



PART B:	RECOMMENDATIONS TO PLANNING COMMITTEE
REPORT TO:	TREE PRESERVATION ORDER WORKING PARTY
DATE:	15 AUGUST 2017
REPORT OF THE:	HEAD OF PLANNING GARY HOUSDEN
TITLE OF REPORT:	TREE PRESERVATION ORDER No: 346/2017 MALTON WAR MEMORIAL
WARDS AFFECTED:	MALTON

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 For members of the working party to consider objections to the Tree Preservation Order (TPO) and to make a recommendation to the Planning Committee on whether the Order should be confirmed.

2.0 RECOMMENDATION

- 2.1 That the Planning Committee is recommended to:
- (i) Confirm Tree Preservation Order No: 346/2017

3.0 REASON FOR RECOMMENDATION

- 3.1 To protect the amenity value that this tree provides to the locality.

4.0 SIGNIFICANT RISKS

- 4.1 There are no significant risks associated with recommendation. However, the site includes Malton 's War Memorial and this is a sensitivity.

5.0 POLICY CONTEXT

- 5.1 Members are aware that Local Planning Authorities can make a Tree Preservation Order (TPO) if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. In this respect, 'expediency' means that there is a risk of a tree/s being felled. An Order prohibits the cutting down, topping, lopping, uprooting or wilful destruction of trees without the Local Planning Authority's written consent.

- 5.2 Amenity, whilst not defined in law, is a matter of judgement for the Local Planning Authority. In terms of the purpose of TPOs, they 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. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future. Matters to consider are:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and
- contribution to the character or appearance of a conservation area.

Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

- 5.3 An Order comes into effect on the day that it is made, and once made, interested parties have a minimum of 28 days to make representations either supporting or objecting to the Order. A Local Planning Authority has six months in which to confirm the Order or to decide not to confirm it. An Order cannot be confirmed unless the LPA has considered duly made representations made in response to the Order.
- 5.4 In Ryedale, the confirmation of TPO's is a matter for the Planning Committee, following advice of the Tree Preservation Order Working Party. The Working Party is established to allow the matter to be considered in detail.

6.0 REPORT

Background

- 6.1 The tree which is the subject of this provisional TPO 346/2017, is a single Sycamore tree, located in a small triangle of land at the junction of Horsemarket Road and

Yorkersgate and is in close proximity to the Malton War memorial (Annex1 tree location). This area falls within the Malton Conservation Area. There is an extant planning permission 15/01093/FUL which proposes changes to the war memorial and the triangular area in which the tree is situated. This permission does not include the removal of the tree, and the retention of the tree in the scheme was a key factor in planning permission being granted.

- 6.2 A s.212 notification (Conservation Area Tree Notice) was received on the 2nd May 2017 (17/00504/CAT (annexe 2) to fell the tree. The notice then referred to a series of reasons why the tree could not be retained, and proposed a replacement from a selection of three trees. The Local Planning Authority must consider the amenity impact on the Conservation Area as a result of the proposed loss of the tree. In response to this CAT Notification, a TPO was served on the 12th of June 2017 (see annexe 3).

