



DM.26 11/12
Development Management Committee
Date: 4 th April 2012

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Subject: Objection to Tree Preservation Order Normanby le Wold 2011

Report by:	Mark Sturgess
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Purpose / Summary:	This report relates to an objection received against the making of a new Tree Preservation Order protecting one large tree in a garden.

RECOMMENDATION(S):

1) That Members, notwithstanding the objections made by the owner, approve the confirmation of the Tree Preservation Order Normanby le Wold 2011.

IMPLICATIONS

Legal: None

Financial : None

Staffing : None

Equality and Diversity including Human Rights : The process for making and confirming Tree Preservation Orders is set out in primary legislation and government guidance. Therefore, if all decisions are made in accordance with those statutory requirements and guidance, and are taken after having full regard to all the facts, no identified breach to the Human Rights Act 1998 should arise as a result of this report.

Risk Assessment : None

Climate Related Risks and Opportunities : None

Title and Location of any Background Papers used in the preparation of this report:

Guidance book - Tree Preservation Orders: A guide to the Law and Good Practice) otherwise known as the "Blue Book", Chapter 3. Available in the bookcase in the conservation/environment team area of the planning department. Also available on the government website www.communities.gov.uk

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

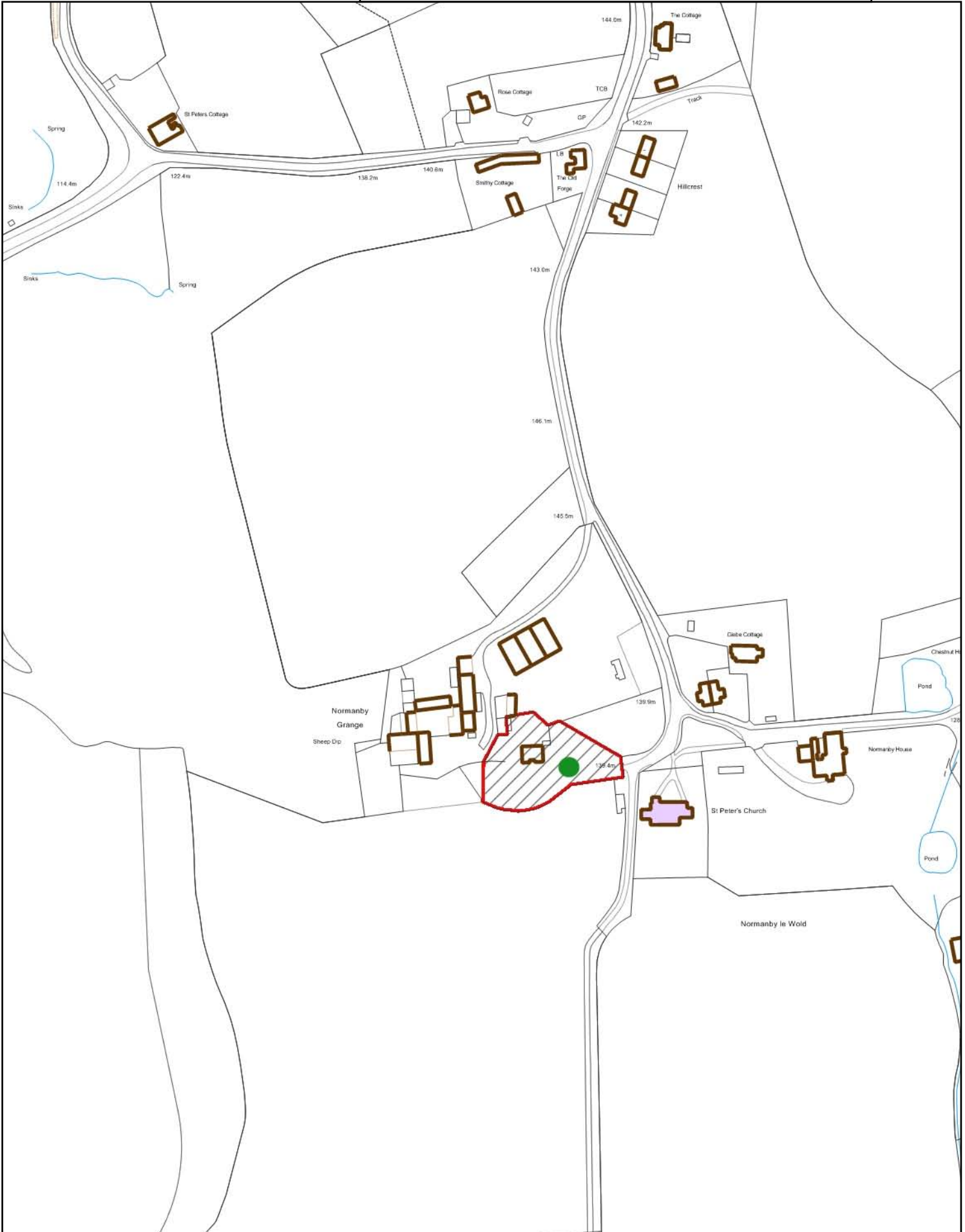
Yes

No

Key Decision:

