

# Memo

## Legal and Democratic Services

To: For Circulation See Below

Development & Regulatory Law Team  
City Hall  
Bradford  
West Yorkshire  
BD1 1HY  
DX11758 BRADFORD -1

Ref: 14/00004/I

From: C E Barrott  
Legal Officer  
Development & Regulatory Law Team

Date: 26 February 2015

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### TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 198 LAND AT 100 AND 102 KINGS ROAD, ILKLEY - TREE PRESERVATION ORDER

The above Tree Preservation Order was confirmed on 26<sup>th</sup> February 2015. Please find attached a copy for your records.

*C.E. Barrott*

C E Barrott

Enc

Arboricultural Technician  
Development Services Tree Section  
Department of Regeneration  
3<sup>rd</sup> Floor, Jacobs Well

Land Charges Manager  
Local Land Charges  
6<sup>th</sup> Floor Jacobs Well

For TPO's in Ilkley Area (including Menston)  
Veronica Clair (Area Clerk)  
Department of Regeneration  
Ilkley Town Hall



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**SUBJECT: CONSIDERATION OF AN OBJECTION TO TREE PRESERVATION**

**ORDER NUMBER: 14/00004/I  
SECTION 201 TOWN AND COUNTRY  
PLANNING ACT 1990**

**SITE: LAND AT 100/102 KINGS ROAD ILKLEY**

**RECOMMENDATION: THAT THE TPO BE CONFIRMED WITHOUT MODIFICATION**

**Background:**

The subject trees are currently protected by TPO 0480. A decision to allow removal one of the trees (T1) was granted in 2014 due to an allegation of subsidence however the tree work was never implemented as the property was underpinned. It is considered that removal of T1 is now unnecessary and since the tree is a significant amenity a decision to protect it and the neighbouring tree with the new TPO 14/00004/I was made. The provisional TPO was made in 11 September 2014.

There are two objections to the TPO.

The provisional TPO expires on: 11 March 2015

**Site description:**

The site on which the TPO stands comprises of two properties 102 and 100 Kings Road, Ilkley. The houses are two storey detached dwelling built circa late 1970s to early 1980s and typical of the era. The trees are situated within the rear gardens of the properties with T1 straddling 102 and 100 Kings Road and T2 located within the rear garden of 100 Kings Road. The area is suburban and residential in character.

**Summary of objections:**

- The tree stops a great deal of light coming into my property and I have concerns that it is too large.
- The TPO was removed in the past which would have allowed significant reduction work – the new TPO prohibits this work from being undertaken.
- The tree is too large given its location and the TPO prohibits sensible pruning.

- The trees are not a considerable amenity and a reduction of the trees will not be detrimental to the environment.
- The decision to fell T1 was seen as a positive step to three properties 98, 100 and 102 as all three properties have been underpinned and damage caused in the past to the properties and is continuing to occur.
- Previous underpinning has not been successful as tree management has not prevented subsidence.
- Flexible tree management is needed which cannot be met by a blanket TPO over T1 and T2.
- The condition of all three properties should be considered and a management process that guarantees future sustainability.
- Previous recommendations have been to fell and these should be upheld.
- The trees grow at an alarming rate.
- Amenity value of the trees is limited.
- Bradford Council allowed the properties to be built thus it has a responsibility for the sustainability of the properties.

**Officer comment in response to the objections:**

The TPO protects two trees located within the rear gardens of 102-100 Kings Road.

Tree 1 (T1) straddles the rear north side boundary between 102 and 100 Kings Road and Tree 2 (T2) is within the rear north facing garden on 100 Kings Road.

Both trees are English Oak (*Quercus robur*) and are of a significant size commensurate with the age of the trees which is estimated at 100 to 120 years old.

Despite the trees being in the rear gardens of the properties they are visually prominent from a number of public vantage points and in particular provide a green backdrop in the skyline behind the houses along Kings Road and are also prominent features from along Beverly Rise. The trees are also significant from Kings Close and Nesfield View. Other views of the trees are available between the gaps of houses from further afield. The size, appearance and standing of the trees leads the case officer to believe that the trees are prominent and add to the sylvan character of the area and has classed the trees as "A grade" specimens.

There have in the past been applications to work on the trees and two appeal decisions. These decisions have generally concluded that the trees are significant amenities and felling or significant pruning would harm public amenity.

The trees are protected by a long standing TPO (TPO 0480). However a decision was taken under TPO 0480 to allow the felling and replacement of T1 due to alleged subsidence. Despite the decision the application tree owner decided against felling and his insurers undertook underpinning work to the house to stabilise the property. The work to the house has negated the need to remove as any damage was repaired. Irrespective of the decision to allow the felling, the tree is still a significant and worthy of a TPO on the basis of its amenity value.

Objections to the TPO state that alleged subsidence has or occurred in the past, is occurring at present or is likely in the future if the trees are to remain or left unmanaged. It is also alleged that previous underpinning has not been successful. However there is no actual evidence submitted with the objections although it is apparent that there has been subsidence claims in the past (as applications and decisions are on file) it would be appropriate to confirm the TPO and weigh the amenity value of the trees against submitted evidence rather than pre-emptively allow felling or significant pruning which could harm public amenity.

