

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 10 January 2024**

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**APPLICATION REF. NO:** 23/01097/TF

**STATUTORY DECISION DATE:** 27<sup>th</sup> December 2023

**WARD/PARISH:** SADBERGE AND MIDDLETON ST. GEORGE

**LOCATION:** 3 Oak Tree Close, Middleton St. George

**DESCRIPTION:** Work to 1 no. Oak Tree protected under Tree Preservation Order (no.2) 1997 (T.2) - Containment pruning; up to 30% reduction in crown size.

**APPLICANT:** Mr. Michael Richards

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**RECOMMENDATION: REFUSE PERMISSION** (*see details below*).

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Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link:

<https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=S3G43IFP0C200>

**APPLICATION AND SITE DESCRIPTION**

1. The 1 no. Oak Tree the subject of this application is located to the front of the property of the application site at 3 Oak Tree Close, Middleton St George. The tree is protected by virtue of Tree Preservation Order 97/00002/TPO. The Order covers 2 no. trees, a Silver Birch tree (T1) to the front garden of 1 Oak Tree Close, and this Oak tree (T2) to the front garden of 3 Oak Tree Close.

2. The application proposes containment pruning of up to a 30% reduction in the crown of the Oak tree. The reasons given for the work is to prevent excessive shading and potential subsidence to the property. The application has been accompanied by an extract from previous arboricultural report dated November 1997 together with photographs of the tree, and a previous permission for pruning works to the tree dated October 2004.

**RELEVANT PLANNING HISTORY:**

3. The most relevant history is as follows:

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|------------------------|---|
| Planning Applications; | Case: 04/01086/TF- Proposal: Pruning of an oak tree included within Tree Preservation Order (No 2) Order 1997- Dated: 04OCT-04- Status: GRANTED   |
| Planning Applications  | Case: 04/00558/TF- Proposal: Pruning of an oak tree included within Tree Preservation (2) Order 1997- Dated: 05-AUG-04- Status: REFUSE  |
| Planning Applications  | Case: 98/00302/TF- Proposal: Works to tree (T2()) within the Borough of Darlington Tree Preservation (No.2) Order- Dated: 09-OCT-98- Status: GRANTED  |
| Planning Applications  | Case: 21/00318/TF- Proposal: Works to 1 no. Oak tree(T1) protected under Tree Preservation Order (No.2) 1997 (T2) crown reduction up to 30% and removal of deadwood- Dated: 13-MAY-21- Status: REFUSE |

#### **MAIN PLANNING ISSUES:**

4. The main planning issues relevant to this application are:-

- a. Effect on protected tree(s).
- b. Amenity values of the tree(s).
- c. Impact on the local environment.

#### **PLANNING POLICIES:**

5. The application must also be considered in the context of Part VIII of the Town & Country Planning Act and The Town & Country Planning (Tree Preservation)(England) Regulation 2012, the National Planning Policy Framework (NPPF) (2021) and Tree Preservation Orders: A Guide to the Law and Good Practice and the National Planning Practice Guidance; and Planning Practice Guidance (PPG).

#### **RESULTS OF TECHNICAL CONSULTATION:**

6. The Council's Senior Arboricultural Officer has commented on the application and recommends that the application be refused as there is no structural reason to wound the tree.

#### **RESULTS OF PUBLICITY AND NOTIFICATION:**

7. Occupiers of neighbouring properties were advised of the proposal by way of letter and a site notice has been displayed.

8. Three letters of representation have been received in support of the application and the main points of which are: -

- *All trees are important and with professional intervention the tree will last for many years;*
- *It is a lovely tree that needs some weight removing to ensure it continues to remain strong and healthy;*
- *The tree is aesthetically pleasing but it is too large for the location and a safety risk*

9. One letter of objection was received in response to the original proposal raising the following concerns:-

- *The tree has good proportions and 30% reduction in crown will make it look unnatural.*

10. Middleton St. George Parish Council have been consulted and agreed to make no comment on this planning application.

#### **PLANNING ISSUES**

11. The main issues for consideration are the effect of the proposed pruning of the tree on the character and appearance of the area, and whether sufficient justification has been demonstrated for the proposed pruning.

12. The Council's Senior Arboricultural Officer has conducted a visual inspection of the tree and has concluded that:

|    |  |
|----|--|
| a. | At the time of the inspection the mature Oak Tree appeared to be in a good condition and form. |
| b. | The tree makes a good contribution to public amenity.  |
| c. | Proposed works are <i>not justified</i> .  |

a. Impact upon the amenity of the area.

13. The application tree has a preservation order placed upon it in accordance with The Town and Country Planning (Tree Preservation) (England) Regulation 2012.

14. Paragraph 174 of the NPPF states that decisions should contribute to and enhance the natural local environment by recognising the wider benefits that trees and woodland provide. Whilst Part 15 'Conserving and Enhancing the Natural Environment' sets out that the Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity.

