

North Tyneside Council

Report to Planning Committee

Date: 07 03 2024

ITEM
Title: Bird Street/Walker
Place, North Shields
Tree Preservation Order
2023

Report from Directorate: Environment, Housing and Leisure

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

Wards affected: Tynemouth

1.1 Purpose:

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

1.2 Recommendation(s)

Members are requested to consider the representation to Bird Street/Walker Place, North Shields, Tree Preservation Order 2023 and confirm the Order.

1.3 Information

- 1.3.1 The Council were notified of the intention to remove a poplar on the corner of Bird Street/Walker Place, North Shields by a section 211 notice of the Town and Country Planning Act 1990 (23/01287/TREECA). These works were assessed, and the Council decided to make a Tree Preservation Order (TPO) (Appendix 1) for the poplar tree in question. The Order was served in October 2023.
- 1.3.2 One representation of support was submitted with the application (23/01287/TREECA). A copy of the representation is included as Appendix 4 to this report. The representation highlights the poor health of the tree and the view that it will continue to suffer due to the development activity in the immediate vicinity impacting on its future growth and the tree should be replaced with an appropriate replacement.
- 1.3.3 Seven representations of objection were submitted with the original application (23/01287/TREECA). A copy of the representations are included as Appendix 5 to this report. The representations claim the tree to be in good health and a home for various birds to nest in. Its removal would erode the visual amenity of the area. The representations highlight the loss of multiple trees in the conservation area and on this site by a previous developer, which has increased the importance of this last remaining tree. The comments point to the Council climate change pledge and how the Council should seek to retain trees and how every tree matters in an increasingly urban environment.
- 1.3.4 The representations also refer to the conditions agreed for the recent residential development (17/00835/FUL) that included tree protection measures, requiring the tree in question to be retained and protected from damage during construction works.
- 1.3.5 One objection has been received following the Council's decision to serve a TPO from the owners of the tree. A copy of the representation is included as Appendix 3 to this report.

1.3.6 The objection to the TPO highlights the poor condition of the tree and how a TPO would not be appropriate. They believe the tree to be dead, dangerous and dying and a TPO should not be adopted contrary to guidance from the Secretary of State. The owners stress how they are keen environmentalists and avid ornithologists and are willing to plant a replacement tree in accordance with the local authority Tree Management policy (2022) to support a range of wildlife. They believe the importance of the tree to the character and appearance to the conservation area appears to be non-existent and would disagree that its impact on the local environment is significant.

1.3.7 The Council Response

The Council has responded to the main issues and are addressed below:

- a) The tree does not qualify to be adopted with a TPO;
- b) Support for the tree to be retained;
- c) Concluding remarks.

a) Objection and argument the tree does not qualify to be adopted with a TPO

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

1.3.9 With regard to amenity, the tree(s) need to be visible from public places, usually the public highway, footpaths and open spaces. In this case the tree is highly visible from a public highway and footpaths. The poplar tree is an individual specimen and considered to have a high degree of visual prominence, making an important contribution to the character and appearance of the local area.

1.3.10 The objector refers to the Secretary of State's view that it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous, but the tree is not in any of these three states and there is no evidence provided to support this view. It is also worth noting that the government guidance on Tree Preservation Orders and trees in a conservation area was updated in 2014 and reference to dying was removed from the guidance. The poplar tree is not a specimen in a good condition (the arborist survey from 2015 considered it to a Category C tree, which is a tree of low quality), but it does provide enjoyment and have value to the public as evidenced in the representations received for the application to remove the tree (Appendix 5). Therefore, it is fair to believe the tree brings a reasonable degree of public benefit.

1.3.11 The objector to the TPO questions the wildlife benefit of the tree, with no wildlife inhabiting the tree in the past 18 months. However, this would have coincided with the building works of the adjacent development and therefore would have been a factor in the lack of wildlife activity on site. Other representations in support of retaining the tree state the wildlife benefits of the tree that are presumed to predate the recent development.

