

# North Tyneside Council

## Report to Planning Committee

### Date: 3 September 2019

**ITEM 6**  
Title: Greymartins,  
Backworth Lane,  
BackworthTree  
Preservation Order 2019

**Report from Directorate:** Environment, Housing and Leisure

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

**Wards affected:** Valley

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#### 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 Greymartins, Backworth Lane, Backworth, Tree Preservation Order 2019 and confirm the Order.

#### 1.3 Information

1.3.1 The Council was informed by the owners that they were considering felling a number of trees surrounding their property with an application to the Council (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 2019 (Appendix 2).

1.3.2 One letter of objection has been received from the owners of the land shortly after they were notified of the Council's decision to serve a TPO on the tree (Appendix 3) and later reports were submitted on behalf of the owner by the company investigating claims of subsidence to the property, which included an overview of the works (Appendix 4), an arboricultural assessment (Appendix 5), a report on the roots that were found as part of the survey work (Appendix 6) a soils report (Appendix 7), a report that monitored the levels on site (Appendix 8) and a geotechnical report (Appendix 9).

1.3.3 Objections from the owner, Greymartins, Backworth, can be summarised as follows:  
- The tree roots are causing damage to the house due to subsidence. Owner wishes to remove trees surrounding the house.

1.3.4 Additional reports submitted by Innovation Group on behalf of the owner (Appendix 4-9) can be summarised as follows:  
- The pattern and type of cracking would suggest that the damage has resulted from subsidence of the site. The most likely cause of subsidence is the shrinkage of underlying soils due to seasonal variations in moisture content. This will have been exacerbated by the moisture extracted by the roots of nearby vegetation.  
- It is most likely that stability will be regained once the vegetation has been removed or reduced.

1.3.5 The Council has responded, in consultation with the landscape architect (who has provided a full response in Appendix 10), to each of the main points:

- a) Clay soil shrinkage
- b) Justification of serving the TPO

**a) Clay soil shrinkage**

1.3.6 It is of the opinion and recommendation of the submitted reports that the current building movement is due to clay shrinkage but other factors in particular the drainage, has been discounted. A drainage investigation report was submitted with the original application that found the majority of drains surrounding the property being made from pitch fibre, which is generally wood fibre pipe impregnated with coal tar. This type of drainage was seen a cheaper alternative to clay pipes but subject to deformation and leaks, having a limited life and often collapsing, blocking the drain. The drainage report noted that many of the pipes are 'deformed'. In addition to this the drains run parallel to the rear building elevation and between the building and the tree groups with manholes set above ground level. The building is also elevated in part with access points to the building accessed via steps. At this stage no indication has been given as to any drainage repair work to be undertaken. It would be prudent to have the drains repaired in the first instance and then continue with the monitoring to assess if the situation alters.

1.3.7 Two boreholes (trial pits) have been dug on 5<sup>th</sup> December 2018. Both boreholes were taken to a depth of 800mm (TP/BH1) and 940mm (TP/BH2) below ground level and in both cases, tree roots were found. The plasticity index readings were between 27 and 31 for TP/BH1 and 27 to 30 for TP/BH2. Both these readings show the soil to be of medium volume change potential. Level monitoring information has been submitted with 3no level monitoring visit occurring in a 5 month period (12 months is a recommended monitoring period) so it has not been established if the damage is progressive and fluctuates with seasonal expansion and contraction of cracks according to moisture content of the soil. Evidence of such fluctuation could provide evidence that the tree is a significant influence particularly if works to repair the drains is undertaken.

1.3.8 Whilst the evidence submitted indicates that the influence of the adjacent trees may be a contributory factor, it is inconclusive and until such time that sufficient evidence is provided which clearly implicates the tree as having a significant role as a cause of structural damage to the property, the TPO should be confirmed.

**b) Justification of serving the TPO**

1.3.9 In serving a TPO, the trees must be able to show that protection would bring a reasonable degree of public benefit in the present or future. As defined by the government's National Planning Practice Guidance (NPPG) 'Tree Preservation Orders and trees in conservation areas' (2014) *'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'* (Paragraph 7). To evaluate amenity, the TEMPO assessment (Tree Evaluation Method for Evaluating Preservation Orders) was used to assess the suitability of the trees 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.

1.3.10 With regard to the tree's visibility to the public, 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. The trees have a commanding presence framing the back of the owner's property, creating continuous tree cover with the other mature trees in the area. Therefore, the trees are considered to have a high degree of visual prominence and make a significant contribution to the character and appearance of the local area.

1.3.11 The higher the amenity value of the trees, the greater the justification must be for their removal, with relevant information submitted to support its removal. Based on the size, health and prominence on the trees, it is considered that additional works could be carried out to justify their removal.

1.3.12 On the basis of the information submitted, the request to fell the trees are not supported for the following reasons:

- 1) The removal of the tree would have a negative impact on visual amenity, hence the TPO.
- 2) Lack of examination of the alternative options to mitigate issues with drainage and prolonged testing of level monitoring and the soil testing to justify the links to the trees and not just seasonal variation.

#### **Additional Guidance**

- i. 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.

In order to maintain the setting of the conservation area, which is considered a designated heritage asset in the NPPF (2019), and recognised in Policy S6.5 and DM6.6 of the Local Plan (2017) it is important that the trees are protected.

#### *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.*

*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.’*

- ii. 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’*

- iii. 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 after it 4<sup>th</sup> April 2019. A copy of this original Order is attached as Appendix 2.
- iv. The Order must be confirmed by 3 October 2019 otherwise the Order will lapse and there will be nothing to prevent the removal of these trees.

**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 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.

**Appendices:**

Appendix 1 – Initial TREECA application for works to the trees

Appendix 2 – Signed and sealed order of the Greymartins, Backworth Lane, Backworth, Tree Preservation Order 2019

Appendix 3 – Objection from owner to the TPO

Appendix 4 – Letter from Innovation Group on the conclusions of the survey works.

Appendix 5 – Arboricultural Assessment

Appendix 6 – Root Report

Appendix 7 – Soils Report

Appendix 8 – Level Monitoring Report

Appendix 9 – Geotechnical Report

Appendix 10 – Response from the Council landscape architect to the objection of the TPO

**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