15. The Oak Tree is subject to a Tree Preservation Order and is considered to be in a good condition with a high amenity value. The oak tree is located within the front garden and is situated to the north/east of the main dwelling adjacent to the paved driveway. It occupies a prominent position in the streetscene. The work as proposed by the applicant has been assessed by the Councils Senior Arboricultural Officer.

16. The application tree is a large and mature Oak Tree that is clearly visible to the public from within Oak Tree Close. The application tree is one of the most prominent trees within the street scene, where its stature and presence adds to the verdant nature of the area. Overall, the presence of the application tree makes a significant contribution to the character and appearance to this part of the locality.

17. The proposed crown reduction will alter the natural appearance of the tree, and consequently its positive effect on the visual amenity and landscape. Furthermore, such a reduction would potentially create large diameter wounds that are in turn likely to be harmful to the health of the tree.

18. As such, it is considered that a crown reduction to the 1 no. Oak Tree would be excessive and of detriment to the appearance of the tree. Therefore the proposed works are considered to be contrary to Part VIII of the Town & Country Planning Act and The Town & Country Planning (Tree Preservation)(England) Regulation 2012; the National Planning Policy Framework (NPPF) (2021) and Tree Preservation Orders and Planning Practice Guidance (PPG).

b. Whether the application is justified.

19. The Local Planning Authority is required to consider the public benefit of proposed works to protected tree(s). With this in mind then the issue to be considered is to whether the reasons given by the applicant are sufficient to justify the proposed works.

20. The applicant is concerned that the tree could potentially cause subsidence issues on site. The application is accompanied by an extract from a 1997 arboricultural report, which was prepared to accompany a subsidence investigation at the time, however no more up to date information such as a more recent arboricultural report or structural engineer's report has been provided to substantiate any claims in regard to potential subsidence issues. This information cannot therefore be given any weight in the consideration of this application given the age of the document. The current application must therefore be considered on its merits.

21. The Council's Senior Arboricultural Officer has advised that the tree appeared to be in a good condition and form at the time of the inspection, and there is no evidence to suggest that the tree is diseased, nor are there any concerns that the tree might break or fail. In the absence of any up-to-date information regarding subsidence claims or structural damage, the fear of the tree causing subsidence related issues is therefore unsubstantiated.

22. It is also claimed that the tree causes excessive shading to the property. The tree is located to the front of the property, with a gravelled parking area, approximately 8.7 metres from the property itself which faces north. Given the position of the tree relative to the front of the house this will result in some shading of the front garden/parking area and to the windows to the front of the house. It is not however considered that the proximity of the tree relative to the front of the property causes shading to such an extent so as to adversely impact upon the living conditions of the property, that would justify the extent of pruning works proposed.

23. With any application to prune protected trees, a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant harm to the amenity of the area. In this case, the proposed reduction of the tree would result in significant harm to the character and appearance of both the tree itself and the surrounding area. In the absence of sufficient justification, the proposed pruning works are considered contrary to Part VIII of the Town & Country Planning Act and The Town & Country Planning (Tree

Preservation)(England) Regulation 2012, the National Planning Policy Framework (NPPF) (2021) and Tree Preservation Orders and Planning Practice Guidance (PPG).

**PUBLIC SECTOR EQUALITY DUTY:**

24. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. There is no overt reason why the proposed development would prejudice anyone with the protected characteristics as described above.

**SECTION 17 OF THE CRIME AND DISORDER ACT 1998:**

25. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

**CONCLUSION:**

26. The proposed works to the 1 no. Oak Tree has not been adequately justified in this application, and it is considered that the proposed works would adversely harm the form and health of the tree. The proposed crown reduction would result in a reduction in the amenity value of the tree and to the surrounding area. The proposed work would be contrary to Part VIII of the Town & Country Planning Act and The Town & Country Planning (Tree Preservation)(England) Regulation 2012; the National Planning Policy Framework (NPPF) (2021) and Tree Preservation Orders and Planning Practice Guidance (PPG).

**RECOMMENDATION:**

27. That consent be refused for the following reason:

1. The Oak tree (T2) protected under Tree Preservation Order (No. 2) 1997 is in good form and condition and is a highly valuable tree in the street scene, contributing to the visual amenities of the area, and as such remains worthy of protection by a Tree Preservation Order. Without sufficient justification, the proposed crown lift of up to 30% would result in a loss of natural form to a protected tree in acceptable condition with no safety concerns. The proposed development would therefore have a detrimental impact upon the amenity value of the tree itself and that of the surrounding area, contrary to Part VIII of the Town & Country Planning Act and The Town & Country Planning (Tree Preservation)(England) Regulation 2012; the National Planning Policy Framework (NPPF) (2021) and Tree Preservation Orders and Planning Practice Guidance (PPG).