

REPORT TO DEVELOPMENT CONTROL COMMITTEE



DATE	12th October 2023
PORTFOLIO	Environment
REPORT AUTHOR	Lesley Blakey
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CONFIRMATION OF TREE PRESERVATION ORDER

PURPOSE

- 1 To seek authority to confirm a Provisional Tree Preservation Order.

SUMMARY OF KEY POINTS

- 2 The Council were informed that land at Colne Road/Steer Street, which was owned by Lancashire County Council, was up for sale by auction; the auction was to take place on the 18th/19th July 2023. As the trees on the site are prominent in the streetscene and make a valuable contribution to the visual amenity of the area it was considered that a provisional Tree Preservation Order should be placed on the trees to ensure their retention. A Provisional Tree Preservation Order was served in relation to one individual Maple tree and a group of four trees consisting of one Maple, two Lime and one Poplar on the 11th July 2023. The Council has six months to confirm the Order or let the Order lapse.
- 3 Following the making of the TPO one of the Maple trees within G1 was felled and the Poplar tree within G1 was pruned by a tree contractor who was carrying out the work on behalf of Lancashire County Council. The tree contractor that was working on site said that an officer from LCC had met him on site that morning with regard to the tree work and that he had been told that the tree was an Ash tree with Ash Dieback, however, he agreed that in fact it was a Maple.

Objection letters have been received to the order from the purchaser of the land together with their solicitor and an arboricultural consultant employed by the purchaser. The objections are as follows;

- a) The purchaser of the land who is an adjoining landowner objects for the following reasons;
 - *We were not informed of the Order.*
 - *The Auctioneers should have been informed and a site notice should have been installed.*
 - *The reason for the Order is unrealistic and an unfair and biased approach to take.*
 - *The correct procedures have not been followed.*
 - *The amenity value of the trees is of very little public benefit and value; there is a negative amenity value of the trees as the site suffers from extensive fly tipping and the tree coverage provides shelter for the fly-tippers.*
 - *The trees are potentially a major health and safety risk to members of the public and highway users, for e.g., the Poplar tree overhangs the road.*
 - *One of the trees within G1 was felled and another pruned after the TPO was made without consent. The TPO is therefore invalid and misleading.*
 - *The tree that was removed and other remaining trees on the site are also leaning and diseased and at risk of collapse and causing serious injury.*
 - *The TPO has been made without seeking the opinion of a qualified tree specialist.*
 - *The trees were under good arboricultural management as they were being managed and pruned by the local highway authority and landowner.*
 - *There are significant costs associated with future applications to carry out work to the TPO trees.*
 - *We request that the TPO is withdrawn with immediate effect, otherwise the local authority will be liable for any damage or injury/death as a result of issues with the trees in the future.*
 - *If the TPO remains you need to prosecute LCC for felling a protected tree and for pruning others without consent.*
- b) The purchaser's solicitor;
 - *Our client did not receive any notice of the proposal to create a TPO; if they had they would have objected.*
 - *LCC have already chopped down one of the trees and our client believes the others present a danger to the public.*
- c) The purchaser's arboricultural consultant;
 - *There was no evidence provided to confirm that the trees are likely to be felled. Therefore, stating that 'the land is currently up for sale by auction and there is concern that the trees may be felled' appears pure speculation.*
 - *The Order is incorrect in that there are only three trees within Group G1, not four as indicated. It is understood that the*

fourth tree may have been removed by LCC after the Order was made.

- *The Poplar has also been heavily thinned.*
- *If these works were undertaken without consent, we would welcome advice as to any enforcement action that is being taken against LCC as this could impact my client's future use of the site.*
- *The Auctioneers should have been made aware of the TPO.*
- *Our client purchased the land in good faith and was only made aware of the Order at a later date.*
- *It would be reasonable to request details of the officers' assessment of the Poplar tree and if any information was sought from LCC regarding their regular inspections.*
- *The trees are not of a high amenity value and the long-term viability of the Poplar tree is questionable.*

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Who must the local authority inform when making a TPO?

