

North Tyneside Council

Report to Planning Committee

Date: 12 12 2023

ITEM

Title: Land to the south of
the former Deuchars, 5
Backworth Lane,
Backworth
Tree Preservation Order

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 six trees 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 south of the former Deuchars, 5 Backworth Lane, Backworth Tree Preservation Order 2023 and confirm the Order.

1.3 Information

1.3.1 The Council were notified of the intention to remove 5 sycamore trees to the rear of the former Deuchars, 5 Backworth Lane, Backworth by a section 211 notice of the Town and Country Planning Act 1990 (23/00769/TREECA). One of the sycamore trees is actually a willow tree. The works were assessed, and the Council decided to make a Tree Preservation Order (TPO) (Appendix 1) for the four sycamore and one willow tree in question, but also included an adjacent sycamore that was considered worthy of protection. The Order was served in July 2023.

1.3.2 Seven objections have been received following the Council's decision to serve a TPO on the trees from the nearby residents. A copy of the representations is included as Appendix 3a to 3p to this report.

1.3.3 The objections state that the five trees subject to the original application should be removed due to the trees causing damage to the boundary wall, their lack of visual amenity, their impact on a reduction in light levels and other issues caused as a result of the trees.

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 condition of the boundary wall;
- b) Public visual amenity;
- c) Light issues;
- d) Poor satellite, TV signal and mobile phone signal;
- e) Damp, falling leaves, sap and issues associated to trees;

- f) Objections raise concerns about removal of trees and unauthorised pruning work to trees in neighbouring properties;
- g) The objections raise concerns about mental health issues;
- h) Concluding comments.

a) The condition of the boundary wall

- 1.3.5 In June 2021 Kingston Properties, a property management company for the former Deuchar Building, contacted the council regarding the trees located on land belonging to Backworth Hall. The trees located along a northern boundary wall of the Hall, overhang the residents car parking area of the converted Deuchars property. Kingston Properties requested informal advice on proposed pruning and felling works to trees along the boundary wall with Backworth Hall for the following reasons:
- Loss of light to 2 cottages at the rear of the development.
 - Damage to cars and car park area, due to the debris falling from a height.
 - Damage to a stone built boundary wall, which is starting to have various issues, due to the tree roots destabilising the structure of the wall.
- 1.3.6 Following a site visit it was noted that the trees were located at a distance that provided sufficient clearance over the car park and that access to the car park was unobstructed. No arboricultural reason was provided to justify works to the trees and Kingston Properties were informed that regular maintenance of the trees to remove deadwood does not require consent from the local authority. This would prevent debris falling on to cars in the car park. Whilst the trees may have some impact on light levels to the neighbouring properties there would need to be clear evidence that the trees are a severe restriction to light levels within the properties and any future works to the trees to enable additional light into those properties would need to be justified. Any issues relating to light levels could be addressed by appropriate pruning works.
- 1.3.7 With regard to the boundary wall, Kingston Properties were advised to obtain a report from a structural engineer or experience builder for their opinion on how to stabilise the wall whilst retaining the trees. This report would be considered with any application for tree works.
- 1.3.8 In February 2022, a structural report was received from Kingston Property Services requesting our advice on the content of the report prior to an application being submitted. Kingston Properties survey of the wall concluded that the trees are causing structural damage to the wall south of the former Deuchars PH, and the recommendation was that certain trees should be removed.
- 1.3.9 The structural report was assessed by the Council and the following advice provided: ‘the works to the wall would require an increased buttress on the north face of the southern boundary wall to add structural stability. This would help alleviate the issue of the ground level to the south being around 800mm higher than the car park level and the lean of the wall. It may also be appropriate that works to remove a tree(s) growing directly adjacent to the wall as part of the works. However, it would be useful if within any future proposals to undertake works to the wall there would be consideration to retain some of the trees identified in para 3.1 where possible. Could the strengthening works to the wall allow for the retention of the trees?’
- 1.3.10 If the intention is as part of the works to reduce the land on the southern face of the boundary wall by 500mm how far away from this wall would a reduction in the land level be necessary? Could root pruning be incorporated into these works and if significant root intrusion was present in the wall a potential re-evaluation of retaining trees be considered?’

