

North Tyneside Council

Report to Planning Committee

Date: 8 June 2021

Title: Elton Street East,
Wallsend Tree
Preservation Order 2021

Report from Directorate: Environment, Housing and Leisure

Report Author: Phil Scott Head of Environment, Housing and Leisure (Tel: 643 7295)

Wards affected: Wallsend

1.1 Purpose:

To consider the above Tree Preservation Order for 11 trees, comprising of two individual trees and nine as part of a group, and taking into account any representations received in respect of the Order.

1.2 Recommendation(s)

Members are requested to consider the representations to Elton Street East, Wallsend, Tree Preservation Order 2021 and confirm the Order with modifications.

1.3 Information

- 1.3.1 The Council were notified of the intention to remove all but one of the trees from the site as part of the development proposals for a medical centre on the site. These works were assessed, and the Council decided to make a Tree Preservation Order (TPO) for the trees (Appendix 1). The Order was served in December 2020. The application for the medical centre (20/01582/FUL) was approved on 16 February 2021 with conditions for the replacement of five trees allowing for 6 trees to be removed during the development with five trees being retained. This was consistent with the information provided by the Council during preapplication discussions that advised that the development should, in the first instance, seek to 'retain, preserve and protect and existing healthy tree structure in its design'.
- 1.3.2 One email of objection has been received following the Council's decision to serve a TPO on the trees from the agent of the applicant of the medical centre (20/01582/FUL). A copy of the representation is included as Appendix 3 to this report with supporting information also submitted (Appendix 4).
- 1.3.3 Objections from the agent, Peacock and Smith can be summarised as follows:
- That due process has not been followed by the Council;
 - The trees are not of a suitable quality to warrant retention;
 - Impact on redevelopment which will have a negative impact on Wallsend Town Centre.
- 1.3.4 A summary of the objections are listed below. The Council has responded, in consultation with the landscape architect (who has provided a full response in Appendix 6), to each of the objections:

- a) Due process not been followed by the Council;
- b) Trees are not of a suitable quality to warrant retention;
- c) Negative impact on Wallsend town centre;

a) Due process

- 1.3.5 The government guidance 'Tree Preservation Orders and trees in conservation areas' states that when a local authority is making a TPO it will serve notice on people with an interest in the land, inviting representations about any of the trees covered by the Order.
- 1.3.6 The Town and Country Planning (Tree Preservation)(England) Regulations 2012 clarifies that a 'person interested' means every owner and occupier of the land affected by the order and every other person whom the authority know to be entitled to cut down, lop or top any of the trees to which the order relates; or to work by surface working any minerals in, on or under the land affected by the order.
- 1.3.7 The landowners were duly informed of the TPO and as no other neighbour satisfied the description of the 'persons interested' the Council has acted in accordance with the due process.
- 1.3.8 The objection claims that as an applicant for a development on the site they should classify as 'persons interested' in the land but applying the wording of the 2012 Regulations the applicant would not be entitled to cut down, lop or top any of the trees to which the order relates without first having approval of the landowner. It is the landowner who is therefore the 'person of interest' and not the applicant of the development.
- 1.3.9 The Council within its correspondence to the landowners, notifying them of the TPO, provided the required guidance that if they wished to make any representations or objections to the TPO, they must be submitting in writing within 28 days from the date of the notice (Appendix 5). The objection states that the Council should ensure that all notified parties are given at least 28 days from the date of the notice to submit their representations, which officers believe have been duly complied with.
- 1.3.10 The difficulties presented by COVID 19 and the limitations on movement and access to the Council offices meant that the Council presented the relevant information on the Council website so that the information was still publicly available for inspection, in accordance with the guidance and regulations.

