

AGENDA ITEM

DARLINGTON BOROUGH COUNCIL

PLANNING COMMITTEE – 4 MARCH 2020

**REPORT OF HEAD OF PLANNING DEVELOPMENT AND ENVIRONMENTAL
HEALTH TO AN OBJECTION TO TREE PRESERVATION ORDER NO 12 2019
1 SUSSEX WAY DARLINGTON**

1. Purpose of Report

- 1.1 To advise members that three objections have been received in respect of Tree Preservation Order Number 12 2019. The objections relate to this order which covers one semi mature maple tree (*Acer spp*) growing on land to the side of 1 Sussex Way Darlington.

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 The tree was originally protected by Tree Preservation Order 2018 (No 12) made on 28 November 2018. This order was revoked due to the species of the tree being incorrect. This Tree Preservation Order 2019 (No 12) was

made on 27 November 2019 on one semi mature maple tree on land to the west of 1 Sussex Way Darlington to replace the original order.

- 3.2 This Tree Preservation Order was made as a result of the occupier of 1 Sussex Way Darlington purchasing the land and proposing to enclose it and change the use from open space to private garden. Planning application 18/00905/FUL refers. New Orders are only placed on healthy trees that are regarded as having a significant degree of public amenity.
- 3.3 Three objections have been received from Mrs Sheila Samways, the owner and occupier of 1 Sussex Way Darlington, Mr Anthony Samways, co-owner of 1 Sussex Way Darlington and Mrs Elizabeth Mitchell, co-owner of 1 Sussex Way in respect of the order being placed on the semi mature maple tree in the side garden of their property.
- 3.4 T1 is a semi mature specimen in reasonable form and condition, the tree has co-dominate stems with a slight inclusion. The tree has a high amenity value as it is highly visible from several viewpoints.

The Tree Preservation Order was based on the following grounds:

This Tree Preservation Order has been made as the tree included in the Order make 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

- The tree is located within my private garden and not situated within the grounds of land adjacent to 1 Sussex Way, Darlington.
- This TPO was created following an objection to planning application 18/00905/FUL stating that they thought the tree would be felled for property development. My intentions were just to get the tree professionally pruned, as requested by Darlington Borough Council due to the tree branches overhanging the public highway;
- The tree was misidentified on the first TPO 'Tree Preservation Order No. (12) 2018.' It was labelled as semi/mature sycamore (*Acer Pseudoplatanus*). On the second 'Tree Preservation Order No. (12) 2019,' the updated TPO is identified as a semi/mature Maple Tree (*Acer spp*). This second attempt to identify a tree is still wrong as it does not specifically identify the tree but gives just the name of a type of tree species. This shows that a detailed inspection of the tree has not been carried out correctly. If a tree cannot be identified, then how has an assessment been professionally carried out with the judgment Grounds 1 '1 The tree was inspected and found to be in healthy condition.'

- I have had two independent tree specialists assess the condition of the tree.
- The first, an independent assessment by a qualified tree surgeon, has stated that the tree is unhealthy and the branches are far too close to the public footpath/highway. The independent assessor also confirmed that roots are causing damage to my garden wall and has since become unstable and has collapsed.
- The second independent company to inspect the tree, assessed the tree and have found that the tree is not in a healthy condition and it is in urgent need of tree pruning to remove the lowest horizontal branches, reduce density and remove dead wood.
- They have also identified the tree as Norway Maple (*Acer platanoides*).
- If a full inspection was carried out on the tree, they would have seen tree has leaf spot and blotch diseases, obvious with discolouration and black spots on leaves. Verticillium wilt is present throughout the central columns of the tree. There are several branches of deadwood hanging, some still attached, others started to break away from main tree column and others dangling dangerously. Lichens are present throughout the central branches.
- I further object to the TPO with the tree causing considerable damage to my property. The root growth has been so detrimental, it has caused the collapse of the wall. The large root growth underground and on the surface have undermined the ground foundations to cause and unstable and dry soil conditions, causing the wall to collapse.
- It is not necessary for Darlington Borough Council to place TPO when the tree is under good arboricultural or silvicultural management. I have demonstrated my duty and have employed the services of a Tree Services company.
- I strongly object to the TPO on the tree within my private garden. The listed objections show there are strong grounds for no TPO to be required.

5. Our response to Objector's Comments

In response to the above objections, the Council's Arboricultural Officer has stated:

If the tree owners have concerns regarding subsidence, they should send all details and reports (including the referred to surveys) in connection with the situation to the Planning Department.

It is natural for trees to have deadwood within their crowns, Lichens can be found on most trees and is natural as they live in harmony with the tree.

Black spot occurs on leaves and is said to be in areas of good air quality, to prevent the reoccurrence the fallen leaves should be removed.

The owner of the trees has a duty of care to ensure that their trees are safe, and it is recommended that they are regularly inspected by a suitably impartial experienced consultant Arboriculturist, and having Professional indemnity insurance. Any works regarding trees that are protected must be carried out by a suitably experienced arborist.

Verticillium wilt to in our arborists professional opinion is not prevalent.

Ultimately it is the responsibility of the tree owners to address these matters as part of a planning application to carry out works to a tree the subject of a preservation order and provide the evidence. This should include structural surveys and arborists reports to support the applicant's position for the Local Planning Authority to consider.

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 Maple Tree is in reasonable form and condition with co-dominate stems with a slight inclusion. 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.

None of the reasons given by the objector in the opinion of the Local Authority would justify not proceeding with the Order.

An avenue does exist should the objector/owner of the property choose to use it, to undertake works to the tree. This would be to submit an application and supply the relevant reports to justify their position. The application would be considered in the normal way.

8. Recommendation

That members confirm the TPO without modification.

Dave Coates
Head of Planning Development & Environmental Health

