

**CITY OF LEEDS TREE PRESERVATION ORDER (NO.25) 2024  
TPO 2024 25 (LAND TO REAR OF CHURCH CLOSE POOL IN WHARFEDALE  
OTLEY LS21 1LN)**

**1. BACKGROUND**

A Conservation Area notification under s.211 of the Town and Country Planning Act 1990 (Ref: 24/00580/TR) was received by the Council. The notification was validated on 12 March 2024.

When considering applications under s.211 of the Town and Country Planning Act 1990 to grant consent to carry out prohibited activities to a tree in a Conservation Area in accordance with the 6 March 2014 Tree Preservation Orders and trees in conservation areas Guidance (Paragraph: 118 Reference ID: 36-118-20140306) Leeds City Council ('LCC') "may:

- make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice."

The Tree Preservation Orders and trees in conservation areas Guidance also provides guidance on the definition of amenity:

"What does 'amenity' mean in practice?

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future."

Paragraph: 007 Reference ID: 36-007-20140306

The notification included the proposed works:

*T1 Birch - To be thinned at 15%, crown to be reduced 4 meters from the top.*

*T2 Horse chestnut - On council land to be cut back as it is covered in ivy to the top and due to its sticky buds it makes the ground and children's play equipment sticky.*

*T3 Holly -To be thinned and branches that hang over cut back at the side of the property just over the fence on the council land.*

*T4 Sycamore - Crown to be reduced and branches thinned, tree is taller than the house and slightly leaning branches are over hanging to the garden. Tree is located on the council land.*

*T5 Sycamore or Ash - Crown reduce and cut back to fencing*

T1 is a privately owned tree in a rear garden. T2 to T5 are located on Council land.

Further email correspondence between the applicant and [tree.enquiries@leeds.gov.uk](mailto:tree.enquiries@leeds.gov.uk), dated 27 February 2024, also highlights the following:

*“There is 3 trees that are concern to us.*

*1. is a already cut horse chestnut that has branches growing one side towards our garden. It is covered in ivy. During summer it has a sticky residue dropping and covering our whole play area in the garden and makes it unusable to play on by kids. We would like this cut down so we can enjoy our play area.*

*2. A large tree higher than our house. Its crown about a 1 meter away from the roof line. It is top heavy and slightly leaning. We are concerned for our safety during a big storm as winds can get strong where we are placed. We are also worried about the roots reaching too close to our house now and causing issues with pipes and the foundation. So we would like this tree cut out and root grind.*

*3. Smaller tree but branches over reaching the fence so would like to cut back the branches”*

The correspondence with tree.enquiries contradicts the subsequent tree works application, which itself is particularly vague. It is difficult to determine the extent of the works that would be carried out, following the application.

An LCC Officer visited the site on 28 February 2024. The LCC Officer considered that the woodland-type group adjacent to the properties, situated on Council land, had amenity value, being prominent from Chapel Hill Road and from Church Close, and offered screening value and a green corridor between the estates.

In order to prevent potentially unsuitable work to prominent trees with amenity value, it was deemed expedient for the Council to serve a Tree Preservation Order ('TPO') on the site, which was made on 19 March 2024.

## **2. OBJECTION**

On 17 April 2024, objections to the Order were received from neighbouring properties at Chapel Hill Road, by way of emails with an attached word document. The attached documents comprise individual covering letters, and then an identical nineteen page objection.

## **3. LEGAL COMMENTS IN RELATION TO THE OBJECTION**

1. As highlighted above, when the Council considers applications under s.211 of the Town and Country Planning Act 1990 to grant consent to carry out prohibited activities to a tree in a Conservation Area, it may:
  - make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;

- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.

