

North Tyneside Council

Report to Planning Committee

Date: 01 09 2020

ITEM
Title: 11 East Farm Mews,
Backworth, Tree
Preservation Order 2020

Report from Directorate: Environment, Housing and Leisure

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Wards affected: Valley

1.1 Purpose:

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

1.2 Recommendation(s)

Members are requested to consider the representations to 11 East Farm Mews, Backworth, Tree Preservation Order 2020 and confirm the Order.

1.3 Information

- 1.3.1 The Council was informed by the owners that they were considering felling the tree in question (Appendix 1) due to their concerns of the tree causing damage to their property and in this case the Council decided to make a Tree Preservation Order (TPO) for the tree. The Order was served in April 2020 (Appendix 2).
- 1.3.2 One letter of objection has been received from the owners of the land. The objection letter was received shortly after they were notified of the Council's decision to serve a TPO on the tree (21.04.2020). Copies of the objection, which includes a letter, annotated map of the area surrounding East Farm Mews and photographs numbered 1-21 of the area surrounding East Farm Mews are included as Appendix 5 of this report.
- 1.3.3 Objections from the owner, 11 East Farm Mews, can be summarised as follows:
- The size of the tree in relation to the property and potential damage it could cause and not being appropriate to the current surroundings.
 - The tree has very limited amenity value, with almost no public visibility and therefore shouldn't be considered for a TPO
 - The tree has suffered from branch failure and disease evidence on its leaves
 - The impact of the tree on the owners health is a serious concern
 - Surrounding trees have been removed without being subject to a TPO therefore the principle to remove this tree should be acceptable.
- 1.3.4 The Council has responded, in consultation with the landscape architect (who has provided a full response in Appendix 6), to each of the main points:
- a) The objection raised concerns about the safe planting distance of trees in relation to the property
 - b) The objection raises concerns about the size of the tree in relation to the garden size

- c) The objection raises concerns about the tree being impractical due to its size in a residential location
- d) The objection refers to amenity and states that the authorities should be able to explain to landowners why their trees have been protected and that the tree has almost no public visibility.
- e) The objection raises concerns about branch failure
- f) The objection raises concerns about poisonous seeds
- g) The objection raises concerns about tree removal on a neighbouring development.
- h) The objection raises concerns about health issues the owner is experiencing.

a) Concern about the safe planting distance of trees in relation to the property

- 1.3.5 The objection refers to the safe planting distance of a tree to a building and the tree size in relation to property distance.
- 1.3.6 The objection refers to internet information, *gardenlaw.co.uk*, that refers to the recommended safe planting distances from buildings. This information includes a reference to *Cutler DF & Richardson IBK (1989), "Tree Roots and Buildings" 2nd ed, Longman*, which outlines the results of a survey undertaken by the authors at Kew Gardens, London between 1971 - 1979 of the incidence of subsidence damage on shrinkable clay in which trees are implicated. The information sets out the 'maximum' distance which the genera had been recorded as causing damage, for example a sycamore tree, say at a height of 24m, should be a safe minimum distance of 17.0m away from the property.
- 1.3.7 In the case of this sycamore tree, and as the tree is smaller in height, the objector has calculated that the sycamore tree is too close to the property by 3.0m.
- 1.3.8 The distance dimensions, in its various forms, are still used as guidance for both new tree planting and trees in existing situations. With new tree planting, distances vary for different species due to factors such as the potential ultimate size; canopy shape and density (e.g. wide canopy with dense foliage); light and shade effects; extent and nature of root systems and the water demands of certain trees. This is often used to allow growth to maturity without conflicting with the amenity of the occupants or causing occupants to be fearful of the proximity of trees. With regard to existing trees on a site, the distances will also allow for construction to take place without causing dieback, or death of the tree (assuming due care is taken to protect the root spread and canopy during construction).
- 1.3.9 The urban environment has altered since the *Cutler & Richardson* data and it should be noted the same website article, *gardenlaw.co.uk*, raises concerns and many arboriculturists and insurance companies use *Cutler DF & Richardson IBK (1989), "Tree Roots and Buildings" 2nd ed*, with caution as '*They represent extreme examples that are statistically unlikely*' (*gardenlaw.co.uk*), recognising that every single tree in every single location is different.
- 1.3.10 With 11 East Farm Mews, the sycamore tree is older than the building (predates construction) and site conditions show that the garden, and the tree, is set at a lower level than the finished floor level (FFL) of the building which is retained by a wall. Foundations would have been designed that accommodate the level change and the presence of the tree and its effect on soils prior to construction. In the case of this objection, structural damage to the property is not an issue and no concerns relating to property damage have been highlighted.

