

OBJECTION TO TREE PRESERVATION ORDER AT 18 STATION ROAD FOREST HALL

A planning application was received by North Tyneside Council (20/01150/FULH) for the demolition of existing side garage, erection of new attached garage, first and second floor side extension and rear extension at 18 Station Road, Forest Hall.

18 Station Road is a semi-detached property located on the junction of Station Road and Lyndhurst Road. The front and rear gardens of neighbouring properties contain a number of mature and semi mature trees and shrubs of varying species. The front garden of 18 Station Road contains a mature Ash (*Fraxinus sp.*) tree in a prominent position, close to the front boundary wall of the property overlooking Station Road and Lyndhurst Road. The tree is not protected by a TPO (Tree Preservation Order) but is located within a Conservation Area and offers significant visual amenity within the context and the aims of the Conservation Area.

The planning application included the construction of a new attached side garage after demolition of the existing garage. Due to the nature of the proposed works, it was likely that tree roots from the mature Ash tree could be damaged as a result of the construction works. In determining the application, advice was given to the applicant that the ash tree should be retained and protected in accordance with BS5837: 2012 '*Trees in Relation to Construction-Recommendations*' to ensure that any foundations and construction works will not damage tree roots. This would also allow an opportunity to assess any alleged structural damage and any look at opportunities to mitigate. Therefore, an Arboricultural Impact Assessment (AIA) was requested to establish the root protection area of the tree which would in turn establish if any construction works will be within the root protection area of the tree and what the tree protection requirements will be.

As part of the decision making process for application 20/01150/FULH the Council Landscape Architect provided comments that led to Mr Bouchard acquiring an AIA from Woodsman Arboriculture Consultancy who confirmed that the ash tree was 'showing classic signs of Ash dieback and should be removed'. Ash dieback is a disease (*Hymenoscyphus pseudoalbidu*) which is present in most parts of the UK, but its effects are most visible in regions where the fungus has been present for the longest time, and where local conditions are most suitable for the fungus.

Based on this information, a site visit was undertaken to inspect the tree. It was found that Ash dieback was present in only about 5% of the trees canopy and was generally healthy with the tree evidencing increased leaf cover over the last few years. On this basis the tree was not considered a hazard and there was no requirement to remove it.

Application 20/01150/FULH was granted conditional approval on 9th December 2020. No condition was applied to the approval that required an Arboricultural Impact Assessment (AIA) or Arboricultural Method Statement (AMS) to be submitted. However, a condition was applied 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*'.

Without conditions being applied to protect the tree further, it was considered that the Ash tree was not sufficiently protected through the planning process. In this case, the planning application itself was considered a section 211 notice whereby notification is given to the Local Authority (LA) to undertake works to a tree located in a 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 LA has 6 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 trees. In this case the planning application acted as a section 211 notice which technically started the 6 week notice.

A TEMPO (Tree Evaluation Method for Evaluating Preservation Orders) assessment was undertaken by the LA and 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 will have a detrimental impact on the Conservation Area.

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 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 Ash tree was considered under threat of removal.

The Ash 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. 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.

The order was served on the owners and occupiers of 18 Station Road and 2 Lyndhurst Road. The LA has 6 months from the serving of the order in which to consider any objections.

On the 20th August 2021, Mr Bouchard enquired as to why a TPO had been made in respect of the ash tree.

On 23rd August 2021, a letter of objection from Mr and Mrs Inness of 2 Lyndhurst Road was received

The objection to the TPO from Mr and Mrs Inness can be summarised as follows:

1. The tree is suffering from Ash die back
2. Sap from the tree is causing damage to their cars
3. The possibility of damage to their property from tree roots
4. Damage to the drainage system from tree roots
5. The tree is becoming increasingly dangerous with frequent branch failure and damage it could cause should the tree fall.

On 7th September 2021 a response to Mr Bouchard was sent.

