

TITLE: TPO/E/04/25

Committee: Planning Committee

Date: 03/12/25

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Report No: AA112

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Site Address: 93 Main Street, Little Downham, Ely CB6 2SX

Proposal: To confirm Tree Preservation Order (TPO) E/04/25

Parish: Little Downham

Ward: Little Downham

Ward Councillor/s: Anna Bailey

Date Made: 23/06/2025

1.0 RECOMMENDATION

- 1.1 Members are recommended to APPROVE the confirmation of the tree preservation order for the following reasons. The tree is a prominent feature, in good health, it offers a significant visual contribution to the amenity of the local landscape in this part of Little Downham and there is currently insufficient evidence to link it to the subsidence case in the officer's opinion.
- 1.2 The confirmation is being determined by Committee because it triggers the Council's Constitution in respect of objections to the TPO being received from a member of the public and their agent within the statutory consultation period.

2.0 Costs

- 2.1 If a TPO is made and confirmed and a subsequent application for works to the tree are refused then the tree owner would have an opportunity to claim compensation if, as a result of the Council's decision, the tree owner suffers any significant loss or damage as a result of the tree within 12 months of that decision being made, costing more than £500 to repair.

3.0 THE SITE AND ITS ENVIRONMENT

- 3.1 The Order was made following receipt of a section 211 notification for the tree's removal and the resulting visit to site and assessment of the information provided undertaken by the trees officer.
- 3.2 The TPO was served under Section 201 of the Town & Country Planning Act 1990, on 16 September 2024 because:
The tree assessed is considered to be of amenity value in this part of Little Downham, contributing to the biodiversity and green infrastructure of the local area and as such worthy of retention.

4.0 RESPONSES FROM CONSULTEES

- 4.1 Two objections to the serving of this TPO were received in writing from a neighbouring property owner and the insurance company's arboricultural representative within the consultation period. The statements of objection are attached in full in Appendix 1.
- 4.2 The objections from the neighbour were as follows:
1. The tree has been identified by the insurance company as directly linked to ongoing subsidence issues at our property.
 2. Two arboricultural reports make it clear that the tree should be removed. Our home should be protected from this damage.
 3. The tree is not a public amenity as it can only be seen by neighbouring properties.
 4. The only biodiversity we have seen is its use by a large group of crows who make a lot of noise and scare other birds away reducing biodiversity.
 5. The tree creates a nuisance from falling leaves throughout the year, especially in the summer.
 6. The tree overhangs the boundary leaving a mess on the lawn and blocking the garage gutters, it also blocks sunlight into our garden.
- 4.3 The objections from the agent were as follows:
1. The LPA have failed to demonstrate how the tree provides any reasonable degree of amenity. The LPA have failed to provide evidence that amenity and expediency have been considered in a structured and consistent way.
 2. The tree has been directly linked as causal to subsidence damage at 93 Main Street as part of the section 211 notification with supporting evidence provided by comprehensive suite of evidence.
 3. The LPA has failed to recognise the evidence provided as causal to the subsidence.
 4. The serving of a TPO restricts the trees removal which is part of the proposed solution to the subsidence issues which will result in increased costs to the insurer and risk ongoing damage.

5.0 **OFFICER RESPONSES TO THE POINTS RAISED BY OBJECTORS**

5.1 Responses to neighbour comments.

1. The causal link to the tree is based on the tree's proximity to the garage, no trial pits have been excavated in proximity to the garage to ascertain if any roots have developed beyond the boundary wall. The trial pits dug in proximity to the dwelling did not contain any Lime tree roots. Approval has already been granted for the removal of the large high water demand Poplar tree which has been directly linked to the subsidence issues, lime trees are regarded as a moderate water demanding species.
2. The Arboricultural reports link the tree to the subsidence only by its proximity to the garage. The movement of the garage is likely a result of the proximity of the high water demand Poplar tree already approved for removal, once this tree is removed it would then be possible to see if the removal of the one large tree will be sufficient unless further trial pits are dug to confirm the presence of root from the Lime tree in proximity to the garage. This suggestion was refused for consideration by the arboricultural consultants.
3. The stated visibility of the tree by neighbouring properties suggests that it does have a limited public visual amenity value.
4. This is a native species of tree that has a biodiversity value beyond just bird life. The woodland trust state that the species supports over 110 insects as a foodplant, including scarce hook-tip moth, the high aphid biomass is prey for other insects and birds and honeydew feeders. Excellent summer blossom for insects, especially Bees.
5. Management of falling leaves is a basic maintenance issue and not regarded as a justification for tree removals.
6. Same as point five but pruning of the overhanging branches would be regarded as reasonable management and approval would be likely if an application for the works were submitted dependent upon the extent of the works.