1.3.11 Nevertheless, this development and many other sites in the borough contain existing mature trees that exist in closer proximity to existing dwellings than recommended in current guidelines and the removal of trees will not normally be justified purely on the basis of substandard distances. Any problems with overhanging can normally be addressed through standard arboricultural practices such as thinning or crown lifting.

b) Concern about the size of the tree in relation to the garden size

1.3.12 There is no legislation as to the presence of an existing tree in relation to urban garden size. Throughout the borough similar juxtapositions can be observed where trees and buildings co-exist in close proximity to each other or mature trees are present in small garden areas. A protected tree would not be removed because it is considered 'too big' or 'too tall' for its surroundings.

1.3.13 The garden is approximately 150m², and of fairly modest proportions. A previous application (17/00026/TREECA) supported the removal of a mature sycamore tree located closer to the property than the sycamore tree in question. The removal of this tree provided additional garden space for use by the occupiers and therefore the tree is not considered to be visually disproportionate to the size of the garden or unsuitable for its location.

1.3.14 It is however acknowledged that due to the tree's proximity to the existing building, periodic remedial work may in the future be required to maintain a reasonable clearance between the canopy edge and building. However, the TPO will ensure that any pruning works are not detrimental to the trees and in accordance with approved standards.

c) Concern about the tree being impractical due to its size in a residential location

1.3.15 The sycamore tree is located approximately 7.0m from the north west corner of the building in a garden which is set at approximately 1.3m lower level than the property and is accessed by a series of steps. The tree is approximately 14m plus in height with a slight lean to the east.

1.3.16 When the farm fell out of use, as part of the planning approval to redevelop the site, retaining trees that were considered an asset and of value and incorporating them into the development was a consideration as part of the planning process. The trees on the former farm site including this sycamore tree have been present on the site for a number of years, predates the construction of new residential buildings and are part of the historic legacy of the former farm land and buildings.

1.3.17 The benefits of retaining and/or incorporating trees in residential/urban locations is now widely supported and recognised and help deliver high quality places to live, work and spend leisure time. Urban trees are well recognised for their aesthetic qualities as well as their contribution to local distinctiveness and biodiversity. As a basis on which any development should proceed, an existing tree survey was undertaken (in accordance with BS5837: Trees in relation to design, demolition and construction – Recommendations) which provided detail on which trees were suitable for retention in the final and approved layout.

1.3.18 In terms of its species, TPO's are not only restricted to native trees and if any tree contributes to the visual amenity of an area, it is worthy of protection by a TPO. Sycamore trees have just as much value in the landscape as any other tree and although sycamores are not a native species, they have been naturalised in the UK for hundreds of years. In

the north east, they have regularly been planted around farm steadings and now form a valuable part of the wider tree assemblage. More recently the importance of sycamore trees in our landscape has probably increased in recent years since elm and ash cannot be planted or have died due to disease.

d) Authorities should be able to explain to landowners why their trees have been protected and that the tree has almost no public visibility

