



PART B:	RECOMMENDATIONS TO PLANNING COMMITTEE
REPORT TO:	PLANNING COMMITTEE
DATE:	28 MARCH 2023
REPORT OF THE:	PLANNING AND DEVELOPMENT MANAGER JILL THOMPSON
TITLE OF REPORT:	TREE PRESERVATION ORDER No: 360/2022
WARDS AFFECTED:	NORTON WEST WARD

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider confirming with amendments Tree Preservation Order (TPO) 360/2022 at THE SPINNEY, 3 PINWOOD, NORTON, MALTON, NORTH YORKS., YO17 9JT.

2.0 RECOMMENDATION

- 2.1 That the Planning Committee is recommended to:
- (i) Confirm Tree Preservation Order No: 360/2022 with modifications

3.0 REASON FOR RECOMMENDATION

- 3.1 To protect the amenity value that the trees provide to the locality.

4.0 SIGNIFICANT RISKS

- 4.1 There are no significant risks associated with recommendation. The TPO working party have assessed the objections to the making of the Order and proposed amendments.

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 trees 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 destruction or 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 contested 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

DESCRIPTION OF SITE AND TREES

- 6.1 The proposed TPO covers 1 no. individual Horse Chestnut tree (T1) and 11 no. Scots Pine trees (G1). The trees are located on raised banking to the rear of six properties (21-31 The Ridings) to the east and to the front of two properties accessed by the aptly named road - Pinewood. The trees are situated about 13-14m from dwellings. They are roughly equidistant from properties on both Pinewood and The Spinney. The trees are viewable from Pinewood to the west of the trees and public highway and pedestrian walkways of The Ridings to the east and Cornlands to the southeast.

- 6.2 The trees (T1 and G1) indicated on the attached TPO plan (Annexe 1) should be viewed in conjunction with the accompanying 'TEMPO' TPO assessment (Annexe 2).
- 6.3 An urgent request to consider protecting the trees came via Cllr Dinah Keal further to reports from local residents that did not wish to see the trees felled. It is understood neighbouring properties have complained to the tree owner about the trees and some resident situated on The Ridings wanted the trees to be felled. Around the time that the request to consider protection was made the owner sought quotes from tree surgeons to fell the subject trees. This prompted an urgent TPO evaluation on 04.10.22.
- 6.4 The proposed felling of the trees was reported on the Yorkshire Live website 06.10.2022 in an article entitled "Yorkshire woman's fury as huge trees threatened to be cut down at end of her garden" (see article in full at Annexe 5).

7.0 TREE ASSESSMENT

- 7.1 As part of the TPO making procedure, the trees were 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 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.
- 7.2 The trees were assessed on 04.10.22 and found to have reasonable health and form. There were no obvious visible defects such as fungal fruiting bodies or structural hazards.
- 7.3 The trees were assessed in detail. The Horse Chestnut (T1) was assessed individually and the 11no. Scots Pine (G1) were evaluated as a group. Scores were given based on condition, retention span and public visibility.
- 7.4 With a total score of 19, T1 was found to be 7 points above the threshold that determines the viability of TPO orders and rated as 'definitely merits TPO'.
- 7.5 G1 receive a total score of 14 and was 2 points above the threshold that determines the viability of TPO orders and rates as 'TPO defensible'.
- 7.5 This TEMPO assessment was undertaken by myself, a qualified arboriculturalist with over twenty years' experience in arboriculture.

Tree assessment- Amenity

- 7.5 Photographs of the trees can be found in Annexe 3.
- 7.6 Horse Chestnut (T1) is in good condition and is therefore highly suitable for TPO, hence it received a top score of 5. It has an anticipated retention span of between 40-100 years and has a good form with an attractive open rounded crown. It is a large tree clearly visible to residents on Pinewood and to nearby residents living on the east side of tree on The Ridings. Whilst visibility from the public highway is currently limited T1 can clearly be seen above the rooftops of 25/27 The Ridings as you drive or walk down The Ridings from Langton Road. This tree has the potential to provide even

greater amenity as it continues to reach maturity and will eventually be more widely visible above the rooftops from The Ridings. The tree's inclusion in the order is therefore recommended to ensure long-term retention.

