



**Report Reference Number: TPO 24/2022**

**To: Planning Committee**  
**Date: 15<sup>th</sup> March 2023**  
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**Lead Officer: Hannah Blackburn (Planning Development Manager)**

APPLICATION NUMBER:	TPO 24/2022	PARISH:	Stillingfleet Parish Council
TPO SERVED:	30 <sup>th</sup> November 2022	DEADLINE FOR CONFIRMATION:	30 <sup>th</sup> May 2023
LOCATION:	Kenilworth House The Green Stillingfleet York YO19 6SF		
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. 24/2022. A copy of the Order is at Appendix A.

## 1. INTRODUCTION

- 1.1 The tree subject to the Tree Preservation Order (TPO) is a Silver Birch tree (‘the Tree’) that is located within the north-west corner of the front curtilage of the dwelling known as Kenilworth House, The Green. It is located to the front garden and sits behind a hedgerow, to the west of its vehicular access and parking area. The tree is positioned close to some overhead cables.
- 1.2 The site is located within the Stillingfleet Conservation Area, south-east of The Green, positioned between The Green and Kenilworth House. The Stillingfleet Village Design Statement (VDS) notes that existing trees and hedges form a significant part of the village’s appearance, and the maintenance and retention of this vegetation is of utmost importance. The location of the TPO is to the south-east of The Green and opposite a large open green space referred to as the “Green”. The “Green” does have an abundance of trees within the open space however the Silver Birch is one of few mature trees located in the gardens along The Green that

provide amenity value to this part of the Conservation Area. Other vegetation within the immediate locality is predominantly made up of lower value ornamental trees and garden landscaping.

### **Relevant History**

- 1.3 The following historical tree applications are considered relevant to the confirmation of this TPO.
- 2021/0141/TCA– Crown reduction and shape by 25% to 3 No Silver Birch trees (T1, T3, T4) 1 No Hornbeam tree (T2) and cut back lower overhanging limb to 1 No Ash tree (T5) in the conservation area. Approved 30.03.2021.
  - 2022/1186/TCA – on 11<sup>th</sup> October 2022 the Council made valid an application for notification of intent to reduce 1 Silver Birch by approximately 4m and shape within the Stillingfleet Conservation Area. The application for consent to reduce the tree was refused on the 17.11.2022. The Council served the provisional TPO 24/2022 in response to this.

## **2. BACKGROUND AND SCOPE OF PROVISIONAL TPO 24/2022**

- 2.1 The Council received an application (2022/1186/TCA) as notification of intent under Section 211 of the Town and Country Planning Act 1990 (as amended) to carry out works to a Silver Birch Tree located in the Stillingfleet Conservation Area. The works were to reduce the height of the tree by approximately 4m and shape. The proposed tree reduction was not supported and notice of this decision was given on 17 November 2022 on the basis that the tree is a healthy specimen and adds to the visual amenity of the Stillingfleet Conservation Area and its reduction would have an adverse impact on character and appearance. Subsequently, a provisional TPO was issued on the 30<sup>th</sup> November 2022 in order to immediately protect the tree and provide long-term protection to the Tree given its size, healthy condition and positive contribution to amenity and the Conservation Area.
- 2.2 The Order was served following the advice of the Council's Tree Officer, a qualified arboriculturist, who recommended that the Silver Birch tree is a healthy specimen typical of the species. Crown reduction is harmful to the tree and reduces visual amenity contrary to policy. Future pruning would be required to keep clear of the overhead cables though this would be supported.
- 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 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'.
- 2.4 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 a single Silver Birch Tree (T1), 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 interested in the land, who has been identified as the owner of the property at Kenilworth House. 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 25<sup>th</sup> January 2023.

### **3. REPRESENTATIONS RECEIVED TO PROVISIONAL ORDER**

- 3.1 One objection to the TPO was received from the owner of the tree at Kenilworth House. It can be summarised as follows:
- Wish that the side branches be trimmed as they are touching the electric power lines.
  - Shortening the side branches all over the tree would make it slightly smaller and more attractive and would reduce the tree's vulnerability to wind damage.
  - Tree surgeon has recommended that the life span of the tree may be up to 10 years despite the trunk showing evidence of disease.
  - Reducing the height of the tree would allow for more visibility of the Green.

