

Report of	Meeting	Date
Director Partnerships, Planning and Policy	Development Control Committee	30 March 2010

OBJECTION TO TREE PRESERVATION ORDER NO.8 (CHARNOCK RICHARD) 2009

PURPOSE OF REPORT

1. The purpose of this report is to decide whether or not to confirm the above Tree Preservation Order (TPO) with or without modification in light of the objection received

RECOMMENDATION(S)

2. That Tree Preservation Order No. 8 (Charnock Richard) 2009 be confirmed with modification to amend the description of T2 from (Whitebeam) to (Goat Willow), T8 (Oak) to (Elm) and T10 (Birch) to (Elm).

EXECUTIVE SUMMARY OF REPORT

3. The purpose of this report is to decide whether to confirm the above Tree Preservation Order with or without modification. The Order was placed on the trees after some were felled and the threat to other trees on the land which have a high level of public amenity. Given that a planning application has been submitted for residential development the trees are potentially at risk and their retention can only be safeguarded by confirming the order.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

4. It is recommended that the Order be confirmed as amended. The objections to the order are not substantiated and the correction to the tree species can be done without causing any injustice.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. The Council could have decided not to protect the trees and allowed them to be felled. However, this would have meant that mature trees which have significant amenity value would have been lost.

CORPORATE PRIORITIES

6. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity		Develop the Character and feel of	X

and life chances		Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	

BACKGROUND

7. The land in question had previously been the subject of pre-application discussions to develop the land for housing and a planning application for residential development is currently under consideration. Following reports of tree felling on the site your officers visited and found that a large mature tree within the site had been felled and that other tree works were progress. Given the immediate threat to trees which contribute to the visual amenity of the area it was considered expedient to make a tree preservation order.

OBJECTION

8. One letter of objection has been received on behalf of the owner of the land. The objection is made on the following grounds:-

- the life expectancy of the trees are limited and development of the site presents an opportunity to replace the trees
- that there are procedural errors in the making of the order
- tree species within the order have been wrongly identified

In response to the objection:-

- the Council's arboricultural officer has met with the landowners agent. His opinion is that the trees are mature but are healthy and there is no arboricultural reason why they should be removed
- The objector contends that the "cover" letter attached to the Order (which the latter describe as the "Regulation 3 Notice") was remiss in that it did not specify by whom the Order was made, to whom objections might be made, and the date by which such objections should be made. The Order was made and served on 9 October 2009 in response to the felling of trees on the site, which was on-going. The TPO was served on two persons, Metacre Ltd, Lynton House, Ackhurst Park, Chorley, and on the Licensee/s, The Dog & Partridge, Charter Lane, Charnock Richard. The "cover" letter that accompanies service of a TPO does not comprise the "Regulation 3 Notice," nor is it meant to serve such function. It serves as no more than an albeit necessary introduction to the documents which it accompanies.
- The "Regulation 3 Notice" is in fact in the form of a standard document as set out in Annex 2 to the DETR publication, "Tree Preservation Orders: A Guide to the Law and Good Practice" published in March 2000. The formal notice served in both cases contained the details, which the objector alleges were omitted, as well as specifying the grounds on which the TPO has been made. A site notice was, albeit differing slightly in format, also posted for the purpose of publicising the fact that the trees concerned were now protected by way of a formal TPO. The site notice was not meant to serve as a personal formal notice in the same sense as those served on named individuals, but rather more in the nature of a general public notice.
- It is further contended that the Order map may be in some way defective because it is not dated and thus there can be no certainty that the Map concerned actually relates to the said Order. The Order map bears the Title of the Order, which discloses in broad terms the name of the Order making authority, i.e. Chorley Borough Council, the place to which it relates to, i.e. Charnock Richard, and the year of its making, i.e. 2009. The title on the Map also bears a serial number, i.e. no. 8, which both identifies the overall sequence in which TPOs are made generally

during the course of any one year, and acts further as a means of indentifying the Map as specific to a given TPO. The Order map is not signed, i.e. it lacks an attestation clause. There is no specific ruling on the use of attestation clauses in such circumstances. The inference is presumably that, without a signed copy of a plan in circulation, this could facilitate the substitution of plans. To endeavour such an exercise would however, apart from being wholly opposed to good practice, be extremely difficult given that copies of the Order and Map are widely circulated to all interest parties from the very start of the process.

- Finally, the objector notes the terminology used in the Schedule to the Order in so far as it relates to specifying that no groups or areas of trees, or woodland are covered by the Order, i.e. the use of the word “nil” in this regard instead of the word “none.” The word “nil” was certainly used in TPO’s in former years and the model available by way of internet link to the DETR does not offer a recommended wording, but rather concerned itself solely with supplying model examples/descriptions as regards the inclusion of groups and areas of trees and woodland. Whatever the appropriate terminology, since no groups or areas of trees or woodland are affected I would not consider this to constitute a substantive objection.
- It is accepted that some of the tree species were incorrectly identified in making the order and this can be corrected by varying the order.

IMPLICATIONS OF REPORT

8. This report has implications in the following areas and the relevant Directors’ comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal		No significant implications in this area	X

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Report Author	Ext	Date	Doc ID
Peter Willacy	5226	17 March 2010	

Background Papers			
Document	Date	File	Place of Inspection
Chorley Council Tree Preservation Order No. 8 (Charnock Richard)	October 2009	TPO No. 8 (Charnock Richard)	Civic Offices, Union Street