

DARLINGTON BOROUGH COUNCIL

PLANNING COMMITTEE – 20 FEBRUARY 2019

**REPORT OF HEAD OF PLANNING DEVELOPMENT AND ENVIRONMENTAL
HEALTH TO OBJECTION TO TREE PRESERVATION ORDER 2018 NO 6
1 CHURCH CLOSE MIDDLETON ST GEORGE**

1. Purpose of Report

- 1.1 To advise members that an objection has been received in respect of Tree Preservation Order Number 2018 No 6. The objection relates to this Order which covers one Semi/mature Pine (Pinus spp) growing in the front garden of 1 Church Close Middleton St George.
- 1.2 This application was considered by the Planning Applications Committee on 14 November 2018 and was deferred for a site visit. The site visit was carried out on 7 December 2018 and at the site visit it was agreed that the applicant would submit further details from a suitably qualified arborist. This further information is set out in section 4.2 below.

2. Legal and Procedural Background

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’

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 take into account 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, taking into account 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.

The process to be followed in making orders is laid down in The Town and Country Planning (Tree Preservation) (England) Regulations 2012.

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.

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.

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.

3. Decision to Make the Tree Preservation Order

- 3.1 Tree Preservation Order 2018 No 6 was made on 9 August 2018 on one Semi/mature Pine Tree in the front garden of 1 Church Lane, Middleton St George.
- 3.2 This Tree Preservation Order was made as a result of the occupier of 1 Church Close Middleton St George making an application to fell the tree. New Orders are only placed on healthy trees that are regarded as having a significant degree of public amenity.
- 3.3 An objection has been received from G Marsh, the owner of 1 Church Close Middleton St George in respect of the order being placed on the Semi/mature Pine Tree in the front garden of his property. No other objections have been received.
- 3.4 T1 is a semi/mature specimen in good form and condition with no visible structural weaknesses. The tree is highly visible and of high amenity value to the area and is also a good example of its species.

The Tree Preservation Order was based on the following grounds:

This Tree Preservation Order has been made as the tree included in the Order makes a valuable contribution to the amenity of the area. The tree appears to be healthy and in good condition and is a highly visible feature in the area.

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 (Trees) Regulations 1999 and the Office of the Deputy Prime Minister's guidance to fulfil a statutory duty.

4. Summary of Objectors' Comments

- 4.1 Comments in response to the placing of the Order:
- No inspection by a qualified person from the agency wishing to protect the tree has been made to understand the overall condition of the specimen and its potential for longer term safety (the property is surrounded by high hedging and has a gated access meaning the occupier would need to have been contacted to gain access;
 - It would not detract from the overall amenity value of the area to fell this particular tree as:
 - It is oversized in conjunction with the volume of other trees in the locale is far from creating value to a domestic setting.
 - There is already in excess of 31 trees of varying scale within a 35 metre (114ft) radius of this particular tree and my home is situated amongst them all.

- The canopy of this tree, in conjunction with a very large sycamore located at No 2 Church Close without maintenance, is serving to close off natural light from my dwelling and street light provision.
- This particular specimen is not native of this particular region and thus has a lower amenity value;
- The tree presents a significant encumbrance to health and safety to the premises and its occupants; from its poor ground setting, its overall growth pattern (as per the application to fell), its proximity to the main dwelling (approximately 5 metres/16ft) and its significant debris fall to walkway areas which are not supportive of the elderly resident.

4.2 Following the site visit on 7 December 2018 the applicant has provided the following additional information in support of his objection that the tree is not worthy of protection:

- The nature of this trees growth to gain best sunlight in order to photosynthesis, its location on a bank side and it being overcast by other significant neighbouring fauna has ensured that it has developed with a dominant lean away from its undermined root system and an oversized mid canopy.
- The root system will have been subject to significant compaction over its lifetime
- Compaction reduces oxygen levels in the soil causing root death and thus further erosion of the soil encapsulating that root system leaving parts of it exposed to open air.
- Given that 90% of a tree's root system is located within the first 12-18 inches of soil and there is a significant amount of soil missing from the lower side of the tree, it is highly likely that severe damage has already taken place and begun taking its toll on the life expectancy of the tree.
- Any root disturbance to pre-existing trees will be detrimental to them and such disturbances may take anywhere from 5-10 years to become fully visible.
- The high density of the tree makes it extremely heavy and with the lean already present there is a very intense stress factor on the lower side of the root system to maintain the trees upright orientation.
- The greatly increased likelihood of damage to the lower high tension side of the root system, the topography and tree positioning together with increased mid canopy ensure that works be carried forthwith to alleviate and reduce the current stress levels on the tree.
- British Standard Arboricultural working recommendations, would suggest removal of 20-30% of live matter to promote the longer term health of the tree.
- However in this particular instance this would not provide the desired full continuance benefit as it still leaves the tree with a dominant and increasing lean, compacted root damage and would be highly unsightly within the locale, also in removing sufficient live mater to minimise stress on the questionable root system and reduce the top heavy see-saw effect may be detrimental to the overall health of the tree.
- Other aspects to consider when assessing the trees overall contribution would be the detrimental effects on light and potential of unnecessary damage and injury to property or life.

