

HAMBLETON DISTRICT COUNCIL

Report To: Planning Committee
2 February 2012

From: The Head of Regulatory Services

Subject: **TREE PRESERVATION ORDER 2011/3 - 22 THE HOLME, GREAT BROUGHTON**

1.0 PURPOSE AND BACKGROUND:

- 1.1 The purpose of this report is to inform the Committee of representations to the making of a TPO No. 2011/3 at 22 The Holme, Great Broughton and for the Committee to decide whether to confirm the Order.
- 1.2 On the 9 September 2011 Mr R Davies submitted notice ref 11/01969/CAT of an intention to carry out works to 5 semi mature ash trees and one mature ash tree located on part of the south boundary of 22 The Holme. The trees are in the Conservation Area, which gave rise to the need to submit notice of the works, under Section 211 of the Planning Act. In respect of trees 1, 2, 4, and 5 the works were to crown lift and reduce by 40%. The proposal for tree 3, was to fell. The position of the trees was set out on the submitted plan (attached Document 1).
- 1.3 The reasons stated for the general works was to renew a previous consent for similar works, ref 06/00957/CAT.
- 1.4 In the 11/01969/CAT application the reason stated for felling T3 related to the overhang of the tree over the neighbouring property, concerns for safety for those walking underneath the tree, and that branches had fallen with near misses to persons and property. Also that the tree takes away light from property, that the lower limbs had been severely cut back in the past resulting in mis-shapen and knarled appearance and a wish to avoid future problems with foundations. It also noted that other trees nearby will provide amenity to the area.
- 1.5 On the 14 September 2011 the owner, Mr Davies, gave the Council 5 days notice of intention to fell T3 (under an exemption available for dead, dying or dangerous trees). The reason given was; instability arising from the form of the tree, unbalance resulting from recent fallen branches, and the poor amenity value of tree. This was accepted by the Council and the tree was felled shortly thereafter.
- 1.6 On the 23 September 2011, a Tree Preservation Order ref 20011/3 was made in respect of the remaining trees. The reason for making the Order was concern that the works as proposed were likely to give the trees an unnatural form, reducing their amenity value in the Conservation Area surroundings and would be harmful to their role in providing a landscape framework for the new house at the rear of the site which has been approved (ref 09/03988/FUL), and which is still valid.
- 1.7 Following the making of the Tree Preservation Order, the Council commissioned a report by an independent arborist Elliot Consultancy (carried out by Charles Prowse), into the condition of the trees and any relevant information about their surroundings (attached Document 2). The report notes that T1, T2, and T4 are in good condition, and T5 is a poor specimen. The report notes that the nearby utility wires, and houses, will compromise the ability of the trees to grow to full maturity, and thus questions their suitability for Tree Preservation Order.

- 1.8 The Elliot Consultancy report goes on to note that if the TPO is confirmed, the proposal to reduce by 40% is excessive. The report suggests that T1 and T2 are left alone in the short term, T4 is crown reduced by 20% and T5 is removed due to its poor structural form and to allow T4 to develop.
- 1.9 Mr Davies was invited to make an application under the Tree Preservation Order for the works set out by Elliott consultancy.
- 1.10 An application ref 12/00089/TPO was received on 10 January 2012. The works proposed by the owner are as out in the Elliot Consultancy (Charles Prowse) tree report. This re-numbers the trees following the felling of the original T3. The numbering now is for the 4 remaining trees where T1 is closest to the road and T4 is furthest from the road. There are no works to T1 and T2, reduction of T3 by 20% and removal of T4.

2.0 DECISIONS SOUGHT:

- 2.1 To confirm TPO 2011/3 in respect of the Trees T1, T2, and T3 as shown on the plan accompanying the provisional Tree Preservation Order (attached Document 3).
- 2.2 To resolve to grant consent under reference 12/00089/TPO for the reduction of T3 by 20% and removal of T4 as noted in paragraph 1.10 above.

