

North Tyneside Council

Report to Planning Committee

Date: 06 08 2019

ITEM 6
Title: 24 Marine Avenue,
Whitley Bay, Tree
Preservation Order 2019

Report from Directorate: Environment, Housing and Leisure

Report Author: Phil Scott Head of Environment, Housing and Leisure (Tel: 643 7295)

Wards affected: Whitley Bay

1.1 Purpose:

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

1.2 Recommendation(s)

Members are requested to consider the representations to 24 Marine Avenue, Whitley Bay, Tree Preservation Order 2019 and confirm the Order.

1.3 Information

- 1.3.1 The Council was informed by the owners that they were considering felling the tree in question (Appendix 1) due to their concerns of the tree causing damage to their property and in this case the Council decided to make a Tree Preservation Order (TPO) for the tree. The Order was served in April 2019 (Appendix 2).
- 1.3.2 Two letters of objection have been received from the owners of the land. One was received shortly after they were notified of the Council's decision to serve a TPO on the tree (24.04.2019) and a later objection (26.06.2019) submitted to accompany this committee report. Copies of the representations, including photographs of the site, an extract of the owners building survey and a report from the owners' tree surgeon are included as Appendix 4, 5, 6, 7 and 8 of this report.
- 1.3.3 Objections from the owner, 24 Marine Avenue, can be summarised as follows:
- The tree roots are causing significant damage to the drive and garden area, but also the adjacent public footpath and the owner is concerned for public safety of those using the footpath.
 - There is potential damage to the foundations of the house caused by the trees roots.
 - The original intention was to carry out works to the roots as part of improvements to the drive, but following an inspection the advice was to remove the tree to prevent further damage.
 - Concerns that the damage caused by the tree could spread to other houses.
 - The owner's insurance company will contact the Council if the TPO is placed on the tree to place all liability of damage to the foundations of their property on to the Council.
 - There is the offer to replant a smaller, less intrusive tree such as a blossom tree if the tree were to be removed.

- 1.3.4 Additional report from a tree surgeon (Appendix 8) submitted by the owner, 24 Marine Avenue can be summarised as follows:
- The tree is healthy and in reasonable condition.
 - Concern the tree roots are causing damage to the property and drive way.
 - Crown of the tree is touching the house, the tree roots will be in contact with the property.
 - Clear visual cracks in the driveway. Relaying the driveway would damage the roots of the tree and could make the tree dangerous in the future.
 - The tree has outgrown its location and now causing damage to the surrounding area.

1.3.5 The Council has responded, in consultation with the landscape architect (who has provided a full response in Appendix 9), to each of the main points:

- a) The tree is potentially causing damage to the property
- b) The tree is causing damage to the drive way and public footpath
- c) Justification of serving the TPO

a) The tree is potentially causing damage to the property

1.3.6 In the case of damage to the property itself, the objection and the tree surgeons report highlights the **potential** concerns. 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. This is consistent with the requirements of any application of works to a tree subject to a TPO where structural issues are highlighted. For example, natural seasonal soil moisture changes, localised geological variations, damaged drainage, over loading of internal walls and settlement, amongst others. Clear evidence is required that the damage caused is due to the tree, in order to require its removal. No cracking or displacement to the property has been reported. 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 to remove the tree.

1.3.7 The updated government guidance, National Planning Practice Guidance (NPPG) 'Tree Preservation Orders and trees in conservation areas' (2014), require applicants to include additional evidence where necessary, *'It is important that applications suggesting that the proposed tree work is necessary to address tree-related subsidence damage are properly supported by appropriate information. The standard application form requires evidence that demonstrates that the tree is a material cause of the problem and that other factors have been eliminated as potential influences so far as possible. The guidance notes for the standard application form list the requirements. Applicants should support claims that trees are damaging lighter structures and surfaces, such as garden walls, drains, paving and drives, by providing technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.* (Paragraph 69, NPPG - Tree Preservation Orders and trees in conservation areas, 2014).

b) The tree is causing damage to the drive way and public footpath

1.3.8 There is evidence of displacement of the brickwork to the driveway. 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, 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. The repair

could be to replace the existing surface with an engineered solution to accommodate the roots. If the driveway has been affected by roots, this does not necessarily mean that the property will be damaged next.

