

# North Tyneside Council

## Report to Planning Committee

### Date: 18 January 2022

Title: 18 Station Road,  
Forest Hall 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:** Benton

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#### 1.1 Purpose:

To consider the above Tree Preservation Order (TPO) 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 18 Station Road, Forest Hall, Tree Preservation Order 2021 and confirm the Order.

#### 1.3 Information

1.3.1 The Council were notified of the intention to carry out works to the tree as part of the works to the planning application 20/01150/FULH. The planning application constituted notification of the owner to the local authority to undertake works to the tree, which is located in Benton conservation area. As required by the Town & Country Planning (Tree Preservation) (England) Regulations 2012, when an application or section 211 notice is received for works to trees in a Conservation Area, the local authority has 6 weeks to consider whether the trees justify a TPO. In this case the planning application acted as a section 211 notice which technically started the 6 week notice. The Council approved planning permission to the application (20/01150/FULH) but decided to make a TPO (Appendix 1) for the tree in question. The Order was served in August 2021.

1.3.2 Two objectors have made representations concerning the tree, one being the owner of the tree, the other being the next door neighbour at 2 Lyndhurst Road. The owner has also submitted two arboricultural reports as part of the representations to be considered by the committee. A copy of the representations and correspondence are included as Appendix 3, 4, 5 and 6 to this report.

#### 1.3.3 Objections can be summarised as follows:

- The tree is suffering from ash dieback and should be removed.
- The tree is within Benton conservation area and therefore already protected and no reason to make the tree subject to a TPO. The TPO should be removed.
- Previous approved application of works to the tree (18/01401/TREECA) show a record of compliance by the owner of following the due process and appropriately managing the tree.
- Concern of structural damage

- Problems with drainage that are believed to be caused by the roots of the tree
- The owner does not seek to have the tree removed but the neighbour has raised concerns that the tree is dangerous.
- Neighbours have noticed the tree looking increasingly unhealthy over the last three to four years and appears to be ash dieback. Several other trees in the surrounding area also appear to be suffering from the same condition.
- Neighbours cars being damaged by sap and pollen from the tree.
- Neighbours concerned of the risk posed by the tree falling on their property and parked cars. They believe the tree is in a dangerous condition and should be felled for reasons of safety.

#### 1.3.4 Arboricultural reports submitted by the owner can be summarised as follows:

- Woodsman report July 2021 was based on various ground survey inspections between October 2020 and July 2021.
- Evidence of poor shoot formation, shoot dieback and weak distorted growth in the upper canopy. Consistent symptoms of ash dieback. The lower crown is showing signs of good vigour.
- Evidence of ash dieback in the surrounding ash trees.
- Reference from Forest Research that older trees (which would be accurate for this tree) can resist ash dieback for some time until prolonged exposure or another pest or pathogen eventually causes them to succumb.
- Given this disease cannot be treated it is recommended that the tree be removed at the earliest opportunity and the tree is likely to increase the risk it poses to adjacent people and property as if left the risk and cost to remove the tree will only further increase.
- AllAboutTrees report September 2021 reaffirms the view that the tree has ash dieback.
- The property has been flooded during adverse weather and the installation of a French drain would be a reasonable and proportionate response to repetitive flooding and damage to the root system is unavoidable.
- The tree is also attributed to causing damage to a boundary wall and there is damage to the concrete pad in front of the garage and cracking above the lintel of the garage to its roof. An underground drainage route is located in this area and may have collapsed leading to subsidence of the garage. Investigation works to the area are proposed but would further disturb the root system, which is unavoidable.
- Proposed works to construct the extension is within the Root Protection area (RPA) of the tree. Pile foundations would prevent significant damage to the root system caused by traditional trench and fill foundations. However, this generates additional cost that is prohibitive and excessive for a tree which will be lost in the coming years regardless.
- Risk of structural failure is not a concern at the present time, but the potential for structural failure will increase with time if the tree were to be retained.
- Ash dieback is not a treatable pathogen and will continue to weaken the tree, as such the tree is considered to be in irreversible decline.
- The combination of the ash dieback and the disturbance of the root system to undertake works to the boundary wall, French drain, repair the existing drainage system and construct a new extension would reduce the trees ability to tolerate the stress placed upon it and would be inadvisable.
- Recommended the tree be removed and replaced with a suitable replacement.