3.0 LINK TO CORPORATE PRIORITIES:

- 3.1 There are no links in this case.

4.0 RISK ASSESSMENT:

- 4.1 The risk is that if the TPO is not confirmed the trees may be treated in a way that is harmful to the amenities of the Conservation Area.

5.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES:

- 5.1 There are none in this case.

6.0 LEGAL IMPLICATIONS:

- 6.1 The general purpose of a TPO is to protect the character and amenity of the area. A TPO may prohibit the unauthorised cutting down, lopping, uprooting, wilful damage, or wilful destruction of trees.
- 6.2 The effect of confirming a TPO is to make unlawful any actions referred to in the TPO.
- 6.3 Following confirmation of a TPO an application can be made to the Local Authority for consent to carry out works on the tree (including cutting it down). If the Local Authority refuses the application for consent the applicant has a right of appeal to the Secretary of State.
- 6.4 In certain limited circumstances (e.g. where the tree is causing damage to the applicant's property) the applicant may make a claim for compensation for any loss or damage suffered as a result of the refusal to grant consent. This is limited however to damage that was reasonably foreseeable when the application was made.
- 6.5 If the claim for compensation is refused by the Local Authority, or the level of compensation offered is disputed, the applicant has a right to appeal to the Lands Tribunal for determination.

7.0 SECTION 17 CRIME AND DISORDER ACT 1998:

7.1 None relevant in this case.

8.0 EQUALITY/DIVERSITY ISSUES:

8.1 There are none relevant in this case.

9.0 OBJECTIONS TO THE TPO:

9.1 Mr Davies has submitted a statement, which is attached (Document 5) as requested by Mr Davies. Mr Davies' statement has three attachments, which are tree reports by Elliot Tree Consultancy (already attached as Document 2) and Peter Harris Associates (as attached Document 4), together with the officer report from the 2006 Notification ref 06/00957/CAT (attached as Document 6).

10.0 RECOMMENDATIONS:

10.1 Due to their contributions to the natural amenities of The Holme, and their value as a natural landscape framework to the approved dwelling ref 09/03988/FUL, it is recommended that the Tree Preservation Order 2011/3 be confirmed insofar as it relates to T1, T2, and T3 as set out on the plan accompanying the provisional order.

10.2 Due to its poor structure and potential weakness, and existing moderate crown dieback and deadwood it is recommended that T4 is not confirmed as part of the Tree Preservation Order.

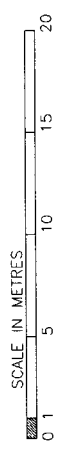
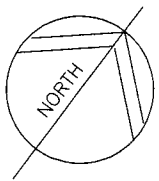
10.3 That in respect of the application reference 12/00089/TPO a 20% reduction be allowed to T3 and that T4 be allowed to be felled.

