



Report Reference Number: TPO 19/2022

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

APPLICATION NUMBER:	TPO 19/2022	PARISH:	Burn Parish Council
TPO SERVED:	28 th September 2022	DEADLINE FOR CONFIRMATION:	28 th March 2023
LOCATION:	Whitings Lodge, Whitings Lane, Burn, Selby, North Yorkshire, YO8 8LG		
RECOMMENDATION:	TPO be confirmed with no modification		

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 no Modification”, Tree Preservation Order No. 19/2022. A copy of the Order is at Appendix A.

1. INTRODUCTION

1.1 The trees subject to the Tree Preservation Order (TPO) (‘the Trees’) are:

- T1 – Oak Tree Located to the north of Whitings Lodge, Whitings Lane, Burn, Selby, North Yorkshire, YO8 8LG within the rear curtilage of the property.
- T2 – Oak Tree Located to the south of Whitings Lodge, Whitings Lane, Burn, Selby, North Yorkshire, YO8 8LG within the site frontage.
- T3 – Oak Tree Located to the south of Whitings Lodge, Whitings Lane, Burn, Selby, North Yorkshire, YO8 8LG within the site frontage.

1.2 The site is located within the open countryside to the south of Burn and to the east of the A19 within a small collection of residential and business premises. Tree T1 is

located within the rear garden of Whitings Lodge but is visible within the streetscene via a field entrance along Whitings Lodge. Trees T2 and T3 are very visible within the streetscene, being located at the site frontage to Whitings Lane and forming part of the approximately 2m high roadside hedgerow.

Relevant History

- 1.3 The following historical planning applications are considered relevant to the confirmation of this TPO.
- 2022/0786/FUL - Change of use of existing store/bathroom to hairdressing salon and dismantling of existing stables. Refused 11/11/2022. None of the reason for refusal related to trees.

2. BACKGROUND AND SCOPE OF PROVISIONAL TPO 19/2022

- 2.1 The Council received an application for planning permission reference 2022/0786/FUL as noted in the relevant history section above. The proposed development was in close proximity to tree T2 and may have resulted in harm to and or loss of the tree. The applicant was asked to provide an arboricultural assessment to consider the impact of the proposed development upon oak tree T2. The applicant did not provide the assessment and a substantial crown reduction to the tree was carried out.
- 2.2 The Council's Tree Officer visited the site and advised all three trees were worthy of protection and that there was an imminent threat of tree loss because of the crown reduction. All three trees are healthy; have a life expectancy over 100 years; are large sized trees visible from the highway and make a significant contribution to local amenity; and there is an immediate threat to the trees given the actions of the property owner. It was officers' judgement that a provisional Tree Preservation Order be issued on 28th September 2022 for trees T1, T2 and T3.
- 2.3 The Town and Country Planning Act 1990 (as amended) sets out the relevant legislation with regards to the making of tree preservation orders 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'.
- 2.4 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.
- 2.5 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.
- 2.6 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.

2.7 The TPO as served relates to three oak trees (T1, T2 and T3), 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 person with an interest in the land, who has been identified as the owner of the property at Whitings Lodge. 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 23rd November 2022.

3. REPRESENTATIONS RECEIVED TO PROVISIONAL ORDER

3.1 One objection to the TPO was received from the owner of the trees (summary):

- We were within our rights to remove the trees before we submitted our planning application, but did not because we like them.
- Trees T1 and T3 have no impact on the site of the planning application.
- The owner is an experienced and knowledgeable tree surgeon.
- Tree T1 is only visible from our paddock gateway so the amenity value is not benefiting anybody driving down a dead end road.
- T1 has had extensive work carried out on it in the last 12 years to prevent it uprooting. The tree has no root growth on the south and west side due to it growing on banking on top of an old WW2 blast shelter. The tree was starting to uproot in strong winds and had to be anchored to a tractor to save it. The canopy was reduced and the blast shelter was removed from the south and west of the tree which revealed that there was no root growth on these sides. Soil was added to the replace the shelter to preserve the tree. It had to be reduced again due to uprooting in high winds. Since then it has been crown thinned and reduced every winter for the safety of my house and longevity of the tree.
- It is frustrating that I will have to apply to the Council to reduce this tree every year and if this is not granted it may endanger my property, family and friends and effect the longevity of the tree. In my professional opinion the tree does not warrant a TPO.
- For T1, the owner has provided their own amenity assessment based on government guidance for evaluation of trees for protection with TPO. Condition and suitability for TPO scores 0. T1 is unsafe with severe irremediable structural defect insecure roothold. Likely to uproot in the near term, retention therefore impossible as something worthy of protection. Remaining longevity and suitability for TPO scores 0. Relative public visibility and suitability for TPO scores 2 as it is partially visible from our field gate on a dead end road. A score of 2 is insufficient to proceed with a TPO.

