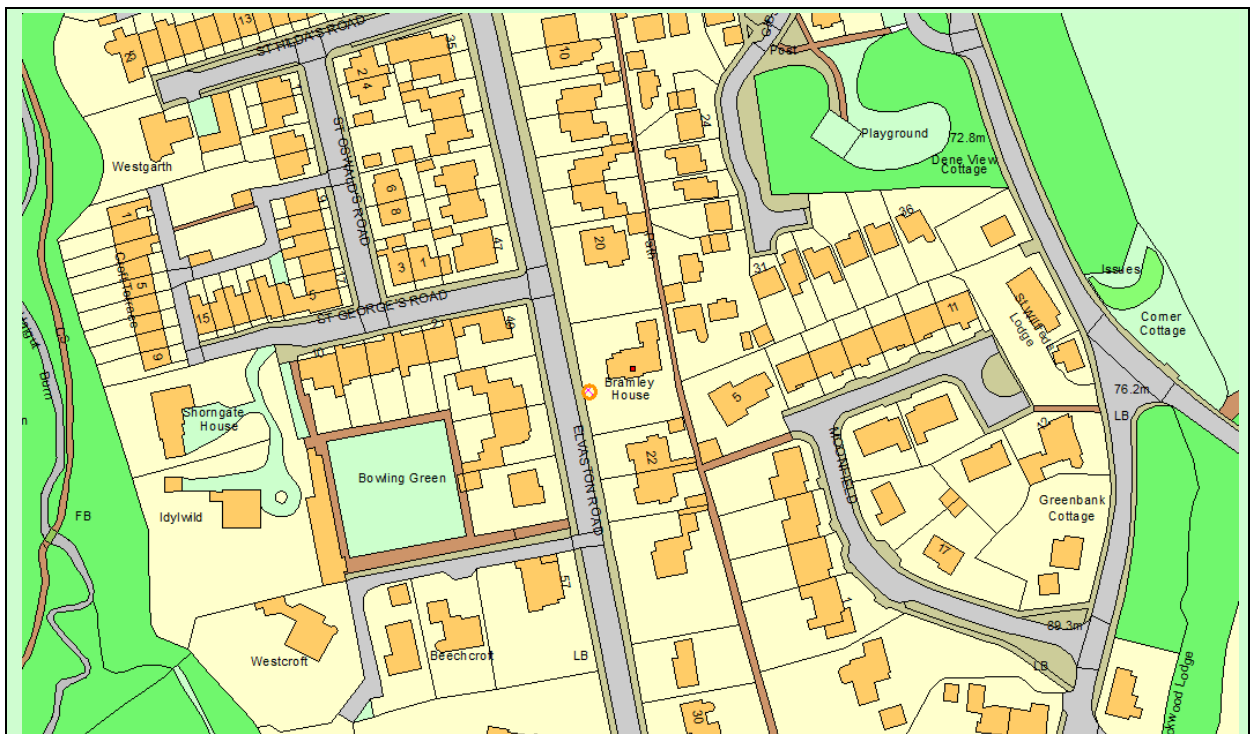




# Northumberland County Council

## TYNEDALE LOCAL AREA COUNCIL 26 FEBRUARY 2019

### THE NORTHUMBERLAND COUNTY COUNCIL (LAND AT BRAMLEY HOUSE, ELVASTON ROAD, HEXHAM, NORTHUMBERLAND) TREE PRESERVATION ORDER 2018 NO 07 OF 2018)



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## 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 provisional Northumberland County Council (Land at Bramley House, Elvaston Road, Hexham, Northumberland) Tree Preservation Order 2018 No 07 of 2018.

## 2. Appraisal

- 2.1. The provisional TPO was made by the County Council under Section 198 of the Town & Country Planning Act 1990 on 4th December 2018 under

delegated powers following the refusal of planning application 18/03520/TREECA, which proposed to fell 1no. Oak tree.

- 2.2. The land in which the order applies lies within the Hexham Conservation Area, specifically within the residential curtilage of Bramley House, Elvaston Road, Hexham.
- 2.3. The order confirms protection of the 1no. mature Oak which is located on the Western boundary of Bramley House, directly adjacent to the Elvaston Road public footpath and highway.
- 2.4. The tree was assessed by the case officer on 1st November 2018 and by the Trees and Woodlands Officer on 29th November 2018. Following these visits it was considered appropriate to refuse the application to fell the tree, and instead create a new TPO to protect the Oak tree.
- 2.5. The owners of the land on which the tree is situated, along with directly adjacent neighbours and the Parish Council, were informed of the making of the provisional TPO on 4th December 2018. Following the receipt of 4no. written objections, the confirmation of the TPO must now be determined by the Local Area Committee.
- 2.6. The objections received were from the owner of the tree, the adjacent neighbours and another resident situated across the road. The objections stated the disappointment in the refusal of 18/03520/TREECA as the residents consider the tree to be too large for the street scene and causing interference with the overhead telephone wires. The owner's letter also referred to the fact their neighbours have recently requested to fell 2no. Trees within the boundary of their property and received no objection from the Council.
- 2.7. The County Council must confirm the provisional TPO, with or without modifications, within the 6 month provisional period, i.e. by the 4th June 2019 otherwise it will cease to have any effect.
- 2.8. The view of the case officer and the Tree and Woodlands officer is that the Oak tree in question does contribute significantly to the visual amenities of the locality and is worthy of TPO status. Whilst it is acknowledged that other proposals to fell trees within the area have received no objection, it is considered that those trees were not as visually prominent within the street scene. It is also acknowledged that the objections suggest interference with overhead telephone wires and overhang across the road would be removed if the tree was to be reduced in size. The imposition of the TPO would not preclude works from taking place, but it would allow the council to monitor works and secure replanting if necessary following the necessary applications. It is therefore considered that the Order should be confirmed given the visual amenity value of the tree.

- 2.9. The fact that TPO's have not been placed on other trees nearby is not a consideration in deciding whether or not this Order should be confirmed.

#### *Other Issues*

- 2.10. 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.
- 2.11. These proposals have no implications in relation to crime and disorder.
- 2.12. 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.
- 2.13. 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.
- 2.14. 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 Bramley House, Elvaston Road,

Hexham, Northumberland) Tree Preservation Order 2018 No 07 of 2018) **be confirmed.**

**Background Papers:** Planning application file(s) 18/03520/TREECA