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<b>PART B:</b>	<b>RECOMMENDATIONS TO PLANNING COMMITTEE</b>
<b>REPORT TO:</b>	<b>TREE PRESERVATION ORDER WORKING PARTY</b>
<b>DATE:</b>	<b>7 JANUARY 2020</b>
<b>REPORT OF THE:</b>	<b>HEAD OF PLANNING AND REGULATION SERVICES GARY HOUSDEN</b>
<b>TITLE OF REPORT:</b>	<b>TREE PRESERVATION ORDER No: 352/2019</b>
<b>WARDS AFFECTED:</b>	<b>MALTON</b>

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 For members of the working party to consider the objection to the Tree Preservation Order (TPO) 352/2019 Holgates House, 18 Town Street, Old Malton and Church Yard of the Priory Church of St. Mary, Old Malton. Then 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: 352/2019

### **3.0 REASON FOR RECOMMENDATION**

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

### **4.0 SIGNIFICANT RISKS**

- 4.1 There are no significant risks associated with recommendation. A canopy survey of T1 has not been undertaken, but this does not preclude the confirming of the Order.

### **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 trees which are the subject of this provisional TPO 352/2019. The proposed TPO covers land in two separate ownerships. The first tree known as T1, a Sycamore, is

within the domestic curtilage of the property known as Holgates House. It is a tree which is viewable from the B1257, Town Street, Old Malton.

- 6.2 The remaining five trees T2- T6 on the attached schedule are within the land which is part of the Church Yard of the Priory Church of St. Mary, a Grade I Listed Church and Scheduled Monument. A map is appended, and the accompanying report identifies each tree separately.

T2 – Sycamore- positioned towards the front of the church yard, proximal to the side garden of Holgates House;

T3 – Sycamore- within Church grounds growing on the southern side of the access to the church yard- close to the western boundary wall;

T4 – Yew – growing adjacent to the Purple leaved beech (T4) in the survey;

T5 – Yew – growing to the west of the church on the southern side of the footpath;

T6 – Oak- Within the church yard grounds growing close to the northern boundary wall;

- 6.3 A Conservation Area Tree Notification was submitted for T1 and T2- the works were originally not described in sufficient detail, and alongside not having the full ownership details, the application was deemed invalid by the Case Officer. On the 12 August, the applicant provided contact details for the landowner and the works to the trees, which are described as thus:

T1 Sycamore - crown lift on the house side, to approximately 4-5m, focussing on the lowest limbs, and some selective thinning and removal of crossing branches, again on the house side.

T2 Sycamore - 2-3m reduction on the road side and over the courtyard, removing crossing and running branches and removing small branches growing towards to roof.

- 6.4 Whilst the notification has not proposed the loss of any trees, the proposed works are considered to be excessive, and unbalance the trees- reducing their amenity value. The trees, particularly T2, given that one is in the church yard without giving the details of the owner of the tree, were vulnerable. The Council therefore commissioned a survey (with the agreement of the Warden) for the consideration of making a Tree Preservation Order on trees within the Church Yard, and within the property known as Holgates House.

### **Tree assessment**

- 6.5 As part of the TPO making procedure, the trees have 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 trees subject to this proposed TPO was found to have an overall score of 18 based on condition, retention span and public visibility, 6 marks more than the threshold that determines the viability of TPO orders, and rating as 'definitely merits TPO'. This TEMPO assessment was undertaken by an independent arboricultural consultant and is appended.

### **Tree assessment- Amenity**

6.6 Each tree has been individually assessed. It should be noted that seven trees were assessed, with one (T4 in the survey) not considered to be defensible of being subject to any TPO. The report below identifies the tree ID based on this tree's non-inclusion in the proposed Order.

6.7 T1 – Sycamore- the tree's condition is fair to satisfactory (3) and an anticipated retention span of between 20-40 years (2) and therefore suitable, there is a significant cavity in the mid- section of the main bough, where a branch was removed, and the cavity is occluding (closing) slowly. The decay in the bough needs further inspection-undertaken at height. The trees inclusion in the order is recommended by the Arboricultural Consultant to ensure retention and the avoidance of detrimental pruning. It is a prominent large tree and scores 5 in terms of public visibility. Officer's consider that should that limb be a potential threat after further survey, the Order can be amended accordingly.

T2 – Sycamore- the tree's condition is good (5) highly suitable and has an anticipated retention span of between 40-100 years, making its very suitable (4). As prominent large tree, it scores 5 (highly suitable) in terms of public visibility.

T3 – Sycamore- the tree's condition is considered to be good (5) highly suitable, with an anticipated retention span of 20-40 years (2) suitable. As a prominent large tree the tree scores 5 (highly suitable) in terms of public visibility.

T4 and T5 – Yews – Each tree's condition is considered to be good (5), and over 100 years in anticipated life span (5) making them highly suitable. Both are characterised as being trees of medium size (3) making them suitable in this regard concerning public visibility.

T6 – Oak- the Tree's condition is good (5) and retention span is anticipated at over 100 years (5) making it highly suitable. The tree is young, and small at present, so scores a 2 (barely suitable).