- T2 does not warrant a TPO because it has 40 year old nylon rope ligatures throughout the canopy. Within the last two years two lateral branches failed, one of which fell onto the highway. The owner has heavily reduced this tree for highway, property and human safety. So aesthetic value of the tree is currently poor.
- The owner has carried out a climbing inspection of all the ligatures and inspected those that had failed. Due to the severity of the ligatures the owner carried out a 50% canopy reduction in order to prolong safety of the tree. This tree will need annual work carried out as it will produce a large amount of epicormic growth that will need selective thinning and reducing to prevent the tree from being a danger as well as enhance the aesthetic value of the tree. A TPO would hinder any ongoing work on this tree. The limbs and branches are weak around the ligatures and will need constant future monitoring and work to keep it in a safe condition. The amenity assessment scores 4 so is not worthy of a TPO because the tree has structural defects and collapse is likely in the near term without sufficient ongoing monitoring and work for safety; if it is left without intervention it would collapse and could be life threatening; larger trees visible with difficulty are unlikely to be suitable for a TPO.
- A TPO on tree 3 is unfair because it is not near the application site. A crown lift to 5.2m is needed as lower branches are being snapped off by lorries driving to the adjacent commercial site. Oak trees are not rare in this area. None of the other trees in the area are subject to TPO. Why would my trees be protected when there are all those to choose from? It is unfair to serve this TPO as I have never removed any tree past or present from my property.
- Some of the tree officers dates and comments are incorrect. T2 was crown reduced before 4th August 2022 before the Tree Officer visited the site. T3 was never at risk of being felled. Concern at use of the word butchered and potential reputational damage.
- There is no tree amenity evaluation method for T1 and T2.
- Another tree assessment is attached to the Tree Officers comments which may be a breach of data protection.

4. APPRAISAL

4.1 The main issues for consideration are:

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

Whether the trees are worthy of protection

4.2 The Council's Tree Officer has advised that the trees are healthy and of typical form; have life expectancy of 100 plus years; are large to medium trees clearly visible or visible to the public from the highway- trees (and hedge) help soften the local built form in this rural location, and Oak are one of the highest performing carbon sequesters; and there are immediate threats to the trees from development and future land use changes. Planning Practice Guidance advises:

“But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where

this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

Paragraph: 010 Reference ID: 36-010-20140306

Revision date: 06 03 2014”

- 4.3 There is evidence of risk to the trees in the form of the substantial crown reduction to T2. Furthermore, while there are no current applications for planning permission, the trees are located adjacent to existing buildings and it is foreseeable that development may take place and the trees require protection and consideration. It is foreseeable that the tree(s) would be removed to facilitate development if the landowner considers they would hinder any future proposal.

Justification and consideration of objection

- 4.4 In relation to tree T1, the objection covers three issues: amenity value is questioned; stability of the tree as a result of the previous underground shelter is questioned; and the safety of the tree is questioned. There is a difference of opinion on the amenity assessment with the owner considering it unworthy of protection while the Tree Officer considers it worthy of protection. From the perspective of the TPO legislation the tree needs to be viewed from a public vantage point. The tree can be seen from the adjacent highway through a field access. The volumes of visibility are not considered as in its simplistic form this is a yes/no question. The tree is of visual amenity. Trees are highly adaptive organisms able to change to particular environments. The presence of the underground shelter will have affected the rooting of the tree with some asymmetry expected, however, this is not considered structurally problematic based on the submitted detail. The structure has been replaced with soil and it is expected new roots will grow. If the stability of the tree is of concern it is recommended that a stability test be commissioned. The risk posed by the tree is likely to be in the acceptable region. It is recommended that if this is a concern that the tree be considered by an arboricultural specialist with experience in risk assessing.
- 4.5 In relation to tree T2, the objection considers the crown was reduced because of ropes attached to the trees 40 years previous. There is the same disagreement between owner and Tree Officer regarding whether the tree is worthy of protection. Whilst the crown reduction has reduced the amenity value of the tree in the short term, the tree remains a substantial amenity feature immediately adjacent to the highway and is expected to grow back in time. The future amenity of the tree will be considerable. A TPO does not hinder pruning of the tree though it does allow for the application to be considered by the LPA's arboricultural section.
- 4.6 In relation to tree T3, the objector questions the order on this tree. It is a large and healthy specimen adding to the visual amenity of the tree area immediately adjacent to and overhanging the highway. Potential development pressure near the tree and mention of the need for a crown lift in the owners objection are sufficient to justify protection. In this case the lopping/topping of T2 indicates there is a threat to the tree through direct or indirect actions of the landowner.

- 4.7 All three trees are beneficial both in terms of visual amenity to the immediate locality but also as a high-performing species for carbon sequestration, providing improved air quality by way of oxygen output.
- 4.8 In summary, the trees make a valuable contribution to the amenity of the area and no technical justification or material reasons have been provided to outweigh the advice of the Council's Tree Officer to justify not confirming the order.

5. CONCLUSION

- 5.1 It is considered that there is not enough evidence or justification for not confirming the provisional TPO for these three oak trees. On the contrary, the trees are visible from public vantage points, are large and healthy, make a positive contribution to the amenity of the area and benefit carbon sequestration. The rooting of T1 and crown growth of T2 can be expected to recover in the fullness of time.

6. RECOMMENDATION

Taking into account all of the above, Officers recommend that Members confirm the Tree Preservation Order 19/2022 to protect the three oak trees T1, T2 and T3 at Whitings Lodge, Whitings Lane, Burn.

Contact Officer: Martin Evans, Principal Planning Officer

Appendices:

A – TPO 19/2022 Schedule

B – TPO 19/2022 Map