1.3.11 To date, no response to these comments has been received from Kingston Properties and on 12th June 2023 an application was received with a report providing supporting evidence for the removal of trees (23/00769/TREECA). However, the supporting report is the same report submitted in February 2022 with no additional information or response to address the council's earlier comments. Due to the lack of response and information, it was felt that the trees were under actual threat of removal without any clear justifiable reason and a TPO was made in respect of the trees.

b) Public/visual amenity

1.3.12 TPOs are administered by Local Planning Authorities (LPA) and are made to protect trees that bring significant amenity benefit to the local area. This protection is particularly important where trees are under threat. If a tree in a conservation area is not covered by a TPO, the Town and Country Planning Act requires that written notification, or a section 211 notice, is given to the LPA, describing what works are to be carried out to trees, at least six weeks before the work starts. This gives the LPA an opportunity to consider protecting the tree with a TPO. A TPO is made in effect of amenity and does not distinct between different types of tree species or its size.

1.3.13 A section 211 notice was received informing the LPA that, based on the findings of the structural engineers report, it was the intention to remove 5no sycamore trees (which in fact is four sycamores and a willow), located on land belonging to Backworth Hall and prune 1no sycamore tree located within the grounds of the Deuchars property.

1.3.14 A site visit was carried out and an evaluation of the trees was made, and it was found that the trees were healthy and as part of a collective group, contributing to the amenity of the conservation area. The amenity of the trees was evaluated by using the TEMPO assessment (Tree Evaluation Method for Evaluating Preservation Orders). This assessment is carried out by the local planning authority and is a widely recognised and respected method of assessing the tree as an important landscape feature offering significant amenity to the general public.

1.3.15 The TEMPO evaluation method 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. Public access to a tree or trees is not a relevant factor for consideration. Whilst this method is more recognised and widely used by local authorities, it must be remembered however that the TEMPO is only used as guidance and to act as supporting evidence to show how the conclusion to TPO or to not TPO is reached. Nevertheless, these factors are taken into consideration to decide whether a TPO is made although as a result of the surveyors judgement rather than a formal method of assessment.

1.3.16 Furthermore, the tree(s) usually need to be under an immediate or foreseeable threat to warrant protection, and in this case, the trees were considered under threat of removal. If a score of 11 and above is achieved in the assessment, then the tree is considered worthy of a TPO. In this case the trees were evaluated with a score of 16, which 'definitely merits' a TPO and therefore the decision was made to protect the trees.

1.3.17 The trees are in reasonable health, early maturity, approximately 14 to 15 m high. The sycamore tree located within the grounds Of Deuchars is large, very mature and clearly visible at the top of the driveway between Deuchars and the neighbouring industrial unit. The sycamore and willow trees behind the wall and on land belonging to Backworth Hall are partially visible from Backworth Lane between a gap between Deuchars and the

neighbouring stone cottages to the east of Deuchars. These trees can be seen from short distance views as an individual specimens from the large public space to the front of the cottages. These trees form a larger tree collective and their loss, both from short and long-distance views would be considered a visual change on a permanent basis.

- 1.3.18 The trees, with the exception of the tree located within the grounds of Deuchars, have fairly narrow canopies but add maturity to the built environment. They are part of a larger collective of trees in the adjacent woodland of Backworth Hall, which is subject to a TPO.

c) Light issues

- 1.3.19 Trees will cast a shadow or reduce natural light to an area of a garden or property on a seasonal basis. However, there is no "right to light" and protected trees would not be removed for light purposes unless it is demonstrated that a severe restriction has resulted. Remedial tree works such as crown thinning can relieve the situation, but shade is not sufficient reason to allow the removal of the tree. Where requests are made to prune trees to increase light levels, each instance will be assessed on its merits.

d) Poor satellite, TV signal and mobile phone signal

- 1.3.20 There is no legal right to a television reception. The satellite or TV provider may be able to suggest an alternative solution to the problems with television and satellite signal which can often be alleviated by the relocation of the aerial or satellite dish as well as the use of a signal booster. The felling of trees is not an arboricultural reason to resolve obstructed mobile phone or other telecommunications signals.