1.3.9 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. Typical evidence and information that is necessary to assess the influence of a tree can be provided by a Structural Engineer and should include:

- A description of the property including, type and depth of foundations, a description of the damage and the crack pattern, the date that the damage first occurred/was noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map.
- Details of vegetation in the vicinity and its management since discovery of the damage, together with a plan showing the vegetation and affected building.
- Measurement of the extent and distribution of vertical movement using level monitoring. However, where level monitoring is not possible, the applicant should state why and provide crack-monitoring data. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s).
- A profile of a trial/bore hole dug to identify soil characteristics and foundation type and depth.
- The sub-soil characteristics including soil type (particularly that on which the foundations rest), liquid limit, plastic limit and plasticity index.
- The location and identification of roots found. Where identification is inconclusive, DNA testing should be carried out.

1.3.10 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.

1.3.11 With regard to liability, the owners' insurance company should advise that further monitoring and investigation should be carried out.

c) Justification of serving the TPO

1.3.12 In serving a TPO, the tree must be able to show that protection would bring a reasonable degree of public benefit in the present or future. As defined by the governments National Planning Practice Guidance (NPPG) 'Tree Preservation Orders and trees in conservation areas' (2014) '*Amenity is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public*' (Paragraph 7). To evaluate amenity, the TEMPO assessment (Tree Evaluation Method for Evaluating Preservation Orders) was used to assess the suitability of a tree for a TPO. This is a widely recognised and respected method of valuation which 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. Furthermore, the tree(s) usually need to be under an immediate or foreseeable threat to warrant protection.

1.3.13 With regard to the tree's visibility to the public, the tree needs to be visible from public places, usually the public highway, footpaths and open spaces. In this case the tree is highly visible from a public highway and footpaths which surround the property to the east and west. The tree is also a single specimen which has a commanding individual presence visible from locations on Marine Avenue and Ventnor Gardens. Therefore, the tree is considered to have a high degree of visual prominence and makes a significant contribution to the character and appearance of the local area.

1.3.14 The higher the amenity value of a tree, the greater the justification must be for its removal, with relevant information submitted to support its removal. Based on the size, health and prominence on the tree, it is considered that there is insufficient additional detailed evidence to justify its removal.

1.3.15 On the basis of the information submitted, the request to fell the tree is not supported for the following reasons:

- 1) The removal of the tree would have a negative impact on visual amenity, hence the TPO.
- 2) The repairs to the driveway can be repaired whilst retaining the tree, but will require further investigation by relevant professionals.
- 3) Lack of evidence with regard to damage to the property.

Additional Guidance

- i. 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.
- ii. Protecting the trees 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'

- iii. 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 this tree to the landscape and visual amenity of the area. The Tree Preservation Order was served on the owners and other relevant parties on 15th April 2019. A copy of this original Order is attached as Appendix 2, including a separate map of the TPO (Appendix 3).

- iv. The Order must be confirmed by 15 October 2019 otherwise the Order will lapse and there will be nothing to prevent the removal of this tree which is currently protected.

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.

Reasons for recommended option:

Option 1 is recommended. A Tree Preservation Order does not prevent works to trees, but it gives the Council control in order to protect trees which contribute to the general amenity of the surrounding area.

Appendices:

Appendix 1 – Initial email received stating the owners' intention to fell the tree.

Appendix 2 – Signed and sealed order of the 24 Marine Avenue, Whitley Bay, Tree Preservation Order 2019

Appendix 3 – Map of TPO for 24 Marine Avenue, Whitley Bay, Tree Preservation Order 2019

Appendix 4 – Original Letter of objection from the owners 24.04.2019.

Appendix 5 – Second Letter of objection from the owners 26.06.2019

Appendix 6 – Photographs of the owners driveway

Appendix 7 – Builders Survey Report

Appendix 8 – Tree Surgeon report

Appendix 9 – Response from the Council landscape architect to the objection of the TPO

Contact officers:

Peter Slegg (Tel: 643 6308)

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