



# PAPER A

Purpose: For Decision

## Committee report

Committee	<b>APPEALS SUB COMMITTEE</b>
Date	<b>THURSDAY, 31 MAY 2018</b>
Title	<b>DETERMINATION OF PROPOSED TREE PRESERVATION ORDER TPO/2017/09</b>
Report of	<b>HEAD OF PLACE</b>

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### EXECUTIVE SUMMARY

1. A request was made by a member of the public in March 2017 for a tree preservation order (TPO) to be placed on trees at Pier House, Pier Road, Seaview. Following an assessment a TPO was placed on nine trees.
2. The statutory notification process was not correctly followed, so it was undertaken a second time. A number of representations were received, some objecting to the TPO.
3. As the Isle of Wight Council is responsible for making and confirming a TPO, it is in effect both proposer and decision maker. By bringing this paper and accompanying information to the Appeals Committee, it is considered that the council will be making the decision on whether to confirm or revoke the TPO in an 'even handed and open manner' as required by national guidance.
4. The report recommends modifications to the made TPO and for the modified TPO to then be confirmed and brought into force.

### BACKGROUND

5. A tree preservation order TPO is an order made by a local planning authority (LPA) in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An order prohibits a number of actions on trees without the LPA's written consent. If consent is given, it can be subject to conditions that have to be followed.
6. For a tree to be considered for a TPO it is assessed against two factors: amenity and expedience.

### Amenity

7. In terms of trees, amenity is considered to be the wider benefits that a treed environment may give to an area. These benefits being the environmental, economic and social aspects a sylvan setting offers. It is not necessary for the public to have access to the trees to benefit from them; the public benefit can also be realised if the trees can be viewed from a public place.
8. An amenity assessment of the trees was undertaken by the council's arboricultural officer. The assessment was undertaken using an industry standard system of amenity assessment, which has been calibrated and adapted for the purposes of use on the Isle of Wight.

### Expedience

9. It is not sufficient for a tree to have a TPO placed on it purely because of its quality or prominence. It is a requirement that they are under some form of threat of removal, or inappropriate work that could impact on their health and public amenity.
10. As well as physical work to the tree or actual development or construction work taking place, potential wider threats to the future of the tree, such as landscaping or a change in ownership can be considered. The consultation involved in the TPO confirmation process provides the opportunity for these potential threats to be considered, and if they are unfounded the TPO could be revoked.
11. A flow chart setting out the process for making and confirming a TPO can be found in Appendix 1.
12. The council's arboricultural officer received a request for a tree preservation order (TPO) to be made on a number of oak trees at a property known as Pier House, Pier Road, Seaview. The officer was led to understand that it was the intention of the owner of the property to seek planning permission for the development of the site. In line with legislation and guidance, this was sufficient justification for the trees to be assessed and considered for a TPO.
13. An assessment of the trees was undertaken and of the 14 trees on site six oaks, two sycamores, a macrocarpa and a beech tree were considered to be worthy of protection. A copy of the amenity assessment undertaken in relation to the made TPOs is in Appendix 2. Therefore a TPO was issued on the 16 June 2017, which triggered a period of consultation. The council is required to serve notification of the TPO to specific affected parties.
14. Due to an error in the process of making the TPO, not all parties were notified of the TPO being made until August 2017. As a result of this the consultation period was extended from 14 July 2017 to 16 December 2017 to ensure that no one had been prejudiced and that all relevant parties had the opportunity to make representation.

15. Internal legal advice was sought regarding the process undertaken in making the TPO. Advice was received on the 29 November 2017 that due to an error in the process of making the order TPO/2017/08 and it should be retracted and remade. As a result the initial order was retracted and an identical TPO was made (reference TPO/2017/09) following due process.
16. TPO/2017/09 was duly made and notification was sent to all relevant parties for consultation on 5 December 2017. Three representations were received and considered alongside the objections made against the original TPO (TPO/2017/08).

