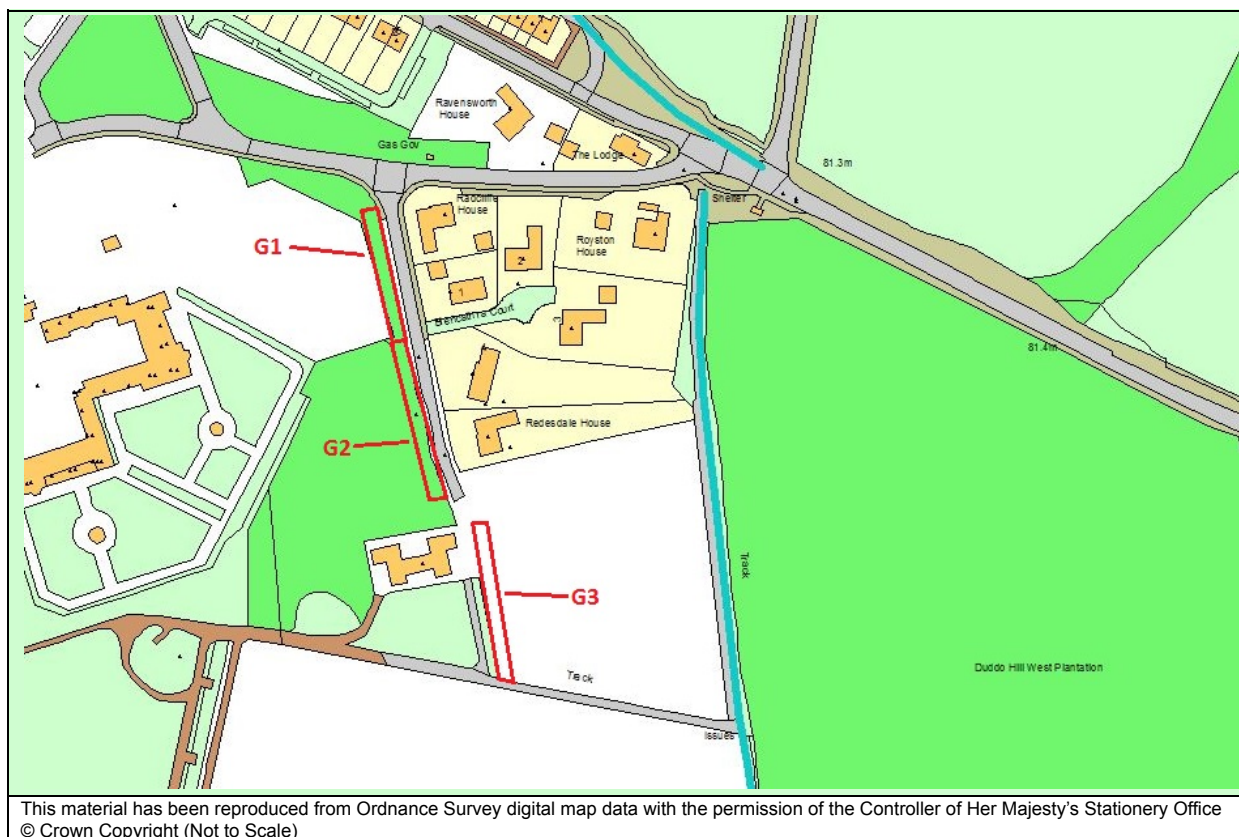




# Northumberland County Council

## CASTLE MORPETH LOCAL AREA COUNCIL 10 SEPTEMBER 2018

### THE NORTHUMBERLAND COUNTY COUNCIL (LAND AT ST MARY PARK, MORPETH) TREE PRESERVATION ORDER 2017 (NO. 03 OF 2018)



## 1. Introduction

- 1.1 The purpose of this report is to seek a decision from the Local Area Council as to whether or not they wish the County Council to confirm the currently provisional Northumberland County Council (Land at St Mary Park, Morpeth) Tree Preservation Order 2018 (no. 03 of 2018).

## 2. Appraisal

- 2.1 The provisional Order was made by the County Council under Section 198 of the Town & Country Planning Act 1990 on 26 March 2018 following a request from a member of the public.

