

## **CITY OF LEEDS TREE PRESERVATION ORDER (NO.15) 2023 (10 ELMETE GROVE ROUNDHAY LEEDS LS8 2JY)**

### **1. BACKGROUND**

A Conservation Area notification under s.211 of the Town and Country Planning Act 1990 (Ref: 23/01319/TR) was received by the Council. The proposed works were as follows:

- T1 Ash - Crown lift to provide 6 meter clearance from the garden, 6 meter crown reduction in height. To allow more light to garden.
- T2 Silver Birch - 6 meter reduction in height. To allow more light to garden
- T3 Horse Chestnut - Fell. Tree is growing into Ash. To allow more light to garden.
- T4 Ash - 6 meter crown reduction in height. To allow more light to the garden.

The notification was validated on 09 March 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

A LCC Officer inspected the trees 29 March 2023. The LCC Officer considered that works proposed were not suitable in the context of the site.

The LCC Officer considered that trees at 10 Elmete Grove were prominent trees in a Conservation Area, and that a new Tree Preservation Order was justified in the interests of amenity.

In order to prevent 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 served on 12 April 2023.

## **2. OBJECTION**

On 19 April 2023 and 09 May 2023, objections to the order were received from neighbouring residents at 9 Elmete Avenue, 11 Elmete Avenue, 6 Elmete Grove, 13 Elmete Avenue and 12 Elmete Grove, by way of two emails. The objection detailed may be summarised as follows;

- The trees at 10 Elmete Grove do not have public amenity value.
- There is nuisance associated with the trees, including shading and dropping twigs, debris and leaves.
- The trees are unmanaged and a potential risk.
- The notification only included pruning, as opposed to removal.
- Consent for similar works was granted in a previous notification (Ref: 14/03722/TR).
- There are dead trees on site.
- An application is now required to prune overhanging branches, which previously was not required (raised by the 12 Elmete Grove objection only).

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

1. As detailed in government guidance, for a tree to be considered a public amenity "The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public."

Paragraph: 008 Reference ID: 36-008-20140306.

2. The trees at 10 Elmete Grove have attractive, natural forms that provide a positive impact on the character of the Conservation Area, providing amenity value. The trees are a nesting, feeding and roosting site for local birds, insects and squirrels. Trees are visible from the public highway, Elmete Avenue and Elmete Grove. As such, trees at 10 Elmete Grove are considered to be a public amenity.

3. Trees will cast a degree of shade over the garden and rear of the house for a proportion of the day. At 9 and 11 Elmete Avenue, the trees are situated to the east and south-east and so should not cause significant direct shading during late afternoon and evening. At 13 Elmete Avenue, trees are situated to the north-east and so will be causing negligible direct shading. At 6 Elmete Grove, trees are situated to the south-west so should not cause direct shading until the afternoon. As such, the properties that have submitted objections to TPO 15\_2023 will have access to natural light at various stages during the day, and shading is not considered excessive.
4. Additionally, of the trees that had works proposed as part of the s211 notification, T1 and T4 are Ash and T2 is a Birch. These trees have light, airy crowns, reducing the impact of direct shading. The majority of trees within the group order are deciduous, and access to light will increase during the autumn and winter.
5. Some shading from trees is a consequence of owning a house with mature protected trees in neighbouring gardens.
6. Seasonal nuisance such as seeds, leaf litter and occasional dropping of minor twigs and branches should be expected and tolerated as part of living close to established trees, even when trees are routinely managed.
7. The LCC Officer considered shading and nuisance issues, against the potential negative impacts of tree work on tree condition and amenity. The work proposed is poor arboricultural practice and would be detrimental to the condition and amenity of affected trees, and that the shading and nuisance issues associated with the trees in the applicant's garden were not so excessive as to justify these works.
8. While the objection has raised potential risk issues, it does not specify the risk that is currently associated with the trees that have been included in TPO 15\_2023. Management of risk was not provided as a justification in the s211 notification. No evidence has been provided by objectors that trees within TPO 15\_2023 are an intolerable level of risk to people or property.
9. At time of LCC Officer site visit, trees at 10 Elmete Grove were assessed individually. Two Beech trees were noted to have fire damage, and were not included within the TPO. This is reflected in the plotting of the TPO.
10. The remaining trees were considered to be in fair to good overall physiological and structural condition based on visual tree assessment by the LCC Officer, and were included within the group TPO.
11. Applications to prune or remove trees within TPO 15\_2023 will be considered by the Council. Applications to prune or remove trees due to concerns regarding tree condition will require suitable evidence and justification.
12. The s211 notification included proposed removal of T3. The claim in the objection that the s211 notification "did not apply to remove" trees is false.

13. The pruning works proposed are considered excessive and poor arboricultural practice. The proposed works would have been detrimental to tree condition and amenity value and would not have been supported. This was discussed in the Officer Report, published on Public Access (Ref: 23/01319/TR) alongside the Decision Notice.
14. The previous s211 notification at the property (Ref: 14/03722/TR) included similar works. The Council did not object to the proposed works on this occasion.
15. The previous s211 (Ref: 14/03722/TR) notification was assessed in September 2014. Arboriculture is a continually evolving science and discipline. Pruning that may have been considered suitable management historically may not be considered appropriate according to modern standards. The pruning proposed in the previous s211 notification is poor practice, according to modern standards.
16. There are two dead Birch trees on site. These were noted at time of LCC Officer site visit and are not included within TPO 15\_2023.
17. Permission is not required for the removal of deadwood. The new preservation order will not prevent the landowner removing deadwood, or neighbouring residents from removing deadwood that overhangs their property.
18. It is notable that the dead trees in the group have been reduced to standing dead stems, approximately 4 metres in height. Reducing the trees to a standing dead stem has reduced the risk associated with the trees, by reducing the size and exposure of the dead trees, while retaining some of the ecological benefits. This is considered appropriate management by the landowner, consistent with good arboricultural practice.
19. The objection raised by 12 Elmete Grove states that “trees without preservation orders are allowed to have overhanging branches removed without permission from the owner and council”, and that the serving of a TPO introduces “red tape”.
20. The case of *Lemmon v Webb* [1862] AC 1 HL, established the principle that where branches from a neighbour’s tree overhang your property you may remedy this by cutting back the branches which have grown into your property provided you do not damage the tree. The objection is referencing this remedy which is from case law. When using this remedy residents must still submit the relevant notification or application if the trees are protected, and gain consent from the Local Planning Authority.
21. The trees at 10 Elmete Grove are within the Roundhay Conservation Area and were protected prior to TPO 15\_2023 being served. A notification to the local planning authority will have already been required, and as such the TPO is not considered a significant additional constraint.

22. The Council will consider applications to prune or removal overhanging branches of trees protected by a TPO.

#### **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.

#### **5. RECOMMENDATION**

That the Order be confirmed as originally as served.