### LOCATION AND SITE CHARACTERISTICS

17. The trees that are the subject of the made TPO are detailed in the plan that forms part of the order TPO/2017/09 in Appendix 3.
18. The trees are located in the garden of Pier House, Pier Road, Seaview. This is a large domestic property, approximately 120 years old and currently unoccupied. The property is located between Pier Road and the shore of the Solent. The trees are found in the large garden that extends north and south of the house itself.
19. The trees are of varying ages with the oldest, some of the oaks, that are thought to be as old as the house and the youngest specimens being approximately 20 to 30 years old. It is considered all the trees that are listed in the order have been planted intentionally as part of the landscaping of the property over the years, with the exception of the two sycamores that are probably self-set. All the trees are visible to varying degrees from the public footpath R105 located on Pier Road and as such are considered to have a strong public amenity.

### STRATEGIC CONTEXT

20. The confirming of a TPO recognises the amenity value of trees and affords them protection. This will contribute to achieving the outcome of the council's Corporate Plan of ensuring that the environment and unique island characteristics are celebrated.
21. The process also links to the corporate plan's core values of:
  - protect and nurture the environment and heritage;
  - transparent decision making, based on the effective use of data and evidence.

### CONSULTATION

22. Notice of the made TPOs was served on 5 December 2017 to the following:

- the owners of the trees and associated parties;
  - neighbouring properties;
  - relevant council departments;
  - Nettlestone and Seaview Parish Council;
  - Councillor Barry, ward member for Nettlestone and Seaview.
23. Three parties made representations to TPO/2017/09 and were received and considered alongside the objections made against the original TPO (TPO/2017/08). A summary of the representations and the officer's responses can be found in Appendix 4

#### Synopsys of objections and officer responses

24. The objector's representations have been given due regard and further site visits inspections were carried out in light of the objections made to assess their weight and validity.

#### Objections

25. The objectors have refuted the TPO being placed on the trees on the grounds of expediency, amenity, inaccuracy and individual tree merit.
26. **Expediency:** It is considered by the objectors that there is no threat to the trees in any form. It said by the objectors that the trustees of the property are not developers and have no experience of such.
27. **Amenity:** It was felt by the objectors that the trees have no public amenity. The reason for this being the trees are in a private garden on a private road and obscured from public view by a fence, conifer hedge and dense woodland. It was also felt that insufficient assessment was made of the trees as to their public amenity to warrant the claim they were worthy of a TPO
28. **Inaccuracy:** It is pointed out that T6 is inaccurately identified as an ash when it is a sycamore. The map that is part of the order is missing buildings and the trees are incorrectly detailed in the TPO as individuals as they have grown as a group.
29. **Individual merit:** Each tree is detailed in the objections to be not worthy of protection for reasons such as the shape form and condition of the tree or due to the tree either causing structural damage to the nearby structure or its potential to do so.

### Officer response

30. **Expedience:** The initial request for the TPO stated the property was to be sold and that it was intended to try and sell it with planning permission. This is a sufficient reason to warrant protection. Whilst the objectors were not developers it would not stop them employing a planning consultant to do this. Even if the current owners were not going to develop there is a possibility that a buyer could as several properties along Priory Road have been developed in recent years.
31. For these reasons it is considered the objection on the grounds of lack of expedience could be dismissed.
32. **Amenity:** The council carried out an amenity assessment to determine which trees were worthy of protection. The system used is similar to an industry standard and calibrated for the Isle of Wight. It found that 9 of the 14 trees assessed were worthy of protection due to their condition and their prominence when viewed from a public view point. All the trees are visible from the public footpath R105 located on Priory Road. Whilst it is seen that the trees are in a private garden they still contribute considerably to the wider areas sylvan amenity.
33. For these reasons it is considered the objection on the grounds of insufficient amenity could be dismissed.
34. **Inaccuracy:** It is recognised that T6 was miss identified in the order as an Ash. However this can be corrected if the order were to be confirmed. It does not detract from T6 sycamore's amenity and worth. The missing structures are not on the original OS maps and as such would not be seen on the orders maps.. The OS maps used are considered acceptable and sufficient for the purposes of making a T.P.O. Whilst the trees are growing in close proximity to each other they can still be seen as individual trees and do function as such. For this reason they are recorded as individuals.
35. For these reasons it is considered the objection on the grounds of inaccuracy could be addressed by varying the order by correcting the species of T6 from Ash to Sycamore and would not be sufficient to prevent the confirmation of the order.
36. **Individual Merit:** Whilst all the trees with the exception of T1 have been criticised as to their condition and health no significant evidence has been submitted to demonstrate this to be the case beyond pointing out unusual form and minor wounds. From re-inspection it is seen that these are minor issues and not unusual in trees of this age and would not prevent their longevity and potential to provide amenity to the wider area. Whilst this is true it was agreed that T8 had structural weaknesses in the fork unions and would not be worthy of protection.

