



<b>Development Control Committee</b>	<b>Thursday, 20 May 2021</b>	<b>Matter for Information and Decision</b>
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**Report Title:** **The Borough Council of Oadby & Wigston (The Oval, Oadby) Tree Preservation Order 2021**

**Report Author(s):** **Michael Bennetto (Arboricultural Officer)**

<b>Purpose of Report:</b>	The purpose of this report is to seek a decision from the Committee to confirm or otherwise the Borough Council of Oadby & Wigston (The Oval, Oadby) Tree Preservation Order 2021 which was made on the 8 January 2021 ("the Order").
<b>Report Summary:</b>	The Order has been made in consideration of replacing and revoking the old County Council TPO which protected trees at 11 and 12 (The Oval, Oadby), the trees within the new Order cover the trees within the wider area of The Oval which are considered to provide a significant degree of public amenity both in the present and future. The Order should help to ensure that the green verdant nature of the area is maintained. Two letters of representation were received, 1 letter of support and 1 letter of objection. These have been taken in to account within the report below.
<b>Recommendation(s):</b>	<b>That the Borough Council of Oadby &amp; Wigston (The Oval, Oadby) Tree Preservation Order 2021 be confirmed without modification.</b>
<b>Senior Leadership, Head of Service, Manager, Officer and Other Contact(s):</b>	Adrian Thorpe (Head of Built Environment) (0116) 257 2645 <a href="mailto:adrian.thorpe@oadby-wigston.gov.uk">adrian.thorpe@oadby-wigston.gov.uk</a>  Michael Bennetto (Arboricultural Officer) (0116) 257 2697 <a href="mailto:michael.bennetto@oadby-wigston.gov.uk">michael.bennetto@oadby-wigston.gov.uk</a>
<b>Corporate Objectives:</b>	Not applicable.
<b>Vision and Values:</b>	Accountability (V1) Customer Focus (V5)
<b>Report Implications:-</b>	
Legal:	The implications are as set out throughout this report.
Financial:	There are no implications arising from this report.
Corporate Risk Management:	Economy / Regeneration (CR9)
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and

	family life and home, and to the peaceful enjoyment of possessions. However, these issues have been taken into account.
Health and Safety:	There are no implications directly arising from this report.
<b>Statutory Officers' Comments:-</b>	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
<b>Consultees:</b>	All persons interested in the land affected by the Order.
<b>Background Papers:</b>	<ul style="list-style-type: none"> <li>• <a href="#">Oadby and Wigston Borough Council Tree Strategy</a></li> <li>• <a href="#">Town and Country Planning Act 1990 Part VIII, Chapter I, Trees.</a></li> <li>• <a href="#">The Town and Country Planning (Tree Preservation)(England) Regulations 2012</a></li> <li>• <a href="#">Human Rights Act 1998</a></li> <li>• <a href="#">Protocol No. 1 to the European Convention on Human Rights</a></li> </ul>
<b>Appendices:</b>	<b>1.</b> The Borough Council of Oadby & Wigston (The Oval, Oadby) Tree Preservation Order 2021

## 1. Information

- 1.1 The Order was created following the request of the Leicestershire County Council, Landscape Officer, Andrew Shaw that the old County Council Area TPOs are brought up to date with new OWBC Orders.
- 1.2 A site visit was carried out to assess the County Council Tree Preservation Order (TPO) review. The existing County TPO covers properties at Nos. 11 and 12 The Oval only, the cover provided by the new TPO encompasses significant trees within the wider context of all properties within The Oval estate and includes several trees which were not protected by the County Order.
- 1.3 A provisional Order was made and served on 8 January 2021. In compliance with the regulation, copies of the Order were served on the owners of the property and adjoining neighbours on 8 January 2021.

## 2. Representation

- 2.1 Two letters of representation have been received: 1 letter of support and 1 letter of objection.
- 2.2 The owner/occupiers of No. 5 The Oval write in support of the Order noting that the areas treescape has gradually been eroding over their 30 year tenure, and that the trees help to support the local ecosystem and wildlife.
- 2.3 The owner/occupier of No. 19 The Oval writes in objection to the Order based on the grounds of:
  - Safety - The resident makes objection that the trees pose potential safety concerns, particularly with regard to worsening weather conditions.

- Leaf litter - The resident makes an objection that there is a significant amount of leaf litter within streets and gardens and that this can pose a risk. Also to cars and pedestrians due to impact on the highway.
- Light - The resident objects on the basis that trees T22, T23, T24, T25 and T26 block natural light and heat from entering the property, and that the trees and consequential light levels are preventative to installing solar panels.

### **3. Officer Comments**

- 3.1 With regard to the objection that the trees pose potential safety concerns, particularly with regard to worsening weather conditions, the trees within this Order remain the property of the owner of the land on which they are sited and not of the Council.
- 3.2 Some of the objections such as leaf litter and loss of light can be categorised as 'causing harm by virtue of their natural characteristics'. The courts expect a reasonable person to accept the fall of leaves etc as a seasonal occurrence over which the tree owner has no control. Concern over the highway should be reported to Leicestershire County Council's Highways Department.
- 3.3 Leaf litter is a natural seasonal process. The amounts of such are regular for this verdant area of the Borough. Excessive leaf fall is not typically deemed sufficient to warrant tree works (see Objective 7 of the Council's Tree Strategy).
- 3.4 With regard to trees, loss of light is not typically considered an actionable nuisance, particularly with older established trees which are appropriate in their growing position and provide a character to the area. While the trees mentioned may act to shield the properties from some warmth, particularly during winter months, their cooling effect in Summer must also be considered as well as the myriad of other benefits trees provide.
- 3.5 Several trees are close to the boundary of adjacent owners. Some of these trees are considered to be within the pavement and are managed and maintained by Leicestershire County Council Highways. These trees' inclusion in the Order is to help prevent inappropriate works being carried out by adjoining land owners as the trees grow and start to straddle the property boundaries.
- 3.6 The trees within this Order remain in the ownership of the land on which they are sited and not of the Council. The tree owners duty is to "take reasonable care to avoid acts or omissions that cause a reasonably foreseeable risk of injury to persons or property".
- 3.7 This is unaffected by the Order, although permission typically needs to be sought from the Local Authority for proposed works to improve a tree(s) safety and safe useful life expectancy are generally considered favourably. Concerns about a trees safety should be expressed to the tree owners for their consideration. Applications for works to trees are free of charge and can be made by any party.
- 3.8 A previous Order was made and issued with regard to Nos. 11 and 12 The Oval, Oadby (under reference no. TPO/0315/TREE). This Order was served on 27 November 2016 however it was not confirmed and allowed to lapse.

### **4. Conclusions and Recommendation**

- 4.1 The Order has been made in consideration of replacing and revoking the old County Council TPO which protected trees at Nos. 11 and 12 (The Oval, Oadby). The trees within the new Order cover the trees within the wider area of The Oval which are considered to provide a significant degree of public amenity both in the present and future. The Order should help

to ensure that the green verdant nature of the area is maintained.

- 4.2 Of the two letters of representation received, there was one letter of support and one letter of objection. The majority of the issues raised in objection can be categorised as causing harm by virtue of their natural characteristics. Fallen leaves do not constitute a nuisance in the legal sense and loss of light does not apply for trees except in the case of certain conifer hedges. The courts expect a reasonable person to accept the fall of leaves etc. as a seasonal occurrence over which the tree owner has no control. The letter of support helps to show that the trees and associated benefits are appreciated in the area.
- 4.3 It is recommended that the Order be confirmed without modification.