



Report Reference Number: TPO 21/2022

To: Planning Committee
Date: 8th February 2023
Author: Emma Howson (Planning Officer)
Lead Officer: Hannah Blackburn (Planning Development Manager)

APPLICATION NUMBER:	TPO 21/2022	PARISH:	Church Fenton Parish
TPO SERVED:	19 th October 2022	DEADLINE FOR CONFIRMATION:	18 th April 2023
LOCATION:	Land adjacent to The Orchards, Church Street, Church Fenton, Tadcaster, North Yorkshire, LS24 9RD		
RECOMMENDATION:	TPO to be confirmed with modifications		

This application is being presented to Members for decision in accordance with the scheme of delegation 3.8.9(b)(viii), the confirmation of the Tree Preservation Order cannot be issued under delegated powers due to an objection to make the order.

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 Modifications”, Tree Preservation Order No. 21/2022. A copy of the Order is at Appendix A.

1. INTRODUCTION

- 1.1 The group of trees subject to the Tree Preservation Order (TPO) are mixed deciduous trees consisting of 13 N^o sycamore, 4 N^o hawthorn and 2no. Ash and 2 no. Elm located in a field to the north of the property known as ‘The Orchards’ off Church Street in Church Fenton. The trees sit adjacent to the highway. There is an error on the schedule which refers to the group as 13no. sycamore; 4 no. hawthorn and 1 no. walnut. This is due to a transfer of information mistake from the previous Order and requires the Order to be modified.
- 1.2 The site lies outside the defined development limits of Church Fenton in Flood Zone 2 and is an important gateway into the settlement. The highway route is noted as a key view of the Grade I listed church in the Church Fenton Neighbourhood Plan which was adopted on 29th September 2021.

Relevant Planning History

- 1.3 The following historical application is considered to be relevant to the determination of this application.
- Application Number: 2021/1544/FUL
Description: Creation of a new vehicular access and associated engineering works on land adjacent The Orchards, Church Street, Church Fenton, Tadcaster, North Yorkshire
Decision: WDN Date: 29-NOV -2022

2. BACKGROUND AND SCOPE OF PROVISIONAL TPO 21/2022

- 2.1 The Council received an application to create a new vehicular access to the field adjacent to the Orchards on 17th January 2022. The access to the field had previously been provided from the property 'The Orchards' but the property has been sold off and no longer remains in the same ownership as the application site.
- 2.2 Following consultation with the Arboricultural Officer a provisional TPO was served under TPO 10/2022 on 3rd August 2022, due to an administrative error this order was replaced by Provisional Order 21/2022 on 19th October 2022 and TPO Order 10/2022 was not confirmed on 16th January 2023.
- 2.3 The orders were served due to the potential for the loss of the trees on the site to make a vehicular access into the field. This was based on the advice of the Council's Arboricultural Officer due to their health and visual amenity benefits.
- 2.4 The Town and Country Planning Act 1990 (as amended) sets out the relevant legislation with regards to the making of tree preservation orders and the preservation of trees in conservation areas and in the Town and Country Planning (Tree Preservation)(England) Regulations 2012. These enable local planning authorities to make an Order if it is 'expedient in the interests of amenity to make the provision for the preservation of trees or woodland in their area'.
- 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 removal or works to the tree(s) would have a significant negative impact on the local environment and its enjoyment by the public. Factors in the consideration of amenity include: visibility; individual, collective and wider impact, i.e. landscape setting and/or preservation or enhancement of character and appearance of the conservation area; and, other factors such as nature conservation or response to climate change.
- 2.6 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.
- 2.7 Regulation 5 of the 2012 Regulations set out at 5(1) the procedure after making an Order and requires the local planning authority as soon as practicable after making the Order to serve a copy of it on persons interested in the land affected by the Order and particulars, and make a copy available for public inspection. The particulars are listed in Regulation 5(2) and include:
- (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;
- (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 setting out how to object or make representations.

2.8 The TPO as served relates to a group of deciduous trees (G1), as shown on the plan associated with the TPO, which is attached to this report at Appendix B. It was served in accordance with the Town & Country Planning (Tree Preservation) (England) Regulations 2012 on the persons interested in the land. A copy of the order was made publicly available at the site for inspection. Comments on the provisional Order were invited to be received by 30th November 2022.

3. REPRESENTATIONS RECEIVED TO PROVISIONAL ORDER

3.1 One objection to the TPO was received on behalf of the landowners and raises the following issues:

- The language within the TPO is misleading
- The documentation does not align with the model order suggested by the current legislation and includes basic errors in document preparation and presentation.
- The TPO does not correctly represent the current state or location of trees on the site and has no obvious barriers between protected and unprotected trees
- The TPO ignores the accepted valuation methodologies and government guidance in justifying a TPO.

4. APPRAISAL

4.1 The main issues for consideration are:

- Whether the trees are worthy of protection;
- Justification and consideration of objection.

