

23/00158/TORDER

Objector Mr and Mrs Dawn

Location St Mary's Church, Barnstone

Objection To Barnstone No.1 Tree Preservation Order 2023

Ward Neville and Langar

THE SITE AND SURROUNDINGS

1. The Tree Preservation Order (TPO) protects 9 Yews, 4 Sycamores and 2 Lime trees within the grounds of the St Mary's Church, Barnstone. A former chapel no longer in use as a place of worship, comprising a modest stone building with a central bell tower to the front. The site is enclosed by mature tree cover and post-and-rail boundary treatment. The site lies to the north eastern edge of Barnstone with neighbouring residential properties to the south west and open countryside to the north east.
2. The Council recently granted permission (reference 23/01281/FUL) to develop the Church into a residential property.

DETAILS OF THE TREE PRESERVATION ORDER

3. The value and importance of the trees was considered at the planning stage as an earlier site plan showed significant tree removal before it was revised. Some thinning out of trees on the site was considered reasonable given the change in use and the dense nature of the trees, as a result the TPO tried to be selective protecting 15 out of 33 trees. The TPO prioritised protecting trees on the boundary of the churchyard where they are most visible from the adjacent road. Trees growing close to the Church itself or on the rear boundary of the site where they would have least public visibility were not protected, this was also to allow some felling which would create a usable garden space and allow sun to the southern facing part of the site and Church.
4. The TPO was made on the 21st September 2023. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 the Order takes effect provisionally and needs to be confirmed within 6 months of the date it was made. The Council has a duty to consider all objections and representations that have been made before deciding whether or not to confirm the Order.

SITE HISTORY

5. The Council has twice granted permission to change the Church into a residential property and construct an external garage, first in 2019 and then in 2023.

REPRESENTATIONS

Local Residents and the General Public

6. An objection has been received from the owners of the Church for the following reasons.
 - The owners intend to rescue the Church from vacancy and make it into a family home for their children and dogs.
 - The objection relates to the 8 of the 9 Yew trees, whilst Yews are common in churchyards the Church is now redundant as a place of worship and will be converted into a family home. The trees are not of ancient significance according to their girth and the site is not located within a conservation area.
 - Yew trees are one of the most poisonous plants in the world with the Woodland Trust noting that “eating just a few leaves can make a small child severely ill and there have been some deaths linked to Yew poisoning. All parts of the tree are poisonous”.
 - The Human Rights Act 1998 states: *“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”* Having so many Yew trees will deprive them of peaceful enjoyment as they won’t be able to let their children and dogs in the garden without constantly monitoring them and this will affect their mental wellbeing due to concerns of what they may have picked up or eaten.
 - The village is open with few trees which allows historic buildings to be viewed. The only adjacent property is to the south and the majority of protected trees are not between the Church and the neighbouring property.
 - The owner is not clear why the trees have been protected in the interests of public amenity and they believe the local community would prefer to see the Church rather than it being screened behind trees.
 - A BS5837 tree survey has been carried out, some of the trees protected are category ‘C’ trees, these are “low quality with an estimated life expectancy of at least 10 years.”
 - The tree survey notes that the “woodland setting is attractive but there has been minimal management of the trees and the old Church is largely obscured from view. Between the Church and the road, a double row of Yews leans over the roof leaving the area dark and oppressive with little natural light reaching the windows. There is scope to remove a proportion of the trees to open up the site without spoiling the setting.”
 - There are an excessive number of trees for the size of the site and they have dried out the ground creating movement in the building which they would like to prevent in future.

- Some trees are positioned in the northern corner of the site where strong winds could blow in. A tree recently fell into the field, if it had been one of the protected roadside trees it would have caused an inconvenience to village traffic and a risk to any passers-by.
- Most of the protected trees are located along the roadside. The trees will need constant care and pruning to keep them from overhanging the road. The objector questions whether now the trees are protected Rushcliffe should maintain them?
- The TPO is inconsistent with the recent planning permission which has conditioned details of building materials, is there a need for this when the trees will screen the work to the Church from public view?
- The objection does not cover the Yew tree shown as T4 as it would be cordoned off as part of the driveway so access to children and dogs would be prevented. Removed trees would be replaced and the owner would like the ability to prune trees overhanging the road.

