



## **PLANNING COMMITTEE**

**9 JUNE 2022**

<b>REPORT TITLE</b>	<b>TREE PRESERVATION ORDER NO WR0421 WESTCLIFFE HOUSE, 5 CROFT DRIVE WEST, CALDY, CH48 2JQ</b>
<b>REPORT OF</b>	<b>DIRECTOR OF LAW AND GOVERNANCE</b>

### **REPORT SUMMARY**

The purpose of this report is to inform the Committee of an objection to Wirral Borough Council Tree Preservation Order No WR0421 Westcliffe House, 5 Croft Drive West, Caldby CH48 2JQ and to recommend that the order shall be confirmed.

### **RECOMMENDATIONS**

Planning Committee is recommended to confirm Tree Preservation Order Number WR0421 Westcliffe House, 5 Croft Drive West, Caldby CH48 2JQ

## **SUPPORTING INFORMATION**

### **1.0 REASONS FOR RECOMMENDATION**

- 1.1 On 19<sup>th</sup> November 2022 the Council became aware of the neighbour's intention to root prune a group of trees standing within the Caldly Conservation area. The works would cause significant damage to the trees and lead to the likely loss of the trees and the amenity and ecosystem services that they provide.
- 1.2 The trees are significant and contribute to the visual amenity and landscape character of the Conservation area due to their size and prominence in the landscape. In terms of visibility, they are clearly visible from Croft Drive West and the surrounding area. The amenity value and benefits that the trees provide are not outweighed by the lifting of the flagstones of a path which is located in a neighbouring property. Therefore the trees meet the criteria for a Tree Preservation Order in terms amenity value.
- 1.3 The Council has a duty to make provision for the preservation of trees and woodlands in the interests of amenity. It does this by making Tree Preservation Orders (TPOs). The purpose of a Tree Preservation Order is to protect trees which make a significant impact on their local surroundings. This is particularly important where trees are in immediate danger.
- 1.4 Urban trees are a valuable source of ecosystem services in towns and cities. They help to alleviate problems associated with densely packed populations by improving local air quality, capturing carbon, and reducing flooding.
- 1.5 Urban trees provide a number of health benefits including improving local air and water quality by absorbing and filtering pollutants and by reducing the urban heat island effect (decreasing illnesses associated with poor air quality and heat). There is also evidence that urban greenery can help reduce stress levels and improve recovery time from illness.
- 1.6 Trees also provide a valuable habitat for much of the UK's urban wildlife, including bats (and bees
- 1.7 On 21<sup>st</sup> December 2021 the Council made Tree Preservation Order Number WR0421 Westcliffe House, 5 Croft Drive West, Caldly CH48 2JQ having regard to the considerations set out in paragraphs 1.1 to 1.6 of this report. Confirmation of the Tree Preservation Order made in respect of these trees would provide an appropriate level of protection for the trees. The location of the trees to which the Order refers is set out in Appendix 1 to this report.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 The Committee has the choice of either confirming the order or deciding not to confirm it. In the latter case the Tree Preservation Order would lapse and there would be no legal protection for the tree.

### **3.0 BACKGROUND INFORMATION**

3.1 In response to the making of the Tree Preservation Order An objection was received on the following grounds:

- (i) The 3 Lombardy Poplar trees are causing damage resulting in a dangerous path in the rear garden of the adjacent property and adjacent to the boundary. The lifting action from buttress growth and root damage has pushed up the 3' x 2' flag stones of the path creating an uneven and dangerous path;
- (ii) The trees which are the subject of the TPO are causing extensive damage to the property and it is therefore not appropriate for the trees to be protected by means of the Tree Preservation Order as the roots of these trees need to be removed and the path re-laid. Any order will prohibit the trimming or removing of roots of the trees without prior consent subject to exceptions;
- (iii) If nothing is done in respect of the roots, then the problem will persist and worsen. The trees need to be removed and due to the TPO the Council's consent would be required;
- (iv) On balance the impact on the removal of the 3 Poplar trees is minimal and is outweighed by the significant property damage;
- (v) The roots of the trees and the damaged path are a safety concern;
- (vi) A conservation area notice was submitted to the council on 22nd September 2020 to remove the 3 poplar trees. If the council have not responded within the six weeks of the date of the notice, then there is deemed approval for the works.

3.2 The path that is referred to in the above objection is in the rear garden of 7 Croft Drive West and is situated adjacent to the boundary between 5 and 7 Croft Drive West. The path is clearly visible from number 5 Croft Drive West. It consists of large paving slabs which have been pushed up in places and have subsided in others. The lifting of the flags has happened over a number of years and the path has clearly been in situ for a long time.

3.3 Removal of the buttresses and roots this close to the main stems of the trees would cause significant damage to the trees and would highly likely result in the trees being rendered unstable and cause them to fall across the owner's property. The path could be re-laid on a new raised subgrade or the flags removed and a gravel path installed. It is considered that removal of the trees would be disproportionate to the actual 'damage' and nuisance caused by the roots where an alternative design solution for the path is possible. The damage is restricted to the path which leads a composting area and is not significant in the wider sense of the property. The owners of 5 Croft Drive West have made an offer to pay towards the relaying of the path.