The trees are large specimens but located to the north side of the houses and there is no evidence submitted that they are blocking out too much sunlight to the houses or properties. Nevertheless the TPO does not prohibit tree work but instead allows the council to control and grant work in accordance with good practice so that the amenity value of the trees is retained, possibly whilst alleviating concerns of the property owners with regards to light issues etc. With regards to the size of the trees and impact on properties such as reducing light levels etc this can be dealt with via the TPO application procedure and reasonable work to the trees in accordance with good practice will be granted.

Calls in the objection letters for the trees to be significantly pruned or for a flexible management approach, (which presumably means either felling or uncontrolled pruning) it is noted that the original TPO was in place before the properties were purchased and the TPO ought to have been fully considered at the point of purchase. In addition and in despite of the removal of T1 being granted under TPO 0480, the protection of T2 has been continuous and the new TPO simply continues this protection. Nevertheless the above paragraph applies in that justification for work should be submitted via a TPO application and appropriately justified work will be granted.

With regards to the trees being too large, is in on file that the Planning Inspectorate dismissed on appeal a proposed reduction of 2 – 2.5m as such pruning would be detrimental to the appearance of the tree. However appropriate justification for reduction or other types of tree pruning should be



submitted via the TPO application process which will be considered on its merits.

The houses were built close to the trees and the council approved the position of the houses. However it is not demonstrated in the objections that the council approved the depths of the foundations of the houses (the depth of the foundations and type of shrinkable clay soils in which the houses are founded upon would be key in determining the likelihood of future subsidence) nor is there evidence submitted regarding foundation depths or other information required to make a call on the likelihood of subsidence. Without such evidence it is considered appropriate to confirm the TPO and weigh up the issues via a TPO application.

Bringing all the issues together it is considered that the TPO should be confirmed without modification.

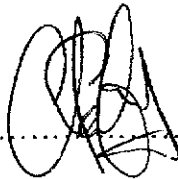
#### **Officer Recommendation**

That the Tree Preservation Order is confirmed without modification.

#### *Recommendation by Simon Keenan*

In accordance with powers delegated to me under section D2 of the City of Bradford Scheme of Delegation of Planning Decisions 2011, I Chris Eaton resolve that the Council under the provisions of Section 198 of the Town and Country Planning Act 1990 confirm the Tree Preservation Order at Land at 100/102 Kings Road Ilkley be **confirmed without modification**.

SIGNED: .....



Chris Eaton  
Planning Manager

DATED: 24.2.2015

## TOWN AND COUNTRY PLANNING ACT 1990

### THE LAND AT 100 AND 102 KINGS ROAD, ILKLEY

#### TREE PRESERVATION ORDER 2014

The City of Bradford Metropolitan District 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 land at 100 and 102 Kings Road, Ilkley Tree Preservation Order 2014.