- 1.3.19 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. Any species of tree can be protected, although a TPO can only be used to protect trees and cannot be applied to shrubs and bushes.
- 1.3.20 A section 211 notice was received informing the LPA that it was the intention to remove a sycamore tree located at 11 East Farm Mews, Backworth. A site visit was carried out and an evaluation of the tree was made and it was found that the tree was healthy and contributed to the amenity of the conservation area. Under the requirements of the section 211 notice, the decision was made to further protect the Sycamore tree by a TPO. Prior to the making of the TPO a further evaluation of the sycamore tree was undertaken 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.
- 1.3.21 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.
- 1.3.22 Furthermore, the tree(s) usually need to be under an immediate or foreseeable threat to warrant protection, and in this case, the sycamore tree was 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 tree was evaluated with a score of 16, which 'definitely merits' a TPO and therefore the decision was made to protect the tree. The TEMPO assessment is attached for information (Appendix 7).
- 1.3.23 The sycamore tree is in reasonable health, early maturity, approximately 14 to 15 m high with a large portion of the crown clearly visible to the occupiers of 10, 12, 14, 15 and 16 East Farm Mews. The tree can be seen at short distance views as an individual specimen in the garden of 11 East Farm Mews from the lane to the east of the property. This lane is a private road (i.e not maintained by the Council) but has been openly and freely utilised by the public at large and would in law be classed as a public right of way. The tree also has principle views from the public highway of East Farm Mews. The tree forms a larger

tree collective from longer distance views which helps provide screening and privacy from the surrounding built environment. Its loss both from short and long-distance views would be considered a visual change and local residents will experience a changed or altered view on a permanent basis.

1.3.24 The objection also refers to the presence of neighbouring trees in the locality and that the removal of this tree would not impact on the amenity of the area. The sycamore tree has a fairly narrow canopy as a result of past pruning works but adds maturity to the built environment and helps provide some privacy and screening between properties. It is part of a collective grouping of trees which is prominent feature in the landscape and by virtue of its size and location, the tree makes a useful contribution to the outlook from nearby properties and thereby to visual amenity. With regard to the presence of other trees, each tree will be considered on an individual basis if an application for work is received and their condition and importance in the landscape will also be assessed. The removal of an individual tree because there are many trees in the local area is not a justifiable reason to remove the tree.

1.3.25 The tree is in fair condition as reflected in the TEMPO valuation. There is some dead wood present in the crown although the overall leaf cover of the tree is healthy. There is evidence of unsympathetic pruning in the past resulting in its narrow shape but this, along with rebalancing and/or thinning the crown if required, can be rectified by more appropriate pruning. Regular inspections of the tree can include the monitoring of branch unions and any development of any decay. Tar spot *Rhytisma acerinum* is evident on the leaves from early summer onwards but rarely causes long term injury or endangers the life of the tree. Other issues associated with the tree for example bud casing, sap and leaves which may be a seasonal inconvenience and whilst troublesome it is not legally a nuisance and considered to be normal and acceptable consequences of living near trees.

e) Concerns about branch failure

1.3.26 The fallout of debris from the tree is no more than should be expected by similar trees of normal vigour and is a natural phenomenon that should be expected when living in an environment with established trees.

1.3.27 Responsibility for the trees lies with the owner of the land on which the tree is growing. There is a duty for the landowner to take reasonable care to ensure that their trees do not pose a threat to people and property as the owner of the tree is responsible for any damage caused to property or persons by their tree, or part of it, failing.

1.3.28 Whilst it is difficult to predict the safety of a tree and whether it will fail or not, regular inspections of the tree by a tree surgeon will ensure they are maintained in a good and safe condition. Branch failure does not always render a tree dangerous and often are isolated events.

1.3.29 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) Concerns about poisonous seeds

1.3.30 The objection refers to sycamore seeds being noxious. Further research of this revealed many newspaper and online articles of poisoning by sycamore seeds in relation to horses rather than relating to human health. Horses who graze in close proximity to sycamore trees can eat large quantities of seeds from the ground which can cause a reaction.

g) Concerns about tree removal on a neighbouring development

1.3.31 This refers to a new development on neighbouring land. Matters of this nature are beyond the scope of this report and have no bearing on the Tree Preservation Order issued at this location.

h) Concerns about health issues the owner is experiencing

1.3.32 Concerns have been raised in relation to wind pollinated plants and the health of the occupier. A Guardian newspaper article dating 2013 is referenced by the objector that reports tree pollen being a main cause of asthma and allergic reactions which the occupier of 11 East Farm Mews suffers. The article states that most of our native trees are wind pollinated including sycamore but the removal of this tree and presumably the other sycamore trees and tree species in close proximity to 11 East Farm Mews would have a profound effect on our landscape and biodiversity. The article also referenced that grass pollen is also a trigger of which there is many areas of grassed open space and gardens in close proximity which again would alter the landscape if paved over.

