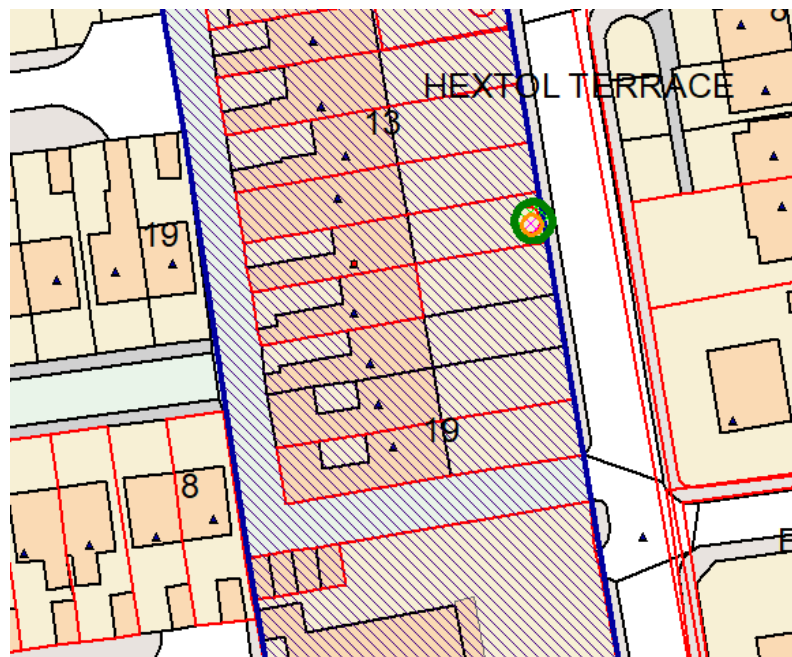




Northumberland County Council

**TYNEDALE LOCAL AREA COUNCIL PLANNING COMMITTEE
12 MARCH 2024**

**THE NORTHUMBERLAND COUNTY COUNCIL (Land at 15 Hextol
Terrace, Hexham) Tree Preservation Order 2023
(No. 05 of 2023)**



1. Introduction

- 1.1. The purpose of this report is to seek a decision from the Local Area Council Planning Committee as to whether or not they wish the County Council to confirm the provisional Northumberland County Council (Land at 15 Hextol Terrace, Hexham) Tree Preservation Order (TPO) 2023 (no. 05 of 2023).

2. Appraisal

- 2.1. The provisional TPO was made by the County Council under Section 198 of the Town & Country Planning Act 1990 on 7th December under delegated powers following the consideration of application 23/04118/TREECA, which provided the applicant's notification of proposed works to fell one mature Copper Beech

Tree to ground level.

- 2.2. The land in which the order applies lies within the Hexham Conservation Area, specifically the residential curtilage of 15 Hextol Terrace, Hexham.
- 2.3. The order confirms protection of the Copper Beech Tree, with the tree now referred to as T1 under PKT 0701.

Background

- 2.4. An initial application notifying of proposed works to remove the tree was submitted under application reference 23/03384/TREECA. This was withdrawn by the applicant on the 19th October 2023 as officers did not consider that there was sufficient justification submitted to support the works and the tree was considered to have a significant contribution to the wider amenity of the area. The applicant withdrew that application as officers would have needed to progress with pursuing a TPO on the tree. They subsequently took the opportunity to resubmit another application with further supporting information and justification for the works. A new application was submitted under 23/04118/TREECA.
- 2.5. Members should note that 4 representations were made on the application, two were received in support and two in objection. These are summarised below:
 - Support:
 - The tree has outgrown the current plot it is in.
 - The blockage of light into the property and both neighbouring properties.
 - The tree is limiting the growth of grass and other plant types in the neighbouring gardens.
 - The tree roots could have extended under their garden and are concerned that the roots could be causing structural issues to the foundations of the house.
 - More suitable trees should be planted in its place would improve the biodiversity of the area.
 - Difficulties parking due to the large spread of the lower limbs.
 - Leaf casings drop and when they then fall they cause drainage issues and a potential slip hazard for pedestrians.
 - Objection:
 - The proposal does not conform to relevant policies of the development plan.
 - The image chosen to illustrate the green space of Hextol Terrace in the Hexham Conservation Area Character Appraisal (2009) includes the Copper Beech Tree.
 - The tree is a very prominent feature of the street.
 - The tree is highly visible from the public realm.
 - Environmental benefits that the trees in the surrounding area provide for the wider amenity.
 - A management regime could help in the trees longevity.