5.2 Responses to the agent's comments

1. A Tree Evaluation Method for Preservation Orders (TEMPO) assessment was undertaken which resulted in the tree having a score of 16 = Definitely merits TPO. This demonstrates that the tree provides a reasonable degree of amenity and evidence's that amenity and expediency have been considered in a structured and consistent way.
2. The claimed link to the subsidence is based on the tree's proximity to the garage and the garage's movement but fails to demonstrate that it is the Lime tree that is responsible and not the large Poplar tree that has already been approved for removal. Poplar and Conifer roots were found in the two trial pits no Lime tree roots were found. No trial pits have been dug in proximity to the garage. Poplar and Conifer species are high water demanding species, Lime is a moderate water demand species. Only after the Poplar tree and the neighbour's trees identified for removal are removed will it be possible to assess if the Lime tree is linked to the subsidence or if trial pits are dug and Lime tree roots found. Currently no notification for the neighbour's tree removals has been made in accordance with the report's recommendations.
3. See point 2.
4. If evidence directly linking the Lime tree to the subsidence is provided, such as trial pit results with Lime tree roots discovered or if continued movement after

the other trees identified for removal are removed is provided, approval for the trees removal would be granted.

6 OTHER MATERIAL MATTERS

- 6.1 Whilst determining if the tree was of sufficient amenity value or not is to some extent subjective, this tree is clearly visible from the public footpath, roads and neighbouring properties. The Trees Officer remains of the opinion that tree T1 makes a significant visual contribution to the local landscape, the amenity and character of the area.
- 6.2 Amenity is a subjective term open to some individual interpretation. Public amenity can be described as a feature which benefits and enhances an area contributing to the areas overall character for the public at large. In this case the tree is mature and visible from the public footpath, road as well as neighbouring gardens and is considered to benefit the area in relation to its contribution to the street scene and locality and therefore is considered a significant public amenity.
- 6.3 If the Planning Committee decide not to confirm the TPO, the TPO will lapse, and the owner can then remove the tree without any permission required from the Council. If the committee confirms the TPO it ensures that suitable evidence is provided before a decision to remove the tree can be made and ensure suitable replacement planting is undertaken.
- 6.4 **Human Rights Act**
The development has been assessed against the provisions of the Human Rights Act 1998, and in particular Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property). Under the Act, it is unlawful for a public authority, such as East Cambridgeshire District Council, to act in a manner that is incompatible with the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance. The Council is also permitted to control the use of property in accordance with the general interest and the recommendation set out below is considered to be a proportionate response to the submitted application based on the considerations set out in this report.
- 6.5 **Equalities and Diversities**
In considering this planning application due regard has been had to the public sector equality duty (PSED) under Section 149 of the Equality Act 2010, which means that the Council must have due regard to the need (in discharging its functions) to put an end to unlawful behaviour that is banned by the Equality Act, including discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not. Account has been taken of the PSED and it is considered that the recommendation set out below would not undermine the objectives of the duty.

7.0 APPENDICES

Appendix 1 Statement of objection to the TPO from the neighbour.

Appendix 2 Statement of objection to the TPO from the agent/Arboriculturist.

Appendix 3 Tree Survey and Site Report, as part of the section 211 notification.

Appendix 4 Photos of tree and its situation.

Appendix 5 Tree Preservation Order and Map.

7.0 Background Documents

Town & Country Planning Act 1990

Town & Country Planning (Tree Preservation) (England) Regulations 2012

National Guidance -Tree Preservation Orders and trees in conservation areas from 6th March 2014 <http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/how-are-offences-against-a-tree-preservation-order-enforced-including-tree-replacement/>