

North Tyneside Council

Report to Planning Committee

Date: 28 September 2021

Title: 1 Holywell Avenue,
Whitley Bay 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: Monkseaton North

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 1 Holywell Avenue, Whitley Bay, Tree Preservation Order 2021 and confirm the Order.

1.3 Information

1.3.1 The Council were notified of the intention to remove one pine tree to the front of 1 Holywell Avenue, Whitley Bay by a section 211 notice of the Town and Country Planning Act 1990 (21/00960/TREECA). These works were assessed, and the Council made a split decision (Appendix 6), deciding to make a Tree Preservation Order (TPO) (Appendix 1) for the tree in question but allowing the removal of leylandii close to the property. The Order was served in May 2021.

1.3.2 Three objections have been received following the Council's decision to serve a TPO on the tree from the owner and two neighbours. A copy of the representations are included as Appendix 3 and 4 to this report.

1.3.3 Objections can be summarised as follows:

- The Council previously gave permission to remove the tree in 2018. Nothing material has changed since the previous decision the Council should reinstate the previous permission.
- The tree is a concern to neighbours based on its safety and aesthetic impact.
- The owners reiterate their intention, as per the previous application to fell and replace the pine tree with an alternative of appropriate scale and species, which is supported by neighbours.
- Neighbours state that the removal of the tree would be a blessing.
- The tree is gradually dying and looks unsightly.
- Fear of neighbours that it will be blown over in strong winds with potential danger to life and property and the Council will have to cover the substantial bill for damages.

- If the tree were to fall it would cause severe damage to business vehicles, equipment, shared drains, telecommunications mast and historic boundary wall, which is over 100 years old.
- Residents claim that properties on Holywell Avenue attract high insurance premiums due to properties suffering from root inclusion.
- The trees along the street have caused serious damage to the footpaths.
- The tree is lovely but is in entirely the wrong environment and grown to such an extent that it now spoils the visual amenity of the street.

1.3.4 A summary of the objections is listed below. The Council has responded, in consultation with the landscape architect (who has provided a full response in Appendix 5), to each of the objections:

- a) Previous approval had been granted for the removal of the pine tree, but the permission had lapsed;
- b) The tree is too big for its location;
- c) The tree affects visual amenity;
- d) Potential failure of such a large tree and damage it could cause;
- e) The tree causes unnecessary problems including damage to surrounding public footpaths, drains and utility services;
- f) Concluding remarks.

a) Previous approval had been granted for the removal of the pine tree but the permission had lapsed

1.3.5 The LPA has a duty to preserve or enhance the character and appearance of a conservation area. A key part of that character and appearance is provided by the presence of trees in the landscape. By imposing a TPO on the tree, the Council is fulfilling its duty with regard to the desirability of preserving or enhancing the character or appearance of the conservation area.

1.3.6 In addition, the North Tyneside Local Plan DM5.9 Trees, Woodland and Hedgerows states that the Council under section (a) will ‘*Protect and manage existing woodland, trees, hedgerows and landscape features*’.

1.3.7 In May 2018, an application (section 211 notice) was received from the owners/occupiers of 1 Holywell Avenue to remove the 1no leylandii and 1no mature Pine tree (18/00503/TREECA). Under the requirements of the Town & Country Planning (Tree Preservation) (England) Regulations 2012, the tree was inspected and determined that it “*does not consider these tree(s) to be worthy of protection by a Tree Preservation Order*”. The Council also recommended “*In order to mitigate the loss of the trees...appropriate replacement trees are planted in the front garden location.*” The permission is valid for 2 years from the date of approval. In this case, the tree was not removed within the agreed time period and a new application was submitted to the Council (21/00960/TREECA).

1.3.8 Under the Town and Country Planning Act, unless it is dead, dying or dangerous or causing a nuisance, there is no legal obligation to plant a replacement tree should permission be granted for removal. Often the Council relies on the ‘good will’ of the applicant to undertake any replanting and in many cases, the replanting of trees is not undertaken and tree cover within the Borough is lost or diminished. A TPO however, does enforce this requirement allowing the Authority to fulfil its duty to maintain the visual amenity of the conservation area and the requirements of the Local Plan policy.

1.3.9 Tree Preservation Orders should only be used where it can be demonstrated that there is a reasonable degree of public benefit from the tree's retention. The Pine tree was re-

inspected again, this time using the TEMPO method of assessment system (Tree Evaluation Method for Evaluating Preservation Orders). This assessment is carried out by the LPA and is a widely recognised and respected method of assessing a tree (or trees) suitability for a TPO.