On 23rd September 2021 Mr Bouchard obtained a second report from an arboriculturalist All About Trees which advises that the Ash tree is dying of Ash dieback a non-treatable pathogen and recommends that the tree should be removed. Mr Bouchard has asked that this report is considered at committee.

With regard to ash dieback, it has so far been relatively uncommon in the borough so far 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 (*Forest Research*¹) for a tree to be of concern. 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. 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 <https://www.forestresearch.gov.uk/tools-and-resources/fthr/pest-and-disease-resources/ash-dieback-hymenoscyphus-fraxineus/>

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, indeed, in southern England, some ash trees are starting to show some level of resistance.

There are other typical signs of *Hymenoscyphus pseudoalbidu* that haven't been reported by the arboriculturalist at this stage therefore further monitoring should be undertaken with increased frequency and at an appropriate time of year to assess the extent of infection. On these grounds it would be premature to fell the tree, even as a precautionary measure.

With regard to the objections raised by Mr and Mrs Inness, the following objections have been considered as follows:

The tree is suffering from Ash die back

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. The advice (Forestry Commission and Woodland Trust²) is to retain ash trees where they stand out as being healthier than those around them and it is safe to do so. The tree still provided a high level of visual amenity which is a key consideration for protection by a TPO.

Sap from the tree is causing damage to their cars

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.

The possibility of damage to their property

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.

Damage to the drainage system from tree roots

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.

² <https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/tree-pests-and-diseases/key-tree-pests-and-diseases/ash-dieback/>

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.

The tree is becoming increasingly dangerous with frequent branch failure and damage it could cause should the tree fall.

As with all mature trees, should the tree fall, then it can't be denied that damage can incur. To date no evidence has been provided by the applicant to show that the Ash tree is structurally unsound 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 structural integrity of the tree (other than the ash dieback) will ensure it is maintained in a safe condition.

On 10th December 2021, a further email was received from Mr Bouchard outlining the steps he had taken in obtaining advice from two tree surgeons. In addition, a further letter from his neighbour Mr David Innes of 2 Lyndhurst Road dated 28th June 2021 was also attached. Mr Bouchard in his email, also referred a number of structural issues in relation to his garage, the front boundary wall to his property and to drainage with particular reference to localised flooding under the garage. Mr Bouchard also referenced that he was unable to do any investigative works as the TPO on the tree prevented him from doing so.

With regard to damage to the property itself, no detail or evidence has been provided. If there is damage to the structure of the property by the roots of the tree, a structural engineers report must be submitted to prove **actual** damage as the tree may not be the only factor that can cause building movement. For example, 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 its removal. This information required will be in line with current TPO guidance to ensure trees are not unnecessarily removed.

Any reasons to remove the tree must be convincing and it is recommended that a structural engineer is sought who can provide the relevant information to establish the cause of any actual damage. In addition, this should be supported by a drainage survey and a report from an arboriculturalist to support the tree work proposals, including arboricultural options for avoidance or remediation of indirect tree-related damage.

With regard to the front boundary wall, they can deform and crack over time even where trees are not present, particularly on clay soil whose volume changes with the seasons. Further investigations would clarify if the wall does require rebuilding (safety and risk) yet it is often possible to rebuild or repair garden walls to take account of adjacent trees by incorporating a 'bridge beam' or lintel in any rebuild of the wall that that allows for future root growth.

Trees co-exist next to structures and in many situations without conflict, so unless evidence is provided indicating otherwise, it is not considered a reason remove the tree.

The TPO does not prevent works being undertaken to the tree but ensures that if any pruning works or construction works in close proximity to the tree are carried out so that the tree is not damaged in any way. Further detail is provided in BS5837: 2012 '*Trees in Relation to Construction-Recommendations*'.

Conclusion

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 Ash tree at this current stage, is in reasonable condition with 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 pedestrian 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 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.

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 (Forestry Commission and Woodland Trust) consideration is given to retaining any trees of value and it is safe to do so. If the trees should succumb to ash dieback or an associated disease and has to 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.

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.

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.