



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: 361/2022
WARDS AFFECTED:	NORTON WEST WARD

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider confirming with amendments Tree Preservation Order 361/2022 on trees located on land at **Flat 1, 125 Langton Road, Norton, Malton, North Yorkshire YO17 9AE**.

2.0 RECOMMENDATION

- 2.1 That the Planning Committee is recommended to:
- (i) Confirm Tree Preservation Order No: 361/2022 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 or pruned severely so as to spoil the amenity of the trees or be detrimental to the health of the trees. 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 six individual trees located on land at Flat 1, 125 Langton Road, Norton, Malton, North Yorkshire YO17 9AE. Flat 1 is one of five flats within Grove House and owns the land on which the trees are situated. The driveway passes 5 of the 6 trees to four further dwellings within the boundary of the site.

- 6.2 At the time that the request to protect the trees was received they were not subject to any statutory controls. An urgent request to consider protecting the trees came via Cllr Dinah Keal further to reports from a local resident. It is understood from information that the Council received at the time that the trees were due to be felled in the immediate future.
- 6.3 At the time the order was made it was understood that at least two of the 6 trees, T2 and T3 as identified on TPO plan (see Annexe 8) were under imminent threat of felling.

7.0 TREE ASSESSMENT

- 7.1 The trees were assessed on 08.11.22 and found to have reasonable health and form.
- 7.2 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.
- 7.3 The trees on the property were assessed individually and scores were given based on condition, retention span, public visibility and expediency.
- 7.3 With a total score of 20, the trees were found to be exceed the threshold that determines the viability of TPO orders. The protection of T1, T4 and T5 were considered 'defensible'. T2, T3 and T6 were considered to 'definitely merit TPO'.
- 7.4 The TEMPO assessments were 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 7.
- 7.6 Each tree has been individually assessed:

T1 – Purple Beech- the tree's condition is fair (3) and an anticipated retention span of between 20-40 years (2) and is therefore suitable. The tree's inclusion in the order is recommended to ensure retention. It is a large attractive tree clearly visible to the public and scores 5 in terms of public visibility. The tree has good form (2) and its attractive purple leaf colour provides additional visual interest. This tree is not currently considered to be under threat therefore its inclusion in the order is for precautionary reasons.

T2 – Small-leaved Lime - the tree's condition is fair (3) and an anticipated retention span of between 20-40 years (2) and is therefore suitable. The tree's inclusion in the order is recommended to ensure retention. It is partially visible from Langton Road and scores 3 in terms of public visibility. The tree has reasonable form (1) and is subordinate to the adjacent Beech (T1) and Maple (T3) which are more prominent. This tree is known to be under threat.

T3 – Norway Maple – the tree's condition is fair to good (3) and has the potential of a further 40-100 years safe useable life expectancy. It is a large tree, visible from Langton Road with lower parts of the tree obscured by T4 Yew. T3 and T1 effectively form one crown, therefore this tree is considered to be important for cohesion of the group (4). This tree is known to be under threat.

T4 – Yew – is in good condition (5) and is therefore considered to be highly suitable for inclusion in the TPO (5). Whilst it is currently visually subservient to the other trees (3) it has the potential to grow taller and live for 100+ years (5). This tree is not currently considered to be under threat therefore its inclusion in the order is for precautionary reasons.

T5 – Maple - the tree's condition is fair (3) and an anticipated retention span of between 40-100 years (4) is therefore considered suitable. It is a prominent tree at the entrance to the property and is clearly visible to the public from Langton Road. This tree is not currently considered to be under threat therefore its inclusion in the order is for precautionary reasons.

T6 – Holm Oak – the tree has good health and form and is considered to be highly suitable (5) together with a conservative estimate of lifespan potential between 40-100 years. The tree is directly adjacent to the public highway and is clearly visible to the public (4). This evergreen species of Oak is not commonly planted in residential locations (2) so it is an unusual specimen in that respect. It's evergreen nature screen the property from the road completely. This tree is not currently considered to be under threat therefore its inclusion in the order is for precautionary reasons.

7.7 The trees are large and clearly visible from different public viewpoints along Langton Road and The Ridings (with the exception of T4 which is relatively small-medium sized in comparison). The trees are attractive and prominent landscape features on the local skyline.

7.8 The wildlife/habitat value of the trees will increase as trees age. The trees are important for local biodiversity both now and in the future.

8.0 Tree assessment- Expediency

8.1 T2 and T3 scored 5 in relation to the expediency, this is due to the immediate threat of tree removal. The removal of these trees is considered to be detrimental to the amenity of the area therefore the serving of a tree preservation order seeks to prevent the loss of attractive mature trees within the residential area of Norton.

