



Northumberland County Council

Tynedale Local Area Council
9 March 2021

The Northumberland County Council (Land at Hazel Hurst, Bardon Mill, Hexham, Northumberland) Tree Preservation Order 2020 (No. 09 of 2020)



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1. Introduction

1.1 The purpose of this report is to seek a decision from the Tynedale Local Area Council as to whether or not they wish Northumberland County Council to confirm the provisional Northumberland Council Council (Land at Hazel Hurst, Bardon Mill, Hexham, Northumberland) Tree Preservation Order 2020 (No. 09 of 2020).

2. Appraisal

2.1 The provisional Tree Preservation Order (TPO) was made by Northumberland County Council under Section 198 of the Town and Country Planning Act 1990 on 3rd November 2020 under delegated powers following a request by a member of the public for the trees on land at Hazel Hurst, Bardon Mill to be assessed to ascertain whether they are worthy of protection.

2.2 The land subject to this order is located to the north and north west of the residential property, Hazel Hurst, Bardon Mill. The land is to the south of the small village of Scrogg Wood and is to the west of the U7058 adopted highway.

2.3 The order confirms the protection of 3 no. individual English Oak trees (identified as T1, T2 and T3) which are located directly to the north and north west of the residential property, Hazel Hurst, Bardon Mill and confirms the protection of 1 no. group of trees (identified as G1) comprising 13 no. English Oak trees, 40 no. Silver Birch trees and 1 no. Rowan tree which are located on land directly to the south of the following residential properties; Pennyburn, Bonny View, 5 Scroggwood, 6 Scroggwood, 7 Scroggwood, 8 Scroggwood and Thornlea of Bardon Mill.

2.4 The trees were assessed by the West Area Tree and Woodland Officer on 20th October 2020. Following this visit, it was considered that the individual trees and group of trees within this order (T1, T2, T3 and G1) merit protection and a new TPO should be created to protect these trees.

2.5 Copies of the provisional TPO, which was made on 3rd November 2020, were served to the owner of the land on which the trees are located, along with neighbouring properties and the Parish Council in accordance with Regulation 3 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. Also, several site notices, with information regarding the provisional TPO, were displayed along the U7058 adopted highway.

2.6 Serving copies of the provisional TPO to the people affected by the provisional TPO, provided them with the opportunity to make representations, if they wished to do so. Any representations were to be received by the Local Planning Authority by 8th December 2020. A total of 2 no. representations were received during this consultation period and therefore, the confirmation of the TPO must be determined by the Tynedale Local Area Council.

2.7 The representations received were from the owner of the land on which the trees are situated and from an adjacent neighbour. The owner of the trees agrees with the protection of the 3 no. individual English Oak trees (T1, T2 and T3), however, proposes modifications to the 1 no. group of trees (G1). The owner of the trees proposes within their representation that the 1 no. group of trees (G1) should be reduced in size, and provides a plan showing the proposed revised group of

trees (referred to in their plan as G1A) and recommends that 4 no. English Oak trees within the 1 no. group of trees (G1) should be individually protected as T4, T5, T6 and T7. The owner of the trees recommends that the 1 no. group of trees (G1) be modified to comprise of 11 no. English Oak trees, 36 no. Silver Birch trees and 1 no. Rowan tree. Within their representation, the owner of the trees states that the modifications they propose to the provisional TPO would continue to maintain the amenity value of the land, would support local nature/wildlife and would protect more than 90% of the trees within the provisional TPO. The owner of the trees also states that this modification would help to support the management of this woodland. The representation submitted by the owner of the trees provides background information regarding land ownership, provides their own assessment of the condition of the trees and also comments on issues such as nature/wildlife, public interest and the visibility of the trees.

2.8 1 no. representation has been received by a neighbour in support of the provisional TPO without modification. This neighbour supports the making of the TPO as it would maintain the rural character of the area, it would prevent further trees being felled in this location, it would prevent the land from becoming unstable, it would support local wildlife and it would protect the residential amenity of adjoining neighbouring properties.

2.9 Northumberland County Council must confirm the provisional TPO, with or without modifications, within the 6 month provisional period, i.e. by the 3rd May 2021 otherwise it will cease to have any effect.

2.10 The 2 no. representations received in relation to this provisional TPO have been considered by the Local Planning Authority in consultation with the West Area Tree and Woodland Officer. On 20th October 2020, a Tree Evaluation Method for Preservation Orders (TEMPO) assessment was undertaken by the West Area Tree and Woodland Officer on the trees within this order. Following this detailed assessment, it was considered that the individual trees and group of trees within this order (T1, T2, T3 and G1) merit protection and a new TPO should be created to protect these trees. It was concluded that the trees collectively have a potentially long lifespan, are prominent within the local landscape, positively contribute to the rural character of the area and are considered to support a range of wildlife. In response to the representation received by the owner of the trees, the West Area Tree and Woodland Officer appreciates the comments made and agrees with the owners plans to improve the species mix of the group (G1) over time, however, ultimately considers that the TPO should be confirmed without modifications. It is therefore the Local Planning Authority's opinion that the order should be confirmed without modifications.

Other Matters:

Equality Duty

2.11 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

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

Human Rights Act Implications

2.13 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.

2.14 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.

2.15 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

3.1 That the Northumberland County Council (Land at Hazel Hurst, Bardon Mill, Hexham, Northumberland) Tree Preservation Order 2020 (No. 09 of 2020) **be confirmed without modifications.**