The 'persons interested in the land affected by the Order' are every owner and occupier of the land on which the protected trees stand and every other person the authority knows is entitled to carry out certain works to any of those trees or in relation to the affected land.

The authority may decide to notify other people, groups, authorities, and organisations (such as parish councils and the Forestry Commission). It can also consider displaying site notices.

The local authority therefore served the Order on the owners of the land who were Lancashire County Council. It was not considered to be prudent to inform the Auctioneers as that was under the jurisdiction of the landowners i.e., LCC, and not considered appropriate for the local authority to interfere in such matters.

- 6 It is understood that this piece of land had been maintained by Burnley Borough Council for some time as Greenspaces and Amenities were unaware that the land had been transferred to LCC. Any necessary maintenance work to the trees was therefore carried out by the Burnley Borough Council tree team. Greenspaces and Amenities were due to carry out pruning work to the Poplar tree overhanging the highway when it was confirmed that LCC were now responsible for the land/trees.

Greenspaces and Amenities had been looking at reducing the overall weight of the branch (of the Poplar tree) which overhung Colne Road to reduce any chance of failure of the branch onto the highway. The tree had in general appeared in a healthy condition albeit quite a large size compared to the other trees on the site. The other trees on the site all appeared healthy and did not appear to be of any concern. There are no trees on the site that are leaning to a degree which could cause concern and there is no obvious evidence of the trees being unstable or signs of any disease of concern.

Greenspaces and Amenities are not aware of any work to the trees ever being carried out by LCC Highways or the owner (LCC) until the current work was carried out i.e., the felling of the protected Maple tree by LCC.

Burnley Council officers are not aware of any fly tipping issues on the site.

There is no fee involved for the submission of applications to carry out work to protected trees.

- 7 It is considered that the trees the subject of the TPO are/were healthy with no concern apart from the need to prune the Poplar tree as mentioned above. Officers from LCC state that they were unaware of the TPO when they felled a Maple tree within G1 and pruned the Poplar tree also within G1. It appears that they were under the impression that the Maple tree was an Ash tree with some Ash Dieback; which was not the case.
- 8 It is considered that the tree that was felled should be replaced with another Maple tree; which should be at least an extra heavy standard with a girth of at least 14-16cm. This should be planted as close as possible to the position of the tree that was felled and will be protected by the original TPO.
- 9 The trees are considered to be of significant amenity value and are prominent when travelling along Colne Road.

It is considered that the decision to place a provisional TPO on the trees was the correct one to secure the retention of tree cover in the interests of amenity.

RECOMMENDATION

- 10 That the Tree Preservation Order be confirmed (with the removed tree being replaced by another Maple that will be protected by the Original Order).

REASONS FOR RECOMMENDATION

11 In order to protect the trees which contribute to the visual amenity of the area.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

12 None

POLICY IMPLICATIONS

13 None

DETAILS OF CONSULTATION

14 Greenspaces and Amenities
Governance, Law, and Regulation

BACKGROUND PAPERS

15 File B140 (L)

The above papers are available for inspection at Housing and Development Control, Town Hall, Burnley.

FURTHER INFORMATION

PLEASE CONTACT:

