

North Tyneside Council

Report to Planning Committee

Date: 11 April 2023

Title: Land to the rear of
12, 14 and 16 Stoneycroft
East, Killingworth Tree
Preservation Order 2022

Report from Directorate: Regeneration and Economic Development

Report Author: John Sparkes, Director of Regeneration and Economic Development (Tel: 643 6091)

Wards affected: Killingworth

1.1 Purpose:

To consider the above Tree Preservation Order for one tree taking into account any representations received in respect of the Order.

1.2 Recommendation(s)

Members are requested to consider the representations to Land to the rear of 12, 14 and 16 Stoneycroft East, Killingworth, Tree Preservation Order 2022 and to not confirm the Order.

1.3 Information

- 1.3.1 The Council were notified of the intention to prune the poplar trees on Council owned land to the rear of 12, 14 and 16 Stoneycroft East. These works were assessed and it was determined that if the pruning works were applied to the maximum extent they would be contrary to good tree management and weaken their positive contribution to the character and appearance of the conservation area. The National Planning Practice Guidance (NPPG) advises that a local authority should propose a TPO if it is 'expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area' (Town and Country Planning Act, 1990). The Order was served in December 2022 (Appendix 1).
- 1.3.2 Two objections have been received following the Council's decision to serve a TPO on the trees from 10 and 16 Stoneycroft East, Killingworth. A copy of the representations are included as Appendix 3 and 4 to this report.
- 1.3.3 Objection from 10 and 16 Stoneycroft East, Killingworth can be summarised as follows:
- The trees are in a poor condition and have not been managed by North Tyneside Council for a number of years.
 - The trees should be in a sustainable condition before a TPO is applied.
 - The original application was submitted due to the Council not seeing the works as a priority even though they have previously undertaken works to the trees.
 - Unclear why a TPO has been issued on these trees when previous works have taken place without the need for a TPO.
 - The application was to cut back over hanging branches because they pose a danger to properties, overhanging habitable rooms.

- The Council have previously paid compensation when branches caused damage to the owners property. This is an acknowledgement from the Council of both their responsibility and liability of the trees not being appropriately managed.
- The trees in question are short lived tree and susceptible to dropping large branches.
- The trees are now larger and more invasive than they have ever been.
- The trees were not viewed from within the grounds of the properties to fully appreciate the proximity of the trees to the properties and the overhang in question when issuing the TPO.
- Questioning of the significant contribution the trees make to the visual amenity and character of the conservation area. The area around the trees is an eyesore with debris from previous pruning works.

1.3.4 The Council has responded, in consultation with the landscape architect, to each of the objections:

- a) The trees are in poor condition and have not been appropriately managed by the Council, or the land around them, and not worthy of TPO status;
- b) The proposed works were as a result of the Council not accepting the works as an immediate priority and the residents then agreeing to undertake the works themselves;
- c) The trees pose a danger to properties, overhanging habitable rooms, which the Council acknowledgement responsibility and liability for;
- d) The Council have previously undertaken works to the trees without a TPO being issued;
- e) The trees are too large and invasive for the area and not an appropriate species being short lived and susceptible to dropping large branches;
- f) Concluding remarks.

a) The trees are in poor condition and have not been appropriately managed by the Council, or the land around them, and not worthy of TPO status

1.3.5 The trees are mature poplars that have previously been managed by the Council, but on an irregular basis. When assessing the condition of the trees against the British Standard 'Trees in relation to design, demolition and construction – Recommendations' BS 5837:2012 the trees would be considered as a group to be category B trees (trees of moderate quality). This is the mid category of tree classification (A being high quality and C being low quality) with a life expectancy of at least 20 years and a landscape conservation value making them worthy of preservation as a group.

1.3.6 The land around the trees has been deliberately left as an unmanaged area to increase its biodiversity value, reflecting the Councils Biodiversity Action Plan and the Grass Biodiversity Areas Plan. The previously pruned branches have been left to enhance the biodiversity habitat for the area. Whilst it may look more untidy, compared to the more frequently mowed areas along East Bailey, this is a deliberate approach and the area is designated as a Wildlife Corridor in the Local Plan.

b) The proposed works were as a result of the Council not accepting the works as a priority and the residents then agreeing to undertake the works themselves?

1.3.7 Prior to the section 211 notice (application of works to a tree(s) in a conservation area) being submitted the resident of 16 Stoneycroft East had met with the Council Tree officer to discuss possible pruning works. The principle of pruning works to the rear boundary of Stoneycroft East was accepted as part of the trees ongoing management. However, because the pruning works were not considered an immediate Council priority the residents decided to submit and finance the pruning works themselves.

