

CITY OF LEEDS TREE PRESERVATION ORDER (No.12) 2019

(20/22 PRIEST HILL GARDENS, WETHERBY LS22 7UD)

1. BACKGROUND

A planning application (18/07533/FU) was previously submitted by the owner of 22 Priest Hill Gardens for predominantly a garage extension. The application included the removal of a prominent Sycamore tree.

The accompanying arborist report to this application focused on presenting a case to demonstrate that the tree was not at that time covered by an existing Tree Preservation Order due to its age, and that it would cause harm in the future.

The report did however state that the tree was generally in reasonable health with only insignificant minor defects. The application was refused for a number of reasons including the loss of the tree.

The decision to refuse the planning application was appealed to the Secretary of State, but was dismissed by the planning inspectorate. The appeal decision supported the Council's reasons for refusal including the loss and harm that would result from the loss of the tree.

Given the doubt raised by the applicant as to whether the tree was already protected by an existing Order, its amenity value and the potential for it to be removed in the future, it was deemed expedient by the relevant Landscape Officer to make a new Tree Preservation Order ('TPO') to ensure protection of the tree. The TPO was accordingly made on 17 September 2019 and served on the owners of nos. 20 and 22 Priest Hill Gardens.

2. OBJECTION TO THE ORDER

One letter of objection was received from the owner of 22 Priest Hill Gardens dated 17/10/2019, supported by the arborist report prepared in relation to the planning application.

The principle points raised in the objection can be summarised as follows:

- a. The order states that the tree belongs to No 22 and that this is incorrect as it belongs to Priest Hill Gardens.
- b. The Amenity Assessment states that the tree overhangs No.11 Priest Hill Gardens which is incorrect as No.11 is on the other side of No. 22.
- c. If the inspection was carried out without entering the property how could the rear of tree or its roots be viewed to make a proper assessment?

- d. The arborist report proved that the tree did not have an existing TPO on it
- e. As the planning application was refused there was no risk to the tree so there was no reason for a TPO. In the intervening 9 months the tree could have been felled but was not.
- f. Reference was made to the planning refusal notice that the planning officer made erroneous statements about the layout of the estate and the tree.
- g. The tree is not suitable for the site as stated in the arborist report. It is the wrong species in the wrong place.
- h. The tree has no value to the general public so why does it need a TPO?
- i. The Amenity Assessment seems to have been done in a rushed with parts scored out and lacking in respect of other professionals (Arborist Report), and unnecessarily excessive.
- j. Was the person who made the TPO suitably qualified?

3. COMMENTS OF THE LANDSCAPE OFFICER IN RELATION TO THE OBJECTION

- a. It was not clear at the time of making the TPO whether the tree was located within the grounds of 20 or 22 Priest Hill Gardens, being situated on the boundary between these properties. For this reason the Order and Map referred to both properties.

In any event, the Council served the TPO on both property owners, as potential owners of the tree, notifying them that the Sycamore was now protected through the making of a new provisional TPO. What is important in terms of the TPO, is that the tree to be protected can be clearly identified from the Order Map.

- b. Whilst the Amenity assessment accidentally referred to the tree overhanging number No. 11 rather than No.20, it remains the case that the tree to be protected is clearly identified from the Order Map. Property Nos.20 and 22 are clearly the relevant the main properties and both property owners were notified of the making of the TPO.

With regard to the condition of the tree, the Arborist report prepared in relation to the planning application and appended to the TPO objection, stated the tree was in good health with only a few insignificant minor defects. The planning inspector who determined the appeal against the came to the same conclusion.

- c. The tree can be clearly viewed from the public highway and assessed from close up site photos.
- d. The Landscape Officer is not necessarily in agreement with the age assessment of the tree as presented in the Arborist report, which may in fact be older, and therefore subject to an existing historical TPO. However, even if doubt remains as to whether the Sycamore was covered by the pre-existing TPO, this is rendered irrelevant by the making of a new provisional TPO.

Regardless of the above all trees, whether legally protected or not, are a material consideration in assessing a planning application. What is important is the quality of any tree and its contribution to the locality.

- e. Although the planning application was refused and the appeal dismissed, there is still a potential threat to the tree. In the absence of any legal protection the tree could be under threat of future removal, prior to the submission of a fresh application for planning permission. Hence it was considered expedient for the Council to serve a TPO, given the amenity value of the tree.
- f. Any dispute that that the applicant has with comments made the planning officer in relation to the planning application refusal should be taken up directly with the officer in question. It is noted that the Planning Inspector in the appeal case did not raise any such issues.
- g. With regard to the suggestion of the tree being 'the wrong species in the wrong place' and that it would inevitably lead to damage, the independent Inspector appointed by the Secretary of State stated that:

"The appellant also refers to recommendations on tree distances in relation to structures, contained within the British Standard for Trees in Relation to Design, Demolition and Construction (BS5837: 2012). However, these recommendations only relate to young trees or new planting and not existing semi-mature trees as in this case"

This accords with the Landscape Officer's view that the Arborist's report is incorrect in this respect. There is nothing in BS5837 that states that a tree in these circumstances will definitely cause damage at some unknown point in the future, and therefore, should be felled.

A future application for Tree Works Application can be submitted, where there is clear evidence of specific, significant, damage occurring or being likely to do so in the near future.

- h. With regard to the suggestion that 'the tree has no value to the general public' the Landscape Officer is in agreement with Inspector's finding that

".....it (the tree) does undoubtedly provide significant visual amenity value to the local area, forming part of a green back drop to the local streetscene. The

tree appeared to be in reasonable health, which is confirmed by the tree report (Barnes Associates Ltd, 29 January 2019). Therefore, under normal growing conditions, it is likely to have a reasonably long-life expectancy. The removal of this healthy tree and its substitution with built form, would lead to a long-term reduction in character and appearance to the area and its residents.”

- i. The amenity assessment of the Landscape Officer is a hand written, contemporaneous note, which clearly states that the loss of the tree would have an impact on the local environment. This analysis is supported by in the independent inspector’s assessment as set out above.
- j. The Landscape Team that deals with TPO’s is multi-disciplinary including Tree Officers, Ecologist and Landscape Architects. The Landscape Officer dealing with this particular TPO has the following qualifications: BA (LA); DipLA; Chartered member of the Landscape Institute. He also has 15 years’ experience in development planning.

4. CONCLUSION

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

The Council would consider any sensible future application for the undertaking of tree works, supported by clear evidence of specific, significant, damage occurring or being likely to do so in the near future.

Any future development related tree issues can be considered through the Planning process, as part of which the presence of the protected tree will be one of many considerations.

5. RECOMMENDATION

That the Order be confirmed as originally as served