

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

meeting date: THURSDAY, 7 DECEMBER 2023
title: ST MARY'S GARDENS MELLOR TREE PRESERVATION ORDER 2023
submitted by: NICOLA HOPKINS – DIRECTOR OF ECONOMIC DEVELOPMENT & PLANNING
principal author: DAVID HEWITT – COUNTRYSIDE OFFICER

1 PURPOSE

- 1.1 For Committee to consider whether the St Mary's Gardens Tree Preservation Order 2023 should be confirmed.
- 1.2 Relevance to the Council's ambitions and priorities:
- Community Objectives – To protect and enhance the existing environmental quality of our area.
 - Corporate Priorities – To comply with the adopted Core Strategy – Environment – Policy DME1: Protecting Trees and Woodlands.

2 BACKGROUND

- 2.1 An area of land to the east of St Mary's Church in Mellor was sold by Woodfold Estates Limited to the Rural District Council of Blackburn in 1946. The Rural District Council then arranged for the construction of residential properties known as St Mary's Gardens on part of the site, and the library and surgery occupy another part of the site. An area of land immediately to the east of St Mary's Church was left undeveloped. In 1975, this undeveloped area was bought by Mellor Parish Council from Ribble Valley Borough Council (who had acquired the assets of the Rural District on reorganisation in 1974).
- 2.2 The Parish Council bought the land for the Parish and entered into certain commitments in the Conveyance. These included maintaining the area permanently as open space, and not doing or permitting to be done anything which might be considered noisome, offensive or any annoyance to the public or the neighbourhood. The Parish Council has installed a play area at the southern end of the plot.
- 2.3 As part of the commemoration of the late Queen's Diamond Jubilee, the Parish Council decided to plant seven trees on the undeveloped land at the northern end of the plot, as part of the Queen's Green Canopy, supported by a grant of £1,000 from the Lancashire Environment Fund. The trees were planted in the planning season in the spring of 2022. Within 2 months, 2 of the trees had been damaged. This has variously been alleged to have been malicious vandalism, or an accident involving 2 children of primary school age.
- 2.4 At the time of planting, the Parish Council were aware that there was some opposition to the use of the open area in this way. There had been some public consultation, which resulted in views being expressed both in support and objecting to the planting.
- 2.5 In May 2023, the Council's Countryside Officer received a report, alleging that the trees were under threat, due to there having been discussions in the village about removal of

the trees. The complainant requested that consideration be given to a Tree Preservation Order (TPO) to ensure the trees were protected in that location.

2.6 Following receipt of further information, the Countryside Officer attended on site and carried out an assessment of the trees, recording the appropriate scores for various categories and issues relating to the trees (see Appendix A). The total score was 18, which, applying the prescribed guidance for decision making, qualified as definitely meriting a TPO. A TPO was duly served on the Parish Council on 30 August 2023 (see Appendix B).

2.7 There have been various representations received which should be considered in determining whether the Order should be confirmed.

- Eight representations in support have been received from residents, including several individuals who were members of the Parish Council at the time of planting of the trees, but who are no longer members. These representations submit that the planting of the trees has enhanced the area, and that they should remain in that location.
- Eleven representations have been received, requesting that the TPO should not be confirmed. These challenge the reasons and evidence put forward by those who had requested the TPO in the first instance. It is also claimed that three of the trees are shrubs and therefore cannot be protected. (The Countryside Officer is of the opinion that all seven are trees, and case law supports that an officer's subjective view is sufficient.) Objectors also refer to the covenants, and state that the trees in this location are causing annoyance, nuisance and upset.
- The current Parish Council oppose confirmation of the TPO. They have received conservative legal advice, warning them of risk of breach of the covenants, and are concerned about children coming into contact with thorns, holly and poisonous berries. The Parish Council have indicated that they wish to relocate the trees to other land and would have no objection to a TPO being in place in that location, if appropriate. (One resident has identified the field adjacent to the village hall, also owned by the Parish Council, as being a possible location.)

3 ISSUES

3.1 From the date that the TPO was served, the Council has six months to confirm the Order, with or without modification, or to decide not to confirm the Order.

3.2 A Local Planning Authority may make a TPO if it appears expedient in the interests of amenity, it may also be expedient to make a TPO if the Local Planning Authority believe that there is a risk of tree(s) being cut down or pruned in ways which would have a significant impact on the amenity of the area.

3.3 A TPO protects trees from lopping, topping and felling but does not preclude tree work being carried out, including felling. However, except for emergencies, for which there are exemptions, a tree work application is required for tree management work.