b) Trees are not of a suitable quality to warrant retention

- 1.3.11 As part of the planning application 20/01582/FUL, an Arboricultural Impact Assessment (AIA) was submitted by Woodman Arboricultural Consultancy (Appendix 4). The objector states that the Local Authority information supporting the TPO does not appear to provide any view as to the quality of the trees. Section 198 of the Town and Country Planning Act 1990 provides that local planning authorities may make Tree Preservation Orders (TPOs) if it appears to them to be "expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area". The Act does not define amenity, but Government guidance states that TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- 1.3.12 The trees were assessed for their amenity value, not their quality. However, the tree survey information provided by the applicant was a consideration in the final decision of the TPO. In terms of assessing amenity, the Tree Evaluation Method for Preservation Orders (TEMPO) was used. This assessment was carried out by the local planning

authority and is a widely recognised and respected method of assessing a tree(s) importance as a landscape feature, and its amenity value to the general public.

- 1.3.13 The TEMPO evaluation method takes into account factors such as a tree's visibility to the public, their condition, age and remaining life-expectancy, their 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, based on a professional judgement rather than a formal method of assessment. If a score of 11 and above is achieved in the assessment, then the trees are considered worthy of a TPO. In this case the collective group of trees was evaluated with a score of 19 and therefore the decision was made to protect the trees by a TPO.
- 1.3.14 In terms of quality, tree survey information was provided within a Pre-Development BS5837 Arboricultural Implications Assessment as part of the application (20/01582/FUL). The site contained *'eleven significant individual trees within influence of the site'* and were surveyed and categorised in accordance with the guidelines contained within BS 5837 (2012) *Trees in Relation to Construction Sites: Recommendations*. The proposal sought to remove ten trees from the site as they were not considered to be of high retention value (i.e. category A trees). All eleven trees except for one were assessed as category B trees i.e. *'Those of moderate quality and value: those in such a condition as to make a significant contribution for a minimum of twenty years. Site design should where practicable retain these specimens'* BS5837 (2012). The AIA tree survey information detailed the trees as having at least 40 years plus Estimated Safe Useful Life Expectancy (SULE) and again applying the guidance from the British Standards 5837 (2012) the trees have 'landscape qualities' i.e. *'Trees present in numbers, usually growing as groups or woodlands, such that they attract a higher collective rating than they might as individuals; or trees occurring as collectives but situated so as to make little visual contribution to the wider locality'*, therefore, Category 'B' trees based on the BS5837 (2012) and are important enough to be considered a constraint to development and consequently should be retained and afforded appropriate protection during the ground works and construction phase of development.
- 1.3.15 However, the proposed development scheme saw the loss of category B trees from the site. The loss of these trees and associated planting would be a visual change to amenity of the local streetscape with no mitigation offered. On this basis, a TPO (Tree Preservation Order) was made to retain and protect all the trees because they have a visual amenity value worthy of protection and make a significant contribution to the local surroundings. Consequently, the application (20/01582/FUL) was amended and five trees were retained, and five others were to be replanted by way of a condition with the approval. There is currently an application (21/00672/FUL) submitted to vary the conditions of 20/01582/FUL and again the Council is working cooperatively with the applicant on this and a decision is still pending.

c) Negative impact on Wallsend town centre

- 1.3.16 The objector refers to North Tyneside Local Plan (adopted in July 2017) Policy AS8.2 which is an Area Specific Policy which relates to The Forum Shopping Centre. The objection states that under section (d) of AS8.2, the TPO would render the proposed scheme undeliverable and would prevent the key social, community and health benefits arising from the scheme and would *'undermine the comprehensive masterplanning of Wallsend Town Centre'*.

