

**PLANNING APPLICATIONS COMMITTEE
9 NOVEMBER 2022**

**OBJECTION TO TREE PRESEVATION ORDER NUMBER 2022 NO. 08
23 MERRYBENT, DARLINGTON**

SUMMARY REPORT

Purpose of the Report

1. To advise members that an objection has been received in respect of Tree Preservation Order Number 2022 no.08. The objection relates to this order which covers one mature Birch Tree (*Betula spp*) growing within the front garden.

Summary

2. Tree Preservation Order 2022 no. 08 was made on 15 September 2022 on one mature Birch Tree growing within the front garden of 23 Merrybent, Darlington, under powers derived from section 198(1) of the Town and Country Planning Act 1990. The Tree Preservation Order was made due to the possibility that the tree may at some point be damaged by unacceptable pruning. In the opinion of the Local Planning Authority it is considered expedient to protect the tree by the making of a Tree Preservation Order as due to its reasonable form and condition and location to the front of the property it contributes to the amenity of the surrounding area.
3. An objection has been received from a neighbour at 21A Merrybent on the grounds that the tree to be protected is a single tree which is not considered to contribute to the overall visual amenity of this area and that there are many similar trees along in the vicinity of equal quality which are not protected; and that the placing of the order may hinder the objector's current planning appeal in respect of the erection of a garage to the front of their property.

Recommendation

4. It is recommended that Members confirm the TPO without modification.

**Ian Williams
Chief Executive**

Background Papers

No background papers were used in the preparation of this report.

S17 Crime and Disorder	This report has no implications for crime and disorder
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Health and Wellbeing	There are no Health and Wellbeing issues
Carbon Impact and Climate Change	There is no impact in this report
Diversity	There are no diversity issues
Wards Affected	Heighington and Coniscliffe
Groups Affected	Not applicable
Budget and Policy Framework	This report does not represent a change to the budget and policy framework
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
Council Plan	No significant implications
Efficiency	No significant implications
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Legal and Procedural Background

5. The power to make a Tree Preservation Order is derived from section 198(1) of the Town and Country Planning Act 1990: -

If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

“Amenity’ and ‘Expediency”

6. Extracts from Government Guidance: -

Amenity

‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order, they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

What might a local authority consider when assessing amenity value?

When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, considering the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual; collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- *size and form.*
- *future potential as an amenity.*
- *rarity, cultural or historic value.*
- *contribution to, and relationship with, the landscape; and*
- *contribution to the character or appearance of a conservation area.*

Expediency

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But 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. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

7. The process to be followed in making orders is laid down in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
8. Where a Tree Preservation Order is made, it has immediate provisional effect to protect the tree. This provisional effect will last for six months, or until the Order is confirmed by the planning authority, whichever is the sooner. If the Order is not confirmed within this time period, the Order will fall away.
9. Once the Order has been made, it is served, together with a Notice, on all persons with an interest in the land affected by the Order. The Notice will state the reasons that the Order has been made and will contain information about how objections or representations may be made in relation to the Order.
10. Where an objection is made to the Order then the Planning Applications Committee must consider any such objections and representations and must decide whether or not to confirm the Tree Preservation Order, and, if so, should that be with or without modifications.

Decision to make the Tree Preservation Order

11. Tree Preservation Order 2022 no. 08 was made on 15 September 2022; on one mature Birch Tree growing within the front garden of 23 Merrybent, Darlington.
12. This Tree Preservation Order was made as a result of a request to the Local Planning Authority due to the possibility that the tree may at some point be damaged by unacceptable pruning.
13. The mature Birch Tree is located to the south of the main house within the front garden of no. 23 Merrybent. The Birch Tree is positioned directly behind a hedge that fronts onto the main road.
14. An objection to the Tree Preservation Order has been received from the next-door neighbour (21A Merrybent); in respect of the order being placed on the mature Birch Tree.

15. The Birch Tree is protected by virtue of being within a Conservation Area.

16. The Tree Preservation Order was based on the following grounds:

"I believe that due to the location and proximity of the tree to a proposed development the tree may suffer from root tissue damaged".

17. The TPO is appropriate in the general interests of public amenity and in accordance with the Town and Country Planning Act (1990), Town and Country Planning (Tree Preservation) (England) Regulations 2012 and the Office of the Deputy Prime Minister's guidance to fulfil a statutory duty.

Summary of Objectors' Comments

18. Comments in response to the placing of the Order:

(a) The objection is on the basis of the reasoning provided for the imposition of the order on principle. The order relates to a single tree and sites that the tree is healthy, and worthy of protection citing its positive impact on visual amenity. As a single tree this is not considered to contribute to the overall visual amenity of this area given the wider area is typified by open views of open countryside. There are many similar trees along this run of houses which are of equal quality. As such the justification either applies to all or none of the trees in question.

(b) The imposition of this order on a single tree and no other trees in this area seems to relate to the pending planning appeal related to my clients new detached garage (APP/N1350/D/22/3306435). The imposition of this TPO during the determination of a planning appeal and the TPO's specific nature could be considered to be vexatious against my clients appeal. It's our view that insufficient justification exists to impose an order on a single tree in this way.

(c) For the above reasons we would ask that the order not to be made.

Summary of Representations

19. Representation in response to the placing of the Order:

The Birch Tree greatly enhances the whole aspect of the front of the property and has been a main feature of the property for a number of years which needs to continue in the future as a benefit to both the residents and public alike. The tree makes a significant contribution to the visual amenity of the locality.

Response to Objector's Comments

20. In response to the objector's comments, the Council's Senior Arboricultural Officer has not responded to the objector's comments.

Consideration of Objections To TPO

21. As stated above the ground for making a TPO is *'that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area.'*
22. Therefore, objections to the TPO should be considered on this basis. The questions to consider are:
 - (a) Would the removal of the tree have a significant negative impact on the local environment and its enjoyment by the public?
 - (b) Is it expedient for the tree to be protected, i.e., is there a risk of the tree being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area?
 - (c) Is the tree dead, dying or dangerous? It would not be appropriate for the Authority make a TPO in these circumstances. By dangerous the test should be is the tree itself hazardous or unsafe.

Conclusion

23. The mature Birch Tree (*Betula spp*) is in reasonable form and condition it is visible from a public place; it has intrinsic beauty and it makes a significant contribution to the landscape.
24. Having considered the comments from the objector and the advice from the Council's Senior Arboricultural Officer, there appears to be no reason why the tree cannot continue to add to the amenity value of the wider community for many years to come which justifies its protection.
25. Consequently, it is considered expedient to protect the tree by the making of a Tree Preservation Order.

Recommendation

26. That Members confirm the TPO without modification.