3.4 Tree work to protected trees that are considered to be dead and/or dangerous can, under exemptions, be carried out to reduce or remove immediate risk; however, a five-day notice is normally required. If a tree has to be felled or pruned in an emergency, the onus is on

the landowner to prove that on the balance of probabilities the tree was dangerous, however dead wood pruning does not require formal consent.

- 3.5 Any tree management decisions about any of the trees included in the Preservation Order should be based on a detailed arboricultural quantified tree risk assessment, carried out by a qualified and public indemnity insured arborist. This ensures that any tree management decisions are based on objective and accurate arboricultural information.
- 3.6 The seven trees are currently young enough and small enough to be relocated. However, it should be noted that transplanting is never the preferred course of action, and relocation could result in some harm to the trees, even when carried out properly by a qualified arborist.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – Dealing with tree related issues form part of the Countryside Officer's duties.
- Technical, Environmental and Legal – Decisions made about trees have to balance protection of the environment against quantifiable risks posed by trees.
- Political – None.
- Reputation – The Council's environmental protection measures are being maintained.
- Equality & Diversity – None.

5 **RECOMMENDED THAT COMMITTEE**

5.1 Confirm the St Mary's Gardens Tree Preservation Order 2023 without modification.

DAVID HEWITT
COUNTRYSIDE OFFICER

NICOLA HOPKINS
DIRECTOR OF ECONOMIC DEVELOPMENT
& PLANNING

BACKGROUND PAPERS

1. <https://www.qtra.co.uk/docs/practice.pdf>

For further information please ask for David Hewitt, extension 4505.

APPENDIX A

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date:	Surve or:		
Tree details			
TPO Ref (if applicable):	Tree/Group No:	Species:	
Owner if known :	Location:		

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part I: 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

Score & Notes

5

** 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
- Unsuitable

Score & Notes

5

**Includes trees which are an existing or nearfuture nuisance, including those degdu 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

2

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of formal arboricultural features, or veteran trees
- 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

Score & Notes

3

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

Score & Notes

3

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

2

APPENDIX B

Form of Tree Preservation Order

Town and Country Planning Act 1990

The Open Space, St Marys Gardens, Mellor 2023 Tree Preservation Order

The Ribble Valley Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as The Open Space, St Marys Gardens, Mellor 2023 Tree Preservation Order.

Interpretation

2.— (1) In this Order “the authority” means the Ribble Valley Borough Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, 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 destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 30th day of August 2023

Signed on behalf of the Ribble Valley Borough Council

.....

Mrs Nicola Hopkins, Director of Economic Development and Planning
Authorised by the Council to sign in that behalf.

TO: Mellor Parsh Council

Regulation 5 Notice

IMPORTANT – THIS COMMUNICATION MAY AFFECT YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREE PRESERVATION)
(ENGLAND) REGULATIONS 2012



**Ribble Valley
Borough Council**

www.ribbonvalley.gov.uk

Tree preservation order: The Open Space, St Marys Gardens, Mellor
Ribble Valley Borough Council

THIS IS A FORMAL NOTICE to let you know that on the 30th of August 2023 we made the above tree preservation order.

A copy of the order is enclosed. In simple terms, no one is allowed to cut down, top, lop or uproot without our permission any of the trees described in the 1st Schedule of the order and shown on the map.

We have made the order because: to protect 7 trees planted as part of HM Queen's Green Canopy as part of Jubilee celebrations.

The order came into force, on a temporary basis, on the 30th day of August 2023, and will remain in force for six months. During this time, we will decide whether the order should be given permanent status.

People affected by the order have a right to object or make comments on any of the trees or woodlands covered before we decide whether the order should be made permanent.

If you would like to make any objections or comments, please make sure we receive them in writing by the 30th of September 2023. Your comments must meet regulation 6 of the Town and Country Planning (TREE PRESERVATION) (ENGLAND) Regulations 2012 (a copy is attached). Please send your comments to the Countryside Officer, Planning Section, Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA. We will carefully consider all objections and comments before deciding whether to make the order permanent.

