

23/01227/TPO

Applicant Mr Maksym Lesiuk

Location Street Record Yew Tree Close Radcliffe On Trent Nottinghamshire

Proposal T1 - Cedar Tree (Cedrus) - Fell

Ward Radcliffe On Trent

THE SITE AND SURROUNDINGS

Details of the application can be found [here](#)

1. The application relates to a Mature Cedar tree located on a piece of land fronting Yew Tree Close. This is located on the right hand side of the road as you enter Yew Tree Close.
2. The site is a narrow strip of land between a low brick wall which fronts the pedestrian pavement and a hedge which forms the boundary of properties on Lamcote Gardens to the east.

DETAILS OF THE PROPOSAL

3. The application seeks consent for works to a tree protected by a tree preservation order. The order is an older one created in 1980: "Rushcliffe Borough Council Radcliffe On Trent No.1 Tree Preservation Order 1980".
4. The application proposes the felling of the tree.

SITE HISTORY

5. Work has been undertaken to the tree in the past, however there is no relevant planning history.
6. Recent works have been reactive and responding to incidents where limbs have fallen from the tree requiring works to make good.

REPRESENTATIONS

Ward Councillor(s)

7. One Ward Councillor (Cllr Upton) initially commented: I believe that this is the tree that was the subject of some local resident's concern a couple of months ago when work was started to fell it. The work was stopped, and in my opinion the tree looks acceptable and makes a contribution to the local environment. However, I have no expertise in the condition and safety of trees and therefore I will support the views of the Borough Council's Tree Officer.

8. Cllr Upton subsequently revised his position providing updated comments: *“Further to my previous comments on this planning application, I have become aware of more issues and comments concerning this cedar tree. In my opinion, this tree has an impact on the local landscape and contributes to the character of Yew Tree Close. It also makes a contribution to nature conservation and ecology. However, I am aware that some safety work may have to be done if it is to be retained. Therefore, I would like this application to have a full, transparent discussion and decision at a meeting of the Planning Committee, and to achieve this I formally object to this application.”*
9. One Ward Councillor (Cllr Brennan comments: *“I am not in a position to comment on the health of this tree. The felling of mature trees should be an action of last resort. I would rely on the advice of the RBC Tree officer as to the extent to which the tree presents a risk due to disease or age and support his conclusion.”*

Town/Parish Council

10. Radcliffe-on-Trent Parish Council resolved to support the professional recommendation of the RBC Tree Officer

Statutory and Other Consultees

11. The Borough Senior Landscape and Design Officer has submitted comments in which they raise no objection to the proposal, subject to a condition requiring replacement tree planting.
12. The full comments are available on the public file, these comments included a number of photographs and annotated photographs which will be shown as part of the committee presentation as well as being available on the file.
13. In summary, the primary purpose of a Tree Preservation Order is to protect trees which enhance the public realm and this is mainly due to the visual contribution they make to the local amenity. The appearance of trees is a significant factor in both making and justifying the ongoing protection of trees. The tree can be seen for short distances on Nottingham Road, but its main value is as an entrance feature to Yew Tree Close. The past failure of branches had affected the natural characteristics of the tree resulting in a sparse central section of canopy and increasingly unbalanced limbs over the road and adjacent gardens. Given the work that took place under the dead or dangerous exemption the tree no longer has any natural appearance or characteristics. As such it would not be appropriate to seek the retention of the tree and allowing its removal and conditioning a replacement is the best way to ensure trees enhance the entrance to Yew Tree Close.

Local Residents and the General Public

14. 5 letters of representation were received. 3 objecting to the proposals and 2 in support, the full details of these public comments are available on the public file.

15. Those raising objections to the proposal included the following observations:
 - a. The tree was described in comments as a “perfectly healthy tree”
 - b. The tree makes a strong positive contribution to local amenity
 - c. The tree supports and attracts the presence of local wildlife
 - d. There is no indication that the tree was/is diseased
 - e. There is no arboricultural evidence provided from a qualified specialist
 - f. There are no aesthetic reasons for the felling of the tree, or that if there are these are subjective.