Whether the tree is worthy of protection

4.2 The Council's Arboricultural Officer has undertaken an appraisal of the trees and confirms that the trees are in good health with a life expectancy of 40-100 years. The trees are medium and large landscape trees which can be seen from the adjacent highway at the entrance to the village and are of high amenity value along a key view to the Grade I listed church. Officers consider that the group of trees make a valuable contribution to the character and appearance of the area and as such should be protected.

Justification and consideration of objection

4.3 The objection received has been provided by an arboricultural consultant, but appears to be a copy of the objection submitted in relation to TPO 10/2022 and raises the same issues to those raised in relation to the previous superseded order. The objections raised have been considered by both the Case Officer and the Arboricultural Officer.

- 4.4 The language within the TPO is misleading
This appears to relate to the justification for making the order “*This Council has made this order as the Group of trees provides a positive and reasonable degree of amenity to the locality and has the potential to provide continued amenity in the future*”. The objection states that this terminology can be used in relation to any order and is not specific to this case. Whilst this may be the case, the use of such language is considered to be a reasonable justification for a TPO as cited in the legislation.
- 4.5 It is not clear why this would be misleading as this is true for the trees under the provisional order. The trees do provide a positive and reasonable degree of amenity, forming a visual group to the south of the village which creates a separation between the built form and the more open aspects of the open countryside which surround the settlement.
- 4.6 Whilst the application has now been withdrawn the trees are still considered to be at risk, as there is no means of vehicular access into the field at this time without passing over land outside the applicant’s ownership and thus the risk of removal of the trees to provide such an arrangement is high.
- 4.7 Documentation does not align with the model order
Whilst this may have been true in relation to the superseded order 10/2022, there is no evidence to support the fact that Order 21/2022 has not been produced or served correctly.
- 4.8 The TPO does not correctly represent the current state or location of trees on site and has no obvious barriers between protected and unprotected trees
The TPO covers a group of trees on the site, and whilst this may create some challenges with interpretation on site, this is a useful tool to protect a group of trees. The dimensions of the TPO can be measured and the area defined on site. Outside the area the trees are not protected.
- 4.9 It is noted that there is an error on the schedule which notes the trees are 13no. sycamore; 4 no. hawthorn and 1 no. walnut. The schedule should confirm the group as 13 no. sycamore; 4 no. hawthorn; 2 no. Elm and 2 no. Ash. It is requested that the order is modified to include the updated information.
- 4.10 The noted trees will be protected across the group and a prudent approach is to check with the LPA if there are any elements of doubt.
- 4.11 The TPO ignores the accepted valuation methodologies and government guidance in justifying a TPO
In line with the legislation a TPO assessment has been undertaken prior to the order being served.

5. CONCLUSION

- 5.1 The group of trees which are the subject of the order are considered to be healthy, with a good life expectancy and have high amenity value to the wider local area. The trees are considered to be worthy of protection under a Tree Preservation Order.
- 5.2 It is considered that the matters raised in the objection do not undermine the suitability of the Order subject to a modification with regards to the schedule of trees within the Group (G1).

6. RECOMMENDATION

Taking into account all of the above, Officer recommend that Members confirm the Tree Preservation Order 21/2022 with modifications to protect the group (G1) of trees at Land adjacent to The Orchards, Church Street, Church Fenton, Tadcaster, North Yorkshire, LS24 9RD.

Contact Officer: Emma Howson (Planning Officer)

Appendices:

A – TPO 21/2022 Schedule with modifications

B – TPO 21/2022 Map

TOWN AND COUNTRY PLANNING ACT 1990

The SELBY DISTRICT COUNCIL

One Group of Trees at Land adjacent to The Orchards, Church Street, Church Fenton,
Tadcaster, North Yorkshire, LS24 9RD

TREE PRESERVATION ORDER 21/2022

The SELBY DISTRICT COUNCIL in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the SELBY DISTRICT COUNCIL – The Orchards, Church Street, Church Fenton, Tadcaster, North Yorkshire, LS24 9RD.- Tree Preservation Order Number 21/2022

Interpretation

2. (1) In this Order “the authority” means the SELBY DISTRICT COUNCIL.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall
 - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 19th October 2022

Signed on behalf of SELBY DISTRICT COUNCIL

A handwritten signature in black ink, appearing to read 'HKB', followed by a horizontal line extending to the right.

Hannah Blackburn - Planning Development Manager

Authorised by the Council to sign in that behalf

SCHEDULE

SPECIFICATION OF TREES

TREES SPECIFIED INDIVIDUALLY

NONE

TREES SPECIFIED BY REFERENCE TO AN AREA

NONE

Reference on Map	Description	Situation/Grid Reference
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NONE

GROUPS OF TREES

Reference on Map	Description	Situation/Grid Reference
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G1	Mixed deciduous 13 N ^o sycamore; 4 N ^o hawthorn; 2 no. Ash and 2 no. Elm	Land to north of The Orchards adjacent to the highway 451338 436676
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WOODLANDS

Reference on Map	Description	Situation/Grid Reference
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NONE