



Report Reference Number: TPO 27/2022

To: Planning Committee
Date: 15th March 2023
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Lead Officer: Hannah Blackburn (Planning Development Manager)

APPLICATION NUMBER:	TPO 27/2022	PARISH:	Escrick Parish Council
TPO SERVED:	22 nd December 2022	DEADLINE FOR CONFIRMATION:	22 nd June 2023
LOCATION:	Oak Lodge, Skipwith Road, Escrick, York, YO19 6JU		
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. 27/2022. A copy of the Order is at Appendix A.

1. INTRODUCTION

- 1.1 The tree subject to the Tree Preservation Order (TPO) an Oak Tree (‘the Tree’) located in the curtilage of Oak Lodge, Skipwith Road, Escrick. It is located within the garden of Oak Lodge and to the rear of the frontage properties on A19.
- 1.2 The site is located within the Development Limits of Escrick village, and within the Escrick Conservation Area. The Council on 13 December 2022 resolved to ‘Make’ the Escrick Neighbourhood Development Plan. This means that the Escrick Neighbourhood Development Plan forms part of the statutory Development Plan for the parish of Escrick. Escrick Neighbourhood Development Plan (2021-2035) paragraph 3.62 states *“Mature trees and hedges make up much of the character of the village as well as providing habitats for local wildlife.”* In paragraph 6.0.4 it goes on to further state that *“The NDP supports all conservation of existing trees and planting of new trees throughout the Parish.”*

Relevant History

1.3 The following historical tree applications are considered relevant to the confirmation of this TPO.

- 2019/1079/TCA - Application for consent to dead wood the whole tree and reduce by 20% next to the house where it overhangs to 1no Oak tree within the conservation area. Permitted 8th November 2019.
- 2022/1331/TCA - Crown reduce by 2.5 metres all round to 1 No Oak tree (T1) in the conservation area. Not supported 22nd December 2022.

Reason: The 1No Oak tree is a healthy specimen that adds to the visual amenity of the area. The tree is considered to have an amenity value and positively contribute to the character and appearance of the Conservation Area. The crown reduction of the tree would reduce the level of amenity without sufficient justification. This decision is in the interests of residential amenity and the subject trees, and therefore the proposal fails to accord with 'A Guide to the Law and Good Practice', Government's policy on the tree preservation order system or the Town and Country Planning Act 1990.

- 2023/0113/TPO - Lateral prune south/south east canopy by 1 m and corrective pruning to reduce remaining canopy to 2 m to 1 No Oak (T1) protected by TPO 27/2022. Pending Decision.

2. BACKGROUND AND SCOPE OF PROVISIONAL TPO 27/2022

2.1 The Council received a notification under Section 211 of the Town and Country Planning Act 1990 (as amended) for proposed works to a tree in Escrick Conservation Area (reference 2022/1331/TCA) as noted in the relevant history section above. The proposal was to crown reduce the Oak tree by 2.5 metres.

2.2 The Council's Tree Officer assessed the submission and considered that the tree is a healthy specimen typical of the species. The tree has a high amenity value; it is a large tree that is visible from the public highway to the west (A19) and it makes a positive contribution to the designated heritage asset. The tree has a high carbon sequestration value and the retention of such trees is of importance and the loss or reduction in scale of such trees is not supported. As a result of the Tree Officer's assessment and having considered the contribution to local amenity and the Conservation Area, the submission was not supported.

2.3 Given the above, Officers considered that further consideration should be given to the long-term protection of this tree given it is a healthy specimen typical of the species and has a high amenity value, being a prominent tree, which adds to the character and appearance of the Conservation Area. The Council's Tree Officer concurred that tree is worthy of protection and that there was an imminent threat of tree loss because of the crown reduction. The tree has a life expectancy of over 100 years; is a large sized tree visible from the highway and makes a significant contribution to local amenity. On this basis it was Officers' judgement that a provisional Tree Preservation Order be issued on 22nd December 2022 for Tree T1 – Oak tree.

- 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 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 one Oak 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 with an interest in the land, who has been identified as the owner of the property at Oak 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 24th February 2022.

3. REPRESENTATIONS RECEIVED TO PROVISIONAL ORDER

- 3.1 Two objections to the TPO were received from the owner of the tree and neighbours (summary):
- Applicant agrees that their initial works proposed were not sufficiently justified or supported.
 - Main issue is to ensure the longevity of this important tree within the Conservation Area whilst respecting its close proximity to adjoining houses and their gardens and their respective amenities.
 - In 2019/1079/TCA application, the officer stated:

"In considering the balance of the tree, it is likely the specimen has historically been subject to a poorly conducted boundary prune to the rear. This has regrown with vigour over subsequent years but needs to be considered in the approach to balancing the specimen and the extent to which material is removed from the front weight bearing limb. In considering the rear boundary, the specimen would benefit from a minor crown lift to the rear boundary which would tidy the lower stem, remove poorly attached epicormic growth and this would also allow more light to the rear of the neighbouring garden.