- The unlikelihood of Beech Tree roots extending as far as the houses.
 - No evidence had been provided to justify the health and safety concerns as well as the concerns regarding property integrity.
 - It was also noted that although other trees had been felled on the street in recent years, but none of them had such an important contribution to the street scene.
- 2.6. The trees were first assessed through a site visit by the case officer on 16th November 2023 and following this advice was sought from the area NCC Trees and Woodlands Officer on the 20th November 2023. The Trees and Woodlands Officer carried out a site visit on the 31st November 2023. The Trees and Woodlands Officer highlighted the good health of the tree and the amenity it adds to the surrounding area. Following these visits, officers determined that there was not sufficient justification to remove the tree and it was considered appropriate to create a new provisional TPO to protect the tree.
- 2.7. The Case Officer prepared a Tree Evaluation Method for Preservation Orders (TEMPO) Report following the relevant assessment tool for TPO suitability, as is normal practice. This was then sent to the Trees and Woodlands Officer for their review and subsequent approval on the 5th December 2023. It was clear from the scoring within the TEMPO assessment that the tree would definitely merit a TPO.
- 2.8. The owners of the land on which the tree is situated, along with directly adjacent neighbours, Northumberland County Council's Highways Department and the Town Council, were informed of the making of the provisional TPO on 7th December 2023. Following the receipt of 2no. written objections, the confirmation of the TPO must now be determined by the Local Area Council Planning Committee.
- 2.9. Members will note that the objectors raise a significant number of points which are summarised below:
- The sale-ability of the property.
 - The tree was not at risk and had been previously managed.
 - The tree is too large and not an appropriate species for the plot.
 - Concerns regarding the procedure followed by NCC.
 - Not enough objectors to the initial application for the tree to be considered a significant contribution to the surrounding area.
 - NCC has not taken into account the rights of the public under the European Convention on Human Rights, more specifically the Human Rights Act Article 1, protocol 1.
 - Previous applications to fell trees on the street have been approved.
- 2.10. The Council must confirm the provisional TPO, with or without modifications, within the 6 month provisional period, i.e. by the 6th June 2024 otherwise it will cease to have effect.

