

## **DARLINGTON BOROUGH COUNCIL**

### **PLANNING COMMITTEE – 16 OCTOBER 2019**

#### **REPORT OF HEAD OF PLANNING DEVELOPMENT AND ENVIRONMENTAL HEALTH TO OBJECTION TO TREE PRESERVATION ORDER 2019 NO 10 15 GARTHLANDS, HEIGHINGTON, DARLINGTON**

#### **1. Purpose of Report**

- 1.1 To advise members that an objection has been received in respect of Tree Preservation Order Number 2019 No 10. The objection relates to this Order which covers one Mature Alder (*Alnus* spp) growing in the rear garden of 15 Garthlands, Heighington.

#### **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 2019 No 10 was made on 23 July 2019 on one mature Alder Tree in the rear garden of 15 Garthlands, Heighington.
- 3.2 This Tree Preservation Order was made as a result of a planning application (ref no 19/00551/FUL) being submitted to the local planning authority to demolish the existing bungalow at 15 Garthlands and to erect a replacement dormer bungalow. The application originally proposed to fell the Alder tree as part of the development proposals.
- 3.3 The planning application was subsequently amended to retain the Alder tree and an Arboricultural Impact Assessment (AIA) was submitted which confirmed that the Alder tree would not be adversely affected by the new dwelling subject to measures being put in place to protect the tree during the course of the development.
- 3.4 The AIA submitted in support of the application identifies the Alder tree as a Category B tree under BS 5837 which is a tree of moderate quality with an estimated remaining life expectancy of at least 20 years.
- 3.5 The planning application was approved on 11 September 2019 subject to the following planning condition:

*The development hereby approved, including demolition works, shall not be carried out otherwise than in complete accordance with the mitigation measures contained within the document entitled ""Arboricultural Assessment - 15 Garthlands, Heighington Village, Newton Aycliffe, DL5 6RE" dated August 2019 and produced by Dendra Consulting Ltd unless otherwise agreed in writing by the Local Planning Authority.*

*REASON: In the interests of the visual amenity of the surrounding area.*

- 3.6 Objections to the Tree Preservation Order have been received from the occupants of 15 Garthlands and from the occupants of the adjacent dwelling, 14 Garthlands, Heighington in respect of the order being placed on the mature Alder Tree in the rear garden of No 15 Garthlands.
- 3.7 The letter of objection from the owners of 15 Garthlands has been accompanied by a petition supporting the removal of the tree. The petition has seven signatories.
- 3.8 No 15 Garthlands is outside of, but on the edge of the Heighington Conservation Area. The property and the tree are visible from within the Conservation Area.
- 3.9 The Tree Preservation Order was based on the following grounds:

*The mature Alder tree is on reasonable form and condition and is highly visible from public vantage points surrounding the site. The tree significantly contributes to the visual appearance of the local landscape.*

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.