8.2 Based on the resultant scores T2, T3 and T6 are considered to **Definitely Merit TPO** and the inclusion of T1, T4 and T5 is also considered to be **Defensible** for precautionary reasons. The TEMPO scoring reflects this expediency.

8.3 The inclusion of T1 to T6 in the TPO 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).

8.4 The making of a TPO will safeguard long-term retention of high quality tree cover in an attractive rural location and when the time comes to fell trees in future will ensure continuity of tree cover in perpetuity, thereby maintaining the verdant character of the area.

9.0 Representations

Representations are below (in italicised type)

9.1 Objections (3 no.)

- 9.1.1 Comments were received by email from neighbour Mr P Johnson, 137a Langton Rd Norton, YO17 9AE. The email including photographs supplied can be found in full at Annexe 9A.

"I strongly disagree with the TPO in relation to trees T2 and T3" for the following reasons:

- 1 *They are too big given their proximity and overhang the property.*
- 2 *Block light*
- 3 *Excessive bird excrement on my windows, outdoor furniture and patio. (see Annexe 9A for photos)*
- 4 *Drop sap*
- 5 *Anxiety over the health of the trees, "following many large branches falling onto my roof and patio in the past". (see photo of fallen branch, Annexe 9A)*
- 6 *Concern that the trees will damage property and drains.*
- 7 *Scale bug infestation present on these trees. (see photos, Annexe 9A)*

Bird mess and sap from trees can be a nuisance, however it can be washed away with soap and water. Scale insects are not poisonous, do not bite and therefore should have no impact on Mr Johnson. Scale insects are not harmful to trees, they are part of the food chain and attract natural predators and parasites such as ladybirds, birds and parasitic wasps.

The trees have been growing on the site for a considerable period of time. Trees are not treated in the same way as high hedges: the public interest of the tree's retention outweighs any perceived or actual overshadowing as a result of the tree's presence. However, your officers consider that Mr Johnson or the owners could apply to carry out remedial works which may improve things, including some sensitive reduction of branches that overhang his property which would improve light conditions and provide a greater sense of space.

The trees do not appear to have been maintained by the owners for quite some time. This is simple a routine activity that could be done every few years to remove dead branches that have a higher likelihood of falling off during strong winds. Removal of deadwood is exempt and does not require prior consent from the Council. With the exception of T3, the trees appear to have reasonable health and form and there are no obvious defects. Routine proactive management of the trees should identify safety issues so that they can be acted upon in a timely manner.

Mr Johnson's concerns about damage to property and drains have no evidence to support this position. If evidence of damage is provided by a suitably qualified professional such as a structural engineer, this would be considered through the tree work application process (e.g. to fell a tree on grounds that it is causing structural damage).

- 9.1.2 Comments were received by email from neighbour Steve Mullins (Flat 4) 125 Langton Road, Norton, YO17 9AE. The email can be found in full at Annexe 9A.

Mr Mullins comments focus mainly on T2 and T3 and suggests that the Officer has categorised the trees as having “*significant health and form*” in the residents’ consultation letter that he received. The Officer’s view expressed in the letter to residents was that the trees have “reasonable health and form” hence those particular trees were assessed to be “fair” in the respective TEMPO assessments (see Annexe 2 and 3).

Mr Mullins expresses the view that the trees do *not* “*contribute much to the attractive tree cover adjacent to Langton Road, because they are set back quite a few yards from that road and barely visible from either direction*”. The trees were found to be visible from several places along Langton Road as well as from neighbouring roads The Ridings, The Chase, Stirrup Close and Saddle Close.

Mr Mullins suggests in his comments that the Officer view is that T2 and T3 are “*problematic*” or “*unhealthy*”. This is not the conclusion reached through the TEMPO assessment. He also goes on to say “*On a personal front, should either of these trees shed branches, or fall, I would suffer severe inconvenience getting to and from my home – as would my adjacent neighbours*”. If the trees are in poor health or unsafe then the owners can provide evidence of this in an application to the Council.

- 9.1.3 Comments were received from the owners of the subject trees protected by TPO 361/2022 - Michael Guy and Wendy Cunnington, (Flat 1) Grove House, 125 Langton Road, Norton, YO17 9AE. The letter can be found in full at Annexe 9B.

The owners have no objection to the order being made on T4 Yew or T5 Sycamore.