Yes

No



1. Introduction

- 1.1 A customer call back request was received containing a message from a concerned village resident, stating some trees had already been cut down and could the remaining trees be protected as the trees were an important component of the local views and character of the area.
- 1.2 A site visit was made to look at the trees and assess the situation on 13th October 2011. Photos were also taken from the Viking Way across the field to the front of the property and the adjacent lane.
- 1.3 The Tree Preservation Order Normanby le Wold 2011 was made on 20th October 2011.
- 1.4 An objection against the TPO was made via the tree owners solicitors, which was received on 25th November 2011.

2. Discussion

- 2.1 A message was received from a gentleman who lives in the area, stating some trees had already been removed within the garden, and it had come to his attention that the owners intended to remove further mature trees. He requested the remaining trees be protected to preserve a valuable historic and beautiful area. His message stated, the trees are in excess of 100 years old, and are opposite the church. The village is located on the Viking Way, at the highest point of Lincolnshire. The character of the location will be dramatically altered if the mature trees are cut down. The stretch of footpath that runs between the church and the property (Viking Way) forms part of one of the most popular walks in the east of England. The removal of the trees will have an adverse effect reducing the aesthetic appeal in a major tourist area. The gentleman was informed that a site visit would be made to assess the trees for a TPO.
- 2.2 A site visit was made on the morning of Thursday 13th October 2011. The various trees were discussed with the lady of the house, and she pointed out where a yew tree had recently been removed due to shading it caused to windows, saying that was the only tree that had been removed. Looking around the garden, it could be seen that at least one more stump was visible in a shrub bed, but it was not clear if this had been a small tree or large shrub.
- 2.3 The sycamore is a very large tree positioned in the driveway to the side of the house. The driveway extends from the lane at the side of the church towards the house. Where the drive meets the tree, the drive encircles the tree creating a mini island before it opens up to a parking area on the east side of the house, to the north of the tree.
- 2.3 The lady said the council of where they previously lived had put a TPO on trees at that house, and she asked me not to put a TPO on these trees as she would get her husband to call me after he returned home

the following day. Her husband did not call the council to discuss the matter.

- 2.4 A week later there had been no contact from the tree owners, so the trees were discussed with the Environment Team Leader and the decision was made to put a TPO on the sycamore as the various other trees did not meet the criteria for a TPO due to being either poor quality or form, or were not prominent enough.
- 2.5 The Tree Preservation Order Normanby le Wold 2011 was made on 20/10/11 and sent to the owner and other relevant parties.
- 2.6 An objection against the Preservation Order was received on 25/11/11 from the tree owner's solicitors. The objections raised are listed below in brief, followed by the council officer response;
 - a. The tree is of an exceptional height and is noticeably out of proportion with its surroundings, and is not sympathetic to the area.
WLDC - The tree is very large which is why it is prominent in its location. Size and prominence are important factors in an amenity assessment. The tree is not out of scale with its surroundings as there are other trees in the area that are of similar size and taller, which is evident in the photo presentation.
 - b. There are a number of sycamores in the area and its removal would have a minimal visual impact.
WLDC - Sycamore trees are ubiquitous across the country. An amenity assessment is based on how nice the tree looks, its health and shape, its size, how prominent it is with consideration of position and presence of other trees, and how it fits in with its surroundings. There is no part of the assessment which asks how common or scarce the species is. The tree is prominent due to its size, position and good shape, and this is not altered or diminished because of what species it is.
 - c. The tree is not in the vista of the church and does not add to its character.
WLDC – Photos in the presentation show that the tree is within the vista of the listed church. Whether the tree is or isn't in the area of a listed building does not form part of the amenity assessment, but it is known that trees do add to the character of an area which is why conservation areas protect trees within them. The "setting" of a listed building is described as the "surroundings in which a heritage asset is experienced". This includes views to and from the historic asset, and can be close to the building or quite a distance away. The house, tree and church are all visible in the same views when walking northwards along the Viking Way in the field to the front of the property.
 - d. The property is on the outskirts of the village and so the trees removal would not have an adverse impact on the character of the community.