e) Damp, falling leaves, sap and issues associated with trees

- 1.3.21 Leaf fall is a natural and seasonal inconvenience and whilst troublesome it is not legally a nuisance and not sufficient to allow the removal of the tree.
- 1.3.22 Honeydew is caused by greenfly (aphids) feeding on the tree, which excrete a sugary sap. Often the honeydew is colonised by a mould which causes it to go black. Unfortunately, there is little that can be done to remove the aphids which cause the problem; and pruning the tree will generally only offer temporary relief. Whilst the sap from sycamore trees can be troublesome on cars and property, it can usually be washed off with warm soapy water.
- 1.3.23 Bird droppings can also be seen as a nuisance. However, they are naturally occurring in urban environments and it would not therefore be considered a realistic option to prune or remove a tree for this reason. Nesting birds are protected under the Wildlife and Countryside Act 1981 (and other related wildlife laws).
- 1.3.24 There are risks associated with trees, for example, unexplained falling branches, dead wood within the trees canopy and the fallout of debris from the trees is no more than should be expected by similar trees of normal vigour. This is a natural phenomenon that should be expected when living in an environment with established trees. As trees grow, it is natural for them to drop branches. This can be addressed through simple management and regular inspections as part of a sensible risk management approach and which can reduce the likelihood of problems in the future. Responsibility for the trees lies with the owner of the land on which the trees are growing. There is a duty for the landowner to take reasonable care to ensure that their trees do not pose a threat to people or property even if the tree is protected by a tree preservation order. As it is difficult to predict the safety of a tree, it is the owner's responsibility to have their trees checked regularly by a competent person and professional arboricultural advice should be sought to ensure trees are maintained in a safe condition. A tree surgeon to undertake an assessment of the trees who will be able to determine if there is any risk and how the risk, if present, can be

mitigated. Branch failure does not always render a tree dangerous and often are isolated events.

1.3.25 The TPO will ensure any works undertaken are carried out in accordance with good arboricultural practices and does not prevent future works from being undertaken, but approval from the local authority would need to be sought beforehand.

f) Objections raise concerns about removal of trees and unauthorised pruning work to trees in neighbouring properties

1.3.26 This refers to trees within Backworth Hall. Matters of this nature are beyond the scope of this report and have no bearing on the Tree Preservation Order issued at this location.

g) The objections raise concerns about mental health issues

1.3.27 The trees themselves, together with other trees in the locality, offer greater benefits and mounting evidence now realises improved health by improved air quality and reduced carbon emissions. Whilst there is great sympathy for the mental health of the occupier of the property, the benefits these trees in the conservation area offer to the wider population outweigh the inconvenience they may cause to an individual. Also, well maintained trees will help alleviate the perception of threat by falling branches or over dominance.

h) Concluding comments

1.3.28 The trees are in fair condition, reasonably healthy with no major defects. They are an important element of the local landscape and part of a wider tree group within a wildlife corridor as defined by the Local Plan. Therefore, the trees not only provide amenity value but also are important for biodiversity.

1.3.29 The Order has been properly made in the interests of securing the contribution these trees make to the public amenity value in the area. The concerns of the homeowners have been fully considered and balanced against the contribution the trees make to the to the local environment.

1.3.30 Whilst it is acknowledged the reasons for objecting to the TPO, in particular concerns about its visibility, individual impact and wider impact require due consideration, it is not felt that they outweigh the contribution these trees make to the area.

1.3.31 Due to the size of these trees, the age of the trees (and potential historical value), their health and current condition, their biodiversity value and on the understanding that the trees are at risk of being felled, it is considered expedient in the interests of amenity to confirm the Tree Preservation Order.

1.3.32 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

1.3.33 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'.

1.3.34 Trees play an important role in the local environment providing multiple benefits but they need to be appropriately managed, especially in an urban environment.

1.3.35 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 trees. If the owners/occupiers were concerned about the condition of the trees and require pruning works to be carried out, an application to the Council can be submitted as required by the TPO.

1.3.36 Protecting the trees 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'*

1.3.37 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.

1.3.38 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).

1.3.39 '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.

1.3.40 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 25th July 2023 A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.

1.3.41 The Order must be confirmed by 25 January 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 Land to the south of the former Deuchars, 5 Backworth Lane, Backworth Tree Preservation Order 2023

Appendix 2 – Map of Land to the south of the former Deuchars, 5 Backworth Lane,
Backworth Tree Preservation Order 2023

Appendix 3a to 3p – Objections from neighbouring residents

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