

# 25/00076/TORDER

**Objector** Mr Eley

**Location** 147 Tollerton Lane, Tollerton, Nottingham, NG12 4FT

**Objection** To the Tollerton No.2 Tree Preservation Order (TPO) 2025

**Ward** Tollerton

## THE SITE AND SURROUNDINGS

1. The trees protected are sited in the front garden of 147 Tollerton Lane, a characterful property constructed in the 1940's which benefits from a large mature garden, approximately 65 x 38 metres in size, with many different compartments and characters. For example, there are lawns north of the house and along the west boundary, formal spaces and informal walks and planting areas. The property is located in a prominent location on the outside of a bend in the road at the northern end of Tollerton Village close to the Church and War Memorial.

## DETAILS OF THE TREE PRESERVATION ORDER

2. The TPO was made on the 7<sup>th</sup> May 2025. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 the Order takes effect provisionally and needs to be confirmed within 6 months of the date it was made. The Council has a duty to consider all objections and representations that have been made.

## SITE HISTORY

3. A potential purchaser (who now owns the property) called the Council to check if trees on the site were protected and was advised that they were not. Within a couple of weeks of this enquiry the Council received calls from 2 other members of the public raising concerns that a developer was buying the house and that the trees were at risk.
4. A site visit took place and it was clear that the previous owner of the property has invested a lot of time and effort into the garden and this included planting a number of trees and that these enhanced the public realm. The Council has discretion when it comes to protecting trees and on this occasion the TPO set out to be selective. It did not protect trees in the rear of the garden hidden from public view. Officers also felt that 2 large Cedar trees that were growing to the immediate front of the property were too close to the house given their tendency to shed limbs due to snow or heavy wind and rain. As a result, 2 large Cedar trees (T1 and T2) were protected close to the driveway along with 2 young Maple trees (T3 and T4) that had been planted in the front garden in a prominent location. It was considered that these young trees had the potential to become increasingly prominent as they grew and would act as replacement trees for the 2 Cedars next to the house when the time came to remove them.

5. Since making the TPO a planning application has been submitted for the removal of the existing dwelling, garage, summerhouse & glasshouses and the provision of a replacement dwelling, reference: 25/01556/FUL. The submitted application indicates all the protected trees can be retained and shows the entrance gate being set back further into the site so is further from the Cedar T2. A 1.4m high Hornbeam hedge is shown to be planted along the frontage.

## **REPRESENTATIONS**

### **Ward Councillor(s)**

6. The Ward Councillor was consulted and didn't object.

### **Local Residents and the General Public**

7. An objection has been received from the new owner of the property in relation to T1 which is the Cedar tree located midway along the drive.

#### **Property Damage**

- Tree roots have significantly damaged the driveway, garden walls, and pathways
- A skip wagon refused access due to the uneven driveway caused by root growth
- Garden walls are cracked and leaning; pathways have lifted and need replacement
- Drainage issues due to historic and current root damage; drains previously dug out
- Gate sensor wires in the driveway are malfunctioning, likely due to root movement
- Structural reinforcement was installed in the house's northwest corner due to alleged tree-related subsidence approximately 20 years ago.

#### **Amenity Value**

- This tree is 24m from the public highway and obscured by T2 (the Cedar at the entrance to the drive) and will be further obscured by T3 and T4 (the young trees at the front of the garden) as they all grow, it has limited amenity value compared to the other trees.

#### **Health & Safety**

- Cedars are very susceptible to losing limbs in wintery and windy weather. As the tree has been topped there are smaller, weaker limbs at the top of the tree which is a cause of concern due to the adjacent drive and paths which the family use.

#### **Justification for the TPO**

- TPO was made based on false claims of development plans and multiple bidders with plans to strip the site. The objector was the only interested party after the property had been on the market for circa 9-12 months. Making the TPO has reinforced this false narrative resulting in ill feeling from local residents when the owner wants to make this their long-term home.

#### Concerns Regarding T2

- They reserve the right to object to T2 which is a Cedar at the front of the property immediately adjacent the driveway entrance and the front boundary wall
- No objection to TPO if the council assumes liability for public property damage as the tree is lifting the pavement
- T2 has already damaged the boundary wall but the owners are open to replacing it with a hedge and fence to enhance the street scene
- Questions whether the tree's amenity value outweighs the cost and liability of ongoing damage.

8. A further objection has been received from the new owner of the property, requesting that the Order is not confirmed for the following reasons:

- Concerns are raised that the Council's points-based assessment of the tree was on a collective basis of all 4 trees and the Council did not publish guidance notes for its assessment
- The objection believes the Cedars fail the assessment for aesthetic value as they have been topped with poor trunk form and thin limbs. Whereas the Maples are too young to warrant protection
- They believe the Cedar T1 fails the assessment for impact on public amenity if removed due to it having a very limited viewpoint and considers the Maples too small to have amenity in this context without the Cedars
- The Cedars should fail the condition assessment due to past topping and their susceptibility to fail in snow, or heavy wind and rain and the fact they cover high use areas of the garden, driveway and car parking
- With regard to proximity and effect on the building they believe the protected Cedars are already damaging the property
- In terms of the health and safety score the Council deducted 1 point, they argue 2 points should have been deducted as this part of the garden is the main outdoor area, they use their driveway 10-20 times a day, 2 lorries have declined to come up the drive due to the slope angle and exposed roots and they use this part of the garden regularly and would want to play with their children in the snow
- The second objection is accompanied by a letter from 4D Tree Survey. Who principally objects to the inclusion of the Cedar's T1 and T2 based on a Tree Evaluation Method for Preservation Order (TEMPO) which is a free to use assessment developed by Forbes Laird Arboricultural Consultancy. TEMPO assessments suggest that trees with less than a 10-year retention span should not be protected including those which are an existing or near nuisance including those clearly outgrowing their context
- They believe the routine maintenance of the trees was stopped sometime after the 2<sup>nd</sup> World War, since then the trees have grown unchecked causing direct damage to surrounding hard surfaces and in the case of T1 apparent obvious signs of damage to the garden room of the property, although this direct damage has not been fully examined for causation. The report believes the trees are a liability and risk to the property.