### **Tree assessment- Expediency**

6.8 T1 and T2 have scored a 3 in relation to the expediency, this is due to the extent of the proposed works, and the s.211 Notice. The works proposed for T1 are considered to be excessive at a 5m height crown lift. The works to T2 are considered unnecessary, the tree has been subjected to work in the past, which has addressed the significant encroachment. For the other trees the expediency scoring is 1 and therefore it would be on a precautionary basis, and the TPO scoring reflects this.

6.9 Each tree has score 14 or more which means in the first instance a TPO is defensible. It should be noted that other trees in the church yard which have not been covered by this assessment are still protected by the s.211 Conservation Area Tree Notification process, including the purple beech (T4 in the assessment).

## 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:-

Mr Matt Ward, Owner of Holgate's House made a initial objection:

*"I must confess we were disappointed that our request for maintenance work was denied and a preservation order has been enforced*

*Last year a large branch fell off the tree in our garden landing on the pavement outside our house. We have a cracked window in our conservatory we believe caused by a falling branch from the tree in the church garden hence the desire to care for the trees*

*We would like to carry out sensible and necessary maintenance to prolong the tree life and protect our persons and property not cause them any damage or detract from the contribution they make to the area*

*Please can you advise how we move forward now?"*

The case Officer advised the following:

Thank you for your email, which I will treat as an objection to the Order, and it is duly made within the 28 day period. I advise that you may wish to make a formal, more detailed objection to the making of the Order, and set out in greater detail why you consider the works are necessary and appropriate (and to which trees) in writing. You may wish to seek arboricultural advice. A report will be prepared which responds to and considers the reasons for the objection. This will then be considered by Members of the Tree Preservation Working Party who will sit and consider the objection and whether or not to amend the Order or to confirm it.

The following response was received:

*"Having had a large branch fall off the Sycamore in our garden which our postwoman said nearly hit them as well as suffering a broken window in our conservatory from a falling branch from the tree in the churchyard we sought the expert advice of an arborist and his professional recommendation is below*

*The first Sycamore, the one on your property, the works will consist of a slight lift on the house side, to approx 4-5m, focussing on the lowest limbs, and some selective thinning and removal of crossing branches, again on the house side.*

*The work proposed for churchyard Sycamore is for a sensitive 2-3m reduction on the road side and over the courtyard, again removing crossing and running branches and removing small branches growing towards to roof. "*

## Appraisal of Representations

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

In making the Order in the first instance, the Local Planning Authority sought to obtain expert advice regarding the trees. This was in particular T1 and T2 which were the subject of the CAT notification, and for which the objection to the Order has been made upon.

The objection has identified a series of previous events regarding the trees, which do not seem to corroborate as it would appear that the damage to the Conservatory may have been caused by a branch in the initial response- if it had been- it would have been clearly evident. These events do not in themselves justify the works proposed.

The advice provided in the objection is around a series of works to the tree- which after the CAT notice was made originally invalid were previously submitted and considered by the external expert employed by the Council. That level of works has already been considered to be excessive.

*“ T1 (Sycamore) appears outwardly healthy. However, there is a significant cavity in the mid-section of the southerly main bough where a branch was removed some years previously. The cavity is well rounded and appears to be occluding (closing) slowly. The extent of any decay within this bough can only be determined by a closer inspection by a tree surgeon. As a rule of thumb the remaining healthy cavity wall at this point should not be less than 2/3rds of the total diameter of the limb at this point.*

*I would recommend that this tree is included within an order to ensure its retention and avoidance of any detrimental pruning until further investigations into the damaged bough is carried out. Should it be proved that this limb is a potential threat then it could be omitted from an amended order at a later date.*

*In terms of future pruning should the tree be deemed safe after further detailed inspection I would recommend that pruning is limited to minor crown lifting in the areas close to property.*

*T2 (Sycamore) has an overall healthy symmetrical crown, although there does appear to be a slight thinning in the upper crown section but which is not of concern at this time.*

*In terms of future pruning it was noted that some lower branches on the property side had been removed in the past which presumably removed any serious encroachment issues at the time. I do not see any need for further pruning of this tree at this time. The proposal to crown lift up to 5m appears excessive and therefore I would recommend that a maximum of 4m would be adequate. Any crown thinning proposed should not in my view exceed 10%.*

No further survey has been undertaken, and it should be noted that in the event future survey work concludes that the southerly main bow that it needs to be removed, then an application can be made to the Council on that basis, without the need to amend or lift the Order.

*Conclusion*

- 6.16 The significant amenity value that these trees 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 trees achieve in the Tree Evaluation Assessment attached at Annex 2.
- 6.17 No objections to the Order were received from the Church.
- 6.18 The external arboricultural advice has identified that the tree T1 does not represent a danger. It is the owner's responsibility to undertake further survey work at height in the canopy which may identify remedial works which are, based on that survey, necessary. Such works could be applied for in the usual manner, and the purpose of the TPO would not be undermined. The owner of the tree has been advised in writing in the notification of the TPO to undertake a canopy survey, and this has not been undertaken.
- 6.19 No evidence has been presented by the objector which confirms that the tree is dangerous or requires remedial work. Even if, in due course, such work is required, this can be applied for in the usual way. It is therefore recommended that the Order is confirmed without modification.

## **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 21 January 2020 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 – CAT Notice

Annexe 2- The independent advice provided to the Council including the TEMPO Scoring

Annexe 3- The TPO