

REPORT OF THE STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT & DEPUTY CHIEF EXECUTIVE

ORIGINATING SECTION: **PLANNING (DEVELOPMENT
MANAGEMENT)**

REPORT TO PLANNING & HIGHWAYS COMMITTEE – 15th February 2024.

TITLE: **7 Dukes Brow, Blackburn Tree Preservation Order 2023
(ref: BWD6)**

WARDS: **Shear Brow and Corporation Park**
COUNCILLORS: **Hussain Akhtar.
Suleman Khonat.
Salma Patel.**

1.0 PURPOSE OF THE REPORT

- 1.1 To request that the Committee endorse the actions of the Council's Arboricultural Officer/Planning Manager (Development Management) in making and serving 7 Dukes Brow Blackburn 2023 Tree Preservation Order (TPO) (ref: BWD6).
- 1.2 To request that the Committee confirm 7 Dukes Brow Blackburn 2023 Tree Preservation Order (TPO) (ref: BWD6) without modification.

2.0 RECOMMENDATION

- 2.1 That the actions of the Arboriculturalist and Planning Manager (Development Management) in making the 7 Dukes Brow, Blackburn 2023 Tree Preservation Order (TPO) be endorsed.
- 2.2 7 Dukes Brow, Blackburn 2023 Tree Preservation Order (TPO) (ref: BWD6) is confirmed without modification.

3.0 BACKGROUND & RATIONALE

- 3.1 On the 1st November 2023, the Council's Arboricultural Officer was contacted by the owner of the adjacent property to No.7 Dukes Brow, Bank House, Adelaide Terrace, who confirmed they were intending to submit a Section 211 Notification for works to trees in a conservation area, to fell a Lime tree, as shown on the location plan (refer to image 4), as they considered it is causing damage to a boundary wall. The owner stated "*The Lime tree is elevated on a higher section of land and directly adjacent to the boundary wall. Due to its proximity with the boundary the root morphology cannot develop stability roots on the eastern side. The result of this is that if the tree is ever uprooted it can only go eastward.*"
- 3.2. Following a site visit made by the Council's Arboricultural Officer on the 9th November 2023 (refer to Images 1-3), it is considered that the damage to the wall referred to above, appears minor and the partially dislodged stones on the top appears minor and potentially could be easily rectified. With regard to anchorage concerns, it is considered the tree is not liable to collapse. The root growth, morphology and architecture will allow adaption of roots (view of the Arboricultural Officer) to provide perfectly acceptable root development and stability, without the risk of the root plate failing. The wall will not create a barrier for root growth and roots will have likely grown and extend beyond the base of the wall.

- 3.3 The tree will have adapted with the development of structural roots with the associated stresses and strains during development from a young tree. The only potential compromise would be if the soil growing medium, mechanical strength (bulk density) was to be inadequate. There is no evidence to indicate this the case and soils typically would be suitable. If required, this could be relatively easily checked with excavations to determine the soil structure and soil texture.

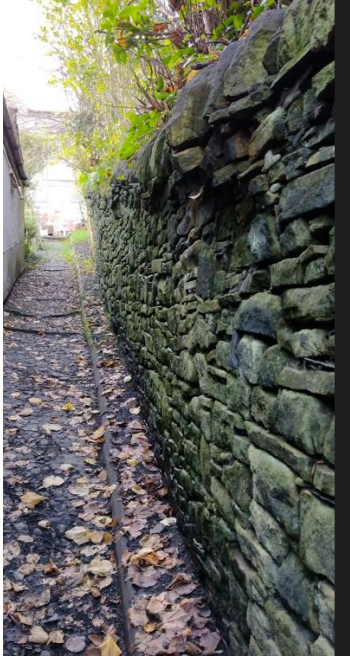


Image 1: Photo of boundary wall to No.7 Dukes Brow – taken 9th November 2023.



Image 2: Photo of lime tree from rear – taken 9th November 2023.



Image 3: Photo of lime tree from front – taken 9th November 2023.