- 7.7 G1 – 11 no. Scots Pine trees - the condition of the trees are fair to satisfactory and with an anticipated retention span of between 20-40 years they are considered to be suitable for TPO. The trees vary in form and visibility and score 3 (suitable) in terms of public visibility. The trees are estimated to be around 40-60 years of age. They are clearly visible from Pinewood, above the rooftops of adjacent properties on The Ridings and can also be glimpsed between properties along 21-31 The Ridings. Individually these tree may have varying shaped trunks it is noteworthy that close up it is clear that the eastern side of the trees have receive more substantial pruning historically. Nevertheless, as a group they are an attractive feature of the estate that offers a year round splash of colour in a landscape predominantly laid to grass with not large mature trees in the gardens. The orange-brown and almost copper coloured bark of the Scots Pines are particularly attractive too.
- 7.8 Since the provision order was served the Council has noted that one of the trees is dead and therefore should not be included in the order, therefore the total number of trees protected in G1 should be 10.
- 7.9 G1 is a group of trees that are large enough to be visible above the rooftops from different public viewpoints nearby. Images from the highway shows that they provide an attractive and prominent landscape feature on the local skyline, particularly when walking or driving towards 21-31 The Ridings.
- 7.10 The wildlife/habitat value of trees increases as they age. The trees is important for local biodiversity both now and in the future. G1 are evergreen trees a particularly beneficial habitat to nesting birds.

8.0 Tree assessment- Expediency

- 8.1 There is a known threat to the trees. If the trees are not protected the owner will fell them (or will allow neighbours to fell them).
- 8.2 The inclusion of T1 and 10 trees in G1 is recommended to ensure the long-term retention of attractive tree cover and to ensure that all future tree work is in accordance with best practice and standards (BS3998).
- 8.3 The making of a TPO will safeguard long-term retention of high quality tree cover in a populated residential location and when the time comes to fell trees in future will ensure continuity of tree cover in perpetuity, thereby maintaining the special character of the area.

9.0 Representations

Direct quotations are below (in *blue italic type*) and the Officer response where it is deemed appropriate can be found in *black italic type*.

9.1 Objections (2 no.)

Comments were received from neighbour, Stuart Gordon, 27 The Ridings, Langton

Road, Norton on Derwent, YO17 9AP (the original email can be found in full at Annexe 4).

The main reasons he objects are as follows:

- 9.1.1 *"It seems your report is compiled from your observations that were made from beneath the trees and from the Pine Tree Drive side of these trees"*

This is not the case, the trees were viewed from various locations including Langton Road, The Ridings, Cornlands and Pinewood. The trees were also seen from the rear of 29 The Ridings during the TPO Working Party site visit.

- 9.1.2 *"Our main concern is one of impending danger that these trees pose by leaning over towards our property"*

The trees were assessed on 04.10.22 and found to have reasonable health and form. There were no obvious visible defects such as fungal fruiting bodies or structural hazards. If any of the trees were found to be unsafe in future the owner has a duty of care to neighbours and road users to ensure that they make them safe or remove them.

- 9.1.3 *"Unattractive"*

That is not the view borne out of the TEMPO assessment. See comments 7.6 to 7.9 (above).

- 9.2 Objections received from Mr M Arnold from 29 The Ridings, Norton, North Yorkshire, YO17 9AP (objection and accompanying photographs can be found in full at Annexe 4).

The main reasons he objects are as follows:

- 9.2.1 The trees are restricting the growth of 6 fruit trees and grapevine that grow in his garden.

- 9.2.2 The trees are *"currently offering very little amenity value in terms of conservation"*

The conservation or wildlife value of the trees was not a consideration in the TEMPO assessment which is largely based on visual amenity and expediency.

- 9.2.3 The dropping of the pine needles and cones is a nuisance.

- 9.2.4 The trees offer *"no positive amenity value to the character of the local landscape"*

- 9.2.5 Some of the trees are *"showing sign of poor health, it is unlikely that they will ever offer more positive amenity value in the future"*

When inspected the trees were found to have reasonable health and form. Twisted trunks and branches and trunks with slight leans were considered to be interesting natural form and not a significant risk or unattractive feature.