- 1.3.12 The objector is concerned of the proximity of the tree to the recently constructed property and the impact it could have on foundations due to its species type. The adoption of the tree with a TPO would not prevent appropriate pruning works, to ensure the tree does not become a nuisance to the owners of the property. The construction of the foundations for the new development should have factored the presence of the poplar tree into the engineering requirements in accordance with building regulations. Many trees co-exist in harmony with adjacent buildings and there is no evidence the tree is dangerous or causing a nuisance to the adjacent property that could not be alleviated with appropriate pruning works.
- 1.3.13 The objectors clearly state their intention to replace the existing tree with a replacement (Appendix 7) that would be in accordance with the North Tyneside Tree Management Policy (2022) (Appendix 6). They hope that an appropriate replacement tree would encourage bees, butterflies and birds, and be fitting for the conservation area. The officers would support the principle of planting a replacement tree in this location that would benefit local wildlife and serve to protect and enhance the character and appearance of the conservation area. Currently the only option for the local authority to secure a replacement tree when it is notified of the intention to remove it (when it is not considered to be dead or dangerous) is to adopt a TPO on the tree and then consider a future application to remove and replace the tree. This would ensure a replacement tree is planted. The land owner is under no obligation to replant a tree in a conservation area (that is not dead or dangerous) if the local authority does not object to a notification to remove it.

b) Support and the argument the tree does qualify to be adopted with a TPO

- 1.3.14 The tree was formerly part of a group on an area of open space opposite the row of properties along Renaissance Point/Walker Place. The loss of the group of trees has increased the importance of the sole remaining tree and its amenity value to the local area is therefore increased. Those supporting the retention of the tree refer to its importance to act as a windbreak, but as an individual tree its presence as a windbreak would be limited, it would have had greater impact when part of a group.
- 1.3.15 Responses received in support of the tree also refer to the application to build the new properties (17/00835/FUL) and how the conditions attached to that permission were to retain the tree and provide tree protection measures during the development. Therefore its value was recognised within that decision and it should be retained.
- 1.3.16 A further point raised by those in support of the tree is reference to the Council commitment to tackling climate change. The Council declared a Climate Emergency in 2019 in light of rising global emissions and is firmly committed to providing a clean, green, healthy, attractive and sustainable environment. Trees are an important resource and many initiatives are underway to increase tree planting across the borough through the North East Community Forest, but it is also acknowledged that trees need to be appropriately managed.

c) Concluding remarks

- 1.3.17 The tree is 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 a tree must be convincing and the information submitted with the application is not sufficiently convincing.
- 1.3.18 The TPO does not prevent works being undertaken to the tree but ensures that if any pruning works or construction works in close proximity to the tree are carried out the tree

is not damaged in any way. Further detail is provided in BS5837: 2012 '*Trees in Relation to Construction-Recommendations*'.

- 1.3.19 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.
- 1.3.20 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. The process for an authority to determine whether a tree or trees merit protection is 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.
- 1.3.21 The poplar tree is located in a prominent position and highly visible to occupiers of neighbouring residential properties and from vehicular and pedestrians routes on the adjacent highways. The tree is considered to be an important element of the local landscape and the representations received in support of retaining the tree make it reasonable to believe that its removal would have a significant negative impact on the local environment and its enjoyment by the public.
- 1.3.22 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 of the area. The concerns of the owner have been fully considered and balanced against the contribution the tree makes to the to the local environment and it is not felt that the reasons to remove the tree outweigh its contribution to the amenity of the local area. The loss would be considered a visual change and local residents will experience a changed or altered view on a permanent basis.
- 1.3.23 Due to the prominence of the tree within the local landscape and the risk of it being felled without a requirement for a replacement to be planted, it is considered expedient in the interests of amenity to confirm a Tree Preservation Order without modification on this tree.
- 1.3.24 It is important to reiterate that, if the Order is confirmed, this would not preclude future maintenance works to the tree. Should any works need to be carried out to the tree 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 tree.

Additional Guidance

- 1.3.25 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'.
- 1.3.26 Trees play an important role in the local environment providing multiple benefits but they need to be appropriately managed, especially in an urban environment.
- 1.3.27 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.

1.3.28 Protecting the tree with a TPO would be in accordance with the Council's 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'*

1.3.29 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.

1.3.30 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).

1.3.31 '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 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 tree to the landscape and visual amenity of the area. The Tree Preservation Order was served on the owners and other relevant parties on 31st October 2023 A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.

1.3.33 The Order must be confirmed by 30th April 2024 otherwise the Order will lapse and there will be nothing to prevent the removal of the tree or seek a replacement.

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 Bird Street/Walker Place, North Shields Tree Preservation Order 2023.

Appendix 2 – Map of Bird Street/Walker Place, North Shields Tree Preservation Order 2023.

Appendix 3 – Objection from the owners of the tree.

Appendix 4 – Support received to application 23/01287/TREECA.

Appendix 5 – Objections received to application 23/01287/TREECA.
Appendix 6 – North Tyneside Council Tree Management Policy (Revised).
Appendix 7 – Email from owner confirming intention to plant a replacement tree

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