

# **CITY OF LEEDS TREE PRESERVATION ORDER (NO.43) 2023 TPO 2023 43 (30 STREET LANE ROUNDHAY LEEDS LS8 2ET)**

## **1. BACKGROUND**

A Conservation Area notification under s.211 of the Town and Country Planning Act 1990 (Ref: 23/05682/TR) was received by the Council. The notification was validated on 19 September 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 included the proposed works to a Birch tree: "Crown lift to the top of the middle storey window on property (circa 7 meters)"

LCC Officer visited site 23 October 2023. LCC Officer considered that the proposed tree work was not required and has the potential to be detrimental to the form and amenity value of T1.

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 02 November 2023.

## **2. OBJECTION**

On 21 November 2023 an objection to the Order was subsequently received from Mr Griffiths, of 34 Street Lane, by way of a letter. An objection response was provided by the Council on 6 December 2023.

On 11 December 2023, a further objection to the Order, expanding on the points made in the initial objection, was received from Mr Griffiths, by way of an email.

On 10 March 2024, following informal correspondence with Mr Griffiths, a third letter of objection was received.

On 16 April 2024, following further informal correspondence, a fourth letter of objection with received, alongside photos of property damage adjacent to T1.

The objections may be summarised as follows;

- T1 has limited amenity value, and is not suitable for a new preservation order when compared to more prominent trees in the area (1-6)
- That T1 has been used as a “political football”, including in a recent development application where it was cited as a danger to a proposed extension (7-12)
- T1 is in the influencing distance of adjacent properties and there is potential for vegetation related subsidence (13-19)
- The objector has made general comments regarding the Council's approach to tree works applications relating to subsidence (20-22)

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

1. When considering a s.211 application for works to trees in a Conservation Area, the Council either decides not to make a TPO and allow the work proposed to take place, or it decides to make a TPO to prevent work proposed from taking place.
2. In the event that the Council receives a s.211, and proposed works are considered to be detrimental to the amenity value of trees in a Conservation Area, the Council will serve a new TPO in order to prevent these works from taking place.
3. The Council considered that the works proposed in the s.211 notification were excessive, with the potential to be detrimental to the condition, form and amenity value of T1. As such, a new TPO was served.
4. The Council considers TEMPO when serving new TPOs (Tree Evaluation Method for Preservation Orders, produced by Forbes-Laird Arboricultural

Consultancy). TEMPO considers the condition, life expectancy, visibility, form and threat to trees and groups. T1 was found to meet the criteria for a TPO under TEMPO.

5. The objector highlights that a number of other trees in the surrounding areas are not currently protected by TPOs. The majority of the trees are situated in the Roundhay Conservation Area and a s.211 application for works to trees is required, and so a pre-emptive TPO is not required at this stage. In the event a s.211 application to undertake works to these trees is received, the Council will consider whether or not to serve a new TPO as part of the response.
6. The December 11 objection notes that there are a number of trees with amenity value, situated outside Conservation Areas, that are not protected by a TPO, and argues that T1 is disproportionately protected in comparison. While LCC Officer agrees that the Council could be more proactive at serving TPOs to trees with no or limited protection, this is not a compelling argument against serving TPOs on trees within Conservation Areas, when unsuitable s.211 notifications are received.
7. The objection suggests that T1 has been used as a “political football”, including being cited as a “real and present danger”.
8. Previous planning applications were not considered as part of the TPO process. Only the s.211 application to prune trees was considered during this process.
9. When reviewing previous planning applications as part of the objection response, there is a case involving the objector (Ref: 21/03389/FU). This application involved the construction of an extension to the rear of 4 West Park Place, in which the objector was the applicant.
10. During this case, an objection comment was received from a neighbouring property. The wide-ranging objection included a comment on the adjacent tree, suggesting the tree was “in falling distance of the proposed extended decking [posing] a substantial risk to tenants”.
11. It is notable that this comment was made by a member of the public, and not the case officer. It is not clear if the member of the public consulted an arborist regarding the condition of the tree and the likelihood of failure. The comments of the Case Officer in the Officer Report associated with the application do not reflect the concerns of the member of the public.
12. A site visit by a Tree Officer to assess 23/05682/TR found that T1 was in fair to good condition, suggesting the likelihood of failure was not significant. 23/05682/TR was submitted by an arborist, who also did not suggest tree removal was required.
13. The objection suggests that T1 may be implicated in property subsidence. The objector has provided an arboricultural report, produced by JCA Limited

(dated April 2020), that provides some detail regarding subsidence at 34 Street Lane. No information has been provided for 32 Street Lane.

14. Six trial pits have been dug at the property. The trial pits indicate that the property is situated on Clay soils with medium to high shrinkability, and there is potential for subsidence due to vegetation.
15. Trial Pit 2, 3 and 4, situated at the opposite side of the building to T1, had the onset of desiccation. Trial Pit 1, 5 and 6 did not have desiccation or onset of desiccation. Trial Pit 6 is situated closest to T1.
16. Roots in Trial Pit 1 to 6 were identified as belonging to Aesculus and Fagus, (Horse Chestnut and Beech). Betula (Birch), was not identified in any Trial Pits.
17. The lack of desiccation or onset of desiccation, and no positive root ID associated with Birch, suggest that Birch is not implicated in subsidence at 34 Street Lane, at this stage.
18. In the 10 March 2024 letter, the objector suggests that while T1 is not implicated in subsidence at 34 Street Lane, T1 will be implicated in subsidence at 32 Street Lane. In subsequent correspondence on 16 April 2024, the objector provided photos of damage to the property.
19. The photos provided do indicate property damage or movement, but the damage highlighted is not wholly consistent with subsidence relating to trees. The objector has outlined that detailed investigation of 32 Street Lane has not taken place. As such, there is no factual evidence that links T1 to property damage at 32 Street Lane.
20. The objections make various comments regarding the Council's approach to tree works applications relating to subsidence. These predominantly relate to a separate case involving allegations of subsidence caused by protected Beech and Horse Chestnut trees at 34 Street Lane.
21. LCC Officer notes the concerns raised by the Objector regarding the approach of insurers and their appointed contractors regarding subsidence relating to trees. However, the LCC response to tree work applications relating to subsidence is limited by the legislation and legal precedent.
22. Additionally, the comments are not considered relevant to the suitability of T1 for a TPO. The relevant tests are if T1 passes an amenity assessment, and if T1 is implicated in subsidence at the property or neighbouring properties. The objector has not challenged the Council's amenity assessment, and has not provided compelling evidence that T1 is implicated in subsidence at their property.

#### **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.