

**PLANNING APPLICATIONS COMMITTEE
11 OCTOBER 2023**

**OBJECTION TO TREE PRESERVATION ORDER NUMBER 2023 NO. 04
YMCA, MIDDLETON COURT, MIDDLETON ROAD, DARLINGTON, DL1 1SL**

SUMMARY REPORT

Purpose of the Report

1. To advise members that an objection has been received in respect of Tree Preservation Order Number 2023 No. 04. The objection relates to this order which covers one early/mature Sycamore Tree, which is growing close to the northern boundary of the site.

Summary

2. Tree Preservation Order 2023 No. 04 was made on 14 April 2023 and protects one early/mature Sycamore Tree growing along the northern boundary of the YMCA, Middleton Court on Middleton Road in 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 be removed if not protected. 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; that it is visible from a public place and contributes significantly to the visual amenity of the surrounding residential area.
3. An objection has been received from Janine Browne, CEO for Tees Valley YMCA.

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
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	Park East
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. Residents can request that a Local Planning Authority (LPA) consider the making of a TPO on a tree. However, the LPA must follow Government Guidance, see extracts below:-

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. This Tree Preservation Order was made as a result of a request from the residents of Middleton Street to the Local Planning Authority to protect a number of trees along the northern boundary of the site on an area of land between a car park and a brick boundary wall.
12. Darlington Borough Council's Senior Arborist inspected the trees, prior to the making of the order and within the group are early mature Rowans which whilst in reasonable condition are in poor form having been suppressed by the nearby Cotoneaster trees which are also in poor form. There are also two Sycamore trees within the group one of which is in reasonable condition and form, whilst the one to the rear is in reasonable condition and poor form. Prunus trees within this group are in reasonable condition and poor form, whilst an easterly clump is made up of Laurel, Buddleia, and Cotoneaster trees and all of the trees are in close proximity to the boundary wall.

13. The Senior Arborist did not recommend that all of the trees be protected by a Group TPO given their close proximity to each other and for the reasons given above.
14. However, the Council's arborist did recommend that one Sycamore Tree, which is approximately 6m in height was deemed to be worthy of protection and Tree Preservation Order 2023 No. 04 was made on 14 April 2023; to protect the early/mature Sycamore Tree given that public benefit will occur due to the tree's intrinsic beauty and the reasonable contribution it makes to the surrounding landscape.
15. The Tree Preservation Order was based on the following grounds:

"YMCA wanted to fell a number of trees within site".

16. 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

17. One objection has been received in response to this order from the CEO of Tees Valley YMCA and the comments are summarised below:
 - (a) The Sycamore tree is to the rear of properties on Middleton Street and is within a group of six trees. It is not highly visible and does not contribute to the amenity given the area where the tree is situated is next to a car park on land which is an eyesore, and which is subject to fly tipping and dog fouling.
 - (b) The tree is causing damage to the foundation of a shared boundary wall which is over 20 feet high, and the YMCA is a charity which cannot afford to replace or maintain the wall.
 - (c) The tree is a 50-year-old Sycamore, not an 800-year-old Oak tree and is therefore not worthy of protection for the above reasons and we would ask that the order not to be made.

Response to Objector's Comments

18. In response to the objector's comments, the Council's Senior Arboricultural Officer has responded with the following comments below:-
 - (a) The Sycamore tree is in reasonable form and condition; is visible from a public place and public benefit will occur due to the tree's intrinsic beauty and the contribution it makes to the surrounding landscape, which will increase once the surrounding trees have been removed
 - (b) No evidence has been submitted from a structural engineer which supports the YMCA's claims that the tree is causing damage to the railway party wall
 - (c) Any tree can be protected by the making of a TPO order if a reasonable degree of public benefit would accrue as per government guidelines.

Consideration of Objections To TPO

19. As stated above the grounds 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.'*
20. Therefore, objections to the TPO should be considered on this basis. The issues 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) Will the confirmation of the TPO bring a reasonable degree of public benefit in the present or the future?
 - (c) 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?
 - (d) 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

21. The early/mature Sycamore Tree is in reasonable form and condition; is visible from a public place; and makes a significant contribution to the landscape.
22. Having considered the comments from the objector and the advice from the Council's Senior Arboricultural Officer, there is 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.
23. It is also important to note that, if the Order is confirmed, this would not preclude future maintenance works to the tree. Should any works need to be carried out to the tree for safety reasons, or for any other reason, such as damage to property, an application can be made to the local planning authority to carry out works to the protected tree.
24. Consequently, it is considered expedient to protect the tree by the making of a Tree Preservation Order.

Recommendation

25. That Members confirm the TPO without modification.