



Report Reference Number: TPO 4/2021

To: Planning Committee
Date: 18 August 2021
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APPLICATION NUMBER:	TPO 4/2021	PARISH:	Bilbrough Parish Council
TPO SERVED:	1 st April 2021	DEADLINE FOR CONFIRMATION:	1 st October 2021
LOCATION:	Old Manor House Main Street Bilbrough York YO23 3PH		
RECOMMENDATION:	To confirm the Blue Atlantic Cedar – Preservation Order 4/2021		

Summary:

In exercise of the powers conferred by section 198 of the Town and Country Planning Act 1990 this report will seek the permission of the Planning Committee to “Confirm, with no Modification”, Tree Preservation Order No. 4/2021 to which objections have been received. In accordance with the scheme of delegation, the confirmation of the Tree Preservation Order cannot be issued under delegated powers due to the objections received.

1. INTRODUCTION AND BACKGROUND

The Site

- 1.1 The Tree Preservation Order (TPO) is located in the southwest corner of the garden space of The Grade II listed Old Manor House.
- 1.2 The tree is located within the Conservation Area for Bilbrough at the eastern end along the main linear core of the village. The site is also washed over by Green Belt. The Bilbrough Village Design Statement (VDS) describes the dwelling with which the tree is associated as being the Grade II listed ‘Old Manor House’ which was once the home of Thomas Fairfax. The tree sits within the curtilage of this

dwelling. This part of the Conservation Area is characterised by two-storey dwellings in traditional styles using traditional materials and having either a Georgian influence or a cottage style in appearance.

- 1.3 Within the Conservation Area, the TPO sits within the setting of several other listed buildings which are sited to the west, including the Grade II listed Church of St James, Rose Cottage, Bilbrough Manor and Bilbrough Grange all of which are also Grade II listed. There are several instances of protected trees close to the site to the north, including Oak, willow, beech, sycamore, horse chestnut, Alder and pine.

1.4 Relevant Planning History

- 1.5 The following historical application is considered to be relevant to the determination of this application.

- 2019/0996/HPA - Application for a new detached garage with office space above to replace domestic outbuildings – Permitted 5th March 2020
- 2021/0145/TCA - on 4th February 2021 The Council Received notification of the Onwer's intent to fell 1 Blue Atlantic Cedar within the Bilbrough Conservation Area. Officers served the provisional TPO 4/2021 in response to this as they were resolved to take professional advice and consider further the implications of its removal

2.0 Scope of the Provisional Tree Preservation Order Ref 4/2021

- 2.1 The TPO was issued on the 1st April 2021 in the context of the application 2021/0145/TCA to remove the tree. Having considered the contribution to local amenity and the Conservation Area, it was the Officers' judgement that consideration should be given to the tree's long term protection. The tree is of a large size and is within the curtilage of a Grade II listed building so it was felt that further consideration had to be given to its protection following the expiry of the application.

- 2.2 The Council's decision to serve the temporary TPO was also informed by the findings of a qualified arboriculturist and Planning Officers under application 2019/0996/HPA which noted the trees large size and positive contribution to the Conservation Area and the setting of the listed building.

- 2.3 As such, the TPO as served relates to:

- a) A single Blue Atlantic Cedar (T1)

- 2.4 The plan associated with the TPO is attached with the officers report below (Appendix A)

- 2.5 An Order can be made to protect specific trees, groups of trees or woodlands in the interests of amenity and should be used where the trees removal would have a significant negative impact on the local environment and its enjoyment by the public. The Order comes into effect immediately on the day the Council makes it and this provisional status lasts for six months, unless the authority either confirms the Order to provide long-term protection or decides not to confirm it.

3.0 Representations

3.1 The TPO was served in accordance with the Town & Country Planning (Tree Preservation) (England) Regulations 2012/605 on the person interested in the land, who has been identified as the owner of the property The Old Manor House. The Regulations specify that in the case of an order made following service of a notice under section 211(3) (preservation of trees in conservation areas), serve on the person who served that notice;

(a) serve on the persons interested in the land affected by the order—

- (i) a copy of the order; and
- (ii) a notice containing the particulars specified in paragraph (2);

(2) The particulars mentioned in paragraph (1)(a)(ii) are—

- (a) the reasons for making the order;
- (b) a statement that objections or other representations with respect to any trees, groups of trees or woodlands specified in the order may be made to the authority in accordance with regulation 6;
- (c) the date, being at least 28 days after the date of the notice, by which any objection or representation must be received by the authority; and
- (d) a copy of regulation 6 (see Appendix B).

3.2 The Order was served following the advice of a qualified arboriculturist who recommended that further testing be undertaken to establish whether removal of the tree could be supported under 2021/0145/TCA. As the application expired on 26.03.21 and gives deemed consent if the council does not respond with their objection, the TPO was served to give the authority further time to consider the matter. A copy of the TPO notice was displayed on site on the 1st April and delivered by hand to the owner of the tree by the officer. Comments were invited on the Provisional Order to be received by Friday 27th May 2021.

