

## **DARLINGTON BOROUGH COUNCIL**

### **PLANNING COMMITTEE – 4 DECEMBER 2019**

#### **REPORT OF HEAD OF PLANNING DEVELOPMENT AND ENVIRONMENTAL HEALTH TO LAND ADJACENT TO THE LODGE, DINSDALE SPA HOUSE, CHURCH LANE, MIDDLETON ST. GEORGE, 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 11. The objections relates to this Order which covers one Mature Willow Tree (*Salix* spp) growing on land adjacent to The Lodge, Dinsdale Spa, Church Lane, Middleton St. George.

#### **2. Legal and Procedural Background**

- 2.1 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 11 was made on the 25 September 2019 on one mature Willow Tree on land adjacent to The Lodge, Dinsdale Spa House, Church Lane, Middleton St. George.
- 3.2 This Tree Preservation Order was made as a result of a request to the Local Planning Authority as the tree was thought to be at risk of being felled.
- 3.3 The mature willow tree is located to the south of a small group of properties located at Dinsdale Spa, to the north of the River Tees. Footpath No. 10 in the parish of Low Dinsdale passes immediately to the south of these properties with the willow tree being high prominent in view from this aspect.
- 3.4 Objections to the Tree Preservation Order have been received from three directors of Dinsdale Spa (Management) Limited (Woodview, Kingfisher House and The Octogan, in respect of the order being placed on the mature Willow Tree. The Directors who represent The Lodge and River View are in support of the Tree Preservation Order.
- 3.5 The Willow Tree is not protected by virtue of being in a conservation area.
- 3.6 The Tree Preservation Order was based on the following grounds:

*The mature Willow tree is in reasonable form and condition, it has small crossing branches and minimal deadwood within the crown. A low scaffold limb protrudes approx.0.5m from the trunk of the tree. The tree is highly visible from public right of way (footpath No. 10 parish of Low Dinsdale). 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:
  - The willow tree was planted approx. 30 years ago by a previous resident, unfortunately it is in close proximity to the septic tank and underground drainage of the property. Since then the tree has developed into a feature that is appreciated by all the residents, but is nevertheless subject to regular sympathetic maintenance to both preserve its character and avoid nuisance to any of the residents. Placing a Tree Preservation Order will place an unnecessary administrative burden on the Management Company and the Council as maintenance works would require formal planning application being submitted to the LPA.
  - The tree has never been under threat of being cut down.

- The tree is not currently under any threat of being cut down.
- The tree would only be felled if it started to cause damage to the adjacent septic tanks or drains in which case we understand the TPO would be removed to allow the avoidance to damage. Roots from the Willow tree have in the past caused blockages to the drains and pipework leading to the properties requiring urgent repairs to be undertaken.
- If tree roots penetrate the septic tank, raw untreated sewage could be discharged into the River Tees, having to apply for planning consent would cause an unnecessary delay to any urgent work required.
- The Willow tree encroaches over both public and permissive footpaths along the banks of the River Tees and also the residents' patio area. If limbs were to unexpectedly snap off then there would be potential danger to both the general public and residents of Dinsdale Spa.
- The view of the Willow Tree is impeded from public view by vehicles, camper vans and other large vehicles parked in the resident's car park. The approach along the Teesdale Way is also obscured by several trees.
- Any matters relating to the shared grounds of Dinsdale Spa would normally be discussed by all Directors of Dinsdale Spa (Management) Limited. This TPO was submitted without any due consultation with the Management Company and therefore the request for a TPO was not agreed by every Director of the Management Company.

## **5. Summary of Representations**

### 5.1 Representation is response to the placing of the Order.

- The willow tree greatly enhances the whole aspect of the front of the property and has been a main feature of the property for over 30 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.
- The tree roots are currently supporting the river bank and we are extremely concerned that if the tree was removed there would be a severe risk of subsidence affecting the structure of The Lodge and River View.

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

### 6.1 In response to the Objector's Comments the Council's Senior Arboricultural Officer has advised as follows:-

- The tree is approx. 18m in height and is highly visible from a number of vantage points, it has a low scaffold limb which is integral to the shape of the crown and therefore makes a valuable contribution to the visual appearance of the locality. The protection of the tree remains desirable in the interests of amenity and as such is considered expedient to protect the tree by the making of a Tree

### Preservation Order.

- The LPA if it believes it is appropriate can impose a time limit of approved works (of say, two years) on the duration of the planning consent which would allow the tree to be regularly maintained and therefore reduce the need for subsequent planning applications and the administrative burden.
- If in future the tree roots are found to be causing damage to the drains and underground pipework then the Management Company could then seek the tree's removal.
- There are many trees covered by tree preservation order which overhang public rights of way and it is a natural occurrence for trees to lose small branches. It is also normal for trees to lose larger branches in extreme weather conditions. However, this is not considered justification as to not placing an order on the tree.
- 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
- For these reasons, the tree is worthy of protection.

## 7. **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.

## 8. **Conclusion**

The mature Willow Tree (*Salix spp*) is in reasonable form and condition with small crossing branches and minimal deadwood within the crown. A low scaffold limb protrudes approx. 0.5m from the trunk of the tree.

Having considered the comments from the Directors of the Management Company

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 is not within a conservation area and without the protection of a tree preservation order could be felled without the need for formal planning consent.

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.

**9. Recommendation**

That Members confirm the TPO without modification

**Dave Coates**

**Head of Planning Development & Environmental Health**