

North Tyneside Council

Report to Planning Committee

Date: 24 10 2023

ITEM
Title: 111 Marine Avenue,
Whitley Bay
Tree Preservation Order
2023

Report from Directorate: Environment, Housing and Leisure

Report Author: John Sparkes, Director of Regeneration and
Economic Development

Wards affected: Whitley Bay

1.1 Purpose:

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

1.2 Recommendation(s)

Members are requested to consider the representation to 111 Marine Avenue, Whitley Bay, Tree Preservation Order 2023 and confirm the Order.

1.3 Information

1.3.1 The Council were notified of the intention to remove a sycamore, cherry, apple and laburnum trees to the front of 111 Marine Avenue, Whitley Bay by a section 211 notice of the Town and Country Planning Act 1990 (23/00497/TREECA). These works were assessed, and the Council made a split decision, deciding to make a Tree Preservation Order (TPO) (Appendix 1) for the sycamore and cherry tree in question but allowing the removal of the apple and laburnum. The Order was served in May 2023.

1.3.2 One objection has been received following the Council's decision to serve a TPO on the trees from the engineers acting on behalf of the insurance company investigating a claim of subsidence. A copy of the representation is included as Appendix 3 to this report.

1.3.3 The objection concludes that the sycamore (T1) and cherry (T2) should be removed due to the trees causing damage to the property and the original application reported the trees should be removed because of subsidence to the property.

1.3.4 The Council Response

The Council has responded, in consultation with the landscape architect (who has provided a full response in Appendix 4) and the main issues regarding the value of the trees to the local area and the issues of subsidence are addressed below:

- a) The contribution the trees make to the conservation area (amenity value);
- b) The potential damage to the property (subsidence);
- c) Concluding remarks.

a) The contribution the trees make to the conservation area (amenity value)

1.3.5 In serving a TPO, the tree must be able to show that protection would bring a reasonable degree of public benefit in the present or future. As defined by the governments 'Tree

Preservation Orders and Trees in Conservation Areas' *'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'*. To evaluate amenity, the TEMPO assessment (Tree Evaluation Method for Evaluating Preservation Orders) was used to assess the suitability of a tree for a TPO. This is a widely recognised and respected method of valuation which takes into account factors such as a tree's visibility to the public, its condition, age and remaining life-expectancy, its function within the landscape (such as screening development or industry), its wildlife or historic value and ultimately its importance to the local environment. Furthermore, the tree(s) usually need to be under an immediate or foreseeable threat to warrant protection.

- 1.3.6 With regard to amenity, the trees need to be visible from public places, usually the public highway, footpaths and open spaces. In this case the trees are highly visible from a public highway and footpaths which surround the property to the east and west. The sycamore tree is a large and mature sycamore on the northern boundary of the property which has a commanding individual presence visible from locations on Marine Avenue. Therefore, the tree is considered to have a high degree of visual prominence and makes a significant contribution to the character and appearance of the local area. T2 (cherry), T3 (apple) and T5 (laburnum) are much smaller trees, closer to the house. However, all the trees make a positive and significant contribution to the landscape to some extent, although the apple possibly less so than the other trees.
- 1.3.7 The sycamore (T1) is an old pollard and has some decay in the point of pollard. However, this does not detract from the positive effect the tree makes on the landscape and there are management options that could be used should the pollard growth and decay become an issue of concern.

b) The potential damage to the property (subsidence)

- 1.3.8 In the case of damage to the property itself, the information provided in support of the application shows minor damage to the structure, intermediate/high plasticity soil, inconclusive root analysis and no seasonal monitoring. There is a recommendation within the engineer report to provide level and crack monitoring to 'confirm the exact nature of any movement to the building and gather evidence in respect of any necessary TPO application'.
- 1.3.9 If there is damage to the structure of the property by the roots of the tree, a fully detailed structural engineers report must be submitted to prove actual damage as the tree may not be the only factor that can cause building movement. For example, natural seasonal soil moisture changes, localised geological variations, damaged drainage, over loading of internal walls and settlement, amongst others so clear evidence is required that the damage caused is due to the trees in order to require their removal. This information required will be in line with current TPO guidance to ensure trees are not unnecessarily removed. In many cases, trees co-exist next to structures and in many situations without conflict, so unless evidence is provided indicating otherwise, it is not considered a reason remove the tree.
- 1.3.10 Typical evidence and information that is necessary to assess the influence of a tree can be provided by a Structural Engineer and should include:
- A description of the property including, type and depth of foundations, a description of the damage and the crack pattern, the date that the damage first occurred/was

noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map.

- Details of vegetation in the vicinity and its management since discovery of the damage, together with a plan showing the vegetation and affected building.
- Measurement of the extent and distribution of vertical movement using level monitoring. However, where level monitoring is not possible, the applicant should state why and provide crack-monitoring data. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s).
- A profile of a trial/bore hole dug to identify soil characteristics and foundation type and depth.
- The sub-soil characteristics including soil type (particularly that on which the foundations rest), liquid limit, plastic limit and plasticity index.
- The location and identification of roots found. Where identification is inconclusive, DNA testing should be carried out.

1.3.11 In addition, this should be supported by a drainage survey and a report from an arboriculturalist to support the tree work proposals, including arboricultural options for avoidance or remediation of indirect tree-related damage.