WLDC – whether the tree is on the outskirts or within the village centre, views of the tree are clear and add feature to its surroundings.

- e. Sycamore trees are not indigenous. Walkers to the area would expect a more suitable tree to be planted.

WLDC – Tree species forms no part of an amenity assessment. Many people would have no idea what species the tree is, nor whether or not it is a native species. People walking along the Viking Way, visiting the church or this property are more likely to just acknowledge the presence of the tree rather than note what species it is. Any tree, regardless of species, has potential to have a TPO placed on it providing it is visible to members of the public, looks good, fits well with its surrounding views and is healthy enough to have at least 10 years of remaining life expectancy. Current research suggests the sycamore may actually be a native tree. Native or not, its environmental impact should not be understated as it makes a great host to a wide range of our wildlife.

- f. The owners had intended replacing the tree with an elm which would be more suitable and add *real* amenity value to the area. WLDC – The English Elm tree is a large majestic tree which was once a common sight across our countryside, but also is not a native tree. Their numbers across England and West Lindsey District have been decimated by Dutch Elm Disease. The disease and the beetle that carries it are still prevalent, and if an English elm or a native Wych elm is planted it is highly likely to die before it reaches maturity. Elm suckers and young stems growing from old stumps are often seen in hedgerows, but usually die when they reach about 15-20 years old when the disease host beetle is attracted to the tree. The comment that an elm replacement would add *real* amenity value to the area implies that tree species should be a main factor in providing amenity value. The various national and internationally used amenity assessment methods developed by leading arboriculturists, including the Helliwell system used by WLDC (the only one officially recognised by the courts), do not take account of species. There are many sycamores across the district that are protected by a TPO.

- g. The tree has caused damage to other trees in the garden i.e. a holly and willow continually in the shade.

WLDC – The holly and willow were growing between a horse chestnut and the sycamore. The horse chestnut has recently been removed due to its poor condition which allows more light to the willow and holly. The horse chestnut was just to the right side of the gate and driveway entrance, then the holly and the weeping willow a bit further along the side of the driveway. Other trees along the left of the driveway which would also have shaded the holly and willow were removed by previous owners, according to the lady of the house. Holly is a species that naturally grows within woodlands and grows well in shaded areas. The holly is of average form but did not meet the criteria for a TPO due to its size and lack of prominence. The willow is

the closest to the sycamore but is just outside its crown spread. The willow has already grown tall and spindly due to shading from other trees, but most of these have already been removed (the horse chestnut and the ones along the left of the drive), and the tree should now have adequate light. The willow is an untidy looking tree and was not included in the TPO due to its poor form.

- h. The tree is incredibly close to the house.
WLDC – the tree is very large but its outer edges of the crown not overhang the house. The photos show the distance between the main house and the tree, although there is a single storey room which is closer to the outer reaches of the canopy.
- i. The tree has not been planted with any thought and the sycamore is seen as a weed species.
WLDC – Species is not part of an amenity assessment. It is appreciated that many people consider sycamore trees to be weeds, but also many people do not consider them weeds. This is very much a personal opinion which seems to be primarily based on their abundance and readiness of seed germination. Sycamore trees thrive in most conditions and its success gives it an unfair tag of being a weed. The tree is very large and possibly was not purposely planted, or the land was not originally garden space when the tree was young.
- j. The tree takes up a considerable proportion of the garden and light into the property, and the owners do not feel able to enjoy their front garden due to the large and domineering tree.
WLDC - The property has a larger than average garden, most of which is away from the tree across the front of the house and to the west side. The sycamore is to the east side of the house growing in a small island in the middle of the driveway. While being a very large tree, the tree crown is mainly above the driveway and over a small amount of lawn/garden to both sides of the drive. The main lawn and shrub beds are across the frontage of the house to the south, and the lawn continues around to the westerly side of the house. There is a smaller area of lawn to the east of the property, separated from the main lawn area by the driveway. The size of garden and the amount that is not under the tree crown is visible by the aerial photo in the presentation.
- k. The tree interferes with overhead cables. If the tree is to remain, there is no doubt that the branches will cause interruption and significant damage to the wires.
WLDC – Branches can be pruned to clear cables. The branches are not currently interfering with the cables so any future pruning works will be minimal and not affect the overall crown shape.

- 2.7 The tree owner's objection also contains three neighbour letters supporting the owners wish to fell the tree. These letters raise the following points;
- i the tree is not native and there are other sycamores in the area.
WLDC – see response above at items 2.6 b and e.
 - ii replacing the tree with a British native tree would provide more colourful bark and leaves.