### **4. APPRAISAL**

- 4.1 The main issues for consideration are:
- Whether the tree is worthy of protection;
  - Justification and consideration of objection.

#### Whether the tree is worthy of protection

- 4.2 As noted above, the Council's Tree Officer has advised that the Tree is a healthy specimen typical of the species. Crown reduction is harmful to the tree and reduces its visual amenity contrary to policy.
- 4.3 The Stillingfleet Village Design Statement notes that existing trees and hedges form a significant part of the village's appearance, and the maintenance and retention of

this vegetation is of utmost importance. The location of the Tree is to the south-east of The Green and opposite a large open green space referred to as the "Green". The "Green" does have an abundance of trees within the open space however the Silver Birch is one of few mature trees located in the gardens along The Green that provide amenity value to this part of the Conservation Area. Other vegetation within the immediate locality is predominantly made up of lower value ornamental trees and garden landscaping. Therefore, Officers consider that the Tree makes a valuable contribution to the character and appearance of the Conservation Area and as such should be retained in its current form.

#### Justification and consideration of objection

- 4.4 No technical information was submitted with the Section 211 notification to prune the Tree. The applicant did not state in their application form the reason for seeking the permission to prune the Tree to the extent proposed. The objection to the making of the Tree Preservation Order states that the side branches touch the electric power lines, particularly in windy conditions. Additionally, the objection states that the pruning of the tree would make it smaller and more attractive allowing for more visibility across the Green.
- 4.5 The Council and its arboricultural consultant have considered the submissions made by the objector, the applicant of the previous notification to reduce the tree and the issues presented. It is considered that:
- (a) Adequate technical justifications for the proposed pruning of the tree have not been submitted.
  - (b) Account should be taken of the fact that the tree is a healthy specimen with a life expectancy of a further 40-100 years.
  - (c) The medium sized tree gives a positive contribution to the setting of Stillingfleet Conservation Area, particularly to help soften the built form.
  - (d) Silver Birch trees in particular are important for carbon sequestration, pollution lock up and oxygen production.
- 4.6 The Council's Tree Officer advises that such aesthetic reasons are not technical justifications to remove trees and has advised that future pruning would be required to keep clear of the overhead cables though this would be supported. Such reasons are not justifications for the reduction of healthy trees at a time when tree retention is highly valued. Therefore, no weight can be attached to the aforementioned reasons in the consideration of the TPO protection.
- 4.7 It is noted that surrounding vegetation within the gardens, which is predominantly ornamental trees, garden shrubs and hedges, does not offer the same visual or environmental benefits as the Silver Birch, which is 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 Tree makes a valuable contribution to the character and appearance of the Stillingfleet Conservation Area and no technical justification or material reasons have been provided to outweigh the advice of the Council's Tree Officer and justify the removal of the Tree.

## **6. CONCLUSION**

- 6.1 Special attention must be paid to the desirability of preserving the character and appearance of the Stillingfleet Conservation Area. It is considered that there is not enough evidence or justification for the reduction of the healthy Silver Birch tree at this time and none of the factors presented have mitigated this. The Council's Tree Officer has concluded that none of the matters raised by the objector of the notification to reduce the tree, undermines the tree's suitability for protection by TPO.
- 6.2 Having regard to the above, the proposal to reduce 1no Silver Birch Tree would have a detrimental impact on the character and appearance of the Stillingfleet Conservation Area. This Tree Preservation Order (24/2022) would provide long term protection of a healthy and high amenity tree which provides a valuable contribution to the green and rural character of Stillingfleet Conservation Area, contributing to the area both visually and environmentally.

## **7. RECOMMENDATION**

Taking into account all of the above, Officers recommend that Members confirm the Tree Preservation Order 24/2022 to protect the Silver Birch Tree at Kenilworth House, The Green, Stillingfleet.

**Contact Officer: Esther Pask, Planning Officer**

### **Appendices:**

**A – TPO 24/2022 Schedule**

**B – TPO 24/2022 Map**