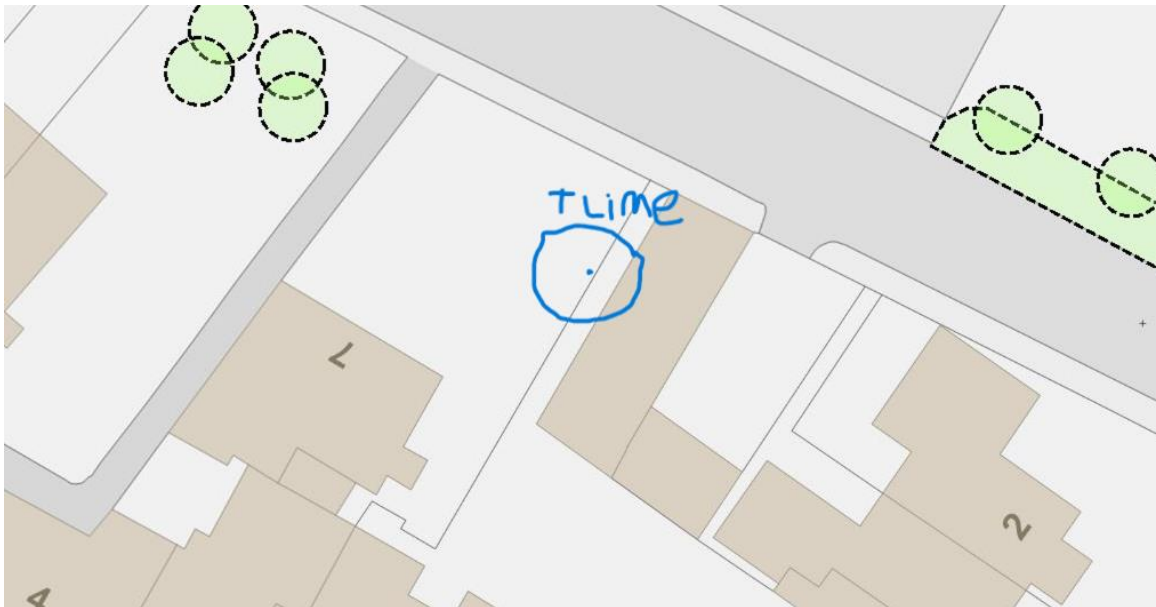


Image 4: Site location plan – 1 Lime tree, 7 Dukes Brow, Blackburn

- 3.4. The Arboricultural officer subsequently carried out a Tree Evaluation Method for Preservation Orders (TEMPO), which was undertaken on the 9th November 2023. The assessment gave the tree a very high score of 18 as illustrated in image 5, which fully warrants a TPO.
- 3.5 A copy of the TPO and Schedule is attached to this report. The emergency TPO was served on the landowner/freeholder on the 15th November 2023.

Image 5: TEMPO assessment dated 9th November 2023:

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 9 th November 2023	Surveyor: David Thorber
Tree details TPORef T1	Individual. T1 Lime.
Owner (if know)	Location:, 7 Dukes Brow Blackburn BB2 6EX

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|--------------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair/satisfactory | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead/dying/dangerous* | Unsuitable |

4. One point deducted with regard to the tree base.

** Relates to existing context and is intended to apply to severe irremediable defects only*

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

Score & Notes: 4.

**Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality*

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes: 4

d) Other factors

Trees must have accrued 7 or more points (with score) to qualify

- | | |
|--|------------------|
| 5) Principal components of formal arboricultural features, or veteran trees | Score & Notes: 1 |
| 4) Tree groups, or principal members of groups important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features (Inc. Those of indifferent form) | |
| -1) Trees with poor form or which are generally unsuitable for their location | |

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- | | |
|---|------------------|
| 5) Immediate threat to tree inc s. 211 Notice | Score & Notes: 5 |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-11 | Does not merit TPO |
| 12-15 | TPO defensible |
| 16+ | Definitely merits TPO |

Add Scores for Total: 18

Decision: Make TPO

CONSULTATIONS:

- 3.6. The current freeholders of the land, where the tree is located, the neighbouring properties, and the ward councillors/Chair of the Committee were informed of the proposed TPO on the 15th November 2023.
- 3.7. Acknowledgement of the TPO was received from the Chair fo the Committee on the 15th November 2023.
- 3.8 No objections to the provisional Order have been received.

3.9 The lime tree scored 18 on a TEMPO assessment that fully warrants them worthy of protecting. Therefore, it is considered that the TPO should remain unless a justified reason is presented as evidence in a future application.

4.0 **CONTACT OFFICER:** Gavin Prescott, Planning Manager
(Development Management)

5.0 **DATE PREPARED** 26th January 2024

TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
As amended by the Town and Country Planning (Trees)(Amendment)(England)
Regulations 2012

Town and Country Planning Act 1990
7 Dukes Brow, Blackburn Tree Preservation Order 2023

The Blackburn with Darwen Borough Council, in exercise of the powers conferred on them by Sections 198, 201 and 203 of the Town and Country Planning Act 1990 hereby make the following Order –

Citation

1. This Order may be cited as the: 7 Dukes Brow, Blackburn Tree Preservation Order 2023.

Interpretation

2. In this Order “the authority” means the Blackburn with Darwen Borough Council and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town & Country Planning Act 1990.

Application of Section 201

3. The authority hereby direct that Section 201 (provisional tree preservation orders) shall to this Order and, accordingly, this Order shall take effect provisionally on the 15th November 2023.

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of Section 198 (power to make tree preservation orders) or subsection (1) of Section 200 (tree preservation order: Forestry Commissioners), and subject to Article 5, no person shall -

(a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destructions of,

Any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

5 – (1) Nothing in Article 4 shall prevent -

(a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary –

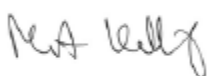
Under paragraph (3) as it applied to the assessment of compensation where a felling licence is refused under Section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a

reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article -

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and “owner” has the meaning given to it by Section 34 of the Forestry Act 1967.

Dated: 15th November 2023



Signed
Strategic Director of Growth & Development/Deputy Chief Executive
Authorised Officer

CONFIRMATION OF THE ORDER

This Order was confirmed by the Planning and Highways Committee of the Blackburn with Darwen Borough Council

Date this day of

The Common Seal of the Blackburn with Darwen Borough Council was here unto affixed in the presence of –

.....
Authorised by the Council to sign in that behalf

SCHEDULE 1

SPECIFICATION OF TREES

**LOCATION: 7 Dukes Brow, Blackburn
Tree Preservation Order 2023**

Trees Specified Individually

(enclosed in black on the plans)

Reference On Map	Description	Situation
T1	Lime	Adjacent to north-eastern boundary with Bank House, Adelaide Terrace

Trees specified by reference to an area

(within a dotted black line on the plans)

Reference On map	Description	Situation
	None	

Groups of Trees

(within a broken line on the plan)

Reference on map	Description	Situation
	None	

Woodlands

(within a continuous black line on the plans)

Reference on map	Description	Situation
	None	