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**PART A: MATTERS DEALT WITH UNDER DELEGATED POWERS**

**REPORT TO: PLANNING COMMITTEE**

**DATE: 16 MARCH 2010**

**REPORT OF THE: COUNCIL SOLICITOR  
ANTHONY WINSHIP**

**TITLE OF REPORT: RYEDALE DISTRICT COUNCIL TREE PRESERVATION  
VARIATION ORDER NO. 319A 2009**

**WARDS AFFECTED: MALTON**

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

1.1 The purpose of this report is to seek Members' approval to confirm Variation Order No. 319A 2009 as an unopposed Order.

### **2.0 RECOMMENDATION(S)**

2.1 It is recommended that:

- (i) That the Order be confirmed as unopposed without modification. .
- (ii) That the Council Solicitor be authorised to serve the necessary notices

### **3.0 REASON FOR RECOMMENDATION(S)**

3.1 Tree Preservation Order No 319A 2009 was made on the 30 November 2009 and the statutory objection period has expired. No objections have been received.

### **4.0 SIGNIFICANT RISKS**

4.1 Statutory procedures have been followed, and there have been no objections to the Order. On this basis it is considered that there is little risk to the Council in terms of legal implications.

## **REPORT**

### **5.0 BACKGROUND AND INTRODUCTION**

- 5.1 Tree Preservation Order 319/2008 was made on the 29 July 2008 to protect an area of mixed deciduous and coniferous trees situated within the curtilage of No. 37 Middlecave Road. Following objections from the owner members confirmed the Order on the 18 November 2008.

### **6.0 POLICY CONTEXT**

- 6.1 The Council may make a TPO if it appears expedient in the interests of amenity. TPO's contribute to the community with the aim of ensuring a high quality, clean and sustainable environment, and are an important function of the Council's Planning Service.

### **7.0 CONSULTATION**

- 7.1 Notices were served on the owner of the land and adjoining owners on the 1<sup>st</sup> December 2009. No objections have been received.

### **8.0 REPORT DETAILS**

- 8.1 Tree preservation Order No. 319/2008 was made on an 'Area' basis in the interests of expediency as, at the time, the property was for sale, and a change in ownership may have lead to the loss of trees. The Government Office recommends that this classification should only be used as a temporary measure until the trees in the protected area can be assessed properly and reclassified. Local Planning Authorities are encouraged to resurvey their existing TPOs which include the area classification with a view to replacing them with individual or group classifications where appropriate as there are often individual trees within a protected area that do not warrant inclusion within a Tree Preservation Order. In this case TPO 319A/2009 varies the original order to include only those individual trees that it is considered of sufficient amenity importance to warrant protection. The Variation Order protects thirteen individual trees within the boundary of the protected area that are considered to be of high amenity value. No objections were received to this Order.

### **9.0 IMPLICATIONS**

- 9.1 The following implications have been identified:

(a) Financial

- (i) TPOs make provision for the payment by the LPA of compensation for loss or damage caused or incurred as a result of:

their refusal of any consent under the TPO, or  
their grant of a consent subject to conditions

- (ii) There is a general right to compensation. However, the TPO includes provisions that are intended to limit the Council's liability to a fair and

reasonable extent, and so the general right to compensation is subject to the following exceptions:

no claim for compensation can be made if the loss or damage incurred amounts to less than £500;

no compensation is payable for loss of development value or other diminution in the value of land. 'Development value' means an increase in value attributed to the prospect of developing the land, including clearing it;

no compensation is payable for loss or damage which, bearing in mind the reasons given for the application for consent (and any documents submitted in support of those reasons), was not reasonably foreseeable when the application was decided;

no compensation is payable to a person for loss or damage which was (i) reasonably foreseeable by that person, and (ii) attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;

no compensation is payable for the costs incurred in bringing an appeal to the Secretary of State against the LPA's decision to refuse consent or grant it subject to conditions.

(b) Legal:

It is considered that this order has been served in accordance with statutory regulations.

(c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder) - None

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**Background Papers:**  
File number TPO/09/319A

**Background Papers are available for inspection at:**  
Legal Services department Ryedale House