Tree assessment

- 6.3 The Sycamore tree is highly prominent when approaching all directions from both the East and West along York Road, Horsemarket Road and Yorkersgate. This is a function of its elevated position on the triangular plot, its height and its crown spread. The site is an important junction in respect of key roads within Malton.
- 6.4 The tree has a balanced form and its vitality is fair. It is considered that its presence reinforces the other individual trees in the locality and provides a valuable amenity in its own right, in a location which would otherwise be dominated by hard landscaping and constructed surfaces. It is a mature specimen in an area of the Malton Conservation Area in which mature trees are a key element of the character and appearance of the Conservation Area.
- 6.5 An independent tree survey report included in the CAT application undertaken by Mr Mark Feather on behalf of Malton Town Council and dated 1st of October 2016 states the following :-
"...the tree.. appeared in a sound healthy condition. The tree has a good full crown and contains some minor dead wood but this is not a concern. The life expectancy of the tree is therefore long, in excess of 50 years".
Officers have also viewed and evaluated the tree in the site. This evidence demonstrates that in terms of its health and appearance there are no issues with the tree which would undermine the provisional, or confirmed, TPO.
- 6.5 As part of the TPO making procedure, the tree has been assessed using the nationally recognised 'TEMPO' system. This has been developed to provide a transparent and objective means of evaluating and considering the merits of a Tree (or Trees) and whether their amenity value is such that it warrants protection. It is split into different aspects of the amenity value, and identifies a scoring system. A minimum of 12 points is required. The Sycamore subject to this provision TPO was found to have an overall score of 18 based on condition, retention span and public visibility, over 6 marks more than the threshold that determines the viability of TPO orders. This TEMPO scoring sheet is appended in annexe 4.
- 6.6 Since the initial assessment further evidence has come to light in the form of several historic photographs (see attached in annexe 5) which indicate that since the mid 19th century the triangular area has always contained large trees and these were retained/present during the construction of the War memorial in the early part of the

20th century. The Sycamore in question could date from the 1920's but the photographs certainly show the intention to allow trees to exist on the site and could constitute a further factor that would support the TPO order that of cultural commemorative or historic importance (see (d) on the TEMPO sheet).

Representations

- 6.7 In the following paragraph the objections to the order have been summarised and the full copies of objections are included in annex 6
Objections have been received from the following:-

John Howard on behalf of Malton War Memorial Restoration Committee
Rosemary Mitchell - The Landscape Design Company
Colin Jennings - on behalf Malton War Memorial Restoration Committee

Colin Jennings and John Howard on behalf of - WMRC

1. Replacement with a smaller tree would allow the improved visibility of the Cross of Sacrifice. The War Memorial has significant amenity value of its own.
2. The tree will prevent wheelchair access to the altered layout of the memorial therefore consider that there is a diminished public benefit argument.
3. No intrinsic beauty, contribution to landscape or scarcity. The tree is a self seeded sycamore, a "weed of the tree world" that dominates the cross and is inappropriate for the setting. It is an existing or near future nuisance.
4. No wildlife benefit
5. The tree is c.15m and Sycamores are normally 30-35m growth has been inhibited by the hard standing and walls. The tree has a number of dead branches and is later to come into leaf than adjacent Sycamores. It is a poor specimen.
6. The absence of railings, removed in during World War II, mean there is a 3 feet drop on the south eastern corner, the TPO is inhibiting access and public safety
7. The tree is a nuisance to passing high sided vehicles, as it overhangs on either side. Yorkersgate is a main route into town.
8. Errors in the TPO Scoring:
Incorrectly assessed, should be
Suitability for TPO- 1
Retention span 0 (due to the nuisance aspect)
Public Visibility 4
Other factors -Not applicable
Expediency Assessment - Not applicable
9. Procedural concerns in respect of the CAT notification- consider it has not been duly processed, as it was not on the Register. The reasons for the CAT have not been considered. The TPO is a 'deplorable over-reaction'. The Tree

was already protected and it is inconceivable that Malton Town Council would authorise the felling of a tree in a Conservation Area without permission.

10. The application for Heritage Lottery Funding stands at £97K, and as the Centenary Anniversary of the Great war Approaches it is an opportunity to fund the refurbishment of the monument.

R. Mitchell

1. Lack of amenity- the existing tree is not of high amenity value as it is estimated to last only 50 years. The tree has a low amenity value as its not "a very large tree with some visibility or a large prominent tree "
2. Compromises inclusive access, as steps need to be retained.
3. Proposing a replacement tree with a longer lifespan.
4. Better specimens along Horsemarket Road, Yorkersgate, and Talbot Hotel grounds, certain trees would provide a better backdrop to the memorial.
5. Nuisance lifting paving forming a trip hazard, drops honey dew onto stonework which discolours it with dust and pollution, interferes with passing high-sided vehicles - and due to the nuisance score a 0 for retention.