Appraisal

- 2.11. It was considered by planning officers and the Councils Tree and Woodlands Officer that the tree on the site in question merited protection by a TPO. Local Planning Authorities can make a TPO if it appears to them to be expedient in the interests of amenity to make the provision for the preservation of trees or woodlands in their area.
- 2.12. The view of the case officer and the Tree and Woodlands Officer from is that the Copper Beech Tree in question contributes significantly to the visual amenity of the locality and is worthy of TPO status. The tree sits prominently along the road and can be viewed from both the bottom and the top of the street. Whilst the street has many trees lining it, very few on this side of the road match the Copper Beech tree's size, prominence or impact on the street scene. The tree is considered to make a significant contribution to the visual amenity of the site, the wider surrounding area and the Hexham Conservation Area. The risk of its removal would have a significant and harmful impact on the visual amenity of the local environment and the wider enjoyment of the public travelling along the through road to access Hextol Crescent.
- 2.13. Whilst it is acknowledged that the applicant wishes to improve the amount of light into their dwelling and has concerns over the structural integrity of the property, as there was no evidence submitted to support this statement it cannot be considered fully when justifying the works to fell. It is accepted that the justification to allow more light into the property and surrounding properties is a material consideration and may have justified minor works to the tree, however, in this case it is not considered enough to fell the tree as it contributes significantly to the visual amenity of the wider area, is in a good condition and has a potential future lifespan of 100+ years. The loss of this tree would have an adverse effect on the character, amenity and landscape value of the wider surrounding area. The condition of the tree is considered to be healthy and worthy of pursuing a Tree Preservation Order in accordance with the advice set out in Policy QOP 4 of the Northumberland Local Plan.
- 2.14. The owner of the property outlines that a substitute tree of a smaller more manageable size for the plot would be planted in its place. However, the Council does not have the power to condition this whilst the tree is only protected through the need to notify of any proposed works to trees within the Conservation Area. Additionally, if the TPO was granted the objector would still have the option to apply for any proposed works but would be required to provide a professional report justifying the works, which would be given appropriate weight in the decision making process. It is also acknowledged that any substitute would take a significant amount of time to mature and be capable of contributing to the wider area to the same degree as the existing tree.
- 2.15. The objector also directly highlights that a Copper Beech Tree is not an appropriate size or species for the plot. This point merely highlights the tree's scale within the street, further emphasising the positive contribution and impact that the tree has on the locality and its clear impression that it makes within the public realm. The decision to preserve the tree was based mainly upon its condition, lifetime remaining, public visibility and contribution to the character of the area, and finally the level of threat posed which is explained below.

- 2.16. Concerns were raised over the lack of risk or threat the tree was under at the time that the TPO was made. However, as the Council's only options for an application notifying of works within the Conservation Area is to offer no objections if satisfied with the work that is proposed or make a TPO within the specified time period otherwise the applicant can undertake the works, the perceived threat to the tree was imminent. The tree was clearly at risk and under threat as the owner had notified of their intention to fell the tree. Regardless of this, the tree would still score high enough on a TEMPO to still definitely warrant a TPO.
- 2.17. The view of the planning department and the Trees and Woodlands Officer is that the tree contributes significantly to the visual amenity of the locality and is worthy of TPO status.
- 2.18. The 2009 Hexham Conservation Area Character Appraisal states: "*A major element in the character and the appearance of the Hexham area are the trees, gardens and open spaces within it. Therefore, ill-considered works to trees may not only lead to the loss of the trees themselves but also ruin the appearance of the area surrounding them and spoil the setting of any buildings nearby*". In Hextol Terrace itself: "*Deep front gardens along Hextol Terrace set back front elevations to soften built impact and create a more generous relaxed space*" which it is considered that the tree significantly contributes to.
- 2.19. The Hexham Neighbourhood Plan Policy HNP 17 sets out "*The loss of healthy trees and hedgerows in the Neighbourhood Area will not be supported*". Considering the above, it is officer opinion that the tree is healthy and at present does not pose a risk to the public, as no supporting evidence has been submitted.
- 2.20. The view of the Council's Tree and Woodlands Officer and Planning Officers is that it is expedient for the reasons above that the tree in question merits protection with a TPO following an assessment of the tree itself and the surrounding visual amenity. The tree is in good health, of significant visual amenity and makes a positive contribution to the surrounding street scene and the Conservation Area. The imposition of the TPO would not preclude works from taking place, but it would allow the Council to assess any proposed works through a formal application and secure replanting if necessary following the necessary applications. The provisional TPO at the site will cease to have any effect after 6th June 2024 and the tree will no longer be subject to protection. It is considered that the Order should be confirmed given the significant visual amenity value of the tree.

Other Issues

- 2.21. 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.

- 2.22. These proposals have no implications in relation to crime and disorder.
- 2.23. 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.
- 2.24. 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.
- 2.25. 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 15 Hextol Terrace, Hexham) Tree Preservation Order 2023 (no. 05 of 2023) **be confirmed subject to no modifications.**