



**Development Control
Committee**

**Thursday, 20 October
2022**

Matter for Decision

Report Title: The Borough Council of Oadby and Wigston (Land East of Bideford Close, Wigston) Tree Preservation Order 2022

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

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm the Tree Preservation Order which was made on the 28 th April 2022 relating to land East of Bideford Close, Wigston.
Report Summary:	The assessment made by the Council justifies the making of the relevant Tree Preservation Order.
Recommendation(s):	It is recommended that the Tree Preservation Order (Land East of Bideford Close, Wigston) 2022 be confirmed without modification.
Senior Leadership, Head of Service, Manager, Officer and Other Contact(s):	Tracy Bingham (Strategic Director / Section 151 Officer) (0116) 257 2845 tracy.bingham@oadby-wigston.gov.uk Adrian Thorpe (Head of The Built Environment) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk Jamie Carr (Planning Policy and Development Manager) (0116) 257 2652 jamie.carr@oadby-wigston.gov.uk Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk
Corporate Objectives:	Not applicable
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	There are no implications directly arising from this report.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable
Human Rights:	There are no implications arising from this report.

Health and Safety:	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.
Statutory Officers' Comments:-	
Head of Paid Service:	As the author, the report is satisfactory.
Chief Finance Officer:	As the author, the report is satisfactory.
Monitoring Officer:	As the author, the report is satisfactory.
Consultees:	None.
Background Papers:	<ul style="list-style-type: none"> • Oadby and Wigston Borough Council Tree Strategy • Town and Country Planning Act 1990 Part VIII, Chapter I, Trees. • The Town and Country Planning (Tree Preservation)(England) Regulations 2012 • Planning Practice Guidance - Tree Preservation Orders and trees in conservation areas • TEMPO - Tree Evaluation Method for Preservation Orders • Human Rights Act 1998 • Protocol No. 1 to the European Convention on Human Rights
Appendices:	1. TPO-0354-GROUP (Prev exp.28.10.2022)

1. Information

- 1.1 The Order was created following the receipt of a pre-application enquiry for the construction of 15 no. dwellings. The pre-application was received on 3rd March 2022.
- 1.2 A site visit was carried out to assess the relevant land area. The trees are sited on an area of land that is between the edge of a large residential development and a primary school. The site is busy especially during school drop off and collection, but also with local residents for dog walking and other recreational activities.
- 1.3 The area of land presents as Public Open Space. On closer inspection it is evident that the land was never formally adopted by the Council and remains in private ownership.
- 1.4 A provisional Tree Preservation Order (TPO) was made and served on 28th April 2022. In compliance with the regulation, copies of the Order were served on the land owner and adjoining neighbours on 28th April 2022.

2. Representation

- 2.1 One letter of representation was received, in objection to the Order.
- 2.2 The owner of the land, (Land registry Title No. LT418634) Persimmon Homes (North Midlands) Ltd. commissioned a report to carry out an assessment of the TPO focusing on the suitability of the trees to be protected under TPO.
- 2.3 Points raised within the report include:

- (i) The Local Planning Authority (LPA) have failed to demonstrate how the protection of trees within the TPO would provide any reasonable degree of public benefit.
- (ii) The LPA have failed to demonstrate how the protection of trees within the TPO would provide any reasonable degree of amenity.
- (iii) Using TEMPO evaluation, T2 & G1 both scores '11', meaning that it 'does not merit a TPO'.
- (iv) The LPA have failed to demonstrate how the groups overall impact and quality merits protection.
- (v) It is concluded that both Tree T2 and Group G1 are unsatisfactory for inclusion within this Tree Preservation Order. The main reasons for objection are set out in the table below.

Tree	Reason for Objection
Group G1	<ul style="list-style-type: none"> • The trees within G1 do not merit a TPO. When applying the TEMPO methodology, the score was 11, and 'does not merit a TPO' • The local planning authority has provided no details of how it has evaluated amenity in this case. • The group contains a number of smaller trees (with less with a shorter life-expectancy). • The groups has less visibility due to its location
Tree T2	<ul style="list-style-type: none"> • Tree T2 does not merit a TPO. When applying TEMPO methodology, the score was 11, and 'does not merit a TPO'. • The local planning authority has provided no details of how it has evaluated amenity in this case. • The tree is a poorer specimen than T1 and is located slightly more setback from Bideford Close.