Some of the overhanging branches have been pruned excessively in the past which has interfered with the natural form. This is more noticeable when seen more closely from the eastern side of the trees.

The Horse Chestnut tree (T1) has a very balanced shape and the potential to be a more prominent tree in future.

- 9.2.4 Risk to structural integrity of property – *“The Scots Pine roots have grown underneath the house and have been found in the front garden 24 metres away from the site of the pines”*

Mr Arnold appears to be inferring that the presence of roots presents a risk to the structural integrity of the property however provides no professional evidence such as a structural engineer’s report to qualify this. Subject to the TPO being confirmed, the Council would consider any application to remove trees where there is clear evidence of them to be causing structural damage to properties. Homeowners are advised to contact their house insurance company if they are concerned that trees are causing structural damage.

- 9.2.5 *“... the trees are leaning towards Mr Arnold’s property, and this has been getting progressively worse”*

The trees are considered to be in reasonable health and form (save for the deleted tree). If they had not been- this TPO would not have been made. If, in the passage of time, there is clear evidence that any of the trees are dangerous then the owner can apply to remove the tree(s), and this will not be contested. The safety of trees is, nevertheless, the responsibility of the tree owners.

9.3 Support (1 no.)

Comments were received from neighbour, Sarah and Ian Sharpe, Mill Beck House, 2 Pinewood, Norton, Malton, YO17 9JT (see Annexe 5).

They express support for the order and state:

“We would like to express our support for the order”

“The trees are quite a feature of the area, especially the Horse Chestnut tree”.

9.4 Neutral comments (0 no.)

No neutral comments were received.

10.0 Other factors

10.1 Whilst the ability of trees to carbon capture and provide wildlife habitats are not a material consideration in the confirmation of TPOs, it is of note that trees provide essential habitat for birds and other wildlife throughout their life. Each tree will typically absorb over a tonne of CO² during its lifetime.

11.0 Conclusion

11.1 The Local Planning Authority has considered all duly made representations and provides detailed responses in section 9.

11.2 In making the Order in the first instance, the Local Planning Authority sought to evaluate the trees situated to the south of THE SPINNEY, 3 PINewood, NORTON, MALTON, NORTH YORKS., YO17 9JT. T1 Horse Chestnut was considered to definitely merit a TPO and protection of the 11 Scots Pine trees was considered defensible.

11.3 Since making the order the Council has noted that one of the Scots Pine trees in G1 is dead and therefore should not be included in the order. The schedule and title of the order will need to be modified to clearly show that the order affects 10no. not 11no. Scots Pine trees in G1. Modification of the order is therefore proposed.

11.4 Further to a site visit with the TPO Working Party on 16.03.23 (see Annexe 8 for minutes) **the working party recommend that TPO 360/2022 is confirmed with modifications** as detailed in the minutes.

11.4 In confirming the TPO with modifications the Council seeks to protect trees that are at risk of being felled which would be a loss to the amenity and a detriment to the area.

11.5 The significant amenity value that the trees provide and will continue to provide to the locality in future is considered to justify the making, and confirming of a TPO, when weighed against the objections received. This is borne out by the TEMPO assessments from 04.10.2022 (Annexe 2).

11.6 It is of note that the tree owner has not objected to the making of the order.

11.7 No objections to the Order were received from parish or district councillors.

12.0 IMPLICATIONS

12.1 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 have been identified.

13.0 NEXT STEPS

- 13.1 The 28.03.22 Planning Committee will consider the recommendations of the Working Party at its meeting. If the Committee resolves to confirm the Order with modifications, 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.)
- 13.2 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- TPO tree location plan for TPO No. 360/2022
- Annexe 2 – TEMPO Tree Evaluations
- Annexe 3 - Images of the trees
- Annexe 4 – Emailed comment (objection)
- Annexe 5 - Emailed comment (support)
- Annexe 6 – Yorkshire Live news article
- Annexe 7 – Copy of signed and sealed provisional order for TPO No. 360/2022
- Annexe 8 – TPO Working Party Minutes
- Annexe 9 – Locations of neighbour representations