

AGENDA ITEM NO. 17

PLANNING COMMITTEE

Date	16 October 2013
Title	TPO 04/2013, 1 Lime, 1 Willow, 1 Birch, 1 Larch, 1 Magnolia Grandiflora on land west of 29 Norfolk Street, Wimblington

1. PURPOSE

The purpose of this report is to advise members of the current situation in respect of confirmation of a Tree Preservation Order (TPO) at 29 Norfolk Street, Wimblington, and to determine an appropriate course of action.

2. SUMMARY

Matters relating to the issue and confirmation of a TPO are normally dealt with by delegated powers and only where objections to the Order are received are some matters referred to this committee.

The grounds for making the Order are that the trees are prominent or will become prominent over time and provide landscape amenity and interest to the local area.

The decision to seek the retention of these trees was made in June 2013.

The trees subject to this TPO are located within the side and rear garden area of No. 29 Norfolk Street, Wimblington.

3. RECOMMENDATION

It is therefore recommended that members confirm the TPO in respect of the specified trees at 93 High Street, March.

Forward Plan Reference No. (if applicable)	Not applicable
Portfolio Holder(s)	Not applicable
Report Originator	Sheila Black, Senior Planning Officer
Contact Officer(s)	Graham Nourse, Head of Planning
Background Paper(s)	-

1. BACKGROUND

- 1.1 During consideration of planning application F/YR12/0833/F it became apparent that development on the land would involve the loss of a significant number of trees some of which were considered worthy of protection due to their prominence in the street scene and their future potential, therefore the Authority sought to issue a TPO. The Order was subject to a 28 day period for the receipt of any objections prior to final confirmation.

2. OBJECTION FROM LANDOWNERS

- 2.1 The Executors of the estate of the late Mr W Hite who formally lived at 29 Norfolk Street, Wimblington, consider that the grounds for the TPO are not a reasonable application of the policy set out in paras. 3.2 and 3.3 of the Guidance for the following reasons:
- *A TPO should only be issued in respect of trees which, if removed, would have a significant impact on the local environment and its enjoyment by the public and that it is only in exceptional circumstances that this would apply to trees that are not viewable. The removal of the trees subject to the TPO would have an insignificant impact on the local environment and its enjoyment by the public as most of them cannot be seen by the public:*
 - *The Guidance states that a reasonable degree of public benefit should accrue before a TPO may be made in respect of the trees. The Executors note that it would be unreasonable to consider that the benefits only to the neighbouring privately owned properties is sufficient to meet this test given that the trees cannot be seen from a public place;*
 - *The LPA should be able to explain why a TPO is necessary and mere visibility is not enough. The Executors do not believe that the explanation given by the LPA sufficiently justifies the exceptional application of the Regulations in these circumstances; and*
 - *Before making the TPO the LPA should visit the site and consider whether a TPO is justified. The Executors do not believe that this was done and the issuance(ing) of the TPO was decided, instead, solely on the basis of the planning application reference F/YR12/0833/O without having carried out a site visit.*

The Executors believe that FDC may have taken into account irrelevant factors (specifically the desire to refuse the planning application) and not taken into account relevant factors when deciding whether or not to issue the TPO. Therefore, even if the TPO was served in accordance with the Regulations, the decision to issue the TPO appears to be a fundamentally flawed decision from the public administrative law perspective.

The Executors further make the following points in relation to specific trees subject to the TPO having taken advice from Mr R Woods of RW Landscaping Ltd:

- *T1 – Lime – this tree is sited too close to the bungalow, will grow excessively large and overwhelm the property in time. The roots will also cause obstruction to the drains and foundations of the house.*
- *T2 – Willow – this tree has a disease which causes the bottom on the branches to break off, the leaves turn yellow and this creates excessive fall of branches. Willows also have a short life span of 20 years approx. and should not be subject to a TPO.*
- *T5 – Magnolia Grandiflora – this tree is planted in the wrong place and does not benefit from the protection of a sheltered wall or fence. As such it is likely to*

suffer damage from exposure to winds as it grows bigger and is likely to topple over. It is also too near the house and roots will affect the foundations if it reaches maturity. It does not provide any meaningful form of amenity or interest to the local area.

3. ARBORICULTURAL OFFICER'S RESPONSE

- 3.1 Whilst it is agreed that the full view of the trees is restricted, they can be seen from the main road and there are good views of T2 particularly from Norman Way.

The TPO guidelines accept that the benefit of a tree may be now or in the future and clearly the trees selected (for good form) will grow significantly larger. The TPO was not placed to prevent development but to ensure if any development went ahead then trees considered worthy of retention could be retained. In addition, a TPO does not prevent development and full planning permission overrides a TPO.

Magnolia are only trained against a wall for shelter as they can be damaged at temperatures below -5°C. They can grow to 25 metres plus in their original habitat and large specimens can be found grown as standard. In London they are being planted in the street as standard trees and have proved to be wind firm despite the funnelling effects on the wind from urban streets. They are rarely implicated in damage to buildings and are noted as being of low water demand.

The position of T1 is prominent and the tree provides undoubted amenity to the area. Whether the tree causes damage to buildings is not just a case of distance, foundation design, soil type are all contributing factors and can only be determined by investigation.

The potential for trees to cause damage is not a reason to not place a TPO as the prediction of damage is not possible with any accuracy.

A 20 year old willow is barely early mature and life expectancy generally of Willows (*Salix* sp) is 50-70 years. Even if a tree was considered to have only 10 years remaining life it could still be considered for protection with a TPO if it had benefits to public amenity.

A TPO does not prevent future tree management or even removal if necessary in the future but is there to prevent unnecessary works.

4. ASSESSMENT

- 4.1 The Order, which encompasses the aforementioned trees, is detailed on the accompanying plan.
- 4.2 Matters relating to the issue and confirmation of a TPO are normally dealt with by delegated powers and confirmations are only referred to this Committee where objections to the Order are received. The decision to seek the retention of the trees was made in June 2013.
- 4.3 The placement of a TPO does not prevent tree works or even removal, but gives the Local Planning Authority control over 'inappropriate' works.
- 4.4 Having given due consideration to both the representations made and the further observations of the Councils Arboricultural Consultant, Officers are satisfied that the TPO should be confirmed as made.

4.5 It is therefore recommended that the TPO is confirmed in accordance with the Order TPO 4/2013.

UPDATE

Members may recall that the confirmation of the TPO was presented to the 16 October 2013 Planning Committee where it was deferred for a further month to give Members the opportunity to visit the site and view the trees.

The LPA still considers that the trees are worthy of protecting and recommends that the TPO is confirmed in accordance with the Order TPO 4/2013.