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Law and Governance

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To all Members of the Planning Committee

Dear Member,

Supplementary Agenda – Meeting of the Planning Committee - Thursday, 25th May, 2023

With the agreement of the Chair (Councillor Harvard), the following report is to be considered as urgent business, the reason for urgency being to enable a decision to be taken within the timescales.

7a City of Coventry (Boswell Drive No2) Tree Preservation Order - Land to Front 1-5 Boswell Drive (Pages 3 - 10)

Report of the Strategic Lead for Planning

Yours sincerely

Carolyn Sinclair
Governance Services Officer



INVESTOR IN PEOPLE

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Planning Committee Report	
Planning Ref:	CITY OF COVENTRY (BOSWELL DRIVE NO.2) TREE PRESERVATION ORDER 2022
Site:	Land to front 1-5 Boswell Drive
Ward:	Henley
Proposal:	To decide whether to confirm the Tree Preservation Order
Case Officer:	Robert Penlington

SUMMARY

The purpose of this report is to consider whether to confirm, confirm with modifications or not to confirm the City of Coventry (Boswell Drive No.2) Tree Preservation Order 2022.

RECOMMENDATION

Planning Committee are recommended to confirm the Tree Preservation Order.

BACKGROUND

This provisional Tree Preservation Order (TPO) was made following an email received in the evening of 28th December 2022 from group of concerned residents, who stated that valuable trees were in the process of being felled on a parcel of open land located to the south of Boswell Drive.

Officers visited the site on the following day and undertook a TPO assessment on the remaining tree, and the provisional TPO was made and served on the 30th December 2022.

The remaining tree is a Lawson's Cypress conifer identified as T1 - Lawson's Cypress within the Order, and is approximately 10m in height, 4m in crown spread and 30 years old, supported upon a trunk comprising of multiple leaders with an average diameter (at chest height) of 0.40m. This evergreen tree is in a good overall structural and biological condition, with a remaining life expectancy exceeding 50 years.

The seven other trees making up the original group had been felled or deliberately made worthless as amenity features by canopy removal and deep partial felling cuts through their lower trunks (mature maple tree).

SITE DESCRIPTION

The tree is located within an area of informal public open space to the southern side of Boswell Drive, opposite its junction with Lucian Close. The area of open space is roughly triangular in shape and measures approximately 540 sqm in area; and forms an attractive open green space flanked on two sides by terraces of residential dwellinghouses fronting onto the land. The open space is visually prominent within the street scene, with Boswell Drive directly to the north, and public footpaths to the south and west.

The open space is adopted highway, maintained by the City Council, however it is owned by a third party and has never fallen within City Council ownership. The land appears to

have been sold in October / November 2022, and the new owner is currently advertising the land for sale again.

POLICY

National Policy Guidance

National Planning Policy Framework (NPPF). The NPPF sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that is relevant, proportionate and necessary to do so. The NPPF increases the focus on achieving high quality design and states that it is "fundamental to what the planning and development process should achieve".

The National Planning Practice Guidance (NPPG) adds further context to the NPPF and it is intended that the two documents are read together.

Local Policy Guidance

The current local policy is provided within the Coventry Local Plan 2016. Relevant policy relating to this application is:

Policy GE3: Biodiversity, Geological, Landscape and Archaeological Conservation – which states that identified important landscape features, including Historic Environment assets, trees protected by preservation orders, individual and groups of ancient trees, ancient and newly planted woodlands, ancient hedgerows, and heritage assets of value to the locality will be protected against loss or damage.

Policy GE4: Tree Protection – which outlines that development proposals will be positively considered provided: a) there is no unacceptable loss of, or damage to, existing trees or woodlands during or as a result of development, any loss should be supported by a tree survey; b) trees not to be retained as a result of the development are replaced with new trees as part of a well-designed landscape scheme; and c) existing trees worthy of retention are sympathetically incorporated into the overall design of the scheme including all necessary measures taken to ensure their continued protection and survival during construction. Development proposals that seek to remove trees that are subject to 'Protection', without justification, will not be permitted.

CONSULTATION

Public consultation has been undertaken in accordance with The Town and Country Planning (Tree Preservation) (England) Regulations 2012, and the provisional TPO was posted on the site on 30th December 2022.

Five objections to the provisional TPO have been received, including one objection purporting to be from the owner. Objections have been received on the following material grounds of:

- The tree has been treated with special chemicals prior to the TPO being made to make it easier to cut down, these chemicals will make the tree dangerous, it will decay at a fast rate and increase the risk of falling uncontrollably; the chemicals may be flammable.

- There is a cut in the upper middle section of the tree which was made before the preservation order was placed making it dangerous to leave the tree, increased risk of falling on passing by pedestrians, as well as being dangerous for neighbouring properties, and potential risk of causing severe damage to the landowner.
- Retaining the tree will cause nuisance and annoyance.
- The tree is not structurally safe.
- Leaves and debris from the tree are hazardous to highway and pedestrian safety.