1.3.5 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 9), to each of the objections:

- a) The tree is suffering from ash dieback and should be felled because it is dangerous;
- b) Concern the tree is causing structural damage to the property and boundary wall;
- c) Concern the tree is causing problems with drainage;
- d) The tree sap and pollen is causing damage to neighbours cars;
- e) The tree is sufficiently protected by Conservation area status and does not require TPO status;
- f) Concluding remarks.

**a) The tree is suffering from ash dieback and should be felled because it is dangerous**

- 1.3.6 The owner of the tree obtained two arboricultural reports that advise the ash tree is dying of ash dieback, which is a non-treatable pathogen, and the tree should be removed.
- 1.3.7 Ash dieback has so far been relatively uncommon in the borough and there is a need to further understand the significance of the disease and any official reporting that may be required. Ash dieback is present in most parts of England, although the severity of the disease varies locally. Usually, more evidence of the disease would be apparent, for example wilting leaves, wilting new shoots, leaf necrosis and lesions on the branches for a tree to be of concern.
- 1.3.8 The current advice is to retain ash trees where they stand out as being healthier than those around them and it is safe to do so and more information is available to view in a guide to ash dieback produced by the Tree Council (Appendix 11). The tree still provided a high level of visual amenity which is a key consideration for protection by a TPO.
- 1.3.9 Forest Research draws on experience in continental Europe, which is now being seen replicated in the UK, indicates that the disease can kill young and coppiced ash trees quite quickly. However, older Ash trees can resist the disease for some time and in southern England, some ash trees are starting to show some level of resistance but this is an area where further research and monitoring will need to be analysed.
- 1.3.10 The presence of the disease does not necessarily mean that a tree should be felled/pruned with each situation assessed on its merits, taking account of the condition, position and importance of the tree. Also, the tree at this stage is not considered imminently dangerous whereby it requires immediate removal, and this was confirmed in the report from AllAboutTrees. The ash tree is a major component of the tree cover of the immediate area and offers significant visual amenity within the context and the aims of the Conservation Area, so any removal will need to be conclusive.
- 1.3.11 The tree is showing very minor die back in the upper crown of the tree. It is unknown at this stage if the tree will eventually succumb to the disease as local conditions will determine how ash trees are affected by the disease. At this stage the tree does not pose a real and immediate danger and it is considered premature to fell the tree, even as a precautionary measure.

**b) Concern the tree is causing structural damage to the property and boundary wall**

- 1.3.12 If there is damage to the structure of the property by the roots of the tree, a structural engineers report must be submitted to the LA to prove actual damage as the tree may not be the only factor that can cause building movement. For example, natural seasonal soil moisture changes, localised geological variations, damaged drainage, over loading of internal walls and settlement, amongst others so clear evidence is required that the damage caused is due to the trees in order to require their removal. This information is in

line with current TPO guidance to ensure trees are not unnecessarily removed. Trees co-exist next to structures and in many situations without conflict, so unless evidence is provided indicating otherwise, removal of the tree is not usually supported. The additional expense of constructing the extension with pile foundations rather than the traditional trench and fill foundation is not considered a sound reason to withdraw the TPO. The lifespan of the tree is unknown as the resistance of the tree to ash dieback will continue to be monitored but undertaking works that would increase the stress on a tree is not considered acceptable.

**c) Concern the tree is causing problems with drainage**

- 1.3.13 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 concrete pad, 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.
- 1.3.14 No evidence has been provided that proves the presence of tree roots affecting or contributing to any damage. This is insufficient information to allow the removal of the tree or withdraw the TPO.

**d) The tree sap and pollen is causing damage to neighbours cars**

- 1.3.15 Sap is a natural seasonal problem caused by aphids. Pruning the tree will only offer temporary relief and can exacerbate the problem in the long run as any new growth is often more likely to be colonised by aphids thereby potentially increasing the problem. As this is a natural occurrence it is not considered reason to remove the tree.