3.3 Objections to the TPO were received from the owner of the tree, three neighbouring occupants to The Old Manor House and a qualified arboriculturist employed on behalf of the owner of the tree. A letter of support for the TPO was also received to the local authority on behalf of another neighbouring occupant.

3.4 The letter of support for the TPO can be summarised as follows:

- State that the tree positively contributes to the amenity of the area
- State that the tree is visually beautiful and appears healthy
- The tree is a habitat for birds
- Independent inspection of tree has shown that it is not near end of natural life so should not be removed

3.5 The letters of objection to the TPO from the neighbouring occupants and owner can be summarised as follows:

- State that previous owners of the site would not have planted the tree if they had known how large it would grow – not yet fully mature and has grown very high in a short time
- Extreme size outweighs any positive contribution of the tree on the area

- Tree is inappropriate for setting close to a listed building, putting it at risk if a branch were to fall
- The tree is oppressive and overbearing to the listed building
- Danger to neighbouring occupants if a branch were to fall as this species is known for dropping limb – especially in high winds
- The tree is not a native species and could be replaced by a native, more sympathetic species could be planted if removed
- Previous works have caused damage to the tree and the tree is currently deformed due to poor maintenance
- Raised concern over alleged fungus at root

3.6 The letter of objection to the TPO received by a qualified arboriculturist Barnes Associates on behalf of the applicant can be summarised as follows but also contains images which will be circulated to members.

- TPO order poorly prepared, has errors and does not align with recommended model set out in government guidance
- Argue that TPO is poorly located on TPO documentation, which is inaccurate and does not represent the situation
- Visual amenity main reason for temporary TPO – material consideration however this must be that offset against trees suitability for placement and foreseeable damage & maintenance requirements
- Tree has past harsh topping works – will be ongoing issue as the tree has a high potential for growth
- Potential conflict between new garage building and tree
- 15m in height and potential to grow 50% more – inappropriately large for setting
- Tree has potential to cause damage to drive and garage building – nuisance to owner
- Close to listed property- repeated requests for work will be required to avoid damage to property, meaning tree is inappropriately located
- Branch failures in past close to listed property
- Potential for owner to apply for expense claims against local authority for increased management costs and inevitable damage and repair – however further evidence beyond scope of this report required
- Multiple limb failures – deep tears left in tree that may compromise upper canopy – more likely that decay can enter trees vascular system
- FAKOPP microsecond timer used to measure flight times of branches between 2 sensors – times are above average where topping has occurred
- Tree previously topped so may have weaker attachment points
- Works recommended by rosetta landscape are expensive and extensive – also would significantly reduce tree so would reduce amenity given
- TPO served with little consideration to site constraints and trees past and future management requirements or location & positioning of tree
- TPO made under flawed assessment – will restrict and prevent normal management of the tree and will cause foreseeable nuisance
- Asked that TPO removed and alternative planting scheme agreed which could be later subject to protection when suitable size reached

3.7 Comments prepared by a qualified arboriculturist Rosetta Landscapes working on behalf of the local authority can be summarised as follows:

- Describes tree as an early mature specimen 12m in height with a 6m canopy spread north, 7m south, 4.5m east and 5.5m west –
- stem 7m from dwelling – canopy doesn't currently reach buildings
- Some evidence of tearing and works in the past however expected life expectancy of 40 years – tree in good condition and stem is sound timber according to resonance test
- Concern raised over honey fungus – none present on visit however further investigation required to establish whether this would affect tree in future – would need underground investigation and is not reason for removal at this time
- Past evidence of topping does not constitute evidence that tree is ill-suited to location – topping is damaging and inappropriate for coniferous trees. Poor tree work does not suggest bad trees just poor quality work carried out in past
- Feel the tree is manageable for decades to come – suggested reduction was to provide comfort to owner in a less harmful way for tree than removal – works would reduce the likelihood of branch failures
- We advise that when undertaking such work, the shape/form of the canopy should reflect a smaller version of its previous iteration, so that the tree would still retain its aesthetic qualities. This principle is strongly supported by BS3998:2010.
- Potential for ANY damage to occur does not justify complete removal – every tree poses SOME risk to surroundings and intervention should be balanced on situation – removal not proportionate to risk
- Acknowledge previous branch loss due to wind loading – some loss is typical of the species – methods used by barnes associates supported however no evidence of actual decay provided or the extent, just that flight times varied from expected values – this could be for a number of reasons and is not conclusive enough to support removal of valuable specimen tree
- Works recommended would reduce further breakage in any case and would benefit the tree – some tree work being required does not give justification for removal
- Point on expense of works taken – however every tree owner has legal responsibility for management of their trees – inevitable that this should incur costs when professionals required – not considered disproportionate
- TPO would be prudent and appropriate.

