

RYEDALE DISTRICT COUNCIL

TREE PRESERVATION ORDER APPEALS WORKING PARTY

16 March 2015 at 10:30a.m.

Report of the Head of Planning & Housing

Objections to Tree Preservation Order No. 338/2014

Purpose of the Report

To advise members of the objections received in connection with the above Tree Preservation Order and to make recommendations on confirmation.

1. INTRODUCTION:

1.1 This Order protects a single Monterey Pine tree growing adjacent to the western boundary of Heather Grange, Sheriff Hutton. The tree is not in the ownership of the objector. The tree is in the ownership of Mr B Cox and Helen Hendry of Heather Grange, Church End Sheriff Hutton. The location of the tree is shown on the TPO map at Annex 1

1.2 The Order was made following a notice under section 211 of the Town & Country Planning Act 1990 Trees in Conservation Areas, to fell the tree by the tenants of the neighbouring property, No. 6 The Croft.

1.3 AMENITY:

1.4 Prior to making the Tree Preservation Order the tree was assessed under the criteria of the 'Tree Evaluation Method for Preservation Orders' which is one of the nationally recognised methods of assessing the suitability of trees for inclusion within a tree preservation order. The evaluation of that tree is at Annex 2.

1.5 The principal reason the Council must take into account when making TPO's is the value of the tree in terms of amenity. The Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath, although, exceptionally, the inclusion of other trees may be justified. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyeshore or future development; the value of trees may be enhanced by their scarcity; and the value of a group of trees or woodland may be collective only.

- 1.6 Other factors, such as importance as a wildlife habitat, may be taken into account which alone would not be sufficient to warrant a TPO. In the Secretary of State's view, it would be inappropriate to make a TPO in respect of a tree which is dead or dangerous.

2 USUAL OBJECTIONS TO A TREE PRESERVATION ORDER:

- 2.1 Objections and representations can be made on any grounds as long as the grounds are communicated to the Council within the statutory time limit. Typically objections and representations can:-
- challenge the Council's view that it is expedient in the interests of amenity to make a TPO;
 - claim that a tree included is dead, or dangerous;
 - argue that a tree is causing damage to property;
 - point out errors in the TPO or uncertainties in respect of the trees that are supposed to be protected by it; and
 - accuse the Council of failing to adhere to the procedural requirements of the 1999 Regulations.

3. SUMMARY OF OBJECTIONS:

- 3.1 Objections have been received from:

Mr K Dobson of Correze, Tollerton Road, Huby, YORK YO61 1HX. (Property owner). A copy of the objectors letter is at Annex 3. The objections are made on four grounds which are summarised as follows.

- 3.2 Objection 1

The tree is extremely large and stands only 4 ½ feet from his property and the roots are likely to extend under the property and may cause damage in the future.

- 3.3 Objection 2

Mr Dobson intends to extend the property in the future.

- 3.4 Objection 3

There are already issues regarding reduced light to the property, greening of the car port roof and blocking of gutters and fall pipes.

- 3.5 Objection 4

At the very least the tree should be severely pruned but the imposition of the tree preservation order makes this potentially difficult, inconvenient, and costly.

4 APPRAISAL OF OBJECTIONS:

4.1 Objection 1

It is accepted that the tree is growing close to the objector's property. However, the tree is considered to be near maturity, possible in the region of forty years old and therefore it might be expected that its root structure has reached its full capacity with no structural damage to the property reported. Damage to property caused by tree roots usually occurs when the underlying subsoil is of shrinkable clay content and in drought conditions the tree roots absorb moisture from the clay to an extent that the clay shrinks causing a void beneath the foundations and subsequently movement of the property and cracking of the structure. Although it is not known what the subsoil is made up of in this location, according to North Yorkshire Building Control, the subsoil in the Sheriff Hutton area is generally of a sandy nature. Sandy soils by their very nature free draining and not shrinkable.

4.2 Objection 2

As the tree is not in the applicants ownership, and therefore not under his direct control, Mr Dobson would have to take into account its existence and likely effects on any future proposal to extend the property.

4.3 Objection 3

It is inevitable that owing to the proximity of the tree to the neighbouring property that the carport would become green and that light levels would be reduced. However, as the tree will be older than the carport Mr Dobson obviously made the decision to erect a car port close to it with the likely consequences.

4.4 Objection 4

It is accepted that pruning in the form of crown lifting, i.e. increasing the clearance between ground level and the start of the crown would increase light levels to the property. However, severe pruning would not be considered to be acceptable as this would significantly reduce the trees amenity value which would be contrary to the reason for making the tree preservation order in the first place.

5. SUPPORT FOR THE TPO:

5.1 The e-mail below has been received from the owners of the tree.

From: John Clayton <john.clayton@ryedale.gov.uk>
To: 'Bryan Cox QC' <brcox@btinternet.com>
Sent: Wednesday, 17 December 2014, 15:52
Subject: RE: tree preservation order 338/2014- Heather Grange

Dear Bryan Cox and Helen Hendry

I confirm receipt of your e-mail stating that you have no objections to TPO No. 338/2014 at Heather Grange, Sheriff Hutton.