**e) The tree is sufficiently protected by Conservation area status and does not require TPO status**

- 1.3.16 Application 20/01150/FULH was granted conditional approval on 9th December 2020 with a condition that stated: 'No trees within the site shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed during the development phase or without the prior written consent of the Local Planning Authority'.
- 1.3.17 As required by the Town & Country Planning (Tree Preservation) (England) Regulations 2012, when an application or section 211 notice is received for works to trees in a Conservation Area, the LA has six weeks in which to determine the application unless an exemption applies. This notice period gives the LA an opportunity to consider whether to make a TPO on the tree. In this case the planning application acted as a section 211 notice which technically started the six week notice.
- 1.3.18 A TEMPO (Tree Evaluation Method for Evaluating Preservation Orders) assessment was undertaken by the LA, which is a widely recognised and respected method of assessing a tree (or trees) suitability for a TPO. 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 ash tree was re-inspected again and it was considered that the tree provided a high level of amenity to the surrounding public area and its removal would have a detrimental impact on the character and appearance of the Conservation Area.

- 1.3.19 The TEMPO evaluation takes into account factors such as a tree's visibility to the public, its condition, age and retention span, 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 surveyor's judgement, rather than a formal method of assessment. Furthermore, the tree usually needs to be under an immediate or foreseeable threat to warrant protection, and in this case, the ash tree was considered under threat of removal.
- 1.3.20 The ash tree is 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. Therefore, a decision was made to protect the tree from removal with a Tree Preservation Order (TPO) and on 18th August 2021, a TPO was served.

**f) Concluding remarks**

- 1.3.21 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.
- 1.3.22 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.
- 1.3.23 The ash tree at this current stage, has no major structural defects. It is located in a prominent position within the front garden of the property and therefore highly visible to occupiers of neighbouring residential properties and from vehicular and pedestrians routes on Station Road and Lyndhurst Road. 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 and neighbour have been fully considered and balanced against the contribution the ash tree makes to the local environment and it is not felt that they outweigh the contribution this tree makes to the amenity 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.
- 1.3.24 The ash dieback is not significant in the tree and it is suggested that the tree is monitored in the coming years. Following current advice consideration is given to retaining any trees of value and if it is safe to do so. If the trees should succumb to ash dieback or an associated disease, and must be removed, the TPO allows for a replacement tree to be planted which would maintain the integrity of the TPO and the character of the Conservation Area.
- 1.3.25 Due to its prominence within the local landscape, the age of the tree, its 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.

- 1.3.26 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**

- 1.3.27 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'.

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

- 1.3.29 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.

- 1.3.30 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'*

- 1.3.31 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.

- 1.3.32 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).

- 1.3.33 '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.

- 1.3.34 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 18<sup>th</sup> August 2021. A copy of the TPO schedule (Appendix 1) and a map of the TPO (Appendix 2) is included in the Appendices.

1.3.35 The Order must be confirmed by 18 February 2022 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 18 Station Road, Forest Hall Tree Preservation Order 2021
- Appendix 2 – Map of 18 Station Road, Forest Hall Tree Preservation Order 2021
- Appendix 3 – Email correspondence from 18 Station Road, Forest Hall 14.07.2021
- Appendix 4 – Objection from 2 Lyndhurst Road, Forest Hall 20.08.2021
- Appendix 5 – Email correspondence between the Council Landscape Architect and the owner of 18 Station Road, Forest Hall 07.09.2021
- Appendix 6 – Objection from 18 Station Road, Forest Hall 17.09.2021
- Appendix 7 – Arboricultural Report – Woodsman July 2021
- Appendix 8 – Arboricultural Report – All About Trees September 2021
- Appendix 9 – Response from the Council Landscape Architect to the objection of the TPO
- Appendix 10 – Decision notice for application 20/01150/FULH
- Appendix 11 – Tree Council Ash dieback tree owners guide

**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

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