1.3.12 On the basis of the information given, the request to fell T1 Sycamore, T2 Cherry is not supported and a TPO is proposed for the following reasons:

1.3.13 The removal of the trees would impact on visual amenity,

1.3.14 Lack of evidence with regard to damage to the property.

c) Concluding remarks

1.3.15 The trees are suitable for a TPO based on a TEMPO assessment (Tree Evaluation Method for Preservation Orders), which is an industry standard methodology. Any reasons to remove trees must be convincing and the information submitted with the application is not sufficiently convincing to remove all the trees. Putting any issues with subsidence aside and assessing at the trees based on amenity (TEMPO assessment) and their contribution to the character of the conservation area it was decided that the Apple and Laburnum have a less convincing TEMPO score than the Sycamore and the Cherry, would not merit a TPO and could be removed.

1.3.16 Trees co-exist next to structures and in many situations without conflict, so unless evidence is provided indicating otherwise, it is not considered a reason remove the tree.

1.3.17 The TPO does not prevent works being undertaken to the trees but ensures that if any pruning works or construction works in close proximity to the trees are carried out so that the trees are not damaged in any way. Further detail is provided in BS5837: 2012 '*Trees in Relation to Construction-Recommendations*'.

1.3.18 The making of a TPO is a 'discretionary' power under the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations

2012, that allows the Local Planning Authority (LPA) time to consider if the tree is worthy of protection or not.

- 1.3.19 The Local Planning Authority currently has over 100 individual tree preservation orders in place for various parts of the borough and the majority of TPO's are protecting trees in privately owned property. There is a process within the authority to determine whether a tree or trees merit protection based on a number of factors such as the size, type or location of the tree or trees and whether it/they are at risk of removal or damage. Whilst the TPO does bring additional responsibilities to the owner of the tree, this is not unusual across the borough.
- 1.3.20 The sycamore and cherry tree at this current stage, are in reasonable condition with no major structural defects. They are located in a prominent position within the front garden of the property and therefore highly visible to occupiers of neighbouring residential properties and from vehicular and pedestrians routes on Marine Avenue. Therefore, the trees are considered to be an important element of the local landscape. The Order has been made in accordance with Government guidelines and in the interests of securing the contribution this tree makes to the public amenity value in the area. The concerns of the homeowner have been fully considered and balanced against the contribution the sycamore and cherry trees makes to the to the local environment and it is not felt that they outweigh the contribution this tree makes to the amenity of the local area. Their loss would be considered a visual change and local residents will experience a changed or altered view on a permanent basis.
- 1.3.21 Due to the prominence of the trees within the local landscape, the age of the trees, their current condition, and on the understanding that the trees are at risk of being felled, it is considered expedient in the interests of amenity to confirm a Tree Preservation Order without modification on this tree.
- 1.3.22 It is important to reiterate that, if the Order is confirmed, this would not preclude future maintenance works to the trees. Should any works need to be carried out to the trees for safety reasons, or for any other reason, an application can be made to the local planning authority to carry out works to the protected trees.

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 Confirming the TPO will not prevent any necessary tree work from being carried out but will ensure the regulation of any tree work to prevent unnecessary or damaging work from taking place that would have a detrimental impact on the amenity value, health and long term retention of the tree. If the owners/occupiers were concerned about the condition of the tree and require pruning works to be carried out, an application to the Council can be submitted as required by the TPO.
- 1.3.26 Protecting the tree with a TPO 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'

- 1.3.27 The recently updated National Planning Policy Framework (2023) emphasises the importance of street trees to the character and quality of urban environments, which can also help to mitigate and adapt to climate change. From this recognition of the importance of street trees to an urban area the NPPF seeks to ensure that all new streets are tree-lined and that existing trees are retained wherever possible.
- 1.3.28 The National Planning Practice Guidance (NPPG) advises that a local authority should confirm a TPO if it appears to them to be '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).
- 1.3.29 '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.
- 1.3.30 In accordance with the Town and Country Planning Act 1990 (as amended) the Authority considers it necessary to issue a Tree Preservation Order to maintain and safeguard the contribution made by the trees to the landscape and visual amenity of the area. The Tree Preservation Order was served on the owners and other relevant parties on 24th May 2023 A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.
- 1.3.31 The Order must be confirmed by 24 November 2023 otherwise the Order will lapse and there will be nothing to prevent the removal of the trees.

1.4 Decision options:

1. To confirm the Tree Preservation Order with no modifications.
2. To confirm the Tree Preservation Order with modifications.
3. To not confirm the Tree Preservation Order.

1.5 Reasons for recommended option:

Option 1 is recommended. A Tree Preservation Order does not prevent the felling of trees, but it gives the Council control in order to protect trees which contribute to the general amenity of the surrounding area.

1.6 Appendices:

Appendix 1 – Schedule of 111 Marine Avenue, Whitley Bay Tree Preservation Order 2023
Appendix 2 – Map of 111 Marine Avenue, Whitley Bay Tree Preservation Order 2023
Appendix 3 – Objection email from Agents (Sedgwick) Holywell Avenue, Whitley Bay
Appendix 4 – Response from the Council Landscape Architect to the objection of the TPO

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

Report author Peter Slegg