Regards

John Clayton

- 5.2 **From:** Bryan Cox QC [mailto:brcox@btinternet.com]
Sent: 17 December 2014 15:51
To: John Clayton
Subject: tree preservation order 338/2014- Heather Grange

Dear Mr Clayton,
I would like to confirm that we have no objection whatsoever to the tree preservation order. We you kindly confirm receipt of this email.
regards
Bryan Cox
Helen Hendry

- 5.3 Dear Mr Clayton,

Further to your request to re-send the email of the 17 December, please find it attached.

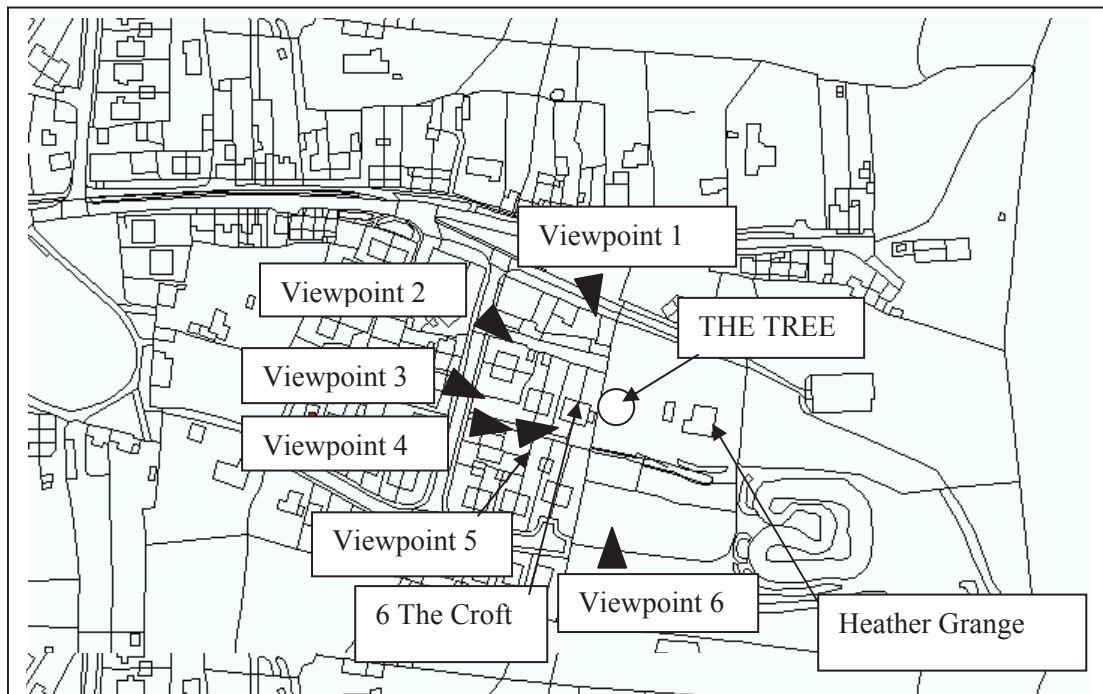
For your information, I would add that since notice of the preservation order was published in Sheriff Hutton Village News, a number of home owners who live in the area, whose homes overlook our garden or have a view of the tree in question, have expressed approval with the preservation order. I think that a number of people who from the Village News that an order had been made had assumed that we had applied for permission to take the tree down for some reason. That is of course not the case, nor have we ever expressed any wish to take the tree down. As we understand it, the Council received a request from the owner of 6 The Croft without any reference to ourselves whatsoever. We were totally unaware of any issue in relation to the tree, until you visited to inspect the tree.

We remain of the view that the Tree is of cosmetic benefit to our own garden and the surrounding area, and do not understand that there can be any reasonable objection to it. We are therefore perfectly content with the preservation order and support it.

Regards
Bryan Cox

6. THE VISUAL PROMINENCE OF THE TREE:

- 6.1 Viewpoints of the tree, or parts of the tree, are annotated on the map below. Slides of the tree from these viewpoints will be shown at the meeting.



7. CONCLUSIONS:

7.1 The significant amenity value that this tree provides to the locality is considered to justify the making of a TPO when weighed against the inconvenience it may cause to neighbouring residents, both now and in the future. This is borne out by the high score the tree achieves in the Tree Evaluation assessment attached at Annex 2. Furthermore no structural damage appears to have been caused to the objector's property by tree roots as the subsoil is likely to be of a non shrinkable sandy nature.

8. RECOMMENDATION:

8.1 Members have two options in this case:

- (a) to confirm the Tree Preservation Order;
- (b) not to confirm the Tree Preservation Order.

RECOMMENDATION

That Tree Preservation Order No. 338/2014 is confirmed.

Background Papers

None

Ref: j:johnclay\commrep\338obj.doc