3.4 Paragraph 82 of the Government's Guidance for Tree Preservation Orders and Trees in Conservation Areas states that,

'When deciding what is necessary to prevent or abate a nuisance, tree owners and, where applicable, their neighbours and local authorities, should consider whether steps other than tree work might be taken. For example, there may

be engineering solutions for structural damage to buildings.'

- 3.5 The trees make a contribution to the character of the Caldys Conservation Area and are visible from Croft Drive West and from parts of the Wirral Way linear Country Park. The amenity value and benefits that the trees provide are not outweighed by the lifting of the flagstones of the path.
- 3.6 A notice was received by the Council to remove the trees in September 2020. The notice expired largely due to Covid restrictions and workload than any agreement to the proposed works. The work was not carried out. The owners of 5 Croft Drive West subsequently obtained arboricultural advice after concerns that removal may cause heave to nearby properties. The owners decided not to remove the trees and asked for a Tree Preservation Order to be served on the trees, whilst negotiations continued with the neighbours. An arboricultural report was commissioned and carried out on 28th January 2022 and submitted in support of the TPO.
- 3.7 The arboricultural report dealt with the following issues:
  - Concerns of the landowner with regard to interaction with the trees;
  - The value of the trees in terms of amenity and as an asset;
  - The safe useful life expectancy of the trees; and
  - A cost-effective solution.
- 3.8 The arboricultural report suggested that future risk of indirect property damage to nearby buildings including subsidence by soil shrinkage is very low, based on geology and soils, however this should not be construed as a subsidence risk report.
- 3.9 The report included an amenity valuation for the 4 Poplar trees using the *“Visual Amenity Valuation of Trees and Woodlands, The Helliwell System 2008”*. This system assigns a monetary amenity value to trees using a Monetary conversion factor sourced from the Arboricultural Association. The valuation concluded that the Amenity of this linear group of trees, scored £14,760 and that the trees form an appropriate and important screen between the two sizeable residential properties.
- 3.10 The arboricultural report identified the 5 trees as normal in terms of vigour and vitality with no major safety concerns noted at the time of inspection and recommended that the trees be pruned to remove any dead or defective growth and to prune out any epicormic growth that would assist in future ground inspections. The report also suggested that the trees may cause a degree of shade onto the neighbour’s property. The arboricultural report contradicts the assertion that the Poplar trees are the sole cause of the displacement of the path and suggested that the row of conifers on the other side of the path have also contributed to the displacement of the flagstones which were poorly laid in the first instance.
- 3.11 The report recommended that both landowners discuss a more appropriate solution to the issue of the path and suggested a path constructed of materials more suited to the location close to trees, such as Compacted gravel or sand

which would allow future growth and movement of buttress roots and be inexpensive to maintain.

- 3.12 It is considered that there is no clear evidence has been submitted demonstrating the likelihood of any indirect damage to buildings. The trees do have a significant amenity value due to their stature and prominence in the landscape, regardless of any ascribed monetary value. The trees are in good health with no obvious tree risk features. The path within the neighbouring property has been in place for a long time and the damage has happened over more than a few years. The path needs to be repaired regardless of the presence of the trees. More cost effective and environmentally friendly methods of replacing the path are undoubtedly available and it is suggested that these should be pursued associated with the confirmation of the Tree Preservation Order.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 There will be minimal costs arising from the proposals set out in this report.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 The principal effect of a TPO is to prohibit the, cutting down, uprooting, topping, lopping, wilful damage, or wilful destruction of trees without the LPA's consent.

#### **6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS**

- 6.1 There are no substantive ICT Staffing and Assets implications arising out of the proposals set out within this report.

#### **7.0 RELEVANT RISKS**

- 7.1 If the Order is not confirmed the trees are at risk of significant damage that would lead to the need to remove the trees.
- 7.2 If the order is not confirmed the path will still need to be repaired.
- 7.3 On application to remove the tree under the TPO, an appellant has the right of appeal against decisions on applications for consent under a Tree Preservation Order. The appellant can apply for their appeal costs and may apply for compensation for loss or damage. An authority may be liable to pay compensation for loss or damage caused or incurred in consequence of it:
- refusing any consent under an Order;
  - granting a consent subject to conditions; or
  - refusing any consent, agreement or approval required under a condition.

## **8.0 ENGAGEMENT/CONSULTATION**

8.1 The Tree Preservation Order was served upon the owner/occupiers of No 3, 5 and 7 Croft Drive west with one objection received.

## **9.0 EQUALITY IMPLICATIONS**

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2. There are no equality implications arising from this report.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 Trees store carbon within their tissues and continually absorb carbon, helping to offset carbon emissions produced by other urban activities.

## **11.0 COMMUNITY WEALTH BUILDING**

11.1 There are no Community Wealth Building implications arising from the proposals set out within this report.

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## **APPENDICES**

Appendix 1 Order Map for Wirral Borough Council TPO No.WR0421

## **BACKGROUND PAPERS**

Visual Amenity Valuation of Trees and Woodlands, The Helliwell System 2008

Guidance for Tree Preservation Orders and Trees in Conservation Areas

## **SUBJECT HISTORY (last 3 years)**

Not applicable.

**APPENDIX 1 - Appendix 1 Order Map for Wirral Borough Council TPO  
No.WR0421**

