

## **5 TREE PRESERVATION ORDER 512 - TREE IN FRONT GARDEN OF 118 CHURCH ROAD, HEREFORD, HR1 1RT**

**Report By: Head of Planning Services**

### **Wards Affected**

Tupsley Ward

### **1 Purpose**

- 1.1 To consider the representation made in relation to a Scots Pine in the front garden of 118 Church Road, Hereford, HR1 1RT and determine whether to confirm the Order.

### **2 Order Description and Details**

- 2.1 This order concerns one individual Scots Pine tree growing along the northeast boundary and front garden of 118 Church Road, Hereford. The tree is visible from both the southwest and northeast section of Church Road along with cul-de-sac 'The Knoll' and Hampton Dene Primary School, which adjoins the southeast boundary of the property.
- 2.2 The tree has been awarded an amenity rating of 17 using the amenity evaluation rating system which is being piloted (benchmark rating for inclusion within TPO is 15). It is of medium size; has an anticipated life expectancy of between 15 and 40 years; has a good form for the species; is particularly visible by the public, being a roadside tree close to a footpath; and is fairly suitable to the location. The tree has a slight adverse influence on its surroundings; its potential is likely to been reached; and there is a reasonable amount of other tree cover in the vicinity.

### **3 Policies**

- 3.1 Herefordshire Unitary Development Plan Policy LA5 indicates that the enhancement and protection of individual trees, tree groups, woodlands and hedgerows will be secured by "... placing Tree Preservation Orders where necessary on trees, groups of trees ...". Although the plan had yet to be adopted there have been no objections to this particular aspect of the policy and it should therefore be attributed significant weight.

### **4 Consultation Summary**

#### Internal Council Advice

- 4.1 Head of Engineering and Transportation has no violent objections to this Tree Preservation Order but has some concerns. Trees adjacent to the highway can cause problems by exclusion of light, interference with street lighting, drainage pipes and root damage, but in this case this is minimal due to the species and the maintenance carried out on it. Evidence of damage to the footway typical of tree root problems was found but is not major at this moment although may get worse in time.

The Highway Authority is responsible for the footway and regular inspections take place. There is concern about whether the tree is shallow rooted with the possibility of over turning in high wind. There is no evidence of 'tearing' within the garden which suggests the roots may go much deeper than 450mm, and the tree appears stable at the present although this assessment is not within the expertise of the Division.

- 4.2 The full text of this advice can be inspected at the Town Hall, Hereford and prior to the Sub-Committee meeting

## **5 Representations**

- 5.1 The TPO was placed on the tree following representation by concerned residents.

- 5.2 Hereford City Council Planning Committee has supported the making of the Order.

- 5.3 One letter of objection has been received from Mr. and Mrs. P. Lyons of 118 Church Road, Tupsley, Hereford, HR1 1RT who are the owners of the tree. The objection is on grounds, which will be detailed and commented upon under the Officer's appraisal (Section 6).

- 5.4 A copy of the representations can be viewed at the Town Hall, Hereford or immediately prior to the Planning Committee

## **6 Officer Appraisal**

- 6.1 A further inspection of the tree has been made in the light of internal advice and representations made.

- 6.2 In relation to the concerns of the Head of Engineering and Transportation, the Council's Arboricultural Advisor confirms the tree is in good to fair condition and not of questionable structural stability. The tree does, however, require some minor remedial surgery such as removal of dead branches and consent for such work would not unreasonably be withheld.

- 6.3 The following responses are given in relation to issues raised by Mr. and Mrs. P. Lyons.

- 6.4 **'If the tree is important why did it not have a preservation order on it from the beginning'.**

- Although the tree met with criteria for a TPO prior to the order it was not considered to be under threat of removal. The Council was subsequently made aware that the tree was at risk of felling and therefore it was correctly identified as 'expedient' to make the TPO at that time.

- 6.5 **Advice was received that the tree was not protected so why was it not pointed out that we should contact an officer to ask whether it might be protected if we wanted to remove it?**

- The initial stage of contact was a general one made in relation to whether or not the tree was within a Conservation Area or covered by a TPO and therefore Mr and Mrs Lyons were informed of that fact. Concerns were subsequently raised to the Council's Arboricultural Adviser after the initial contact who then identified the potential need for a TPO.