4 Report

4.1 The Council and their Arboricultural Consultant have considered the submissions made by objectors and the issues presented. It is considered that:

- (a) Adequate justification for removal of the tree have not been given at this point.
- (b) Account should be taken of the fact that the tree has capacity to thrive in its current siting with remedial work, which has been recommended.
- (c) The tree gives a positive contribution to the setting of a listed building and the wider conservation area.
- (d) More testing would be required with regards to fungus and decay to provide evidence which would justify removal of tree.

- (e) Although the tree is large, the Council's independent consultant considered it to be manageable for decades to come.
- (f) Moreover, careful reduction is possible should the tree become too large.

- 4.2 With regards to comments made by an objector regarding the inaccuracy of the TPO as served, this was done in line with government guidelines on Tree Protection Order paragraph 025, which states that when serving a provisional TPO the *'the legislation does not require authorities to describe the trees in the Order with full scientific names or plot them on the map with pinpoint accuracy.'* The correct tree and species had been identified prior to serving of the Provisional TPO, which was plotted in an approximately correct position based on the planning history for the dwelling and the correct owner was served with the order on 1st April as identified by the land registry.
- 4.3 Barnes Associates on behalf of the applicant raise the point that harsh topping in the past has led to weak points in the stem of the tree, which could facilitate future branch failure. They also argue that previous works and limb failure from the tree (which is a species prone to dropping limb) would leave the tree open to decay, making it more dangerous. The Council's Arboricultural Specialist has stated that although they acknowledge previous branch loss due to wind loading on the tree, and supported the methods used by Barnes Associates to assess the movement of branches, no evidence of actual decay has been provided as part of their report, just that flight times varied from expected value. This could be for a number of reasons and is not conclusive enough to support removal of valuable specimen tree.
- 4.4 With regards to the comments made by objectors which state that falling branches pose a risk to the safety of the owner, neighbouring occupants and the Grade II listed property, it is considered that the Arboricultural Specialist for the Council has recommended a scheme of works which would improve the appearance of the tree and make instances of limb loss less likely. Therefore, it is not felt that the complete removal of the tree is justified when a scheme of works could ensure its continued health in its current siting and that the instatement of a TPO would not restrict appropriate and proportionate works being done to the tree in the future.
- 4.5 Objectors to the TPO state that any benefit of the tree is outweighed by its sheer size and its potential to grow further. However, it is considered that if this TPO were not to be upheld, the tree could be removed and it positively contributes to the Conservation Area and the setting of a Grade II listed building (as previously considered by officers under 2019/0996/HPA) and adequate justification has not been given to justify the harm to this as set out under Section 66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990.
- 4.6 With regard to concerns raised by objectors to the TPO regarding the presence of fungus at the root of the tree, photos have been provided to the council's arboricultural specialist of the tree when this was present, however they stated that it could not be seen when a visit was undertaken. Therefore, it was recommended to the local authority that the possible presence of fungus (which is not conclusive at this point) would not be reason to support the potential removal of the tree at this point and that further underground testing would be required to establish if fungus was present. The council therefore does not feel that this is a reason not to confirm the TPO.

- 4.7 With regards to the comments made on behalf of the applicant that the financial expense of repeated maintenance works which would be required if the tree were to be retained would be excessive and cause nuisance to the owner, it is not felt that this is a reason to justify removal and cause harm to the Bilbrough Conservation Area. Furthermore, it is felt that it is reasonable to expect that the owner of the tree should incur some expense occasionally when carrying out routine maintenance of their tree.
- 4.8 Objectors to the application raised concerns regarding the potential conflict of branches leaning towards the Grade II listed dwelling itself and also the new garage building which was permitted under 2019/0996/HPA, as a falling branch could cause injury and damage to property. When assessed at the time, Officers concluded that the garage does not overlap the root protection area or the crown of the tree. A condition was added to the permission to ensure the trees protection during construction. The Arboricultural Specialist for the council more recently (March 2021) concluded that the branches do not reach the house or the new garage building so it is not felt that this is a reason to support removal of the tree.

5 Conclusion

- 5.1 Special attention must be paid to the desirability of preserving the character or appearance of the Conservation Area. It is considered that there is not enough evidence or justification for removal of the tree at this time and the harm to the Conservation Area. Having regard to the above, the proposal to fell 1 Blue Atlantic Cedar in the Conservation Area would have a detrimental impact on the character and appearance of the Conservation Area. TPO 04/2021 would protect an important tree, in the interests of amenity and its contribution to the Bilbrough Conservation Area and the setting of the Grade II listed Old Manor House.

6 RECOMMENDATION

To Confirm the Blue Atlantic Cedar – Preservation Order 4/2021

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Appendices: None