- 1.3.10 The TEMPO evaluation 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. The TEMPO assessment is only used as guidance and to act as supporting evidence to show how the conclusion to TPO or to not TPO is reached. These factors are taken into consideration to decide whether a TPO is made along with the surveyors judgement, rather than a formal method of assessment. Furthermore, the tree(s) usually need to be under an immediate or foreseeable threat to warrant protection, and in this case, the Pine tree was considered under threat of removal.
- 1.3.11 The Pine tree is in reasonable health, mature, and clearly visible from public footpaths and highways surrounding the property. It is considered to have a high degree of visual prominence and makes a significant contribution to the character and appearance of the local area. Its loss would be considered a visual change and local residents will experience a changed or altered view on a permanent basis.
- 1.3.12 With regard to the scoring of the TEMPO evaluation, 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 Pine tree was evaluated with a score of 15, which 'definitely merits' a TPO, having passed both the amenity and expediency assessments. Therefore, the authority decided that the tree in question merited protection from being removed and made a temporary TPO to protect it.
- 1.3.13 With regard to replacement planting, no indication was given by the applicant to plant any new trees within the curtilage of the property to replace those which are to be removed. It is only through the objections received that replacement planting has been offered, '*with alternatives of appropriate scale and species to complement the visual amenity and character of our conservation area*'. The TPO will ensure this duty is undertaken.

b) The tree is too big for its location

- 1.3.14 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, particularly if no damage to the fabric of the main building structure has been reported.

c) The tree affects visual amenity

- 1.3.15 The objections raise concerns that the Pine tree does not enhance the character or visual amenity of the local area. By assessing the tree's health and amenity using the TEMPO method, demonstrates that the tree does offer a level of amenity within a conservation area and therefore appropriate for protection by a TPO. The Pine tree is clearly visible from Holywell Avenue being in a prominent location in the front garden of the property and its height and maturity also helps to contribute to the amenity that it provides to the area.
- 1.3.16 Beyond the visual aspect of the trees, the amenity value of trees is derived from the wider benefits delivered by trees; many of which are only truly felt once a tree reaches maturity, for example reducing air and water pollution, provision of habitat and cooling local air temperatures. The pine tree has, therefore been shown to have high amenity and is important to the local area and its loss will be felt.

d) Potential failure of such a large tree and damage it could cause

- 1.3.17 As with all mature trees and adjacent infrastructure, should the tree fall, then it cannot be denied that damage will be caused; however healthy trees do not normally fall over. To date no evidence has been provided by the applicant to show that the Pine tree is either unhealthy, or is suffering from a significant structural problem that is undermining its integrity.
- 1.3.18 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.
- 1.3.19 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.

e) The tree causes unnecessary problems including damage to surrounding public footpaths, drains and utility services

- 1.3.20 The Tree roots cannot enter an intact drain. Many drains can have a variety of defects such as displaced joints, circumferential and longitudinal cracking regardless of the proximity of trees and the existence of roots within the drain does not indicate that a tree has caused the defect even if a root has grown through the crack. Provided the drains are maintained there is little capacity for damage to occur and tree removal would not normally be considered for this reason. With regard to surrounding footpaths, tree roots typically grow close to the surface, and it is not uncommon for them to develop on the underside of hard surfaces such as driveways or footpaths, which can lead to cracks developing through physical pressure. This damage is frequently superficial, and there is a range of options available which could include repairing the damage whilst retaining the tree such as replacing the existing surface with a sustainable engineered solution that can accommodate the roots.
- 1.3.21 No evidence has been provided that proves the presence of tree roots affecting underground utility services or if they are contributing to any damage. This is insufficient information to justify the removal of the tree or not confirm the Order.

f) Concluding remarks

- 1.3.22 The Pine tree is in fair to reasonable 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 Holywell Avenue. The tree is considered to be an important element in 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 the Pine tree makes to the to the local environment and it is not considered that they outweigh the contribution this tree makes to the area.
- 1.3.23 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.
- 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 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'*

1.3.29 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.

1.3.30 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 28th May 2021. A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.

1.3.33 The Order must be confirmed by 28 December 2021 otherwise the Order will lapse and there will be nothing to prevent the removal of the tree.

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 1 Holywell Avenue, Whitley Bay Tree Preservation Order 2021

Appendix 2 – Map of 1 Holywell Avenue, Whitley Bay Tree Preservation Order 2021

Appendix 3 – Objection email from 2 Holywell Avenue, Whitley Bay

Appendix 4 – Objection letter from 1, 1a and 2 Holywell Avenue, Whitley Bay

Appendix 5 – Response from the Council Landscape Architect to the objection of the TPO

Appendix 6 – Officer report for application 21/00960/TREECA

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