- 1.3.8 Once the residents had submitted the section 211 notice the details of the pruning works were described as 'over hanging branches to be cut back to trees on boundary fence'. This broad definition of works meant the trees could potentially be pruned in such a way that would not be considered sound arboricultural practice.
- 1.3.9 The Council Landscape Architect, who comments on all applications to protected trees and the Council Tree officer did not support the proposed description of works. Instead they both favoured a more detailed description applying a target approach to the pruning that would retain the overall amenity value of the trees.
- 1.3.10 A decision is required within 6 weeks from the section 211 notice being submitted. The decision was made to issue a provisional TPO on the trees to allow more time to consider and discuss possible options to prune the trees.
- 1.3.11 Since the provisional TPO has been placed on the trees the Council Tree officer revisited the site and identified a series of acceptable pruning works to the trees and confirmed that these would be undertaken before the end of the summer in 2023 and ideally by the start of the summer. This new proposed timeframe of pruning works was welcomed by the resident of 16 Stoneycroft East.

c) The trees pose a danger to properties, overhanging habitable rooms, which the Council acknowledgement responsibility and liability for?

- 1.3.12 The trees are not considered to be dangerous and the recommended pruning works, as suggested by the Tree Officer, would be part of their ongoing management. The trees are a species that naturally shed limbs, which can be disconcerting, but is a natural process that can be mitigated against as part of an active management plan.
- 1.3.13 The trees do overhang the rear gardens of the properties of Stoneycroft East, but they do not overhang habitable rooms. Some gardens have outbuildings in their rear gardens that are underneath the canopy of the trees, but these structures, such as sheds and garden rooms are not considered to be habitable rooms as they are a separate structure from the main residence and do not require building regulations for their installation.
- 1.3.14 The Council Claims Investigation Team have made two payments to residents of Stoneycroft following damage to property caused by the trees. One payment was several years ago when the Council accepted pruning works should have been undertaken and the second was a more recent claim after Storm Arwen.
- 1.3.15 The Council did not accept the second claim as an admission of liability because pruning works had been carried out to the trees prior to the damage caused, but because there was no record of the Council undertaking the pruning works the Council had no evidence that it had been acting as a responsible owner by actively managing the trees and made a small payment to the resident.
- 1.3.16 The Claims Investigation Team believe that if the trees are inspected at regular intervals and work done within a reasonable timescale, which is then recorded (this now takes place), it would allow the Council to defend future claims of damage.

d) The Council have previously undertaken works to the trees without a TPO being issued

- 1.3.17 The Council had previously undertaken maintenance works to the trees without a TPO being issued because the works were considered appropriate based on sound arboricultural reasons and the Council are exempt from having to submit an application for works to trees in a conservation area.

e) The trees are too large and invasive for the area and not an appropriate species being short lived and susceptible to dropping large branches

- 1.3.18 The trees are large specimens that make an important contribution to the mature canopy cover of Killingworth Village conservation area, which is an important feature of its character and appearance. The species of tree in question are susceptible to dropping branches and therefore require regular inspections with pruning works where necessary. If the trees are actively managed, they should not have a detrimental impact on the garden areas of neighbouring properties.

f) Concluding remarks

- 1.3.19 As landowner of the trees it is expected that the Council would undertake all works to the trees in accordance with British Standards 'Tree Work – Recommendations (BS3998:2010) to safeguard their health and amenity value.
- 1.3.20 The Council has accepted that it will undertake the pruning works first requested by the residents after they were initially told the works weren't a priority.
- 1.3.21 The Council no longer believes it is worth pursuing a TPO on the trees as the management and maintenance of the trees will be undertaken by the Council and not by third parties, ensuring the amenity value and contribution to the conservation area of the trees is protected.
- 1.3.22 It would not be expedient for the Council to pursue a TPO on the trees as the trees would not be considered under threat from inappropriate works. The same principle applies to many other Council trees across the Borough that are worthy of TPO status, but are not subject to a TPO as there is no perceived threat of inappropriate works to the trees. When discussing with the applicant the prospect of not confirming the TPO they were supportive. This was based on their desire to see works done to the trees at the earliest opportunity and any potential delays to undertaking works due to the TPO process should be avoided. They are keen to see the Council undertake works in timescale suggested as the absolute maximum.

Additional Guidance

- 1.3.23 North Tyneside Council is firmly committed to providing a clean, green, healthy, attractive and sustainable environment, a key feature of the 'Our North Tyneside Plan'.
- 1.3.24 Trees play an important role in the local environment providing multiple benefits but they need to be appropriately managed, especially in an urban environment.
- 1.3.25 Not confirming the TPO will allow the Council to undertake works to the trees without having to submit an application and therefore speed up the process of being able to react to residents' request for works, if they are considered appropriate. This is due to local authorities' being exempt from having to submit an application form (Section 211 notice) for works to trees in a conservation area (Paragraph 132 of government guidance Tree Preservation Orders and trees in conservation areas, 2014).
- 1.3.26 It is the Council's intention to resume an active management programme of works to the trees, maintaining records of the works undertaken. This will allow the Council the opportunity to review and assess the impact of the works to the trees and respond accordingly. Currently the Council aims to undertake works to the trees by the summer of 2023.