Paragraph: 118 Reference ID: 36-118-20140306

2. When the Council receives such an application, if it does not serve a new TPO the works proposed will be allowed to go ahead by default. The protection offered by the Conservation Area is not effective, without the proactive use of TPOs for trees with amenity value.
3. The trees are owned by Leeds City Council. While this offers a basic layer of protection, this does not necessarily prevent unsuitable tree work. For example, overhanging branches that are pruned to the boundary can result in substandard pruning by third parties. Additionally, when a s211 application is received and No Objection is issued (whether within the notice period or by default) this creates ambiguity as to whether or not the works have been approved by the Council (see 4.2). As such, it can be appropriate to issue TPOs on Council owned trees.
4. Government guidance suggests that Councils consider the visibility and impact of trees, groups and woodlands when serving TPOs. Suggested characteristics to consider include size relationship with the landscape and contribution to the character of a Conservation Area.
5. The woodland group is visible from the public highway at Chapel Hill Road and Church Close. This is sufficient to merit a TPO based on visibility.
6. The objector has provided aerial photos of the trees from 1946, prior to the construction of the Church Close estate and the more recent Chapel Hill Road estate. The trees are part of a historic field edge boundary and have a relationship with the landscape that pre-dates the objector's properties.
7. The objector has also provided a photo of Pool-in-Wharfedale, taken from the Leathley Farm shop approximately one mile from the site, highlighting the presence of trees in and around the village. Mature trees, including woodland groups, characteristic of the landscape and Conservation Area.
8. The photos provided by the objector show that the woodland groups, including trees at the edge of the field boundary, provide screening value between the estates. That the screening is considered partial, due to either tree spacing or the trees being deciduous, does not detract from this.
9. Regarding the use of the Woodland Order, the photos provided by the applicant at Section 3 and Section 9, highlight that the value of the trees is as a woodland group, not as individual trees. The Woodland classification is appropriate.

10. When serving a new TPO, the Council serves notice on all properties affected by the TPO, consistent with the legislation. This includes properties adjacent to the TPO, and where the TPO overhangs into adjacent gardens. That the shared boundary of the site with 23 Chapel Hill Road is short, is not relevant.
11. Regarding pruning to the boundary, the case of *Lemmon v Webb* [1862] AC 1 HL, established the principle that where branches from a neighbour's tree overhang your property you may remedy this by cutting back the branches which have grown into your property provided you do not damage the tree. The objection is referencing this remedy which is from case law. When using this remedy residents must still submit the relevant notification or application if the trees are protected, and gain consent from the Local Planning Authority. As the trees were already in a Conservation Area, this is not significantly changed by the serving of a TPO.
12. LCC takes its duties under the Human Rights Act seriously. It is not considered that carrying out a statutory function under the Town and Country Planning Act 1947 is a breach of human rights for local residents.
13. Regarding right to light, the Council will continue to accept applications to prune the trees to reduce nuisance associated with overhanging branches and direct shading, under the TPO. The Council will support tree work that is consistent with good arboricultural practice.
14. The objectors suggest that they will pursue the Council for damages related to the trees. The Objector could seek compensation under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 if they can show that the refusal of an application caused loss or damage over £500.

#### **4. GENERAL COMMENTS IN RELATION TO THE OBJECTION**

1. The objection highlights that the Council "approved" a previous application at the site (Ref: 22/02772/TR). The application included a reduction in height of two Sycamore trees, reducing the trees to half their previous height.
2. The application was not "approved". As per the decision notice, "severe resourcing pressures being currently experienced within the Tree Team" resulted in "the application [passing] the statutory period for determination" and receiving an automatic "No Objection". At the time, the application passing the notice period resulted in a decision notice being generated automatically, and so the application does not appear to have been reviewed by a Tree Officer. This is evidenced by the lack of Officer Report.
3. The previous application is consistent with topping. Topping has long been regarded as poor practice in the arboricultural industry, due to its negative impact on tree condition, form and amenity value, and is not supported where trees have amenity value.

4. Additionally, the trees are situated on Council land and, in order to undertake the works proposed, the trees will have to have been accessed and pruning will have to have taken place beyond the boundary of the applicant's property. This is contradictory to the Council's established approach to third-parties scheduling works to Council-owned trees.
5. The precedent highlighted by the objector is considered to reinforce the case for a TPO at the site.
6. The objector has highlighted concerns regarding the long-term maintenance of trees, including potential tree growth, general maintenance by the Council, and the potential cost of tree work applications.
7. The figures provided for potential tree height and spread are not typical of similar trees in the area, but rather are the maximum that trees can potentially reach, in optimal growing conditions over a long period of time. The likelihood of the maximum potential growth being reached is not high. This is illustrated by photos provided by the objector, which shows that the general size of trees in the woodland and field edge group does not appear to have significantly changed since 1946, as mature features have declined and been replaced by younger trees.
8. The woodland group will be managed in accordance with Council policy, consistent with good arboricultural practice. There is a common misconception that "management" will necessarily include remedial work, however this is not the case. Basic and detailed assessment can also comprise suitable tree management.
9. There is no cost for applications to work on a tree protected by a TPO. The objector suggests that employing arboricultural experts to support applications will be prohibitively expensive, however this is only required if the application has been prompted by concerns regarding the condition of the trees, or due to structural damage caused by the trees.
10. Regarding applications due to tree condition, an email or brief description of tree condition from an appointed contractor is often considered sufficient "expert advice" to acknowledge an application for works to a tree with a TPO. While individual contractors may charge for this service, this is not required and there are many contractors who do not charge for this service.
11. Regarding applications due to the impact of trees on structures, these applications are typically submitted by insurers following detailed investigation, consistent with Planning Portal. As the woodland is owned by the Council, requests to prune or remove trees due to structural damage would be expected to follow this process, regardless of the Conservation Area or TPO being in place.
12. The objector has voiced concerns regarding the risk associated with trees. As per BS3998:2010 Tree Works – Recommendations 0.1: "Trees are dynamic, continually self-optimizing organisms" that are "highly efficient in intercepting,