Furthermore, removing this material would halt impeding growth on the host dwellings property boundary. From the ground it appears a generally healthy and stable specimen. Following observations from the site visit, the proposed works set out in the application appear reasonable maintenance work. However, the applicant is advised that the tree, given its size and contribution to the area requires a more comprehensive approach to balance, shape and maintain a healthy specimen."

- The current owner of the Oak tree's intention remains to preserve and protect the health of this wonderful specimen. Therefore, there is no evidence to suggest, indeed it is inconceivable, that the Tree should be under any kind of threat or harm under our ownership.
- Submission for reduction was timed for the 2022/23 pruning season whereby proposed works were expected to bring the shaping of the Oak tree to a similar position had reasonable maintenance work been carried out previously.
- The tree is not under threat and is protected by its location within the Escrick Conservation Area. Therefore, a TPO is not required and has not been justified. Since the Oak Tree already lies within a designated Conservation Area, any additional protection a TPO may otherwise afford is not only duplicative but carries no material advantage to the protection already available to the Tree. Indeed the only thing the imposition of the Temporary TPO has achieved to date is create additional work for an already overloaded planning team, consumed substantial local authority time and resources, as well as taken up valuable time on the Planning Committee's stacked agenda. Surely before any temporary TPO is issued, it would make practical sense to ascertain the covenants and protections already in place before setting the wheels in motion for a lengthy administrative process.
- Had the visual inspection of the Oak Tree been conducted with greater proximity, it would have been clear that the rear aspect of the Oak Tree (facing towards the A19 and encroaching on the boundary with 23 Main Street) has grown significantly since the original 2019 evaluation, and the urgency to address the lopsided nature of the Oak Tree would have been abundantly apparent, setting aside the substantial growth that has since also taken place towards the applicants house within their perimeter. To this date, we have not received notice nor request for an on-site visit to inspect our Tree from the appointed tree consultant, therefore it is difficult to draw meaningful confidence as to the conclusion of the assessment which has led us to this point.

- The Tree's amenity also significantly deprives natural light to the applicants neighbours for a vast majority of the year when in leaf. This also remains a key consideration behind their request for reduction.
- Currently the tree is a danger with falling branches, pigeon droppings and the tree is riddled with infestation.
- The tree also now blocks the light from allowing other shrubs and trees developing and the grass it has killed off.

4. APPRAISAL

4.1 The main issues for consideration are:

- Whether the tree is worthy of protection;
- Justification and consideration of objection.

Whether the trees are worthy of protection

4.2 The Council's Arboricultural Officer has advised that the tree is healthy and of typical form. The tree has life expectancy of 100 plus years and is a large tree visible to the public from the highway. The tree also helps soften the local built form and positively contributes to the character and appearance of Escrick Conservation Area. Further, Oak species are one of the highest performing carbon sequesters. Given there were immediate threats to the tree from the proposed crown reduction through the Section 211 notification, the serving and confirming of the Order is recommended. 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 tree in the form of the proposed substantial crown reduction. There is a current application (2023/0113/TPO) for consent to lateral prune south/south east canopy by 1 m and corrective pruning to reduce remaining canopy to 2 m to 1 No Oak (T1). This is pending determination.

Justification and consideration of objection

4.4 The tree the objection covers a number of issues:

- Safety of tree,
- Amenity of neighbours,
- Tree not at risk as protected by conservation area.

There is a difference of opinion on the amenity assessment, with the owner considering it unworthy of protection, while the Council's 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 A19 highway that runs through the settlement and conservation area. It is of high visual amenity and is a healthy tree of good form and structure. If the stability of the tree from its *"lopsided nature"* is of concern it is recommended that a stability test be commissioned. Guidance states it is *"not necessary for there to be immediate risk for there to be a need to protect trees."*

- 4.5 The tree 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.
- 4.6 In summary, the tree makes a valuable contribution to the amenity of the area and positive contributes to the character and appearance of the conservation 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. If confirmed any future application for works to the Tree would be made via a Tree Preservation Order submission and assessed accordingly.

5. CONCLUSION

- 5.1 The tree which is the subject of the Order is visible from public vantage points, is large and healthy, makes a positive contribution to the amenity of the area and the character and appearance of the conservation area, and delivers benefit in terms of carbon sequestration. The tree is considered to be worthy of protection under a Tree Preservation Order.
- 5.2 It is considered that the matters raised in the objections do not undermine the suitability of the Order or provide justification for not confirming the provisional TPO for this Oak tree.

6. RECOMMENDATION

Taking into account all of the above, Officers recommend that Members confirm the Tree Preservation Order 27/2022 to protect the Oak tree T1 at Oak Lodge, Skipwith Road, Escrick.

Contact Officer: Jordan Fairclough, (Planning Officer)

Appendices:

A – TPO 27/2022 Schedule

B – TPO 27/2022 Map