#### **APPRAISAL**

9. The Council's tree policy is available on our website it states that "when considering the amenity value of trees, the Council will rely on Officer judgment in the first instance, but where decisions are borderline or need to be documented the Council has a point-based assessment". This assessment

considers aesthetic value, condition of trees, the impact on public if they were removed and proximity and effect on buildings, before subtracting points for health and safety and then adding or subtracting points based on wildlife or heritage value. Whilst small trees are considered lower value, Government advice is that the future amenity value of trees can be taken into account and on this occasion, it was felt appropriate to protect young prominent trees in lieu of larger ones that were close to the house.

10. In terms of aesthetic value of the Cedar trees, they have been pruned in the past, but this has not adversely affected their appearance.
11. Regarding the tree's condition, the Cedars have been heavily reduced in the past and going forward it is likely that some form of pruning would be required to reduce the risk of failure from the new growth, but this could be managed through applications to prune the trees. The trees are healthy and have a 25 year or more lifespan ahead. Due to past pruning the Cedars have more compact canopies than would usually be expected for the species.
12. When making TPO's the Council generally assesses trees from public vantage points and doesn't conduct a detailed assessment of the property. It is clear that T1 has lifted the driveway on the side closest to the tree which causes it to slope away from the trunk. Whether such damage warrants the removal of the tree is questionable. It is considered that the drive could be re-laid to make a level surface again or even relocated slightly to position it further from the tree given the large size of the garden and the proposed new house.
13. The part of the garden closest to T1 contains a circular wall and planter to form a rose garden and there are signs of movement in the brickwork and paving. Given that this is a low wall the risk of failure is low and again repairs could take place to retain this feature.
14. The other concerns relating to roots affecting drainage, cables or the subsidence of the garden room have not been investigated or proved sufficiently. The objections blame T1 for the movement to the garden room, but this is not demonstrated and one of the Cedar trees that hasn't been protected is located much closer to it and is likely to be having a more direct effect. Government advice is that tree-related subsidence damage should be supported by appropriate information that demonstrates that the tree is a material cause of the problem and that other factors have been eliminated as potential influences so far as possible. An application could then be made to remove the tree which would allow a condition to be used to ensure appropriate replacement planting. Given the current planning application intends to demolish the property and construct a new dwelling, it may be the case that many of the issues raised become irrelevant if it is approved.
15. T1 is the least prominent tree of those protected, but as mentioned above large trees close to the house were not protected with a view that in all likelihood their removal would take place at some point. When making the TPO officers were of the opinion that it was likely that some form of development proposals would come forward at some point given the size of the garden. There was a strong chance that this tree could become more prominent with time if the trees nearest the house were removed. As mentioned above, the future amenity value of trees can be taken into account and it appears the future of this site is somewhat uncertain.

16. Cedars do have a tendency to shed branches due to snow or heavy wind and rain, hence the decision not to protect the trees closest to the house. Whilst such failure cannot be ruled out to the Cedars close to the drive, it is unlikely the parts of the garden under the trees would be used in such weather and there is a large parking area at the end of the drive that allows vehicles to not park under the trees. Just because there is a risk, doesn't mean that a TPO should not be made. Given the large size of the garden, it allows space away from the trees for informal recreation and parking. If the Cedar's dominated all the garden, it could then be argued that protecting them would be unreasonable.
17. The Council cannot predict the future and has to make assessments based on the information to hand. The public are entitled to request TPO's be made and can provide valuable local information. TPO's are public knowledge but the Council does not advertise them widely and it is regrettable if making one results in ill feelings having been made towards the owner from a member of public. Government advice is that "it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases, the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order." The sale of properties is often a point in time when intentions towards trees change or become unclear and as the current planning application shows there is some intention to alter the site.
18. The Cedar T2, is located on the entrance to the site next to the driveway gate and a reconstituted stone wall that is slightly out of character with the rest of the property. The wall has cracked close to the tree but not to the point that it is now structurally unsound. Such damage could be used to support an application to fell the tree and this would allow the Council to seek replacement planting, but the first objection makes it clear that the owner is considering replacing the boundary wall. This is backed up in the current planning application which proposes a hedge along the frontage as well as relocating the gate so it is further from the tree. Therefore, there is no pressing need to remove the tree for this reason at this point in time.
19. The pavement to the front of the tree does undulate due to a raised kerb and some drainage gullies. Surfaces can be disturbed by roots and the responsibility for maintaining the pavement lies with Nottinghamshire County Council and their agent Via East Midlands. Via advise that in instances of private tree damage to footways, (if at a level for further investigation) a job would be raised and the cost for repair met by Via. They cannot think of any instances where they have recouped monies for damage from private root growth to public footways.
20. The responsibility and liability for the tree remains with the tree owner unless the Council refuses an application for specific evidence-based reasons to justify removal and then damage occurs within 12 months for a value over £500.
21. The advantage of confirming the TPO is that it would allow a replacement tree to be conditioned should permission be granted to fell. It would also allow enforcement action if damaged occurred to the trees during construction work.

22. The Committee can confirm the TPO as it stands, or request that fewer trees are protected, or even none at all.

### **RECOMMENDATION**

It is RECOMMENDED that the **Tollerton No.2 Tree Preservation Order (TPO) 2025** be confirmed without modification.