



PL.17 15/16

Planning Committee

Date 6th April 2016

Subject: Objection to Tree Preservation Order Caistor No1 2015

Report by:

Chief Operating Officer

Contact Officer:

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Purpose / Summary:

This report relates to an objection received against the TPO made on a beech tree on land to the side of the objector's property.

RECOMMENDATION(S): That members approve the confirmation of the Tree Preservation Order Caistor No1 2015.

IMPLICATIONS

Legal: None

Financial : FIN/7/17 There are no financial implications at this time. However, members should be aware that there is a small chance of a future claim for costs if any future application is refused and then goes to appeal, or if any property damage occurs as a direct result of our decision not to allow certain tree works.

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 : Protecting trees is beneficial to the climate.

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

The Planning Practice Guidance available on the [www.gov.uk](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/) website at <http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

N

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

N

1 Introduction

- 1.1 An application for tree work in the Caistor Conservation Area (CA) was received in August 2015 (called a section 211 notice of works). The tree is a copper beech tree within a landscape garden area at the entrance to George Mews, Caistor, which is owned by Acis. This garden area is land to the east side of No5 North Street.
- 1.2 An amenity assessment was carried out on the copper beech tree. It met the criteria for a TPO and is considered to be a feature of the street scene, therefore the Caistor No1 2015 Tree Preservation Order was made.
- 1.3 An objection letter was received from the residents of No5 North Street, adjacent to the tree.

2 Discussion

- 2.1 The purpose of a tree application for trees only covered by the conservation area is not to ask for council permission, but is just to give the council prior notice of intended work so the council can check if the work is appropriate. Under the protected tree legislation the council can only deal with a conservation area application in two ways;
 - a) Agree with the work and let it go ahead
 - b) Disagree with the work and carry out an amenity/TPO assessment, and make a TPO if it meets the criteria.The tree application was the trigger for the TPO assessment.
- 2.2 The tree application was for a crown reduction, to reduce its height and width by 1m, to leave the tree at 3.7m wide. The reason given for the work was to bring the tree off the lamp post and back from buildings (blocking daylight to No5).
- 2.3 Street lamps can have branches cut back from around them at any time without council consent, as the requirement to keep street lights clear is part of the Highways Act. Tree work necessary for compliance of another Act is exempt from needing council consent.
- 2.4 The proposed work of an all-over crown reduction was considered inappropriate, and would have had little to no impact on light to the adjacent property. A tree will always try to regrow back to its original size as quickly as possible, and will usually regrow two or more branches around the cut ends where there was originally just one branch. So if light being blocked is an issue, doing a crown reduction will often make the issue worse after new growth has developed. Alternative work was considered more appropriate for the tree and for the reasons provided for the work by the applicant.
- 2.5 Caistor Town Council raised concerns on the tree application about the size (extent) of reduction on the copper beech tree.

- 2.6 Due to the proposed work being considered to be inappropriate for the tree, and the tree met the criteria for a TPO, a TPO was made and sent out to the tree owners (Acis), their agent who made the application, and the neighbouring property at No5. An objection was made by the residents at No5, in which they;
- a) raise concerns about the proximity of the tree to their house because the tree is not fully grown and branches already touch their house.
 - b) raised concerns about roots potentially affecting their boundary wall as the tree grows. The objectors feel the tree is not an appropriate species for the location.
 - c) They are concerned that the shrubs and trees “have never been adequately maintained or pruned” and so they want WLDC to take responsibility to ensure the tree is crown lifted and managed so it doesn’t become overbearing or cause any detrimental defects to their home.
- 2.7 A site visit was arranged to discuss the objection points and discuss the tree, during which I pointed out that alternative work would be more appropriate but it is the tree owner’s decision whether or not to make another application. More appropriate work would be a crown lift to raise the lower branches to provide greater clearance above their driveway house roof. They mentioned the tree also restricted light to a house over the road and invited that lady round to discuss the tree/TPO. Following the site visit, additional copies of the TPO and associated documents were sent to the properties over the road, but no responses/objections have been received, even from the lady who said the tree blocked her light.
- 2.8 A site visit was made on a sunny morning to see where the shadow fell. By 10:20am, the shadow of the beech was already past the only window of No5, and was across the road and up the front wall of the house over the road. It was only a small shadow of the tree top, but as the tree grows and is covered in leaves then the shadow will be larger and let less light through the tree. There is also a large conifer close to the beech which is causing dense shade, a birch tree, and many tall shrubs also causing shade.
- 2.9 In response to the objection points raised by the neighbour at No5;
- a) Tree branches close to the house are currently just a couple of twiggy branch ends which could easily be trimmed back from the house rather than doing an all-over crown reduction. A crown lift would remove the low branches altogether, thus removing the need for trimming branches back from the house side and over the drive every few years.
 - b) There is currently no indication that roots will affect the nearby boundary wall as the tree grows. It may be that in the future roots could meet the wall and just turn to follow the wall side, or they might push against the wall and cause displacement. We cannot guess what will occur in the future, but British Standards recommendations, BS5837:2012 *Trees in relation to design*,

demolition, and construction, recommends a minimum distance of 2.0m between a tree and masonry boundary walls. This tree is 2.3m from the boundary wall, but although it is further away from the wall than the guidance minimum, there is no guarantee that its roots won't cause damage to the wall some time in the future. The tree belongs to Acis so they are responsible for its management. If the tree is going to cause any damage in the future, it will be caused regardless of whether or not the tree has a TPO on it. We cannot support inappropriate work or the removal of trees just on an assumption that they might cause property damage as they grow bigger. If a tree does eventually cause property damage then an application could be made to remove the tree if necessary, providing appropriate supporting information is supplied to show that the tree is the cause of the damage. There is also a large conifer tree only a foot or two from the boundary wall. This conifer is already taller than the objector's chimney. The conifer and the tall shrubs cause more shadow up their house side than the beech.

- c) The owners of the tree and other trees and shrubs in the garden area are responsible for their maintenance, and have a common law 'duty of care' to ensure their property (the trees and shrubs) are kept in a reasonable condition to keep risk of injury to people or damage to property as low as reasonably practicable. This is a common law requirement and common law is outside the council's jurisdiction. We cannot tell the tree owners to do work to their tree, and placing a TPO on it does not place any responsibility for its management on to the council. The TPO just means that if the owners decide they want to do some work to the tree, they need to make an application so the council can ensure only appropriate work is done, and not work that is bad for the tree's health, future life expectancy or amenity value.
- d) There are various exemptions from needing council consent within the TPO legislation. One of the exemptions is to 'abate a nuisance'. This means that if any branches rub on the house side or on the roof tiles, the branch could be cut back a suitable distance to abate the nuisance without needing to make an application

3 Conclusion

- 3.1 The copper beech tree is a feature along the street scene adding to the character of this part of the Caistor conservation area. Confirming the TPO is the only way to ensure this tree is not inappropriately pruned or removed without good reason.