



PART B: RECOMMENDATIONS TO PLANNING COMMITTEE

REPORT TO: TREE PRESERVATION ORDER WORKING PARTY

DATE: 12 DECEMBER 2018

**REPORT OF THE: SPECIALIST SERVICES LEAD (HEAD OF PLANNING)
GARY HOUSDEN**

**TITLE OF REPORT: TREE PRESERVATION ORDER No: 347/2018
KIRBYMOORSIDE PIERCY END**

WARDS AFFECTED: KIRBYMOORSIDE

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: 347/2018

3.0 REASON FOR RECOMMENDATION

3.1 To protect the amenity value that these trees provides to the locality.

4.0 SIGNIFICANT RISKS

4.1 There are no significant risks associated with recommendation.

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 (LPA). 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 trees which are the subject of this provisional TPO 347/2018, are both Silver Birch trees, located in the footway on Piercy End Kirkbymoorside adjacent to numbers 43 and 48 (Annex1 tree location). This area falls within the Kirkbymoorside Conservation Area.

- 6.2 A s.212 notification (Conservation Area Tree Notice) was received on the 11th June 2018 (18/00599/CAT (annexe 2) to fell the trees. The trees are owned by North Yorkshire County Council Highways (NYCC). The notice referred to a series of reasons why the tree could not be retained, and proposed no replacement. The Local Planning Authority must consider the amenity impact on the Conservation Area as a result of the proposed loss of the trees. In response to this CAT Notification, a TPO was served on the 23th of July 2018 (see annexe 3).

Tree assessment

- 6.3 The Birch trees are highly prominent when approaching from both the north and south along Piercy End. This is a function of their prominent position on the Main Street, their height and crown spread. The location is an important position in respect of key roads within Kirkbymoorside.
- 6.4 The trees T1 and T2 have balanced form and fair vitality although both trees do contain physical defects in the form of weak forks and areas of decay. It is considered that their presence provides a valuable amenity in their own right, in a location which would otherwise be dominated by hard landscaping and constructed surfaces. They are both mature specimens in an area of the Kirkbymoorside Conservation Area in which mature trees are extremely rare but in which they form a key element of the character and appearance of the Conservation Area.
- 6.5 A brief note accompanying the application from a tree specialist employed by NYCC, states that :-
"In my view, both trees should be removed. The one at the southern end of Piercy End outside no 48 has extensive decay in a number of limbs and these will eventually fail. The one outside no 43 Penny place has been pruned very poorly in the past which has created a weak union and I would therefore recommend this is also removed ... "
- 6.6 It is considered however that the physical defects noted by the applicants tree specialist do not amount to a valid reason to remove the trees at this time. Both trees badly need some management to ensure they are safe in their location on a busy street but with careful management and regular inspection these trees could continue to provide benefits to the locality for many years to come. This evidence demonstrates that in terms of health and appearance there are no issues with the trees which would undermine the provisional, or confirmed, TPO.
- 6.7 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 2 birch trees subject to this provision TPO were found to have an overall score of 15 based on condition, retention span and public visibility, over 3 marks more than the threshold that determines the viability of TPO orders. This TEMPO scoring sheet is appended at annexe 4.
- 6.8 Since the initial assessment further evidence has come to light in the form of a historic photograph (see attached in annexe 5) which indicate that an avenue of trees had been planted in the late 1940's or early 1950's and T1 and T2 may well be the last remaining trees from this era, or perhaps more recent replacement plantings.

Representations

- 6.9 No objections have been received to the order and the applicant has not made representations in response to the order.

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 – Location Plan

Annexe 2- CAT Notice

Annexe 3- The TPO

Annexe 4 - TEMPO Scoring

Annexe 5- Historic Photos

Background Papers:

CAT Application

Background Papers are available for inspection at:

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