- 2.2 It is understood that these Scots Pines once formed part of an historic avenue leading to the now derelict building known as Ashley House, situated to the South East of the former St Marys Hospital.
- 2.3 Planning permission for the demolition of Ashley House and the erection of 5 no. new dwellings was granted on 8 March 2017 under application reference 16/03227/FUL. The making of the new TPO had been requested on the grounds that the approved development of the Ashley House site could endanger the longevity of the trees in question.
- 2.4 The site was assessed by the Planning Technician on 21 February 2018 and by the Tree and Woodland Officer on 8 March 2018. Following these visits it was considered appropriate to create a new TPO to cover 3 tree groups (G1-G3).
- 2.5 The owners and occupiers of the land on which the trees are situated, along with directly adjacent neighbours and the Parish Council, were informed of the making of the provisional TPO on 26 March 2018. Following the receipt of a written objection, the confirmation of the TPO must now be determined by the Local Area Committee.
- 2.6 The objection received took the form a letter, received via email, from Rivergreen Developments Ltd who own the development site around Ashley House. The objection states that the retention of all trees included in G3 would restrict access to the land East of Ashley House and would obstruct the proposed construction of a turning head. The letter also referred to the existing grant of planning permission for the site with reference 16/03227/FUL which gave consent for the felling of trees that had subsequently been included in the TPO at the Southern end of G2.
- 2.7 Given the above objection, the County Council must advise the objector by the 26 September 2018 whether or not the Order has been confirmed.
- 2.8 The Officer notes that since the making of the provisional TPO, planning consent for the removal of trees at the Northern end of G3 was granted on 11 June 2018 under application reference 18/01355/VARYCO. The conditions attached to this more recent permission for the site specifies that the landscaping of the Ashley House site is to be carried out in accordance with the details approved under application reference 18/00820/DISCON, which shows the removal of trees from the Northern end of G3 to facilitate the construction of a turning head and bin store.
- 2.9 As such, the Officer's view is that the TPO should be confirmed with modifications to the boundaries of G2 and G3 in order to avoid potential confusion over the status of those trees included in the TPO for which there is now existing planning consent for their removal.
- 2.10 The proposed modification to G2 would reduce the length of the line of the protected Scots Pines from approximately 75 metres to 65 metres. This would

remove the trees included within the G2 boundary which had been granted planning consent to be removed prior to the making of the provisional TPO under application reference 16/03227/FUL to accommodate the new roadway to be built along the Northern edge of the development site, extending Westward from St Marys Lane to serve 2 of the 5 no. approved new dwellings.

- 2.11 The proposed modification to G3 would reduce the length of the line of protected trees in this group from approximately 74 metres to 62 metres, so that its Northern boundary ends at the Southern edge of the proposed turning head shown in the landscaping plans for the site approved under application reference 18/00820/DISCON, and cited in the conditions attached to the planning permission for the site with reference 18/01355/VARYCO.
- 2.12 The placing and confirmation of a Tree Preservation Order would not preclude future maintenance works to the trees. While it does mean that any application for works to the trees would need clear justification, it is considered that the confirmation of the provisional TPO subject to the modifications outlined in this report would help to address the concerns of the landowner over the legal status of the trees for which the Local Planning Authority have already given their consent to be felled, while ensuring that those trees recommended to remain within the confirmed TPO would receive the necessary legal protection to safeguard their future longevity and amenity value set within the open countryside surroundings of the wider St Marys Park development.
- 2.13 Overall, due to the visibility of the trees from the public realm, the positive contribution they make towards the character of the landscape and their significance in arboricultural terms, it is considered expedient in the interests of amenity to confirm the TPO, subject to the modification of the provisional order as set out above in order to remove from the schedule and plan those trees which the Local Planning Authority has given their consent to be felled both prior to and since the making of the provisional TPO.
- 2.14 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.
- 2.15 These proposals have no implications in relation to crime and disorder.
- 2.16 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in

accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.

2.17 For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

2.18 Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

### **3. Recommendation**

That the Northumberland County Council (Land at St Mary Park, Morpeth) Tree Preservation Order 2018 (no. 03 of 2018) be confirmed subject to the modifications to the schedule and plan for tree groups G2 and G3 as detailed earlier in the report.

**Date of Report:** 28.08.2018

#### **Background Papers:**

- The Northumberland County Council (Land at St Mary Park, Morpeth) Tree Preservation Order 2018 (no. 03 of 2018);
- Proposed modified plan to be annexed to the confirmed TPO;
- Representation from Rivergreen Developments Ltd.