16. Those commenting in support of the proposal included the following observations:
 - a. The tree has dropped large limbs in the past
 - b. The tree has/had limbs overhanging neighbouring properties representing a risk from future limbs dropping
 - c. The tree has/had limbs overhanging the road representing a risk from future limbs dropping
 - d. With lower limbs removed following previous issues the tree is top heavy and more vulnerable to winds
 - e. This top heavy character is also unnatural/unbalanced/unappealing
 - f. Cedar trees are notorious for shedding limbs.

PLANNING POLICY

17. The Development Plan for Rushcliffe consists of The Rushcliffe Local Plan Part 1: Core Strategy (LPP1) and the Local Plan Part 2: Land and Planning Policies (LPP2). Other material considerations include the 2021 National Planning Policy Framework (NPPF), and the National Planning Practice Guidance (the Guidance).
18. The full text of the Council’s policies are available on the Council’s website at: [Rushcliffe - Planning Policy](#).

Relevant National Planning Policies and Guidance

19. There are no sections of the NPPF which specifically refer to protected trees, however paragraph 131 briefly mentions:
20. “Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users.”

Full details of the NPPF can be found [here](#).

21. Central Government has published separate guidance to local authorities on tree protection [here](#) the key points of which can be summarised as:

- assess the amenity value of the tree and the likely impact of the proposal on the amenity of the area;
- consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
- consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
- consider whether any requirements apply in regard to protected species;
- consider other material considerations, including development plan policies where relevant; and to ensure that appropriate expertise informs its decision.

Full details of this legislation can be found [here](#).

22. Legislation sets out circumstances where applicants may seek compensation for “loss or damage” which arises as a result of a local authority refusing consent for works to trees where the damage occurs and claim is made within 12 months of a decision being issued under section 203 of the Town and Country Planning Act 1990:

A tree preservation order may make provision for the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence—

- (a) of the refusal of any consent required under the order, or*
- (b) of the grant of any such consent subject to conditions.*

Relevant Local Planning Policies and Guidance

Relevant policy within the Local Development Framework is within Policy 37 (Trees and Woodlands) of Local Plan Part 2 (LPP2)

23. Within Policy 37, section 1 is the most relevant as sections 2 and 3 refer to situations of granting planning permission and woodland planting for biodiversity gain which are not relevant in this instance:

24. *“1) Adverse impacts on mature tree(s) must be avoided, mitigated or, if removal of the tree(s) is justified, it should be replaced. Any replacement must follow the principle of the ‘right tree in the right place’.”*

25. Radcliffe on Trent has an adopted neighbourhood plan. The plan has no policies specifically relating to protected trees, and mentions trees only in relation to proposals for housing development and as part of Biodiversity Networks linked to development neither of which are relevant in this instance.

26. The full text of the policies in the LPP1 and LPP2, together with the supporting text, and Neighbourhood Plans can be found in the Local Plan documents on the Council's website at:

