

**CITY OF LEEDS TREE PRESERVATION ORDER (NO.53) 2023  
TPO 2023 53 (ALBION HOUSE 41 KENT ROAD PUDSEY LS28 9BB)**

**1. BACKGROUND**

A Conservation Area notification under s.211 of the Town and Country Planning Act 1990 (Ref: 23/07038/TR) was received by the Council. The notification was acknowledged on 23 November 2023.

When considering applications under s.211 of the Town and Country Planning Act 1990 to grant consent to carry out prohibited activities to a tree in a Conservation Area in accordance with the 6 March 2014 Tree Preservation Orders and trees in conservation areas Guidance (Paragraph: 118 Reference ID: 36-118-20140306) Leeds City Council ('LCC') "may:

- make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice."

The Tree Preservation Orders and trees in conservation areas Guidance also provides guidance on the definition of amenity:

"What does 'amenity' mean in practice?

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future."

Paragraph: 007 Reference ID: 36-007-20140306

The notification detailed the intention to undertake a 3m crown reduction of T1 and T2, and a 6m reduction of T3 and T4.

LCC Officer visited site 07 December 2023. T1, T2, T3 and T4 were found to be in good overall condition, and were prominent trees in a Conservation Area with amenity value. The proposed work was considered to be detrimental to the amenity value of the trees. A new Tree Preservation Order was justified in the interests of amenity.

In order to prevent potentially unsuitable work to prominent trees with amenity value, it was deemed expedient for the Council to serve a Tree Preservation Order ('TPO') on the site, which was made on 14 December 2023.

## **2. OBJECTION**

On 20 December 2023, an objection to the Order, was subsequently received from Mr R Halliday, of Albion House 41 Kent Road, by way of a letter and an email including the letter as an attached PDF.

Following a separate application under the new Order, which was supplemented by a third-party arboricultural report (Ref: 23/07581/TR), the objector confirmed they wished to pursue an objection to the Order.

The objection detailed may be summarised as follows;

- The trees represent a Public Health and Safety issue. The objection highlights recent branch loss and movement in high winds, proximity to buildings and the public highway, and the presence of a gas main (1-13)
- The objector will hold the Council responsible, in the event of damage resulting from tree failure (14)
- There was no correspondence from the Council prior to the Order being served (16-18)
- The trees are situated in a Conservation Area, so a new Order is not required (19)

## **3. COMMENTS OF THE TREE OFFICER IN RELATION TO THE OBJECTION**

1. T1, T2, T3 and T4 are within influencing distance of the public highway, objectors property and the neighbouring property. The objector's concern regarding the risk associated with tree failure is understandable. However, the approach to managing risk associated with tree failure (i.e. the crown reduction proposed) is considered disproportionate.
2. The objection highlights that branches have failed in high winds. T1, T2, T3 and T4 are mature trees, and it is not uncommon for minor deadwood to form in mature canopies, even in trees that are routinely managed. This is not necessarily considered undesirable, where the risk associated with dead wood is minor. As per BS3998:2010 Tree Works – Recommendations 7.3: "The unnecessary loss of deadwood habitats should be avoided when specifying pruning or other works".
3. T1, T2, T3 and T4 appear to be in fair to good overall condition, based on visual inspection from ground level. As per BS3998:2010 0.1: "Trees are

dynamic, continually self-optimizing organisms, i.e. each year, by producing new shoots, roots and radial increments of wood and bark, they maintain both their physiological functions and their structural integrity". As the trees were in fair to good overall condition, this would suggest the trees are currently self-optimizing and compensating for the influence of abiotic and biotic stresses, including wind loading.

4. The proximity of T1, T2, T3 and T4 to buildings and highways is notable. However, T1 and T2 had suitable clearance over the public highway at time of site visit, and T3 and T4 had suitable clearance from the adjacent buildings.
5. In order to maintain suitable clearance from the highway and buildings in future, only minor targeted crown lifting and lateral reduction of smaller diameter tertiary branches will be required, as opposed to the full crown reduction proposed.
6. The proximity of a gas main is not sufficient justification for the works proposed, when considering the overall condition of the trees.
7. As such, the works proposed in the s.211 notice are considered disproportionate relative to the condition of the trees and their proximity to the highway, structures and utilities. The works proposed will be detrimental to tree condition, and form and amenity value, and are not supported.
8. Should evidence come to light that suggests T1, T2, T3 and T4 represent an unacceptable level of risk, and works suggested to mitigate this are proportionate to the risk associated with the trees, the Council will consider this in future applications for consent, under the Order.
9. Following the Order being served, and a phone call with the objector, an application for consent for works under the Order was received (Ref: 23/07581/TR). A site visit took place on 22 January 2024. LCC officer had the opportunity to discuss the trees with the objector and advised that some of their concerns could be addressed through an arboricultural survey.
10. On 12 February 2024, LCC officer received a follow-up email from the objector's appointed arboricultural consultant, who provided an arboricultural report. The report included a VALID Risk Assessment of the trees, photos of risk features and recommendations for tree work.
11. The recommendations for tree work included ivy removal of T1 and T2 to allow for detailed inspection, installing non-invasive bracing on T3 to mitigate risk associated with an included union, and a minor crown reduction of T4 due to decay at a historic pollard point which was revealed following a climbing inspection.
12. The application was amended, at the appointed consultants request (on behalf of the objector) to reflect the findings of the report and the recommendations of the arboricultural consultant.

13. The recommended works were considered proportionate to the risk associated with the trees and were approved. This demonstrates that the Council will support work to trees, provided proposed works are suitable and consistent with good arboricultural practice.
14. The objector has suggested that they would hold the Council responsible in the event of tree failure. The Objector could seek compensation under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 if he can show that the refusal of his application caused loss or damage over £500.
15. LCC Officer visited site on 12 December 2023. While LCC Officer did attempt to introduce themselves at time of visit, the property was unoccupied.
16. Due to current workloads, Tree Officers have limited capacity to arrange phone calls, meetings or site visits with applicants/agents as part of the response to tree work applications.
17. As detailed above, the Council's available responses When considering applications under s.211 of the Town and Country Planning Act 1990 are:
  - make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
  - decide not to make an Order and inform the person who gave notice that the work can go ahead; or
  - decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice."
18. Even in the event that LCC Officer did meet the objector during the site visit, whether pre-arranged or otherwise, the response to the s.211 notification would have been limited to serving a new Order, or not. As detailed in 1-8, the works are not supported and so a discussion on site will not have affected the decision to serve the Order.
19. When the Council receives a s211 application, if it does not serve a new TPO the works proposed will be allowed to go ahead by default. The protection offered by the Conservation Area is not effective, without the pro-active use of TPOs for trees with amenity value.

#### **4. CONCLUSION**

The Order is warranted on the grounds of amenity and expediency and therefore, the imposition of the Order is appropriate.

The Council will consider future tree works applications. Permission is not required for the removal of dead wood.

#### **5. RECOMMENDATION**

That the Order be confirmed as originally as served.