The following non-material grounds have also been raised in objection:

- The tree was planted by residents who had no legal right to plant a tree on the land.
- The tree will affect the development potential of the site.
- The TPO has resulted in threats and harassment.
- The preservation order encourages the public to trespass on the land.
- The TPO will decrease land value and is being used by residents to secure a lower price for the land.
- The TPO will prevent further works to secure the land.
- Residents have been threatening and alleging they are influencing / directing the Council officers to work against the landowner.
- The tree will be cut down by people wanting firewood.
- The preservation order has adversely affected the health of the landowner.
- High probability that residents will damage the tree and blame the landowner.
- The land will be occupied by gypsies and travellers as it cannot be secured.
- Letters of support are being encouraged through misinformation on social media.

Fifty-five comments in support of confirming the TPO have been received on the following materials grounds:

- The tree contributes considerably to the amenity of the locality and the street scene.
- The tree is part of a green open space that contributes visually but also to the wellbeing of residents.
- Positive contribution to the local landscape.
- It provides habitat and foraging for local wildlife.
- The tree and open space add to the green and pleasant environment of Boswell Drive.

The following non-material grounds have also been raised in support:

- The area included several other trees which have been cut down resulting in loss of amenity and habitable.
- Residents are aggrieved by the action of the new owner who wants to clear the land for development.

APPRAISAL

The provisional Tree Preservation Order was initially made in accordance with Policy GE3 and GE4 of the Coventry Local Plan 2016. The felling of the tree which is the subject to this provisional Tree Preservation Order, would result in the loss of a key landscape feature to the detriment of the visual amenity of the locality.

The tree is located in a position where it significantly contributes towards the visual amenity of the local area by way of its attractive dark green upright pyramidal crown, made up of elegant pendulous branch-work which enhances the general landscape and street scene for Boswell Drive, and also for its screening value whilst providing seclusion for the adjacent residents and those who enjoy the once bosky nature of this open space which this green buffer provided from the confines of the adjacent harsher environment of active highway commuting.

There is no evidence on site of any trial pits or other soil disturbance to corroborate the claims that the tree has been treated with chemicals. The tree was in a state of good health at the time of the TPO assessment on 29th December 2022, and its health has been monitored to date with no evidence of symptoms or rapid dieback associated with such chemicals. The tree is therefore considered to be in good biological health.

Following the initial TPO assessment further tree inspections have been undertaken and no evidence of the alleged cut to the upper middle section of the tree can be found. The tree is in good structural health with no signs of damage or diseases to structural limbs.

It is the duty of the local authority to protect trees which provide amenity value and contribute positively to the locality, and there is no apparent reason or evidence to suggest, despite the allegations made; that the health, structural stability, or quality of the tree should prohibit protection.

The Council has its own system for assessing whether trees are worthy of a TPO, and a full assessment was made prior to the service of the provision TPO. The tree has also been formally assessed under the nationally recognised TEMPO system (Tree Evaluation Method for Tree Preservation Orders). The TEMPO system indicates that a tree is worthy of a TPO if it scores 16 or above. The Lawson's Cypress scored 18 and consequently merits a TPO under the TEMPO methodology.

The fall (abscission) of the leaves and light debris from trees are incidental to nature, and part of the natural life cycle of a tree's normal development. The trees provide more advantages than disadvantages to a local community and are valued accordingly, and any nuisance, inconvenience or safety issues perceived from the nature life cycle of the tree do not justify declining to confirm the TPO.

The owner has not provided any arboricultural evidence to support the claims that the tree is dangerous and officers have found no evidence to substantiate the allegations.

Equality Implications

Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010.

Conclusion

It is considered that the Lawson's Cypress tree (identified as T1 within the provisional TPO) makes a significant positive contribution to the visual amenity of the street scene and wider locality around Boswell Drive; as well and the amenity and outlook of the occupiers of the adjacent residential properties; and therefore confirmation of the City of Coventry (Boswell Drive No.2) Tree Preservation Order 2022 is fully justified in accordance with Policy GE3 and GE4 of the Coventry Local Plan 2016, together with the aims of the NPPF.

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CITY OF COVENTRY
(Boswell Drive No.2)
TREE PRESERVATION ORDER 2022

The common seal of the Council of
the City of Coventry was hereunto
affixed in the presence of

Authorised signatory  S. Mahmood

Rev.No.	Date	Revision	Init.
Location CITY OF COVENTRY			
Scheme Boswell Drive No.2			
Detail LA / TPO / 483			
Scale 1 : 500 @ A3			
Drawn RP	Checked MF	Approved MF	Date 30/12/22

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