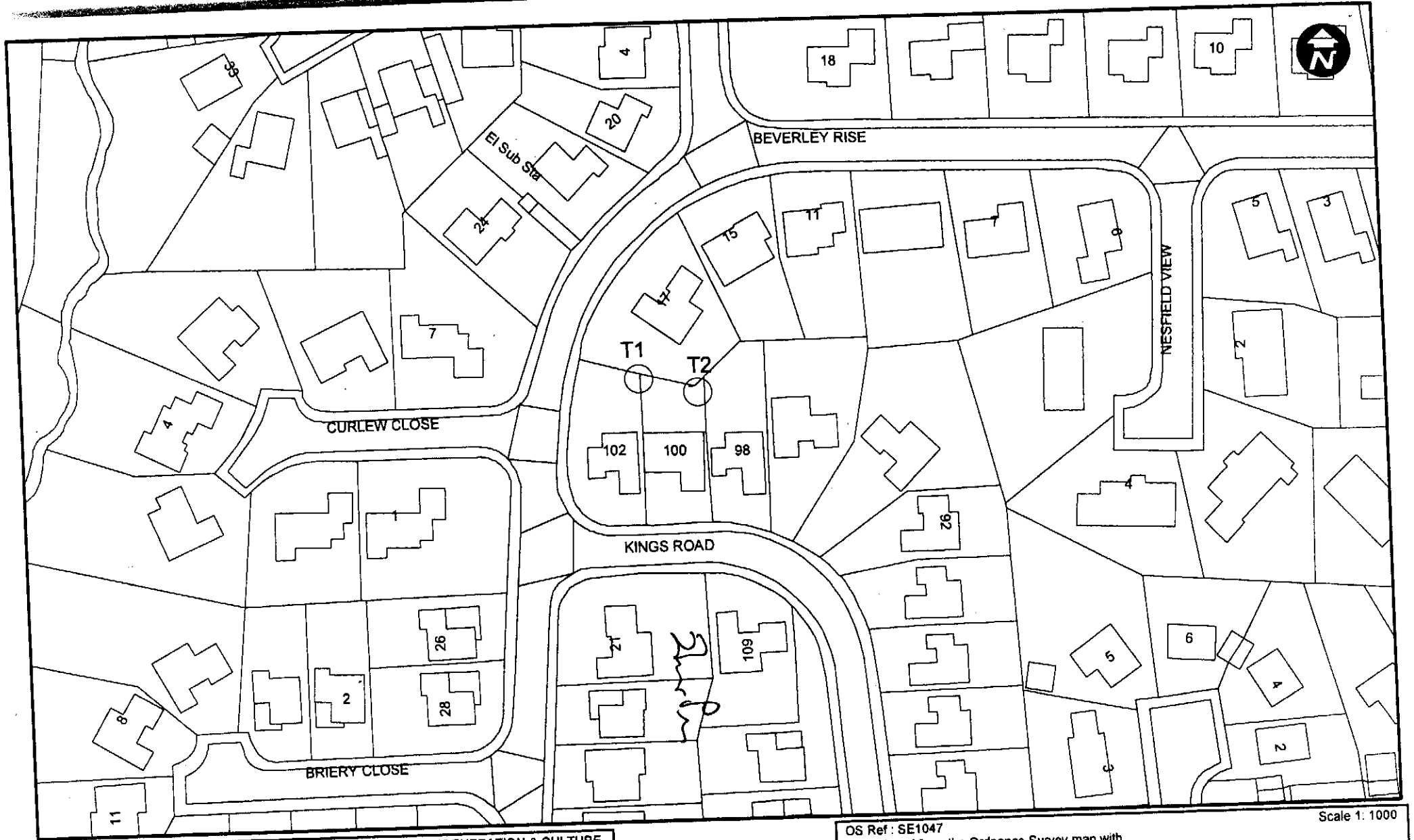
#### Interpretation

2. (1) In this Order "the authority" means City of Bradford Metropolitan District 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 Act (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 exception 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, 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



14/00004/1  
 LAND AT 100/102  
 KINGS ROAD  
 ILKLEY

DEPARTMENT OF REGENERATION & CULTURE  
 Jacobs Well  
 Bradford  
 BD1 5RW

OS Ref : SE1047  
 Reproduced from the Ordnance Survey map with  
 the sanction of HM Stationery Office  
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 LA078120

Scale 1: 1000

23 and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planed 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 take effect as from the time when the tree is planted.

Dated this 11<sup>th</sup> day of September 2014.

**EXECUTED AS A DEED** by affixing  
**THE COMMON SEAL** of **THE CITY**  
**OF BRADFORD METROPOLITAN**  
**DISTRICT COUNCIL** in the presence of:-

96497.



~~96496~~

Assistant  
Authorised by the City Solicitor

**CONFIRMATION OF ORDER**

This Order was confirmed by the City of Bradford Metropolitan District Council without modification on the 26<sup>th</sup> day of February 2015

OR

The Order was confirmed by the City of Bradford Metropolitan District Council subject to the modification indicated by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

**EXECUTED AS A DEED** by affixing  
**THE COMMON SEAL** of **THE CITY**  
**OF BRADFORD METROPOLITAN**  
**DISTRICT COUNCIL** in the presence of:-



Authorised by the City Solicitor

96831



**DECISION NOT TO CONFIRM**

A decision not to confirm this Order was taken by the City of Bradford Metropolitan District Council on the                      day of

**EXECUTED AS A DEED** by affixing  
**THE COMMON SEAL** of **THE CITY**  
**OF BRADFORD METROPOLITAN**  
**DISTRICT COUNCIL** in the presence of:-

Authorised by the City Solicitor

**VARIATION OF ORDER**

This Order was varied by the City of Bradford Metropolitan District Council on the  
day of    by a variation order under reference number  
a copy of which is attached.

**EXECUTED AS A DEED** by affixing  
**THE COMMON SEAL** of **THE CITY**  
**OF BRADFORD METROPOLITAN**  
**DISTRICT COUNCIL** in the presence of:-

Authorised by the City Solicitor

**REVOCATION OF ORDER**

This Order was revoked by the City of Bradford Metropolitan District Council on the        day of

**EXECUTED AS A DEED** by affixing  
**THE COMMON SEAL** of **THE CITY**  
**OF BRADFORD METROPOLITAN**  
**DISTRICT COUNCIL** in the presence of:-

Authorised by the City Solicitor

**SCHEDULE****Specification of Trees****Trees specified individually****(encircled in black on the map)**

Reference on map	Description	Situation
T1	OAK	410235 447775
T2	OAK	410247 447772

**Trees specified by reference to an area****(within a dotted black line on the map)**

Reference on map	Description	Situation
NONE		

**Groups of trees****(within a broken black line on the map)**

Reference on map	Description	Situation
NONE		

**Woodlands****(within a continuous black line on the map)**

Reference on map	Description	Situation
NONE		