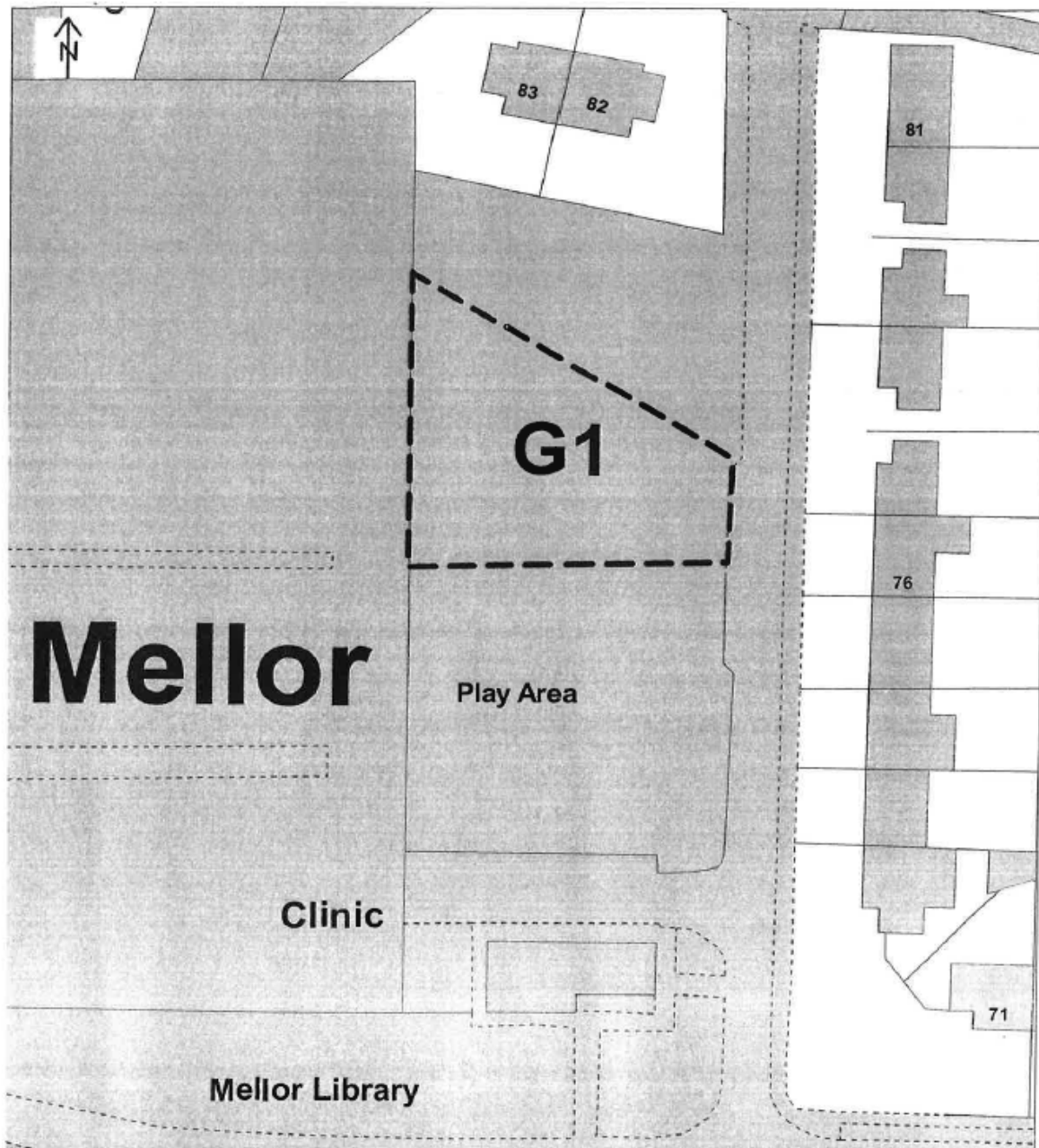
We will write to you again when we have made our decision. In the meantime, if you would like any more information or have any questions about this notice, please contact the Countryside Officer, Planning Section, Ribble Valley Borough Council, Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA, tel: 01200 414 505.

Dated:

30th August 2023

Signed:

Countryside Officer
Ribble Valley Borough Council
Council Offices
Church Walk
CLITHEROE
Lancashire BB7 2RA



RIBBLE VALLEY BOROUGH COUNCIL TREE PRESERVATION ORDER NO./NOS. 7/19/232
 TOWN & COUNTRY PLANNING ACT 1990
 TOWN & COUNTRY PLANNING (TREES) REGULATIONS 1999

LOCATION: OPEN SPACE, ST MARYS GARDENS, MELLOR
 PARISH: MELLOR

OS SHEET: SD6530NW

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Scale 1:500

SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
none	none	n/a

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
none	none	n/a

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[G1]	7 trees consisting of: 1 Scarlet Hawthorn 1 Variegated Holly 1 Weeping Birch 1 Silver Birch 1 Hornbeam 1 Copper Beech 1 Field Maple	Growing on the open space, St Marys Gardens, Mellor

Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
none	none	n/a

COPY OF REGULATION 6 OF THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012

Objections and representations

6. (1) Subject to paragraph (2), objections and representations:

- (a) shall be made in writing; and
 - (i) delivered to the authority not later than the date specified by them under regulation 5(2)(c); or
 - (ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;
- (b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which such objections and representations are made; and
- (c) in the case of an objection, shall state the reasons for the objection.

(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected.