#### 4. **Summary of Objectors' Comments**

##### 4.1 Comments in response to the placing of the Order:

- This tree has been a constant source of concern to us ever since we moved into the adjacent property some 23 years ago. The main trunk of the tree is less than four metres from our building, and we can only hope that its main roots are not damaging (or about to damage) our building foundations
- Your inspection found the tree to be “in a healthy condition” but I can assure you that its leaves and catkins fall from the tree all year round and we are continually cleaning these deposits from our lawn and garden in addition to our gutters and roof. In fact, after strong winds we also pick up small broken off branches. We can only think that this is because this type of tree is normally found beside streams and rivers and so its present location is too dry
- Your Order states that this tree “makes a significant contribution to the visual amenity of the locality” but fails to note that within about ten metres of this tree there are several very large full grown trees that can be seen from many public places in and around the area. Surely this one tree is not going to significantly detract from “the visual amenity of the locality”.
- The tree is both a danger and a nuisance around the two properties concerned. We can only hope that common sense will prevail and that this Order is withdrawn which will then allow the tree in question to be removed.
- We fully understand the current climate regarding the loss of woodland and the need to plant more trees in order to improve the environment. However, this one tree is not in the right place and so the situation needs to be addressed.
- The tree significantly detracts from the visual amenity of our home (15 Garthlands) and that of our neighbours. It blocks our view of the surrounding countryside. In terms of overall visual amenity value, the trees located in the boundary between Nos 12 and 14 Garthlands and Torval satisfy that need. Surely as residents in the immediate vicinity, our opinion should carry extra weight
- The tree overhangs No 14 Garthlands. It is close to both our property and the adjacent property (No1 South View). We have already found one windfall branch of approximately 2m. We are all concerned given the more extreme weather that we now experience, that a large branch will become detached during a gale and cause significant damage to property or person. Its trunk is 9m away from our property and only 4m away from No 14 Garthlands
- Common Alder typically live for 60 years. The tree location and information from our neighbours lead us to believe that this tree is over 50 years old. This being the case, it is likely to deteriorate, the tree does not appear to be thriving. We understand it should be ideally located near wetland and our neighbour tells us the leaves are continually shedding into his garden. Furthermore, it is approximately 12m high when given its age, it should exceed 30 m

- The main drain for Heighington Village runs through our garden. Northumbrian Water recommend trees of this size should be planted at least 6m away from the drain. Because Alder's drink a lot of water, this has the potential to increase the risk to the drain.

## **5. Response to Objector's Comments**

5.1 In response to the above comments the Council's Senior Arboricultural Officer has advised as follows:

- The local planning authority has not been presented with any evidence by the owner of No 15 Garthlands or the occupant of the adjacent dwelling (No 14) to show that the tree is causing any structural damage to No 14 Garthlands.
- The loss of leaves, catkins and small branches are a natural occurrence of a tree and it is not a justification to support its removal. Alder trees are a moderate water demanding tree and this is only a significant issue if there is clay in the area.
- The tree is approximately 12m tall and it is highly visible above the roofline of No 15 Garthlands and its immediate neighbouring dwellings, which are single storey bungalows. The tree is also visible from the north (South View), which is within the Heighington Conservation Area. The tree would remain highly visible over the proposed new dwelling, which is a dormer bungalow, for the site. It is acknowledged that there are other trees in and around the area of the site and in proximity of the Alder tree but it remains a fact that the Alder tree itself makes a valuable contribution to the visual appearance of the street and the wider local area. 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.
- There are many trees, which are covered by a preservation order, that overhang structures, land and dwellings and it is normal for trees to lose branches in extreme weather conditions. However, this is not considered to be a justification to remove such trees.
- The Council's Senior Arboricultural Officer is not aware of an Alder tree to exceed 30m in height and it is not uncommon for trees in built up areas to be in close proximity to services. If the tree was causing any problems to drains or had the potential to do so, it is considered that Northumbrian Water would have sought its removal.
- The AIA submitted in support of the application identifies the Alder tree as a Category B tree under BS 5837 which is a tree of moderate quality with an estimated remaining life expectancy of at least 20 years.
- The tree has an important position in the landscape and the tree is in reasonable form and condition. There are no visible structural weaknesses within the tree and so the tree is not considered to be a danger at this time. The Council's Senior Arboricultural Officer does not agree that the tree will deteriorate within the next few years. Should the tree go into decline within the next 5 to 10 years there will be an

opportunity to revisit the tree within this time but the benefit of the tree in terms of its amenity value will have been retained for this time.

5.2 For these reasons, the tree is worthy of protection.

## **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 mature Alder Tree (*Alnus* spp) is in reasonable form and condition with no visible structural weaknesses. Having considered the comments from the occupant of the adjoining dwelling 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. The tree was in imminent danger of being felled due to the submission of a planning application (ref no 19/00551/FUL) for the erection of a replacement dwelling, however an Arboricultural Impact Assessment (AIA) submitted in support of the application shows that the development could proceed without the need to remove the tree nor cause any damage during the demolition and construction phases. The AIA submitted with the application considered the tree to be a Category B 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**