WLDC – There are 33 British native trees, most of which are very common across our district and not colourful. Ones providing colourful bark are the white downy and silver birch, and wild cherry red/brown bark, all having a fairly short useful life expectancy. Ones with colourful leaves are rowan and cherry which turn red, and birch, lime & field maple which turn yellow in autumn. These are all common trees, and with the exception of the lime would not be acceptable as replacements due to their short life, small size or low prominence.

iii the owner intends replacing the tree with one that will be much smaller at maturity.

WLDC – a smaller tree will provide much less visual amenity value, as size and prominence are main parts of an amenity assessment. The owner's suggestion of planting an elm as replacement is proposing another large tree which could grow as tall or possibly taller than the sycamore, and therefore contradicts this comment from a neighbour.

iv the tree is in the garden some distance from the Viking Way and the trees removal will not affect views of the surrounding countryside to the footpath users.

WLDC – photographs show views of the tree from the Viking way. The tree is directly in front of anyone walking northwards across the field.

v the tree is near the house which has shallow foundations.

WLDC – photos show distance from house. Both tree and house are very old and if any foundation disturbance was likely to be caused, it would probably have occurred by now. If foundations are damaged at any time in the future, an application could be made to remove the tree providing adequate evidence is provided to show the tree is the cause of the damage.

vi the tree will continue to grow and be even more detrimental to the property.

WLDC – the tree will continue to grow but I do not see how it will be detrimental to the property. A TPO will not prevent the owners from applying to carry out pruning works or to resolve any damaged branches.

vii the tree is far too large for its location and could pose a threat to the property.

WLDC – most trees are naturally large structures and do not usually become dangerous just because of their size. Providing the tree is properly maintained and any branches that become storm damaged or develop weakness are dealt with then any risk of branch failure would be minimal. Branch drop could happen to any tree regardless of size or position, particularly during stormy weather. The crown of this sycamore does not overhang the house and so if a branch was to fail it would not hit the house.

vi the tree is very tall casting a shadow over what ever is struggling to grow under it - holly and willow.

WLDC – most of the garden below the tree is driveway and lawn with a narrow shrub bed following the edge of the drive. The sycamore is considered to be more valuable as an amenity tree than the willow or holly. Also see WLDC response at 2.6 j.

- 2.8 Various photos were sent with the objection letter to show tree size and proximity to the house, and have been included in the PowerPoint presentation. It is felt that the photos help to show the good shape and prominence of the tree and its high amenity value, and help to reinforce the decision to protect it. The photo showing the tree proximity to the house has been taken at such an angle to show the house behind the tree and might give the impression the tree spreads across the roof. This photo angle does not accurately express the distance between the tree and the house, and so proximity is more clearly shown in photos taken by the council officer.
- 2.9 Confirming the TPO will not prevent any necessary tree work from being carried out, and any dead wood can be removed without requiring council consent. The purpose of a Tree Preservation Order is not to prevent works from being done, but is to allow regulation of any tree works in order to prevent unnecessary or damaging works from taking place. Keeping the protection will ensure that any pruning works required are done to British Standards Recommendation for Tree Work, (BS3998:2010) and follows industry good practice. In this way, any pruning will be done at correct pruning points minimising the risk of disease and decay developing and reducing excessive, dense regrowth. A TPO should prevent the tree from being inappropriately pruned which would reduce its amenity value and long term retention.
- 2.10 Making an application for consent to carry out tree works is currently free of charge and takes between 3 to 8 weeks to process.
- 2.11 LPA's have the power to make a Tree Preservation Order if it appears expedient in the interests of amenity value to make provision for the preservation of trees. The Secretary of States view is that a TPO should be used to protect selected trees if their removal would have a significant impact on the local environment and its enjoyment by the public. "Amenity" does not just refer to visual amenity but can also include such considerations as future benefit, contribution to the landscape, screening an eyesore or development, and can include other factors such as wildlife value or scarcity.

3. Conclusion

- 3.1 The tree contributes to the landscape character of this part of the Wolds and adds amenity value to the village edge and the area near a listed church and part of the Viking Way. Trees have already been removed and not replaced by the previous owner. A yew and horse chestnut have already been removed by this owner, and they also intend removing a semi-mature beech close to the ha-ha across the front of the house. Confirming the Tree Preservation Order is the only way to ensure this tree is not removed or inappropriately pruned affecting its shape, health and long term retention. If the TPO is not confirmed, the owner will be able to remove the tree without good reason and would not be required to plant a replacement.