- The tree provides significant light deprivation to the windows of two bedrooms of the building it sits in front of, it is in very close proximity (within 5 metres) to and sits much higher above the lower level accommodation.
- The proximity to the building with such a dominant specimen is simply daunting and highly stressful for any owner as should the tree fail the disturbance to the property side including the retaining wall could be extremely expensive and possible life changing.
- The damage caused from the actual impact of the tree coming down could shut the road, destroy the street lamp, potentially causing extensive damage to neighbouring property including vehicles etc.
- The trees removal would benefit the street lighting as it currently encompasses the lamp immediately outside the property which is emphasised by the fact that poor pruning works to the canopy around the lamp have already been conducted by the Local Authority.
- Therefore the recommendation would be felling the tree and replacement planting of a more suitable species (possibly container grown oak).
- If felling was deemed not to be a considered option, the a 30% reduction to canopy would be a minimum requirement to reduce the risk and provide increased longevity of the tree.

5. Response to Objector's Comments

- 5.1 The additional information provided by the applicant has been considered by the Council's Senior Arboricultural Officer who has responded as follows:
- 5.2 It has been suggested that the tree's location on a bankside and being influenced by neighbouring fauna (a tree) have ensured that it has developed a dominant lean away from its undermined root system. The tree is also considered to have an oversized canopy. The report also suggests that the tree's roots have been affected by compaction of soil reducing oxygen levels to its root system.
- 5.3 Many trees are protected and overshadowed by larger trees. This is not justification for their removal. Compaction of soil is a major issue in general terms, not just on development sites. The tree does not appear to be stressed and the removal of 20 – 30% of the tree is therefore not justified. Furthermore, this may allow disease to enter the tree from pruning works.
- 5.4 The tree has been in place for a number of years and as such its impact on the property in terms of light reduction to bedrooms will have been an issue for some time. This situation is unlikely to have significantly worsened in recent times to warrant the removal of the tree.
- 5.5 The protection of the tree remains desirable in the interests of amenity and as such it is considered expedient to protect the tree by the making of a Tree Preservation Order. The tree has a useful life expectancy of in excess of 40 years and has an important position in the landscape. The form of the tree is good and although there have been occasions of adverse weather in recent years it is not apparent that this tree has been damaged in high winds. The tree does not appear to have any structural weaknesses and the Scots Pine (*Pinus sylvestris*) not *Prunus Sylvestria* as identified in the tree report is native to Britain.

- 5.6 Should the tree go into decline within the next 5 to 10 years there will be an opportunity to revisit the tree works within this time but the benefit of the tree in terms of its amenity value will have been retained for this time.
- 5.7 For these reasons, and for those reasons set out in section 3.3 above, it is still considered that the tree remains worthy of protection and no works are considered necessary at this time.

6. Consideration of Objections to TPO

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.*'

Therefore, objections to the TPO should be considered on this basis. The questions to consider are:-

1. Would the removal of the tree have a significant negative impact on the local environment and its enjoyment by the public?
2. 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?
3. Is the tree dead, dying or dangerous? It would not be appropriate for the Authority to make a TPO in these circumstances. By dangerous the test should be is the tree itself hazardous or unsafe.

7. Conclusion

The Semi/mature Pine Tree (*Pinus sylvestris*) is in good form and condition with no visible structural weaknesses. Having considered the additional information provided by the applicant, there appears to be no reason why the tree cannot add to the amenity value of the wider community for many years to come as it matures which justifies its protection. Although the tree is not in imminent danger of being felled, following an application to fell the tree it is considered expedient to protect the tree by the making of a Tree Preservation Order as the loss of the tree would have a detrimental impact on the amenity of the area.

8. Recommendation

That members confirm the TPO without modification

Dave Coates
Head of Planning Development & Environmental Health