1.3.27 The resumption of the active management of the trees would be in accordance with the Councils adopted Local Plan policy DM5.9 Trees, Woodland and hedgerows, which states;

‘DM5.9 Trees, Woodland and Hedgerows: Where it would not degrade other important habitats the Council will support strategies and proposals that protect and enhance the overall condition and extent of trees, woodland and hedgerows in the borough and:

a) Protect and manage existing woodlands, trees, hedgerows and landscape features’

1.3.28 Policy S6.5 (Heritage Assets) and DM6.6 (Protection, Preservation and Enhancement of Heritage of Heritage Assets) of the Local Plan also seek to pro-actively preserve and enhance its heritage assets, which includes conservation areas.

1.3.29 Trees are recognised in the Killingworth Village conservation area character appraisal (February 2008) as making a significant contribution to the green and open spaces in the conservation area and this mature green character should be protected and managed into the future to ensure long term sustainability. The importance of the trees to the rear of Stoneycroft East and West are highlighted in the Character Appraisal as a comparison of how the village has some a short but wide views (Stoneycroft East and West) and other that are long and narrow (West Lane), but in both, trees draw the eye either above the roof tops or along the street to provide a verdant quality to the area. Local Plan Policy S6.5 and DM6.6 states;

‘Policy S6.5 - North Tyneside Council aims to pro-actively preserve, promote and enhance its heritage assets, and will do so by:

b. Maximising opportunities to sustain and enhance the significance of heritage assets and their settings.’

‘Policy DM6.6 - Proposals that affect heritage assets or their settings, will be permitted where they sustain, conserve and, where appropriate, enhance the significance, appearance, character and setting of heritage assets in an appropriate manner. As appropriate, development will:

c. Conserve and enhance the spaces between and around buildings including gardens, boundaries, driveways and footpaths’

1.3.30 The recently updated National Planning Policy Framework (July 2021) also emphasises the importance of trees, specifically street trees to the character and quality of urban environments, which can help to mitigate and adapt areas to the impacts of climate change.

1.3.31 ‘Amenity’ is not defined in law, but the local authority should be able to show that protection would bring about a reasonable degree of public benefit in the present or future. The NPPG identifies certain criteria to consider when assessing the amenity value of a tree(s) that include the visibility of the tree to the public, its contribution to the landscape, the characteristics of the tree, its future potential and whether the tree has a cultural or historical value.

1.3.32 In this instance the local authority thought it expedient to place a temporary TPO on the tree in accordance with the Town and Country Planning Act 1990 (as amended) to maintain and safeguard the contribution made by the trees to the landscape and visual amenity of the area. This was due to the works not being supported by the Council Tree Officer or the Council Landscape Architect and although owners are allowed to prune branches overhanging their property the extent of the works were considered to be inappropriate. It was therefore considered expedient to serve a provisional TPO on the

owners and other relevant parties on 21 December 2022 as it was the only option available to the Council to control works to the trees outside of the six week timeframe of the section 211 notice being served. The provisional TPO has also allowed the opportunity to discuss alternative pruning works between the Council and residents. A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.

1.3.33 If the Order is not confirmed by 21 July 2023 the Order will lapse and the works to the trees that overhang the boundary would be reconsidered by a subsequent section 211 notice.

1.4 Decision options:

1. To not confirm the Tree Preservation Order
2. To confirm the Tree Preservation Order with modifications.
3. To confirm the Tree Preservation Order.

1.5 Reasons for recommended option:

Option 1 is recommended. The trees are owned by North Tyneside Council and within Killingworth Village conservation area. The trees are believed to have sufficient protection in place to ensure only appropriate works are undertaken as part of their ongoing management and the intention to undertake the works by third parties is no longer applicable.

1.6 Appendices:

Appendix 1 – Schedule of Land to the rear of 12, 14 and 16 Stoneycroft East, Killingworth Tree Preservation Order 2022

Appendix 2 – Map of Land to the rear of 12, 14 and 16 Stoneycroft East, Killingworth Tree Preservation Order 2022

Appendix 3 – Objection from 16 Stoneycroft East, Killingworth 11.01.2023

Appendix 4 – Objection from 10 Stoneycroft East, Killingworth 23.12.2022

1.7 Contact officers:

Peter Slegg (Tel: 643 6308)

1.8 Background information:

The following background papers have been used in the compilation of this report and are available for inspection at the offices of the author:

1. Town and Country Planning Act 1990.
2. Planning Practice Guidance (As amended)
3. The Town and Country Planning (Tree Preservation) (England) Regulations 2012
4. National Planning Policy Framework (July 2021)
5. Killingworth Village Conservation Area Character Appraisal February 2008)
6. North Tyneside Council Local Plan (2017)
7. Newcastle and North Tyneside Biodiversity Action Plan
8. North Tyneside Grass Biodiversity Areas

Report author Peter Slegg