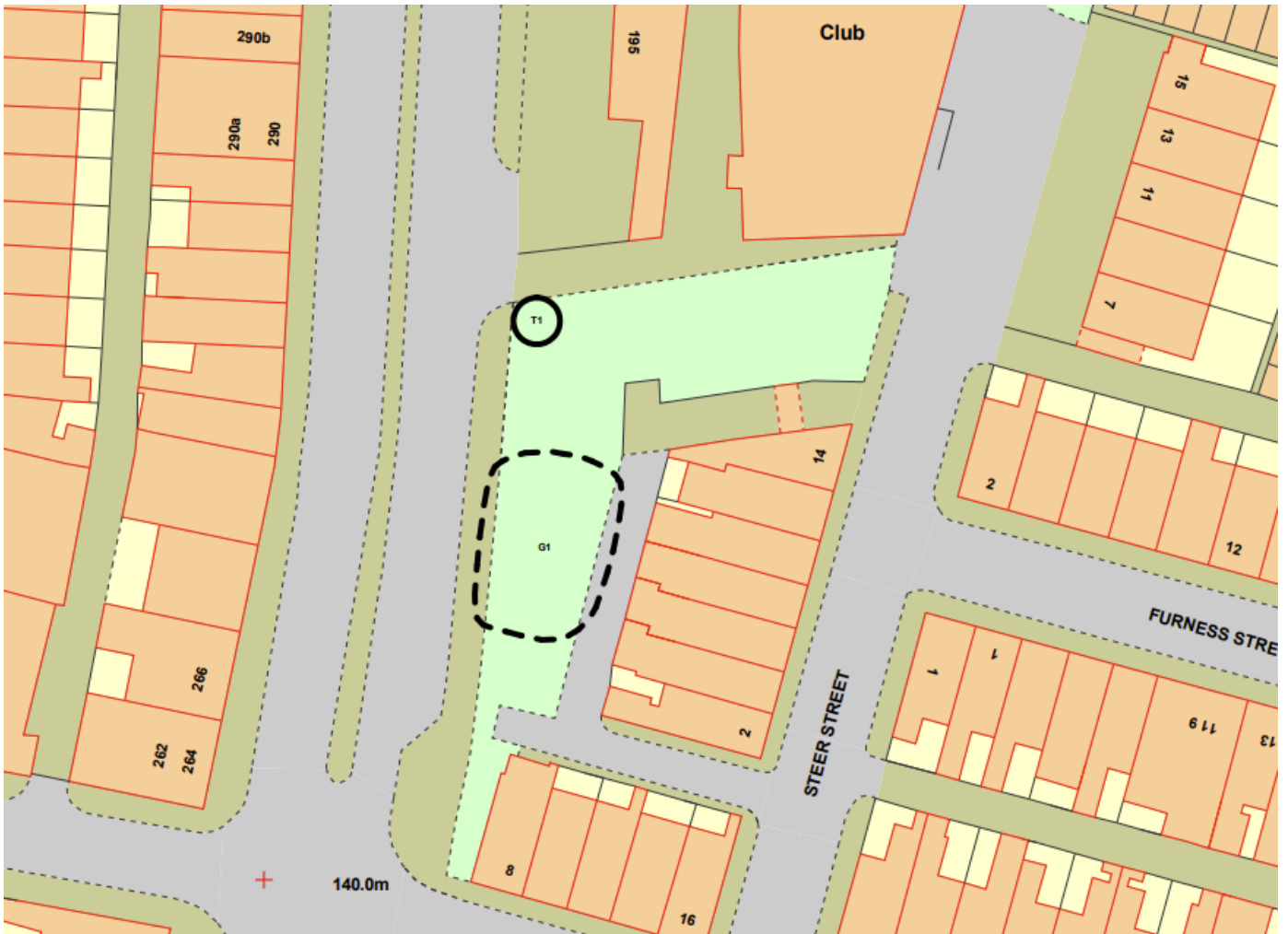
ALSO:

Housing and Development Control

Lesley Blakey 01282 475817



(photo courtesy of Google Maps – June 2022)



THE BURNLEY (COLNE ROAD / STEER STREET)
TREE PRESERVATION ORDER 2023

FIRST SCHEDULE

TREES SPECIFIED INDIVIDUALLY

<u>No. on Map</u>	<u>Description</u>	<u>Location</u>
T1	Maple	SD84693433

TREES SPECIFIED BY REFERENCE TO AN AREA

<u>No. on Map</u>	<u>Description</u>	<u>Location</u>
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None

GROUPS OF TREES

(encircled in a black dashed line on map)

<u>No. on Map</u>	<u>Description</u>	<u>Location</u>
G1	Consisting of one Maple, two Lime, and one Poplar.	SD84693431

WOODLANDS

None

