

# North Tyneside Council

## Report to Planning Committee

### Date: 28 September 2021

Title: Land at Carlyle Court, 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:** Riverside

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#### 1.1 Purpose:

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

#### 1.2 Recommendation(s)

Members are requested to consider the representations to Land at Carlyle Court, Wallsend, Tree Preservation Order 2021 and confirm the Order.

#### 1.3 Information

1.3.1 The Council were notified of the intention to remove one ornamental cherry tree to the front of 9 and 10 Carlyle Court, Wallsend. The tree was assessed, and the Council decided to make a Tree Preservation Order (TPO) for the tree. The Order was served in May 2021 (Appendix 1).

1.3.2 One objection has been received following the Council's decision to serve a TPO on the tree from a neighbour of 10 Carlyle Court, Wallsend. A copy of the representation is included as Appendix 3 to this report.

1.3.3 One supporting statement has been received following the Council's decision to serve a TPO on the tree from a local resident. A copy of the representation and photograph is included as Appendix 4 and 5 to this report.

1.3.4 Objection from the neighbour, 10 Carlyle Court, Wallsend can be summarised as follows:

- The tree blocks significant light into the front bedroom, which is now a permanent home office. The Right to Light Act (1959) means the occupier is entitled to receive the daylight that it has done for the previous 20 years.
- Financial impact due to the trees proximity to the house resulting in increased insurance premiums and in one case refused an insurance policy due to the proximity of the tree to the house.
- The tree is not within a conservation area and is not a species of significant importance.
- The tree causes a large amount of litter, especially the blossom, and this has the effect of blocking the nearby drain. The occupier had to clear the drain five times in May when it was raining because the blossom had caused a blockage and was causing flooding.

1.3.5 Support from a local resident can be summarised as follows:

- Magnificent example of an ornamental cherry.
- Provides a valuable and colourful asset to the bland vista in a prominent location.
- The only significant tree in the street.
- Important to the local bird population.
- The tree helps to neutralise carbon emissions.
- The tree deserves protections due to the recent threat of its destruction.
- The tree is in good health and is no threat to the houses in the area.
- There is an acceptance that the lifespan of a cherry tree is not as long as most other trees but the beauty it provides should be cherished and protected.
- The tree should be recognised as a community asset so that others can enjoy the tree over its natural lifespan.

1.3.6 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) The tree restricts light into the bedroom/office;
- b) The tree is not in a conservation area and is not a species of significant importance;
- c) Financial impact caused due to proximity to the property;
- d) Blossom from trees causing drainage issues resulting in flooding;
- e) Concluding remarks.

**a) The tree restricts light into bedroom/office room**

1.3.7 The tree is located approximately 6.0m to the east building elevation of 9 and 10 Carlyle Court and stands in front garden space of both properties. The canopy overhangs both garden spaces almost equally. It is approximately 6.0m to 7.0m in height with the outer edge of the canopy approximately 3.0m from the building elevation.

1.3.8 The tree will cast shade to the front building elevations in the mornings during the winter months as the sun travels to the rear of the properties in the afternoon. However, during the height of the summer months this impact will be reduced and when the tree was inspected in the morning of May there was no significant shading of the property. This is therefore not considered extreme and not sufficient to not confirm the Order.

**b) The tree is not in a conservation area and is not a species of significant importance**

1.3.9 A tree doesn't not have to be located within a conservation area for it to be protected by a TPO. Any tree that provides a level of amenity can be protected. 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 tree as an important landscape feature offering significant amenity to the general public. 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.

**c) Financial impact caused due to proximity to the property**

1.3.10 No detail has been provided as to why the insurance company refused to cover the property. Insurance companies may ask before a policy is taken out if the tree poses a risk or if the tree has been maintained thereby minimising any potential risk. There are many instances where trees, even without a TPO, are in close proximity to buildings which is why insurance policies will help protect you from any risk.

#### **d) Blossom from trees causing drainage issues resulting in flooding**

1.3.11 Falling leaves, blossom and seeds under the current British legal system are not recognised as a nuisance and therefore not a reason to remove a tree. They are all considered natural processes and their removal (picking up leaves, removing seedlings, etc) is seen as normal maintenance of a person's property.

#### **e) Concluding remarks**

1.3.12 The Cherry tree is in fair condition, reasonably healthy with no major defects. It is located in a prominent position within the front garden of the property. It is therefore highly visible to occupiers of neighbouring residential properties and from vehicular traffic and pedestrians on Carlyle Court. Therefore, the tree is considered to be an important element of the local landscape. 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 in the area. The concerns of the homeowner have been fully considered and balanced against the contribution this Cherry tree makes to the local environment and it is not felt that they outweigh the contribution this tree makes to the area.

1.3.13 Due to its prominence within the local landscape, the age of the tree, its health and current condition, 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 without modification on this tree.

1.3.14 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**

1.3.15 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'.

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

1.3.17 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.

1.3.18 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'*

1.3.19 The recently updated National Planning Policy Framework (July 2021) 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.

- 1.3.20 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).
- 1.3.21 '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.
- 1.3.22 In this instance the local authority thought it expedient to place a temporary TPO on the tree in accordance with the Town and Country Planning Act 1990 (as amended) 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 28<sup>th</sup> May 2021. A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.
- 1.3.23 The Order must be confirmed by 28 December 2021 otherwise the Order will lapse and there will be nothing to prevent the removal of these trees which are currently protected.

#### **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 at Carlyle Court, Wallsend Tree Preservation Order 2021  
Appendix 2 – Map of Land at Carlyle Court, Wallsend Tree Preservation Order 2021  
Appendix 3 – Objection from 10 Carlyle Court, Wallsend  
Appendix 4 – Support from local resident  
Appendix 5 – Photograph submitted as part of the support of the tree  
Appendix 6 – 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
4. National Planning Policy Framework (July 2021)

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