Appraisal of Representations

- 6.8 The Local Planning Authority has considered these duly made representations and provides the following response:

Matters of Procedure

- 6.9 The Local Planning Authority is guided by the online Planning Practice Guidance (DCLG), as the publication: Tree Preservation Orders: A Guide to the Law and Good Practice was withdrawn by DCLG in 2015. The CAT notice was recorded on the Planning Register, and the standard CAT consultation process undertaken. There has been no err in statutory proecedures. The TPO was also duly served within the 6 week notice period. The Local Planning Authority, not the Town Council as identified landowner, has the statutory responsibility in respect of considering works to Trees within a Conservation Area. The application is actually a Notice, whereby the Local Planning Authority have 6 weeks from the date of notice to consider whether the works are acceptable, and thereby allow the works. Inaction is deemed to be that the works are acceptable. As it is a notice, there is no ability to negotiate a different approach. If the Local Planning considers that the works are not acceptable, its next consideration is 'Is the tree of sufficient merit to warrant a TPO?'. Then it must consider the Tree through the TEMPO appraisal to establish whether the tree's amenity value is sufficient to warrant making the TPO. The Sycamore exceeded the minimum requirements. Therefore, the Local Planning Authority would have failed in its duties had it *not* made the provisional Order. The CAT notice is to 'fell the tree'-bringing an immediate threat. The reasons for the felling were set out in the Notice.

These reasons have also been re-iterated in the objections, and are considered below:

The Lack of Amenity Value

- 6.10 The Local Planning Authority must consider the amenity value of the tree in respect in making and confirming a Tree Preservation Order. It is considered that the Tree does not harm the integrity of the monument. The fact that the Sycamore is a non-native species is not a matter which would in itself result in the decision to not make a Tree Preservation Order. It is about the amenity value of the tree. Accordingly, the surrounding tree's ability to provide what has been suggested by the objectors as a more suitable setting to the monument, is also not material to the consideration of the amenity value of the Sycamore tree which is subject to this provisional TPO. The fact that the tree may be a 'self-sown' is also not material in considering amenity. That said, it is a remarkably well-positioned self-seeded tree, being centrally positioned in the triangular area of the site, and the Local Planning Authority is not aware of any evidence that the tree is self-seeded. As evidenced by the survey, and historic photographs, and which accompany this report, trees, and indeed this tree, have a long-standing connection to this important location. Officers consider that the tree has significant amenity value as set out in paragraph 6.2 and contributes to the character and appearance of the Conservation Area.
- 6.11 Comments have been made regarding the lack of habitat importance. The TPO has not be made for reasons of habitat significance.

Nuisance

- 6.12 The nuisance element has been attributed to the following matters:
- sap drop and impacts on stone work;
 - the longer term implications for paving; and
 - overhanging branches on the highway

These are not material nuisance matters which would warrant a 0-rated score on the retention span of the assessment. The sap is a product of aphids, and is a normal process, and with regular maintenance is not a reason give a 0 rating. The approved scheme has been designed to provide a more suitable surface treatment for both the tree and the wider site, with the retention of the tree in mind. The presence of the TPO does not preclude the consideration of appropriate tree management works which are considered both necessary for the benefit of the tree, and that ensure no adverse impact is experience to vehicles or the tree. It should be noted that the tree has been in existence for c.90 years, and within that time would have experienced countless passes by high-sided vehicles.

Compromises Inclusive Access and the Proposed Works to the Memorial Site

- 6.13 The importance of communities having a site of remembrance for the sacrifice's made in the field of battle is not underestimated by the Local Planning Authority. It is noted that much of the objections are focused around the inability of the War

Memorial scheme granted permission to be delivered. However, acknowledging the importance of the site for the local community, the planning application was approved in 2015 and shows the retention of the tree and includes a more suitable method of surfacing under the tree. The improved surface would be beneficial to the tree. No further changes to those originally proposed and approved in 2015 have been submitted. The fact that the railings were removed some 70 years ago leaving the identified 3ft drop is not a reason to have the tree removed. The approved application seeks to reinstate the railings, ensuring that this safety concern can be addressed.

