

## **OBJECTION TO TREE PRESERVATION ORDER AT 1 HOLYWELL AVENUE, WHITLEY BAY**

An application (21/00960/TREECA) was received by the council requesting the removal of a mature Pine and Leylandii tree located within front garden of 1 Holywell Ave, Whitley Bay. The property and associated trees are located within Monkseaton Conservation Area. As required by the Town & Country Planning (Tree Preservation) (England) Regulations 2012, when an application (section 211 notice) is received for works to trees in a conservation area, the council has 6 weeks in which to determine the application unless an exemption applies. This notice period gives the Local Authority an opportunity to consider whether the trees to make a TPO on the trees.

The trees within the property were assessed and based on the evidence and findings of the assessment, it was concluded that the Pine tree provides a high level of amenity to the surrounding public area and its removal will have a detrimental impact on the conservation area. Therefore, a decision was made to protect the tree from removal with a Tree Preservation Order (TPO) and on 28<sup>th</sup> May 2021, a TPO was served.

The order was served on the owners and occupiers of numbers 1 and 3 Holywell Avenue. The LPA has 6 months from the serving of the order in which to consider any objections.

Relevant planning policies relevant to this TPO confirmation are:

- Town and Country Planning (Tree Preservation) (England) Regulations 2012
- NTC local plan policies

The purpose of this report is to assess the objections received and determine whether the TPO should be confirmed or not.

The government's advice in the National Planning Practice Guidance (NPPG) states that;

*"When deciding whether an Order is appropriate, authorities are advised to take into consideration,*

- *what 'amenity' means in practice*
- *what to take into account when assessing amenity value*
- *what 'expedient' means in practice*
- *what trees can be protected and*
- *how they can be identified'*

Three objections have been received from Mr and Mrs Snowball of 2 Holywell Avenue, Mr and Mrs Watson of 1A Holywell Avenue and Mr & Mrs Pritchard of 1 Holywell Ave, in relation to the TPO being placed on the Pine tree at 1 Holywell Avenue Whitley Bay.

The objection to the TPO can be summarised as follows:

1. Previous approval had been granted for the removal of the Pine tree but the permission had lapsed
2. The tree is too big for its location
3. The tree affects visual amenity
4. Potential failure of such a large tree and damage it could cause
5. The tree causes unnecessary problems including damage to surrounding public footpaths, drains and utility services

The making of a TPO is a 'discretionary' power under the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012, that allows the Local Planning Authority (LPA) time to consider if the tree is worthy of protection or not.

The Local Planning Authority currently has over 100 individual tree preservation orders in place for various parts of the borough and the majority of TPO's are protecting trees in privately owned property. There is a process within the authority to determine whether a tree or trees merit protection based on a number of factors such as the size, type or location of the tree or trees and whether it/they are at risk

of removal or damage. Whilst the TPO does bring additional responsibilities to the owner of the tree, this is not unusual across the borough.

The following objections have been considered as follows:

**Previous approval had been granted for the removal of the Pine tree but the permission had lapsed**

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.

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*'.

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)

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.

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.

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.

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.

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.

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.

### **The tree is too big for its location**

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.

### **The tree affects visual amenity**

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.

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.

### **Potential failure of such a large tree and damage it could cause**

As with all mature trees and adjacent infrastructure, should the tree fall, then it can't be denied that damage will be incurred; 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.

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.

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.

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

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.

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 allow the removal of the tree or withdraw the TPO.

## **Conclusion**

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. 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 the Pine tree makes to the to the local environment and it is not felt that they outweigh the contribution this tree makes to the area.

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.

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.