using and storing solar energy, while also bearing its own weight and dissipating the potentially damaging forces of the wind". As the trees in the woodland largely appear to be in fair to good overall condition, it can be assumed that they are self-optimising.

13. The objector has specifically highlighted the phenomenon of Summer Branch Drop to highlight the risk associated with the trees. Summer Branch Drop is a very loose term for unexpected branch loss in trees that otherwise have no obvious risk features. According to VALID Tree Risk-Benefit Management system, the actual risk associated with summer branch drop is "is less than one in one hundred million", and that "[there is] greater risk for the few minutes it takes to cover about 5km/3mi on a drive, than from SBD over an entire year".
14. The objector suggests that there is a risk associated with ivy on trees adjacent to the property, as the ivy was "suffocating" and "taking water" from the tree. While ivy can obscure notable features such as decay or fungi, healthy trees largely tolerate ivy, and "throttling" by ivy is a rare occurrence. Ivy is one of few native, woody evergreen plants in the UK, providing valuable habitat and late flowering.
15. The objectors highlight increased emission use and nuisance issues that may occur as a result of unchecked tree growth.
16. The Council will continue to consider third party applications to maintain trees in the woodland, to mitigate nuisance issues experienced at the properties.
17. Regarding emissions and the impact of removal of trees detailed in the application, a recent study by the United Bank of Carbon at Leeds University, and supported by the Council ("What is 'Like for Like'?") found that significant replacement planting is required to effectively offset the removal of mature trees.
18. It is suggested that the intent of the TPO is "politically motivated" by the Council's Zero Carbon policy, rather than the actual threat to the trees. Officer decisions are based on the works proposed, and whether it will be detrimental to amenity, as per the Town and Country Planning Act and Government guidance. There is no scope to consider Council policies when responding to tree work applications.
19. The objection offers alternative solutions to the TPO.
20. The first suggestion is to TPO trees individually, as opposed to using the woodland order. See 3.9.
21. The second suggestion is that that residents should be allowed access to the woodland group to remove small trees establishing close to the fence. This approach is not consistent with the Council's established approach to third-party management of Council trees.

22. The second suggestion also states that the Council should “recognise their ownership and arrange for work to be carried out”. The woodland will be managed according to the agreed and established approach of arborists and arboriculturists in the Council’s forestry team. Guidance on the Council’s approach can be found here: [Council owned trees \(leeds.gov.uk\)](http://leeds.gov.uk).
23. The solutions offered in the objection are not consistent with the relevant legislation, as highlighted at 3.1 and 3.2.
24. The Council is happy to consider planning applications for works to the Woodland TPO. Additionally, under the TPO, Case Officers are now in a position to issue full or partial approval (a Split Decision). As part of a Split Decision, Case Officers can provide suitably worded, detailed work specifications to mitigate issues associated with trees. Many of the issues highlighted in the objection, including risk, nuisance associated with encroaching/overhanging branches, and access, can continue to be addressed by third parties with the TPO in place. Applicants will also be able to appeal decisions to the independent Planning Inspectorate. It is argued that a TPO is the best way forward for the site, in the long term.

#### **4. CONCLUSION**

The Order is warranted on the grounds of amenity and expediency and therefore, the imposition of the Order is appropriate.

The Council will consider future tree works applications. Permission is not required for the removal of dead wood.

#### **5. RECOMMENDATION**

That the Order be confirmed as originally as served.