Errors in the Scoring

- 6.14 The suitability of the tree to become subject of a Tree Preservation Order has been evaluated based on the information which has been provided as part of the CAT notification, and the objective, detailed evaluation of the merits of the tree.
- 6.10 As discussed above, a number of the objections relate to the perceived nuisance of the tree, and its anticipated lack of longevity. It is considered that none of those objections result in a level of nuisance from the Tree which would warrant a 0-rating in the TEMPO scoring.
- 6.11 The Tree is identified as being fair/satisfactory, and having a long life-span to warrant the making of the Order. In terms of visibility of the tree, the possibility that the tree's growth may have been impeded by the hard surfacing and walls has not diminished the contribution of the tree within the street scene and within the Conservation Area, it is still a large tree, and it has retained a balanced form, the tree stands in a 'purposeful' position within the site, and is very prominently situated. Indeed it is the very combination of the prominence and character of this tree which has prompted the Local Planning Authority to make a TPO, and which has then resulted in the objections to the tree's retention.
- 6.12 Since the serving of the provisional TPO, the 'other factors' score of 1 (section d of the Tempo sheet) could in light of further documentary evidence be increased to 3 due to the date and positioning of the tree in the site, and its potential commemorative associations.
- 6.13 The Expediency component of the assessment has also identified correctly that the tree was subject to an immediate threat, as discussed earlier in the procedural matters section, and that a s.211 Notice had been made to fell the tree. Therefore the scoring of 5 is correct.
- 6.14 In respect of the TEMPO evaluation, the Local Planning Authority considers that the evaluation was appropriate and justified and the evidence has been correctly considered.

The proposed works to the site- and the Heritage Lottery Funding

- 6.15 The Malton and Norton Rotary Club and Malton Town Council have plans for improvements to the site to mark the Centenary of the end of World War I. Permission has been granted in November 2015 for a scheme whereby the tree is retained, and utilises more suitable surface treatment. There is no subsequent application to consider a revised layout, nor has such an application been suggested

as part of this making of the Tree Preservation Order. The Heritage Lottery Funding is not a material consideration in respect of the merits of retaining the tree.

Conclusion

- 6.16 The significant amenity value that this tree provides to the locality is considered to justify the making, and confirming of a TPO, when weighed against the objections put forward. This is borne out by the high score the tree achieves in the Tree Evaluation Assessment attached at Annex 2.
- 6.17 The owners of the tree/interested parties have put forward a scheme for the War Memorial Area which was accepted by all parties at the time, and which retained the tree in situ and provided acceptable access improvement and resurfacing of the triangular area under the tree.

7.0 IMPLICATIONS

- 7.1 The following implications have been identified:
- a) Financial
No financial implications identified
 - b) Legal
A decision to confirm the Order must be made within six months of the Order being made.
 - c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)
No other implications identified

8.0 NEXT STEPS

- 8.1 The Planning Committee will consider the recommendations of the Working Party at its next meeting. If the Committee resolves to confirm the Order all of the interested parties will be notified and the notice will provide details of the grounds on which an application can be made to the High Court. (The legislation provides no right of appeal to the Secretary of State against an authority either making or confirming an Order.)
- 8.2 The Council must make a formal note of its decision in relation to the Order. If the Order is confirmed it will be recorded in the Land Charges Register. If the Order is not confirmed, its operation will cease with immediate effect.

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Annexes:

Annexe 1 - Tree's Location

Annexe 2- CAT Notice

Annexe 3- The TPO

Annexe 4 - TEMPO Scoring

Annexe 5- Historic Photos

Annexe 6 - Representations

Background Papers:

Planning Application reference 12/00261/FUL

Planning Application reference 15/01093/FUL

Background Papers are available for inspection at:

<http://www.ryedale.gov.uk/residents/planning/view-a-planning-application.html>