It is of note that Mr Guy and Ms Cunnington state there are no objections to a further 3 of the remaining 4 trees subject to certain provisos. The provisos are as follows:

T1 Purple Beech – no objection if they can reduce crown away from property by a minimum of 5% to clear roof, soffits, slates, etc.

T2 Common Lime – no objection if they can remove deadwood and crown thin resulting in 20% crown reduction to balance the “*one-sided*” crown which “*give us safety concerns for the potential impact on the property next door*”. Note – prior consent from the Council is not required to remove dead branches; they can be removed any time. No significant defects were noted during the TPO Working Party visit. Application to carry out remedial pruning can be dealt with through the usual application process. If there was any clear evidence that the trees are dangerous then the owner can apply to remove the tree, and this will not be contested. Safety of the trees is, nevertheless, the responsibility of the tree owners.

T6 Holm Oak – No objection if they can carry out “*minor crown reduction on the road side of the tree... within the next 2 years...to allow unimpeded vehicular access along the road and safe pedestrian access along the adjacent footpath.*”

The owner can cut back branches to the edge of the carriageway and above the road to a height of 5.2m above road level and up to 2.2m above the path without the requirement to apply for the work as this work is considered to be exempt under the Highways Act and is clearly in the interests of public safety.

Unfortunately it is not possible to say at this stage whether those provisos would be supported without going through the usual tree work application process.

Objection to retention of T3.

The owners object to the TPO on T3 Norway Maple on the grounds that it is one-sided, a risk to people and property and would give improved views of the Beech tree (T1). The owners would therefore like to fell the tree in order to *“remove safety issues...and retain a 3 metre monolith which would develop as standing deadwood”*. They offer to replant with a new Field Maple or Wild Cherry tree in mitigation.

Mr Guy and Ms Cunnington express the view that T3 Norway Maple should be removed for the following reasons:

- The majority of the crown directly hangs over the property next door and should the tree lose a major limb this would cause severe damage to the property and possible risk of injury to its inhabitants.
- Because the weight of the tree is very unevenly distributed it is more likely to be prone to root plate lifting. Given the location of the tree, such an event would be catastrophic.
- Whenever there have been high winds the tree sheds some timber. Although this is usually small amounts of deadwood, the tree has shed live branches.
- The lower limb has a significant scar which although apparently slowly healing over may well have allowed fungal infection to already have penetrated the tree.
- There are historic scars on the main stem of the tree which may similarly have allowed fungal infection to enter in the past.
- The tree will never develop into a healthy, balanced specimen as its proximity to other trees, primarily the beech will prohibit this. Beech is known for casting deep shade which makes it difficult for any plants to develop; this would preclude any branches developing on the northside of the maple.
- The removal of the maple would allow the beech to continue to develop a healthy, balanced crown.
- The loss of amenity value caused by removing the Norway maple is likely to be minor as its removal would give improved views of the lime and the beech, the latter of which is the far more spectacular tree.

9.2 Support (1 no.)

Comments were received by email from neighbour Marc Fothergill 137a Langton Rd Norton, YO17 9AE. The email can be found in full at Annexe 10.

“In response to the TPO I would like to thank you for acting to stop removal of said trees and for protecting them.

As a resident of 137a Langton Rd I love looking out at the maple, Lime and beech trees on a daily basis. They are important to me and my family and are an important feature of the surrounding area.

The mature trees are very prominent and provide shade, shelter and food to many resident and visiting bird species. From small garden birds to tawny owls the trees provide year round cover and interest and are by far the largest trees in the immediate area. The holm oak on the edge of the property is the largest in the area and again essential habitat that needs protecting.

We often sit in the garden of a summer evening listening to the leaves blowing in the breeze, watching the birds and watching the local bats flit amongst the branches feeding on the insects that thrive in the tree cover.

I also understand that all urban trees need ongoing monitoring, remedial pruning works and sometimes in the worst case scenario removal. I'm hopeful that with a TPO in place the trees will be protected and cared for and any remedial works applied for in accordance with local planning regulations and legislation. I am not against any remedial pruning works to these trees but outright removal would concern me regardless of any stipulated replanting scheme"

9.3 Neutral comments (1 no.)

Neutral comments were received by email from neighbour Elizabeth Brown from, (the original email can be found at Annexe 11).

"I see these trees every day they are all very ordinary trees which do need a good deal of attention particularly one which has a very bad lean on it, also these trees have many roots which do cause problems with the drainage from time to time."

"The only tree worthy of a TPO is the Copper Beech which is a beautiful old tree, half way up the drive."

"As for the trees being an attractive tree cover the only people that see these trees are all the residents living at 125, 129,131, 133, &135, and are not seen by general passers."

