact on the human rights of the objectors.</p>
18.	<p>The matter of whether there is a disproportionate interference of human rights contains an element of confidentiality as this relates to information classified as 'Special category data'. Members are requested to consider the confidential Document (Appendix 9) in relation to this which can also be seen as redacted documents in (Appendix 4 and 6)</p>
19.	<p>11th October 2024 – No response had been received to the email sent 20th September 2024 and a further email is sent requesting confirmation of intentions to retract or uphold objection.</p>
20.	<p>28th October 2024 – Email received indicating the objection is to be upheld. (Appendix 7)</p>
21.	<p>29th October 2024 – A series of emails sent, confirming the matter will be taken to Planning Rights of Way meeting for consideration and responses to this (Appendix 8)</p>
<p>RESOURCE IMPLICATIONS</p>	
<p><u>Capital/Revenue</u></p>	
	<p>Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.</p>
<p><u>Property/Other</u></p>	
	<p>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 a 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.</p>
<p>LEGAL IMPLICATIONS</p>	
<p><u>Statutory power to undertake proposals in the report:</u></p>	
	<p>In accordance with the Constitution, the officer has delegated power to make, modify or vary, revoke, and not confirm Tree Preservation Orders under Section 198 and 201 of the Town and Country Planning Act 1990; and to</p>

	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)
RISK MANAGEMENT IMPLICATIONS	
	None
POLICY FRAMEWORK IMPLICATIONS	
	None

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	Portswood
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	
2.	

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 /
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	Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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