

**Oxford City Council - Lathbury Road (No.1) Tree Preservation Order, 2011.**

<b>Report of:</b> Planning Control and Conservation Manager	<b>WARDS AFFECTED:</b> St Margaret's Ward
<b>Report Author:</b> Chris Leyland	
<b>Lead Member Responsible:</b> M. Clarkson	
<b>Key Decision:</b> N/A	

<p><b>SUMMARY AND RECOMMENDATIONS</b></p> <p>(1) This report concerns an oak tree located at 26 Lathbury Road, in the North Oxford Victorian Suburb Conservation Area, which has been alleged as a causal agent in subsidence damage at the property. A provisional Tree Preservation Order has been made in response to a statutory notification (Section 211 Notice) of intention to fell the tree. Members must decide whether to confirm the provisional TPO thereby making it permanent; otherwise the tree may be removed lawfully after 08/12/2011.</p> <p>(2) The report considers the contribution that the tree makes to public visual amenity and to the character and appearance of the North Oxford Victorian Suburb Conservation Area. An objection to the Order has been made by arboricultural consultants acting on behalf of the insurers of the property [at the time the Order was made]; this was received later than the 28 day notice period deadline and is therefore not a technically valid objection.</p> <p>(3) The report concludes that the tree is important to local public visual amenity and there is a clear expediency in confirming the Order. The content of technical evidence submitted with the Sec 211 Notice has been noted but this should not prevent confirmation of the TPO. Applications to carry out works to the tree (including felling) can be made at any time under the Order, and any application will be judged on its merits. The Committee is therefore recommended to confirm the, Oxford City Council - Lathbury Road (No. 1) TPO, 2011 without modification.</p>
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**Representations Received:**

1. One letter of objection to the Order was received from arboricultural consultants acting on behalf of the insurers of the property [at the time the Order was made]. The objection was received after the 28 day notice period for representations and is not therefore a technically valid objection.

2. In response to the Section 211 Notification of intent to remove the tree fifteen representations objecting to the proposed felling and requesting the making of a Tree Preservation Order were received; including objections from Moreton Road Residents Association and the Oxford Civic Society.

**Objection:**

The grounds given for the objection are that, contrary to Government advice on the proper making of TPOs, the Council has not explained the reasons for the making of the Order. The representation cites Government's published advice on the subject, 'Tree Preservation Orders: A Guide to the Law and Good Practice' at Section 3.3, which states that,

*'LPAs should be able to explain to landowners why their trees or woodlands have been protected by a TPO. They are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the following key criteria: (1) Visibility; (2) individual impact; (3) wider impact and (4) expediency.'*

The objection further asserts that the service of the TPO has added a significant additional layer of complexity for the engineers investigating subsidence damage at the property in relation to requirements for mandatory levels of evidence if they wish to apply for consent to carry out works [felling] the tree.

**Officers Assessment:**

The Tree

The oak stands along the southern boundary of 26 Lathbury Road, which is within the North Oxford Victorian garden suburb conservation area. Extensive mature tree cover is a significant feature of the character and appearance of the conservation area. The tree is a mature English oak (*Quercus robur*) of approximately 15m height, with a radial crown spread of 7-8m. The tree has been pruned in the past and this has affected its crown shape and subsequent habit of growth, resulting in a dense, rounded and compact crown, which is nevertheless symmetrical and aesthetically pleasing; the layperson being unlikely to notice the fact of its previous management. The oak has a prominent position in public views from part of the Woodstock Road opposite the western junction to Lathbury Road, and from the western end of Lathbury Road. The oak is one of a number of other mature trees of similar size, which punctuate the garden frontages of the street. In conclusion the tree constitutes an attractive feature in the local street scene, and it makes a significant positive contribution to the character and appearance of the conservation area.

The objection

(1) The objection to the Tree Preservation Order (TPO) states that '*contrary to Government advice on the proper making of TPOs, the Council has not explained the reasons for the making of the Order*'.

The Officer advises that this is not the case. The Council has complied fully with the procedural requirements under regulation 3 of the 1999 Regulations – 'Procedure after making an Order' (Town and Country Planning {Trees} Regulations 1999); this properly included the service of a notice ('a regulation 3 notice') stating 'the LPA's reasons for making the TPO' As well as other information specified in the Model Regulation 3 Notice, which is provided in Annex 2 of 'Tree Preservation Orders: A Guide to the Law and Good Practice', the Government's published advice on the making of TPOs. The Regulation 3 Notice included the following statements explaining the reasons for the making of the Order,

1. *To protect in the interest of public amenity, a tree, which makes a valuable contribution to*

*public views from Lathbury Road and Woodstock Road, and to the character and appearance of the North Oxford Victorian Suburb Conservation Area.*

*2. The Order is made in response to a notice under Section 211 of the Town and Country Planning Act 1990 of intention to fell the tree. The Order is also made to allow for a request of further technical information related to the reason given for the proposed felling, i.e. Alleged casual link to building subsidence damage.*

In accordance with Government advice to assess the amenity of trees in a structured and consistent way, the Council used two different methodologies to assess the value of the oak tree, one is an in-house system, the was other produced by a arboricultural consultancy practice and widely used amongst other local planning authorities (TEMPO Forbes-Laird, J. (2005) 'Guidance Note for Users: Tree Evaluation Method For Preservation Orders – TEMPO.' CBA Trees, Twyford, Hampshire).

*(2) The objection asserts that 'the service of the TPO has added a significant additional layer of complexity for the engineers investigating subsidence damage at the property in relation to requirements for mandatory levels of evidence if they wish to apply for consent to carry out works [felling] the tree'.*

The Officer advises that the Order was indeed made partly to allow for the possible request of further technical information beyond the six week notice period. S subsidence investigations by the nature of their complexity can make the six week period insufficient to allow the LPAs full critical evaluation of the evidence; this may include the appointment of their own technical experts and evaluation of monitoring results over several months. It was therefore considered reasonable, given the significant amenity value of the tree, to make a TPO to extend this period.

Applications to carry out works to the tree (including felling) can be made at any time under the Order, and any application will be judged on its merits and the technical evidence presented. The decisions of LPAs may be appealed to the Planning Inspectorate and TPOs also include provisions for damages to be paid to applicants should they be adversely affected as a direct consequence of a decision of an LPA. No such application has been received to date.

**Conclusion:**

The oak is important to local public visual amenity and there is a clear expediency in confirming the Order to prevent its removal without an opportunity for further assessment of the technical reasons given in the Sec 211 Notice. The inclusion of technical evidence with the Sec 211 Notice should not prevent confirmation of the TPO at this time. Applications to carry out works to the tree (including felling) can be made at any time under the Order, and any application will be judged on its merits. The Committee is therefore recommended to confirm the, Oxford City Council - Lathbury Road (No. 1) TPO, 2011 without modification.

THIS REPORT HAS BEEN SEEN AND APPROVED BY THE PLANNING BUSINESS  
MANAGER

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a decision to make and confirm the Tree Preservation Order. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

**Background Papers:**

11/00003/ORDER- Lathbury Road (No.1) Tree Preservation Order 2011

11//01262/CAT- Section 211 Notice; Technical Assessment File

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**Extension:** 2149

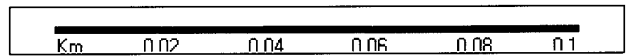
**Date:** 18 August 2011

# 11/00003/ORDER

26 Lathbury Road



Legend	
<b>Scale:</b>	1:1250



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<b>Organisation</b>	Not Set
<b>Department</b>	Not Set
<b>Comments</b>	
<b>Date</b>	28 September 2011
<b>SLA Number</b>	Not Set

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