

REPORT TO:	Trees Sub Committee		
DATE:	23 January 2019		
PORTFOLIO:	Cllr Miles Parkinson, Leader		
REPORT AUTHOR:	Katy Morley, Arboricultural and Conservation Officer		
TITLE OF REPORT:	Tree Replacement Notice Enforcement		
KEY DECISION:	No	If yes, date of notice:	

1. Purpose of Report

- 1.1 To seek approval from Committee to take formal action (serve Tree Replacement Notices) under s.207 of the Town and Country Planning Act 1990 to secure the replacement planting at Owl Hall and Heathlands School that should have been undertaken in accordance with the consent after the protected trees were felled.

2. Background

Owl Hall

- 2.1 Owl Hall is located in open countryside (beyond the urban boundary) at the end of Plantation Road to the east of Accrington. Although the hall was empty and derelict for many years, planning permission was granted for the redevelopment of the hall for residential development in 2009 at appeal. The trees in the grounds of Owl Hall are protected under a Tree Preservation Order, 1952/7.

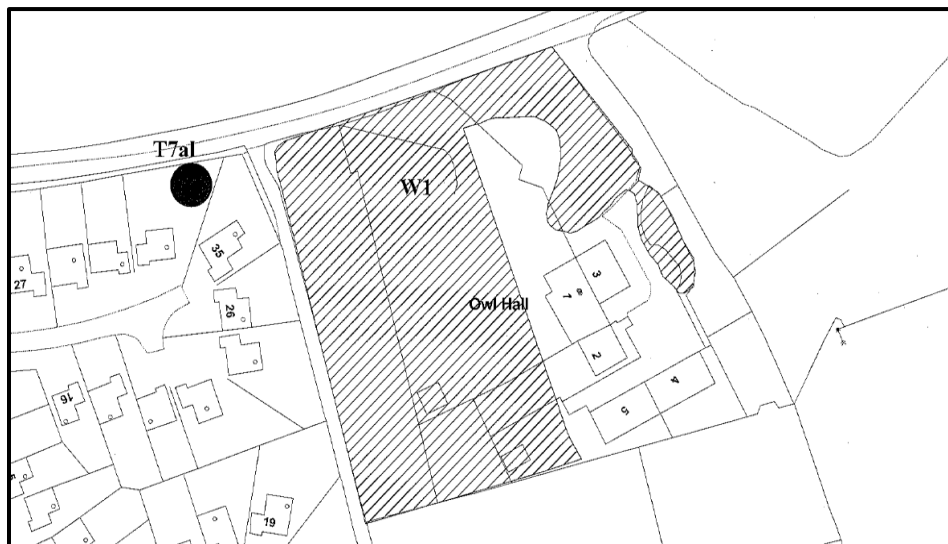


Fig 1. Extract from plan illustrating the trees protected at Owl Hall under Tree Preservation Order 1952/7.

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- 2.2 On 29th July 2016 the Council granted consent for the felling of eight trees (ref 11/16/0238) on the condition that there should be replacement planting to compensate for the loss. Although the Council usually ask for trees to be replaced at ratio of 3 (new trees) to 1 (lost tree), due to the size of the site it was considered necessary to plant replacements on a one for one basis .
- 2.3 The replacement trees have not been planted.
- 2.4 A second application (ref 11/17/0099) was submitted in 2017 to fell a further 8 trees on the same site on the basis that they were in poor condition and needed to be removed. This was approved, again subject to a condition requiring replacement with 8 trees.
- 2.5 These replacement trees have not been planted. The Council's trees and Woodlands Officer wrote to the applicant / land owner in September 2017 reminding him of the need to plant the 16 replacement trees no later than 31st January 2018.
- 2.6 A third application (ref 11/17/0237) was submitted by another owner to fell 4 trees on the site. This was granted, subject to replacement trees being planted at a ratio of 3:1, meaning that 12 replacement trees would be planted in this case.
- 2.7 No replacement tree planting has been undertaken on this part of the site either.

Heathlands School

- 2.8 Consent (ref 11/17/0278) was granted to fell a Beech Tree in July 2017 subject to a requirement to plant 3 replacement trees. The replacement trees were to be of a standard size and to be Beech, Birch and Alder. The replacement trees have not been replanted.
- 2.9 Similarly, consent was granted in September 2018 for the felling of four trees (ref 11/18/0354) at the school and although replacement planting (three replacement trees for each tree felled comprising Beech, Birch and Alder) was required this has not been undertaken.

