

21/00198/TORDER

Objectors Mr and Mrs Houghton

Location 3 Cumbria Grange, Gamston

Objection Objection to Tree Preservation Order

Ward Holme Pierrepont and Gamston

THE SITE AND SURROUNDINGS

1. The Tree Preservation Order (TPO) protects a Crab Apple in the north east corner of the rear garden of 3 Cumbria Grange, Gamston. The tree is located on a strip of land owned by the above property that separates their garden fence from the pavement. This was a common feature of estates of this age and was intended to give a more open and landscaped character. The tree faces onto a cul-de-sac at the end of Cumbria Grange and whilst this section of road is relatively short several properties face towards the tree and it enhances the character of the road.

DETAILS OF THE TREE PRESERVATION ORDER

2. The TPO was made on the 4 November 2021 and needs to be confirmed within 6 months of being made otherwise it will lapse.

SITE HISTORY

3. The Council received a planning application for the demolition and replacement of corner walls and fence with new fence; demolition of shed and replacement with a new lean-to shed, Ref: 21/02297/FUL. The application proposed to remove 2 trees within the landscape strip between the rear garden and pavement and then enclose with fencing to the rear of the pavement. The trees were assessed to see if they warranted protection. Whilst one tree had a poor structure due to competing trunks, the other was considered appropriate for protection and a TPO was made. Whilst the tree is a smaller species than what the Council would usually protect, it is considered that it enhances the character of the road and its small size meant that it is appropriate for its location and suitable for long term retention without the need for regular pruning.
4. After the TPO was made discussion continued between the Planning Department and the applicant and a revised scheme was approved in March, this allowed the rear garden to be extended to the pavement, but the protected tree was retained within the garden and a new line of pleached Hornbeams are now proposed along the remainder of the boundary to provide screening and foliage above the fence.

REPRESENTATIONS

5. One objection to the TPO has been received from the owners of the property for the following reasons:
 - The TPO is invalid under section 3.31 (5).
 - The planning authority failed to notify the applicant of the decision within 8 weeks of the planning application. No such extension was agreed by the authority and applicant and therefore, the TPO is deemed void.
 - The nature of the tree is not expedient in the interests of amenity. The tree bears no special positioning or beauty and is not home to wildlife. The tree bears no 'special' or 'outstanding' characteristics. They would like the Secretary of State to assess the tree to consider whether the tree poses the distinguishable characteristics to sustain a TPO.
 - They were not aware of a visit by an officer with arboricultural knowledge which is disappointing due to the lack of willingness to progress the planning application.

APPRAISAL

6. The Council has not been able to establish what section 3.31 (5) refers to and such a section is not found in the 2 main pieces of legislation that govern TPO's. A TPO can be made at any time and does not need to be made within 8 weeks of a planning submission.
7. Under the section 197 of the Town and Country Planning Act 1990 local authorities have a duty to consider using conditions or TPO's to protect trees when considering planning applications. The TPO was not intended to stop the planning application and as previously mentioned, ongoing discussions allowed a revised scheme that retained the tree.
8. TPO's can be made when it is 'expedient in the interests of amenity'. Amenity is not defined in law, but it considered to be the pleasantness or attractiveness of a place. Government advice is that Council's can protect trees where their removal would have a 'significant impact on the local environment and it's enjoyment by the public' and that trees should 'normally be visible from a public place'. In this case it was felt that whilst Crab Apples are a small growing tree, due to the roadside location it was sufficiently prominent to justify protection and that the tree enhanced this part of Cumbria Grange for residents. The trees and landscape strip formed part of the original planning layout of the estate and these would have been intended to enhance the public realm. The Council considered that the tree could be retained even if the boundary fence was relocated close to the pavement and that by doing so the canopy would remain visible to the public.
9. The primary purpose of a TPO is to protect the local amenity and the wildlife value of a tree is not referred to in the Act. However, Council's can give weight to nature conservation. Whilst the tree may not have wildlife nesting in it, Crab Apples are a native tree and the attractive spring blossom will be a food source for insects and the small autumnal fruit will be eaten by birds and mammals.

10. The Council has a points-based assessment which is used when considering making a TPO, this looks at the amenity value of the tree, its condition, impact on public amenity if removed and proximity and effect on buildings as well as considering health and safety. To justify a TPO a tree needs to score more than 11 out of 16 and the protected tree had a score of 12. With fair amenity value, good condition, severe impact if removed and with the ability to grow to full maturity without impacting on buildings. No negative health and safety issues were identified.
11. When the Council was considering making the TPO the tree was not protected in any way and could have been felled. For this reason, the Landscape Officer did not actively engage with the tree owners or announce a site visit, and this is common practice in such circumstances. Councils are only obliged to notify interested parties as soon as practical after making a TPO. Whilst it is unfortunate that this can be seen to be unhelpful, it is done to preserve the tree in the first instance.
12. At the current time the Council is required to consider the objection and decide whether the TPO should be confirmed or not. The Secretary of State is not involved at this stage of the process. However, the owner could apply to remove the tree and if the Council were to refuse permission an appeal could be made to the Planning Inspectorate.

RECOMMENDATION

It is RECOMMENDED that the TPO be confirmed without modification.