37. It was also said T1, T8 and T9 are or could be causing structural damage to the neighbouring structures. In the case of T1, it was felt that if the site was developed the garage it is adjacent to would be removed and due to this the tree could remain and if not removed the cost of repair might justify the removal and rebuilding the garage using arboricultural sympathetic methods allowing the retention of the tree. In considering T8 it was agreed there was a potential it could damage a boundary wall and would have to be removed to repair it. In relation T9 it is felt the tree is not causing damage and is a sufficient distance from the boundary wall.
38. For these reasons it is considered the objection on the grounds of individual merit could be addressed by varying the order by removing T8 from the order's schedule and would not be sufficient to prevent the confirmation of the order. If it is felt by the committee that the reason for the protection for T1 is not sufficient then it is possible to also remove it from the order also and confirming the remaining trees.

#### FINANCIAL / BUDGET IMPLICATIONS

39. The cost of making and confirming TPOs is covered within the existing budget for Planning Services.
40. The financial implications of making TPOs or determining applications resulting from the making of them should be no greater than that which is already afforded to Planning Services.

#### LEGAL IMPLICATIONS

41. The process governing the making of a TPO is set out in part VIII of the [Town and Country Planning Act 1990](#) (as amended) and the [Town and Country Planning \(Tree Preservation\), \(England\) Regulations 2012](#). Further guidance is set out in the governments online planning practice guidance entitled [Tree Preservation Orders and trees in conservation areas](#).
42. As representations against the making of the TPO have been received, they must be considered before the TPO is confirmed. This must take place within six months of when the order was first made.
43. If the TPO is confirmed, the owners of the trees can seek a judicial review if they consider the decision was unlawful or due process has not been followed.
44. If the TPO is not confirmed it will be revoked and the trees involved will have no statutory protection.

## EQUALITY AND DIVERSITY

45. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
46. *It is not considered that the making of this TPO will have a negative impact on any of the protected characteristics.*

## OPTIONS

47. Having taken into account the relevant processes and representations on the proposed TPOs, it is considered that the options available are as follows:
- a) To confirm the made TPO in its original form.
  - b) To modify the made TPO by removing the trees identified as T8 and correctly classifying T6 and confirm it as such.
  - c) To modify the made TPO by removing the tree identified as T1, T8 and correctly classifying T6 and confirm it as such.
  - d) To not confirm and therefore revoke the made TPO.
48. Representations have suggested that none of the trees should be subject to a TPO. A summary of the objections and the officer's analysis can be found in Appendix 4

## RISK MANAGEMENT

49. National guidance highlights that authorities should bear in mind that since they are responsible for making and confirming a TPO, they are in effect both proposer and decision maker.

## CONCLUSION

50. In light of the representations received it is considered appropriate to confirm the made TPO. However, it is recognised that in confirming the TPOs the trees identified as T1 and T8 should not be included.

## RECOMMENDATION

51. Option C- To modify the made TPO by removing the tree identified as T1 and T8 and correctly classifying T6 and confirm it.

## APPENDICES ATTACHED

52. Appendix 1 – Process for making and confirming a TPO.  
Appendix 2 – Amenity assessment of the trees.  
Appendix 3 – TPO/2017/09.  
Appendix 4 – Summary of representations received and officers' responses.

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