Ms Brown expresses the view that one of the trees has a "very bad lean" although does not specify which one. Whilst I would acknowledge that not all the trees have a perfectly vertical trunk, there is nothing to suggest that these are not natural or the trees are at risk of collapse. If the Council were to be provided with evidence that any of the tree are unsafe or are causing damage to drainage this could be considered through the normal application process.

The trees are not only seen by residents living at 125, 129,131, 133, & 135 Langton Road. They are significant in size, can be seen above the rooftops, from the roadside and appreciated from several locations including Langton Road, The Ridings, The Chase, Stirrup Close and Saddle Close.

10.0 TPO Working Party Site Visit

10.1 As a contested made TPO, the TPO Working Party assesses the proposed making of the Order.

10.2 When the TPO Working Party Site Visit was carried out on 16.03.23 the condition of T3 was inspected in more detail. Unfortunately the tree was found to have a large exposed wound on the southern side of the trunk at around 3m above ground level which was not picked up on during the TEMPO evaluation. Furthermore one of the primary branches that overhang the neighbouring property (no. 137) was found to have a large cavity at the crook of the branch. It is not known whether the large partially occluded cavity was the result of poor historic pruning or previous branch failure. The crown of T3 was also found to have a pronounced bias towards the neighbouring property. In itself this would have been acceptable, however when combined with the

evident decay cavities present the Officer view was that the tree had significantly higher likelihood of tree failure.

- 10.3 The tree referenced T3, is a specimen which is in a more vulnerable condition, and on the advice of the working party will now be excluded from the order.
- 10.4 Concerning T2, no supporting evidence has been provided by either Mr Mullins or the owners to suggest that the tree is unhealthy or has significant defects that require immediate action or that the trees are unsafe in any way.
- 10.5 On balance, the TPO Working Party decided it would be appropriate to exclude T3 from the order. The neighbouring trees T1 and T2 were considered to be better specimens and have potential to fill the void that T3 will leave.

11.0 Other factors

- 11.1 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.

12.0 Conclusion

- 12.1 The Local Planning Authority has considered all duly made representations and provides detailed responses in section 9.
- 12.2 In making the Order in the first instance, the Local Planning Authority sought to evaluate 6 individual trees on land at Flat 1, 125 Langton Road, Norton, Malton, North Yorkshire YO17 9AE. T2, T3 and T6 were considered to 'definitely merit TPO'. The protection of T1, T4 and T5 were considered 'defensible'. This is borne out by the scores the trees achieved in the TEMPO assessments from 08.11.2022 (Annexe 1-6).
- 12.3 Since making the provisional order a more detailed examination of the trees was carried out during the TPO Working Party visit on 16.03.23. During that visit it was noted that T3 had significant defects that were not identified during the TEMPO evaluation and the TPO Working Party considered it to be appropriate to exclude T3 from the order. The schedule and title of the order will need to be modified to exclude T3.
- 12.4 The species of T2 and T5 were not identified correctly during the TEMPO evaluation and should be corrected, it is therefore for avoidance of doubt it is proposed that the species are modified on the schedule.
- 12.5 Further to a site visit with the TPO Working Party on 16.03.23 (see Annexe 14 for minutes) **the working party recommend that TPO 361/2022 is confirmed with modifications** as detailed in the minutes.
- 12.6 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.
- 12.7 In confirming the TPO the Council seeks to protect healthy and attractive trees that are at risk of being felled. This would result in loss to the amenity of the area and would be a detriment to the area. *The Tree Preservation Order will ensure the long-term*

retention of attractive tree cover that is publically visible from Langton Road and other neighbouring roads. This will ensure that trees are not needlessly felled and that all future tree work is in accordance with best practice and standards (BS3998).

- 12.8 The 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 one representation supporting the order, one representation that was neutral and three representations that were objections.
- 1.9 Any concerns about overhanging branches can be overcome by either owners, neighbours or agents applying to carry out remedial work.
- 12.10 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 28.03.23 Planning Committee will consider the recommendations of the Working Party at its 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.)
- 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 1-6	TEMPO Tree Evaluations
Annexe 7	Images of the trees
Annexe 8	TPO tree location plan for TPO No. 361/2022
Annexe 9A	2no. objections
Annexe 9B	1no. objection from owner
Annexe 10	1no. emailed representations (support)
Annexe 11	1no. emailed representations (neutral)
Annexe 12	Plan indicating addresses where representations have been received from
Annexe 13	Copy of signed and sealed provisional order for TPO No. 361/2022
Annexe 14	TPO Working Party Minutes