<https://www.rushcliffe.gov.uk/planningpolicy/localplan/>

APPRAISAL

27. The main consideration in relation to this application is whether there is sufficient justification for the proposed works, taking into account the health and amenity value of the tree.
28. The council has had previous involvement with this tree over a number of years when limbs have fallen into the garden or road. The first such incident may have been a one off and at that time the tree owner was advised that the tree did not need felling as a result of a single incident and that works to remove any limbs damaged by the one which had fallen should be sufficient. That work was undertaken on the basis of the exemption which applies where a tree is dangerous, hence this tree has no planning history on file.
29. Earlier this year a further limb fell from the tree. Some of the comments from local residents made in support of the proposal reference these previous instances of falling limbs.
30. The Borough Landscape and Design Officer attended site, and given the previous incident and the potential for injury to persons or property advised that the tree did pose a risk to users of the road and neighbouring residents and that work could commence under the dead or dangerous exemption to remove the tree. There were signs of decay at the point of failure and there was concern that it could affect an adjoining limb originating at a similar height on the trunk. It should be noted that Cedar trees do have a tendency to drop limbs as a general point.
31. It is understood neighbours feel the fallen limbs were not decayed based on seeing the limbs sawn up into pieces with little evidence of decay. Decay was limited to branch junctions and would not necessarily have continued along the full length of the limb, as such what was described would not be unexpected given the location of the decay at branch junctions.
32. Works were commenced under the exemption but halted as the tree surgeon was uncomfortable continuing due to concerns from neighbours. Further advice was given by the Borough tree officer that an application could be submitted if this would provide the clarity over the works agreed.
33. This application was duly submitted. The tree currently stands as a vertical trunk with no limbs or foliage bar limited growth at the very top of the tree. Prior to recent works the tree had lost the majority of the middle proportion of the canopy resulting in an unbalanced canopy with growth limited to the top of the trunk and large limbs at the base. The tree was already far from a perfect example of its species but now is just a standing trunk.
34. Cedar trees have a reputation for dropping limbs particularly in periods of wind and rain or snow. Given the size of limbs dropped on both occasions in the

past and proximity to the road and public realm it seems entirely reasonable to suspect that further limbs could have been shed and the potential existed to impact on public safety.

35. Were the council to refuse consent for the proposed felling then any limbs which fall from the tree within the following 12 months and cause any loss or damage could see a claim for compensation made against the council for costs associated with such loss or damage.
36. With the tree in its current state there is no prospect of regeneration, and even if limited regeneration occurred this would occur only at the highest part of the tree and above the point of recent failure where decay was present at the union between the limbs and trunk. As the only future growth would be above a point of decay it would inherently be hazardous. For that reason, the tree is considered to have no remaining amenity value such that its removal is justified and would cause limited harm to amenity.
37. Arguably in light of the guidance in NPPF paragraph 131, and Policy 37 of Local Plan Part 2, a tree species known for dropping limbs is not “the right tree in the right place” given the context of neighbouring gardens and a road which the tree overhung prior to the works which commenced earlier this year under the dead / dangerous exemption.
38. The location would be suitable for a replacement tree, however given proximity to public realm, a replacement Cedar is not considered appropriate. However, some replacement would be possible a condition is suggested allowing flexibility of proposed replacement species however Yew is suggested as a likely option given the road name and the evergreen character of the tree.

RECOMMENDATION

Grant consent subject to conditions

1. The works must be completed no later than the expiration of two years beginning with the date of this consent.

[To ensure that the work is completed before the tree(s) has significantly altered in size, appearance and condition].

2. A replacement tree of a species, details of which have been submitted to and approved in writing by the Borough Council shall be planted in place of tree Cedar to be felled in the first planting season after the felling of that tree. The position and species of the replacement tree to be approved in writing by the Borough Council and then planted in accordance with such approval. Any replacement tree which, within a period of 5 years from the completion of the planting, dies, is removed or becomes seriously damaged or diseased shall be replaced in the next planting season with another of a similar size and species, unless the Borough Council gives written consent to any variation.

[In the interests of amenity and to comply with policy 37 (Trees and Woodlands) of the Rushcliffe Local Plan Part 2: Land and Planning Policies (2019)].

NOTES TO APPLICANT

Nesting birds and bats, their roosts and their access to these roosts are protected under the Wildlife and Countryside Act 1981. Should birds be nesting in the trees concerned it is recommended that felling/surgery should be carried out between September and January for further advice contact Nottinghamshire Wildlife Trust on 0115 958 8242 or by email at info@nottswt.co.uk. If bats are present you should contact Natural England on 0300 060 3900 or by email at enquiries@naturalengland.org.uk.