- 1.3.17 By retaining and protecting trees with a TPO, confirming the order would meet section (c) of the same policy AS8.2 'Enhance the internal and external appearance of the shopping centre making the area attractive to shoppers and visitors'. Also, Local Plan Policy DM5.9 'Trees, Woodland and Hedgerows' states that the Council will support strategies and proposals that protect and enhance the overall condition and extent of trees, woodland and hedgerows.
- 1.3.18 Trees are an important feature in urban landscapes and make a significant contribution to the character and quality of our landscape offering a 'sense of place' and amenity with regard to the public's interaction and enjoyment of the immediate and wider area. Therefore, the retention of trees on the site is a material consideration in determining any application. The retention of the trees would therefore be in accordance with Local Plan Policy S3.1 'Competitive Centres' that states the Council will seek ways to support their growth and regeneration, and support proposals for main town centre development that:
- a. Contribute to the protection and enhancement of the vitality and viability of the centre.
 - b. Capitalise upon the character and distinctiveness of the centre, while sustaining and enhancing its heritage assets.
- 1.3.19 Local Plan Policy DM6.1 'Design of Development Applications' outlines that designs should be specific to the place, based on a clear analysis of the characteristics of the site and proposals are expected to demonstrate a design that is responsive to 'landscape features'. The trees are a landscape feature and their retention would be in accordance of the government's recent consultation document of the National Planning Policy Framework (NPPF) that emphasises the importance of street trees within the local environment. The consultation draft of the NPPF highlights how the wider debate concerning trees is growing and the importance of trees, especially in the urban environment, play a small but important role in the wider ambitions to tackle climate change and improve health and well-being. The emphasis is clear that existing trees should be retained wherever possible.
- 1.3.20 Following the developer's initial intention to remove all but one of the trees the Council worked with the developer to agree an alternative scheme that retained five trees and secured 5 to be replanted as per a condition. The approved development now provides a more well thought out design solution that meets the requirements of the Wallsend masterplan aims (as set out in the objection), and the ambitions of the Local Plan that recognises the importance of retaining the trees for visual amenity, whilst supporting the redevelopment and expansion of Wallsend town centre.

Additional Guidance

- 1.3.21 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'.
- 1.3.22 Trees play an important role in the local environment providing multiple benefits but they need to be appropriately managed, especially in an urban environment. The Council has recently agreed the North Tyneside Climate Change Emergency Action Plan (2020) and there is increasing evidence to justify the importance of retaining trees for numerous reasons including improved air quality and reduced carbon emissions.
- 1.3.23 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 owner were to be concerned about the condition of the trees an application for pruning works can be submitted to the Council as required by the TPO.

1.3.24 In this instance it is considered necessary to modify the TPO to reflect the decision of application 20/01582/FUL and how the works to remove six trees, as agreed, have been undertaken (Appendix 7 and 8).

1.3.25 Protecting the remaining 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'*

1.3.26 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 these trees to the landscape and visual amenity of the area. The Tree Preservation Order was served on the owners and other relevant parties on 17 December 2020. A copy of the original TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices, but considering the events that have taken place since the original TPO was issued a modified TPO Schedule and modified map of the remaining trees subject can be seen in Appendix 7 and 8.

1.3.27 The Order or modified Order must be confirmed by 16 June 2021 otherwise the Order will lapse and there will be nothing to prevent the removal of these trees which are currently protected.

1.3.28 The Council can choose to consider varying the order, to include the replanted trees once the medical centre has been completed, at a future date.

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 2 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. Due to the works permitted (20/01582/FUL) that have allowed the removal of six trees the TPO has been modified to reflect only the remaining trees on site. Once the five trees are replanted as per the condition of the application (20/01582/FUL) the TPO could be varied to include the additional trees.

1.6 Appendices:

Appendix 1 – Schedule of TPO for Elton Street East, Wallsend Tree Preservation Order 2020

Appendix 2 – Map of TPO for Elton Street East, Wallsend Tree Preservation Order 2020

Appendix 3 – Email of objection from Agent (Peacock and Smith)

Appendix 4 – Supporting information from the objector – Arboricultural Impact Assessment

Appendix 5 – Notice of making sent to the landowner from the Council

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

Appendix 7 – Modified Schedule of the TPO for Elton Street East, Wallsend Tree Preservation Order 2021

Appendix 8 – Modified map of the TPO for Elton Street East, Wallsend Tree Preservation Order 2021

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 (As amended)
5. National Planning Policy Framework Draft Text for Consultation (2020)
6. North Tyneside Council Climate Emergency Action Plan (2020)

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