3. Officer Comments

- 3.1 With regard to the TPO assessment and objection the following Officer comments are relevant:
- 3.2 TEMPO (Tree Evaluation Method for Preservation Orders) guidance is a systematised assessment tool for TPO suitability. It should be acknowledged that the TEMPO assessment is not the only tool used to assess TPO's, other items such as those mentioned within section 3.16 are also factors that may be taken into account.
- 3.3 While in general agreement with the TEMPO valuation scores attributed by the representor, its noted that within the representor TEMPO valuation provided, section 1d is left blank. However, within the TEMPO guidance it states that "*Where none of the above apply, the tree still scores one point*" – therefore within the assessment put forward, this would effectively increase the score for all trees and groups by one point which when applied to the decision guide (Part 3) it yields 'TPO defensible' outcome for all features.

- 3.4 The TEMPO methodology is designed as a 'field guide' and is not designed to be prescriptive, but merely to recommend a course of action.
- 3.5 In serving a TPO to tree owners and neighbours, there is no requirement to provide details of how the trees amenity has been evaluated.
- 3.6 With regard to visibility, it is noted within the TEMPO guidance part C - Relative public visibility:
- "The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility."*
- 3.7 Given the pre-application regarding development which would effectively include a changed land use, the trees potential for continued growth and increased visibility is a material consideration.
- 3.8 Visibility of the trees is not solely to local residents and should also take into account the school pupils, staff and parents, for whom the trees offer many benefits.
- 3.9 The field maple, tree T2, while slightly more setback from the road is still clearly visible to the public and provides ample room for it to age through to maturity and into senescence with relatively minimal arboricultural intervention foreseen.
- 3.10 The area has long been described and declared as Public Open Space (POS), since the initial application and permission in 1967.
- 3.11 Tree planting in the area was agreed upon by the Council and local residents and conditioned for retention. The land has never formally been adopted by the Local Authority, but this does not impact its status as POS.
- 3.12 Compared to the initial approved landscaping, a significant reduction in tree cover appears to have occurred.
- 3.13 There has been no previous reason to suspect that the trees within this area of open space would necessitate protection by a TPO, as since the very first applications involving this area it has always been denoted as POS. Being in receipt of consultation on a pre-application to effectively change the land use from POS to residential housing provides at the very least a 'foreseeable' threat to the treescape, arguably 'immediate'.
- 3.14 Planning conditions are used, where appropriate, to secure the planting and establishment of new trees. Tree planting provides for the future amenity of a site and its surroundings, supplements existing tree cover or enhances areas where tree cover is sparse. A TPO may be used to protect trees which are planted pursuant to such conditions.
- 3.15 Maintaining an area historically described as a POS to be a treed environment is inherently for the public's benefit to ensure that as a non-adopted area of designated open space (as per previous planning applications), that this treed area remains a treed area and is managed appropriately.
- 3.16 In terms of the use of the group classification, the value of a group of trees may be collective only. As a collective, the group is greater than the sum of its parts. Other factors, such as importance as a wildlife habitat, natural capital and the wider benefits of trees including response to climate change, may be taken into account but which alone would not be sufficient to warrant a TPO.

4. Conclusions and recommendation

- 4.1 The Order has been made with the consideration of the potential land use change. The degree of public benefit and degree of amenity are considered within the TEMPO valuation score, which as considered within the report when carefully applied yields 'TPO Defensible'.
- 4.2 The presence of a TPO does not necessarily preclude works or removal of trees, however it ensures that the area is managed appropriately with regard to development control.
- 4.3 The trees are in a healthy condition, are considered to enhance the visual amenity of the area, the creation of the TPO should allow the Local Authority to ensure that the treescape in this publicly accessible open space is managed appropriately.
- 4.4 It is recommended that the Order be confirmed without modification.