3. Guidance on Replacement Tree Planting

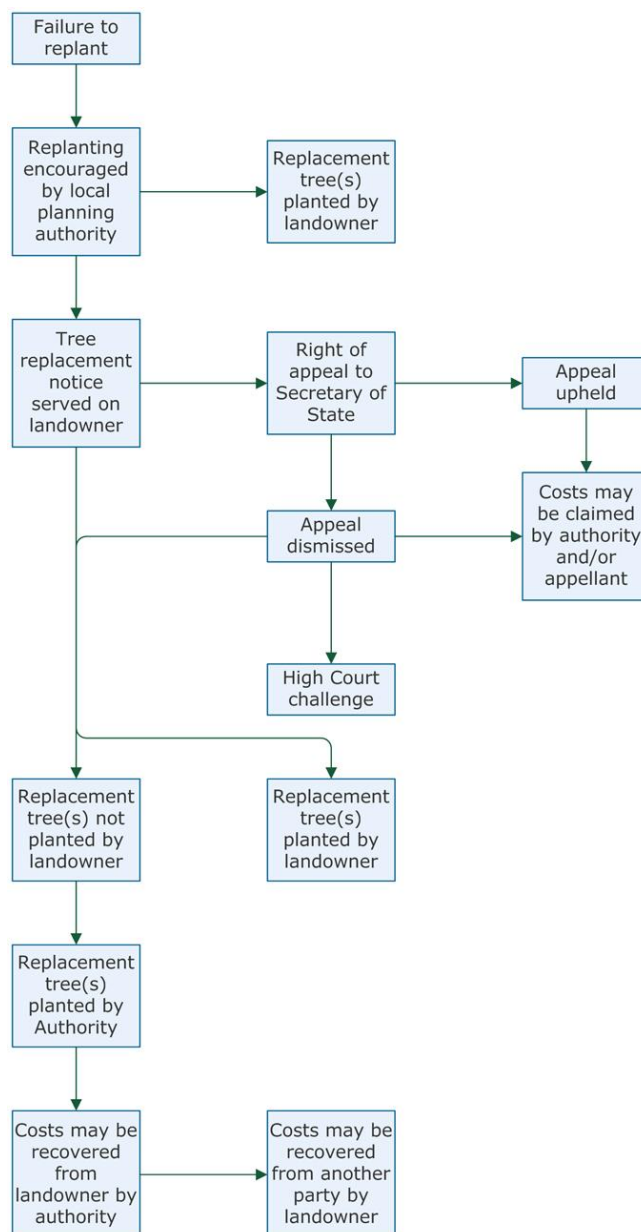
- 3.1 Planning Practice Guidance provides advice on the approach that should be taken to replacement trees planting.
- 3.2 When granting consent to fell a protected tree, the local authority may grant consent subject to conditions that may require the planting of replacement trees. A condition should:
 - relate to the authorised work;

- be fair and reasonable in the circumstances of each case;
- be imposed only where there is a definite need for it; and
- be worded precisely, so the applicant is left in no doubt about its interpretation and the authority is satisfied it can be enforced.

3.3 If an authority grants consent for a tree to be felled and wishes there to be a replacement tree or trees, it must make this a condition within the decision. If it does not make such a condition it cannot serve a tree replacement notice requiring replacement.

3.4 The authority can enforce tree replacement duties by serving a tree replacement notice.

3.5 The process of serving a Tree Replacement Notice is illustrated by the flow chart below:



3.6 There is a right of appeal against a Tree Replacement Notice, as set out in the diagram above. Whilst there is a risk of costs being awarded against the local authority if it acts unreasonably, in this instance these risks are considered to be low. The Council has tried to work with the land owners to secure the planting of the trees but no action has been taken.

3.7 In the first instance it is hoped that the owners will comply with the notice(s) and plant the trees. However, if the trees are not planted by the owners the Council is entitled to plant the trees and recover the costs incurred in doing this.

4. Officers Observations

4.1 Trees and woodlands form an important part of our urban and rural landscape and as well as being important in their own right have important ecological value and play a critical role in climate change.

4.2 Within Hyndburn there are 6,000 individually protected trees, 128 protected woodlands and 29 protected areas. Trees within Conservation Areas are also protected.

4.3 A regulatory framework exists for the management of trees protected by Tree Preservation Order. This framework recognises that trees need to be managed and that there will be times when protected trees also need to be felled.

4.4 Recognising the importance of protected trees, the framework makes provision for the local authority to grant consent to fell trees subject to conditions. In this case, a condition has been placed on these consents that requires new trees to be planted to compensate for the loss of each tree. In some cases this has been done at a ratio of 3:1. This approach to replacement tree planting is supported by Policy DM17 of the Development Management DPD.

4.5 The replacement trees have not been planted as required. The Council has sought to secure the replacement planting through agreement but this has not been forthcoming. To secure the planting it is therefore necessary to serve a Tree Replacement Notice.

4.6 There is a right of appeal against a notice and there are also provisions that allow the Council to plant trees on a site and recover the cost of the planting from the land owner. The appeal may be made on the following grounds:

- that the duty to replace the tree is not applicable or has been complied with;
- that in all the circumstances of the case the duty to replace the tree should be dispensed with;
- that the requirements of the TRN are unreasonable in respect of (i) the size of the tree, or (ii) the species of the tree, or (iii) the period given;
- that planting the tree in line with the TRN (i) is not required in the interests of amenity, or (ii) would be contrary to the practice of good forestry;
- that the place on which the tree is or trees are to be planted is unsuitable for that purpose.

4.7 The Council's Trees and Woodlands Officer is satisfied that the requirement to replace the trees meets the requirements set out at para 4.6 above.

5. Recommendation

5.1 That Committee support the service of Tree Replacement Notices to secure the planting of the replacement trees required by the consents set out in the report.