



**Castle Morpeth Local Area Committee**  
**8<sup>th</sup> March 20201**

**THE NORTHUMBERLAND COUNTY COUNCIL (LAND NORTH OF 7A LADYWELL WAY, PONTELAND, NORTHUMBERLAND) TREE PRESERVATION ORDER 2020 NO 05 OF 2020)**



## **1.0 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 North of 7a Ladywell Way, Ponteland, Northumberland) Tree Preservation Order no. 05 of 2020.

## **2.0 Appraisal**

- 2.1 The provisional TPO was made by the County Council under Section 197 (a) of the Town & Country Planning Act 1990 on 19<sup>th</sup> October 2020 under delegated powers. The 3no individual trees were secured under a replacement planting condition attached to planning approval 19/02754/FUL (later varied under ref no.

20/00532/VARYCO). The replacement planting condition was attached to the approval to mitigate the effects of the development upon the surrounding landscape.

- 2.2 By placing a TPO upon the replacement planting, the trees would therefore be granted an additional level of protection that goes beyond the three-year protection condition attached upon the planning permission. This would ensure that any works to the trees would require written approval from the local planning authority. The replacement planting is integral to offset the additional built form of the new dwelling and therefore warrants a significant level of protection.
- 2.3 The land in which the order applies is located within Ladywell Way and is currently owned by Hamme Construction Ltd (where C1 is located) and Ponteland Town Council (where C2 and C3 are located). Agricultural fields are located to the North of the proposed tree referenced as C1 whilst existing residential dwellings bound the land where trees C2 and C3 are proposed.
- 2.4 The location of the replacement tree planting was agreed under approved application ref no. 20/00532/VARYCO where the applicant submitted a landscaping plan for consideration of the LPA. Consultation was undertaken with the local authority's ecologist who raised no objection to the location of the 3no trees nor the species proposed.

- 2.5 The species of the proposed 3no trees are:

C1 – Betula Pendula multi stem (Silver Birch)  
C2 – Betula Pendula (Silver Birch)  
C3 – Prunis cerasifera nigra (Black Cherry Plum)

- 2.6 Condition 3 of approved application ref no. 20/00532/VARYCO states

*'Replacement planting of 3no. trees, as shown on drawing no. LWW01revB, shall be carried out no later than the first planting season following the completion of the felling works. These shall be a Nursery standard size tree (10-12cm diameter stem and 2.5-3m height) supported with a stake and maintained by weeding, watering and replacement of failures for a minimum of three years.'*

Therefore the 3no trees are to be planted on site before 30<sup>th</sup> April 2021.

- 2.7 2no objections have been received against the proposed TPO from neighbouring residents. Concerns were raised regarding the lack of TPO protection upon existing trees within the wider Ladywell Way/Simonside View/Rothley Close estate. Further concerns were raised regarding the location of the trees and potential impact upon residential amenity, the impact upon existing trees and potential impact upon utilities. Due to objections being received against the provisional TPO, the confirmation of the TPO must now be determined by the Local Area Committee

- 2.8 Focusing upon the lack of protection upon existing trees within the wider estate, other parcels of land within this area are owned by Ponteland Town Council who

therefore have control over any works that would be undertaken to existing trees. Various pruning works have been undertaken by Northumberland County Council's Tree and Woodlands team upon these trees in recent years, at the request of the Town Council, who have confirmed on numerous occasions they would not support removal of any of these trees. As such, the LPA feel confident that there is already significant level of protection to these existing trees. As one of the trees included within this Preservation Order is not on Town Council land, the LPA feel it would be appropriate for it to be given further protection through a TPO due to the amenity value it shall provide. Furthermore, and as referenced within 2.2 of this report, the replacement planting was vital in the granting of the planning approval and would lessen any harm caused by the introduction of additional built form within the area.

- 2.9 Concerns were also raised by an objector regarding the location of the replacement planting, specifically trees C2 and C3. These locations were approved under application reference no. 20/00532/VARYCO and it is not the role of the TPO order to relocate replacement planting. If members chose to reject the provisional TPO, the location of the planting would still need to be within the approved location. Discussions have been held between the Planning Officer and applicant regarding possible amended locations, at the request of an objector, but the applicant has decided not to pursue this.
- 2.10 The objector also questions the lack of consultation on this matter, this being the first time notified of the replacement planting. As referenced earlier within the appraisal, the planting location was approved under a previous variation of conditions application. Whilst the applicant did not initially include the replanting locations as part of the application, a decision was made midway through the process that they would submit this information to the LPA to address this condition. When applicants seek to address conditions upon a previous approval, this does not warrant further consultation with neighbours therefore notification letters were not sent out following submission of these plans. Whilst it may have been appropriate for the applicant or Town Council to consult with neighbours regarding replacement tree planting, this is not a consideration of this provisional TPO.
- 2.11 The objection also refers to the impact upon an existing tree due to the proximity. Again, the location of the trees is not part of the consideration of this provisional TPO however, the replanting locations were agreed with the local authority's ecologist following assessment of the submitted plan. Concerns have also been raised by the neighbour regarding impact upon existing gas utilities installed within this area; the LPA have notified Northern Gas Networks of this provisional TPO who have confirmed in correspondence with the Planning Officer that they have no objection to these trees and that they would not impact upon existing utilities.
- 2.12 Ponteland Town Council also provided comments upon the provisional TPO and whilst raising no objection, queried the use of a Black Cherry Plum species for tree C3 due to their root spread. As detailed within paragraph 2.10, the species and location was agreed with the local authority's ecologist under planning application ref no. 20/00532/VARYCO and is not part of this current assessment in relation to placing a TPO on the replacement trees.

2.13 The Local Authority must confirm the provisional TPO, with or without modifications, within the 6 month provisional period i.e. by April 2021 otherwise it will cease to have any effect.

2.14 Section 198 of the Town and Country Planning Act 1990 states that '*If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order*'. It is the view of the local planning authority that the planting of 3no trees will ultimately benefit the visual character and amenity of the area, mitigating the effects of the new dwelling whilst representing biodiversity gains. It is not considered that the replacement planting locations would adversely impact upon the amenity of neighbouring properties that bound the parcel of land. The imposition of the TPO would not preclude works from taking place, but it would allow the council to monitor works. It is therefore considered that the Order should be confirmed

### ***Other Matters***

#### **Equality Duty:**

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.

#### **Crime and Disorder Act Implications:**

2.15 These proposals have no implications in relation to crime and disorder.

#### **Human Rights Act Implications:**

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.

### **3.0 Recommendation**

- 3.1 That the Northumberland County Council (Land North of 7a Ladywell Way, Ponteland, Northumberland) Tree Preservation Order no. 05 of 2020 **be confirmed.**