1.3.33 The sycamore tree and the other trees in the locality, collectively offer greater benefits and mounting evidence now realises improved health by improved air quality and reduced carbon emissions (as seen by recent COVID-19 events). Whilst there is great sympathy for the health of the occupier of the property, the benefits this tree and tree groups in the conservation area offer to the wider population outweigh the inconvenience they may cause to an individual.

Summary

1.3.34 The sycamore tree is in fair condition, reasonably healthy with no major defects. It has high amenity value, located in a prominent position within the rear garden, highly visible to and enjoyed by a significant number of occupiers of neighbouring residential properties and from vehicular traffic and pedestrians on East Farm Mews. The tree in question is an important element of the local landscape and its biodiversity and provides important screening across the rear gardens of neighbouring properties. The Order has been properly made 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 this Sycamore tree makes to the to the local environment.

1.3.35 Whilst it is acknowledged that the reason 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 this tree makes to the area.

1.3.36 Due to the size of this tree and prominence within the local landscape, the age of the tree (and potentially its historical value), its health and current condition, its biodiversity value and on the understanding that the tree is at risk of being felled, it is considered expedient in the interests of amenity to confirm a Tree Preservation Order on this tree.

1.3.37 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

1.3.38 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.

1.3.39 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’

1.3.40 Protecting the trees with a TPO would be in accordance with the Councils adopted Local Plan policy S6.5 Heritage Assets and DM6.6 Protection, Preservation and Enhancement of Heritage Assets, which states

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

a. Respecting the significance of assets.

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

c. Targeting for improvements those heritage assets identified as at risk or vulnerable to risk.

d. Seeking and encouraging opportunities for heritage-led regeneration, including public realm schemes.

e. Supporting appropriate interpretation and promotion of the heritage assets.

f. Adding to and keeping up-to-date the Borough's heritage asset evidence base and guidance. Examples include conservation area character appraisals, conservation area boundary reviews, conservation area management strategies, conservation statements/plans, registers of listed and locally registered buildings, the historic environment record and buildings at risk registers.

g. Using the evidence it has gathered, implement the available tools to conserve heritage assets, such as Article 4 Directions and Building Preservation Notices.’

‘DM6.6 Protection, Preservation and Enhancement of Heritage Assets - 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;

d. Remove additions or modifications that are considered harmful to the significance of the heritage asset;

e. Ensure that additions to heritage assets and within its setting do not harm the significance of the heritage asset;

g. Be prepared in line with the information set out in the relevant piece(s) of evidence and guidance prepared by North Tyneside Council;

h. Be accompanied by a heritage statement that informs proposals through understanding the asset, fully assessing the proposed affects of the development and influencing proposals accordingly.

Any development proposal that would detrimentally impact upon a heritage asset will be refused permission, unless it is necessary for it to achieve wider public benefits that

outweigh the harm or loss to the historic environment, and cannot be met in any other way.'

- 1.3.41 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 this tree to the landscape and visual amenity of the area. The Tree Preservation Order was served on the owners and other relevant parties on 3rd April 2020. A copy of this original Order is attached as Appendix 2, including a separate map of the TPO (Appendix 3).
- 1.3.42 The Order must be confirmed by 3rd October 2020 otherwise the Order will lapse and there will be nothing to prevent the removal of this tree which is currently protected.

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.

Reasons for recommended option:

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

Appendices:

Appendix 1 – Original Section 211 Notice Notifying the Council of the intention to remove the tree

Appendix 2 – Signed and sealed order of the 11 East Farm Mews, Backworth, Tree Preservation Order 2020

Appendix 3 – Map of TPO for 11 East Farm Mews, Backworth, Tree Preservation Order 2020

Appendix 4 – Schedule of the TPO for 11 East Farm Mews, Backworth, Tree Preservation Order 2020

Appendix 5 – Letter of objection from the owners 21.04.2020

Appendix 6 – Response from the Council landscape architect to the objection of the TPO

Appendix 7 – TEMPO for the tree subject to the 11 East Farm Mews, Backworth, Tree Preservation Order 2020

Contact officers:

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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