**6.6 The TPO was dropped through our letterbox without anyone asking my wife or I why we wanted to remove the tree. Why are householders not spoken to first so that they can put forward their case?**

- Guidance in 'Tree Preservation Orders - A Guide to the Law and Good Practice' indicates the ways in which a Tree Preservation Order can be served and this includes: 'by *leaving the document at the usual or last known place of abode of the owner or occupier*'. The document can also be delivered into the hands of the owner or occupier but this course of action is not normally followed. Officers seek to follow a consistent approach through providing initial protection, which then has to be confirmed by the Planning Committee. The owners of the trees are afforded the opportunity to put their case forward at that time should they wish. This is in accordance with current best practice advice. This Planning Committee then determines whether or not to confirm the Order and not an individual officer.

**6.7 We wish to remove the tree firstly because pigeons roost in it. Their droppings create a health hazard. Two complaints this year from parents taking children to nearby school/ nursery. On one occasion a child slipped on the wet droppings hurting her elbow. Who would be responsible?**

- The nuisance is generally one that may cause inconvenience to people, but rarely significant discomfort or financial loss. Most trees in highly populated urban areas have the capacity to cause nuisance, but it is not uncommon to hear that the tree is generally appreciated, but not wanted in a particular position because of this. Action in response to all minor nuisances would lead to the removal or mutilation of many protected and unprotected trees, to the detriment of both public amenity and wildlife. The recognition of the value of trees in cities requires that trees be retained for the benefit of the wider community, even where they cause minor inconvenience to immediate residents. In many ways birds are perceived to be beneficial and are to be encouraged in the city. The degree of the droppings problem in this location does not appear to be such that it presently represents such a serious problem as to require the tree to be removed. The Council as Highway Authority is responsible for the maintenance of the footpath. There are many trees in similar locations throughout the City and elsewhere and the level of risk here is no more than for vast majority of these. Should this situation worsen then we would look at the matter again. Officers within the Highways and Transportation Division undertake regular inspections of footpaths and we would welcome the householder advising us when they feel there is a problem or deterioration.

**6.8 The tree roots are damaging the driveway. It has also broken up the pavement, now repaired, over the years. We would like to replace the driveway but feel that the tree roots would similarly break up any new drive. Would the council be accountable if a pedestrian tripped on the pavement because of the uneven surface caused by the tree roots?**

- Trees can cause problems where the development of roots and buttresses distorts light structures such as pavements or driveway surfaces. Damage of this type is generally associated closer to the tree where root expansion and growth is greatest. In this case, although roots may play a part, other factors are more probable to be the greater cause of damage than roots alone. In relation to the driveway, if it is replaced in accordance with current arboricultural best practice guidance on driveways near trees, future problems should not reoccur therefore eliminating the need to remove the tree on this ground. The Council's Arboricultural Adviser would be happy to

provide relevant guidance on constructing driveways near trees. The Council's responsibilities in relation to the highway are covered under the previous point.

- 6.9 **Finally we have already spent a large amount of money on the tree. Branches break off regularly causing damage and in the past have taken down BT wires which has resulted in it being re-sighted further away from the tree. Who is responsible for the cost of the damage?**

- A tree owner has a duty of care to ensure that trees within his/her responsibility do not pose an unacceptable risk to life or property. It is therefore accepted that a tree owner should have their tree or trees inspected on a regular basis, depending on age, species and location, and by an appropriate person. Routine deadwood and minor defects within branches could be easily resolved by remedial tree surgery. This normal household maintenance of a tree while clearly a burden to some people, is a fact of life and the disadvantages should be weighed against the benefits of the tree to the city and to the value of both the property and the neighbourhood. If a problem were reasonably foreseeable then the Council would not withhold permission for appropriate works to the tree. The Council would not be liable for an injury caused unless it refused consent to remove the hazardous material.

## **RECOMMENDATION**

### **THAT:**

- (a) **The Tree Preservation Order no. 512 be confirmed without modification.**