APPRAISAL

7. Yew are a common churchyard tree and over 500 across the country have been found to pre-date the adjacent churches, they were commonly planted in Norman times as the poisonous foliage deterred grazing by animals. Whilst the Church is no longer used for worship, it is considered that the presence of Yew trees will still enhance the character and setting of the Church. The trees are not ancient or veteran and the site is not a conservation area, but despite this they still warrant protection and TPO's can be used to protect trees of any species, age and location.
8. Yew trees are well known for being poisonous but there are no controls on what can and can't be grown on private land and the public will give no thought to many garden plants that are poisonous. The Horticultural Trade Association places plants in 3 Categories, 'A' for most severe to 'C' least severe. Yew is in category 'B' with many other common garden plants such as Solomon's Seal, Euphorbia, Lily of the Valley and Foxglove. A landowner has a duty of care not to let poisonous plants grow into places where injury could occur, it would be wise not to let Yew trees grow into adjacent paddocks where livestock is kept and care needs to be taken when disposing of Yew cuttings. In this case a decision has to be taken if it is reasonable for the owners to wish to remove 8 of the 9 protected Yew trees due to the risk they pose, or whether this should have been considered when purchasing the Church given that they are common churchyard tree. It would also be possible for the owners to secure parts of the garden given that most of the protected Yews grow close to the boundary. Unprotected Yew trees close to the Church could be removed without the need to seek the Council's permission.
9. Despite Yew trees reputation for being poisonous recorded cases of such incidents are low. Most court cases have been as a result of farm animals eating cuttings that have been deposited close to boundaries or where trees have grown over into fields. Whilst the Human Rights Act protects the right to life, there will inevitably be a degree of risk in most common day to day activities and teaching children to manage risks is a part of life.

10. The most prominent trees have been protected and these tend to be on the boundaries facing the road rather than the farm to the south, this is due to Government advice that when protecting trees, they should be at least visible from a public vantage point and the Council gives little weight to the views from private properties. The protected trees have high amenity value due to their prominent roadside location.
11. The Council recognises that some tree removal could open up views to the Church and whilst this might change the character of the existing site it would not necessarily result in any loss of public amenity value as the Church is of historical and visual interest. As previously noted only 15 out of 33 trees were protected so there are ample opportunities for tree works to take place despite the TPO.
12. Tree surveys in accordance with BS5837 categorise trees in 4 ways, 'A' good quality trees, 'B' moderate quality, 'C' low quality and 'U' trees which should be removed. Of the 15 trees protected, 2 are category A, 11 category B and only 2 are category C. Whilst the Council tries to protect the best quality trees it also has to take into account their visibility and public amenity value and protecting low quality trees from time to time is appropriate. The Council recognised that the centre of the site close to the Church was dark and that trees were encroaching on the Church and such trees were omitted from the TPO.
13. Given the sheer number of trees on the site it isn't clear which ones are contributing to the movement in the building. Again, not all the trees have been protected including large trees on the rear of the site and many of the trees closest to the Church. It is considered that removal of unprotected trees would be the best way to go about reducing the risk of movement combined with works to convert the Church, after which further assessments could be made if it remains an issue to support a future TPO application. If the Council were to omit the Yews from the TPO this would leave the larger Sycamore trees remaining, but larger trees will extract more water from the soil and could be the trees which pose most risk of subsidence.
14. Trees can fail in high winds, but the position of the trees within the site shouldn't affect their ability to be protected. Should the worst happen and a protective tree fail, there are exemptions that allow work where there is an immediate risk of serious harm and work is urgently needed to remove that risk. In such situations the Council should be notified as soon as possible afterwards.
15. As the main aim of TPO's is to protect trees which enhance the public realm many protected trees are often in roadside locations and roadside trees in themselves are common. The TPO allows applications to be made to allow work to trees and these can also include repeat operations. It would be entirely appropriate for the Council to allow work to ensure trees provide adequate clearance over the highway (5.3 metres over roads and 2.6 metres over pavements.) The TPO does not take away any responsibility for the trees from the owners and the Council would not maintain them.
16. The Council used a planning condition to ensure the materials and rooflights would be in keeping with the character of the Church due to its historical interest and this is relevant whether it is visible to the public or not. As the

report should demonstrate not all trees are protected and it is likely the building will not remain entirely hidden by trees.

17. The Council also used a planning condition to ensure that if any trees were removed within 5 years of completion that replacements should be planted. This will allow the owners some freedom to fell trees that are not protected as long as suitable replacements are planted and there would be some flexibility when it comes to species selection.
18. The committee could ask for trees to be omitted from the TPO if it is confirmed. However, it is considered that the most prominent trees have been protected and whilst tree removal in the short term would require replacement planting, omitting trees from the TPO could create a situation where large-scale felling takes place and it would be sometime before replacement planting has an effect.

RECOMMENDATION

It is **RECOMMENDED** that the Barnstone No.1 Tree Preservation Order 2023 be confirmed without modification.