MAURICE CANN

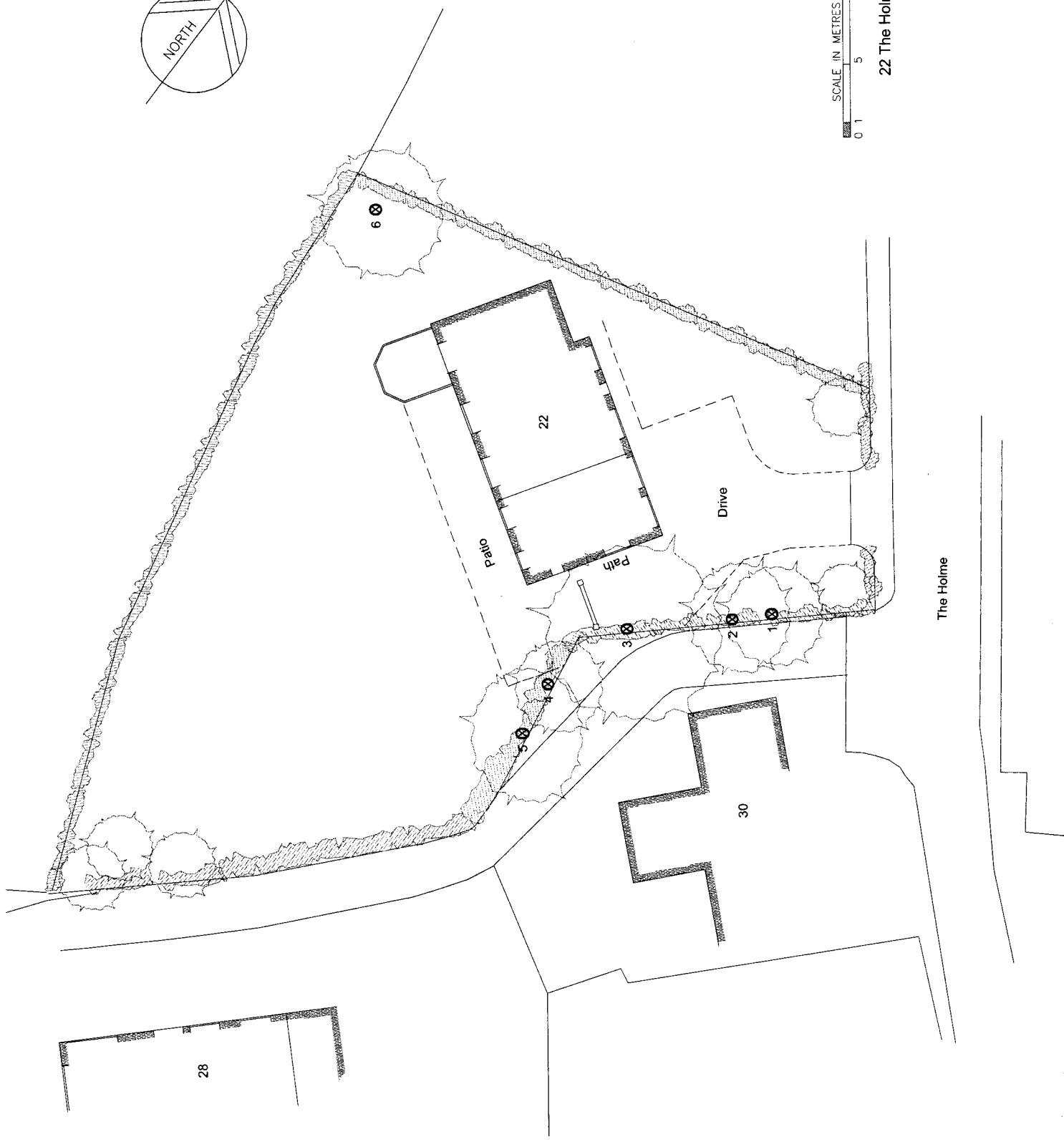
Background papers:

Document 1	Plan accompanying application ref 11/01969/CAT
Document 2	The Council's Arboriculturalist's report (Elliot Tree Consultancy, for HDC)
Document 3	Tree Preservation Order Plan TPO 2011/3
Document 4	Arboriculturalist's report (P Harris Associates, for Mr R Davies)
Document 5	Statement by Mr Davies
Document 6	Officer report 06/00957/CAT

Author ref: BR



22 The Holme Tree Plan



Bridget

I email with findings from my visit to 22 The Holme this morning.

The trees in question numbers 1, 2, 4 & 5 (3 has recently been removed) are all semi-mature self-seeded ash along the line of a hedgerow. I checked each tree in turn and assessed them in context of the works proposed.

Tree 1 currently appears to be of good physiological and structural condition. Its overall form is compromised by its proximity to its neighbour (Tree 2), with both having co-dominant crowns.

Tree 2, like Tree 1 is currently of good physiological and structural condition and again it shares a co-dominant crown with Tree 1.

Tree 4 has suppressed form due to its proximity to Tree 5, which has the more dominant crown. Currently it appears to be of good physiological and structural condition.

Tree 5, is in my opinion a poor specimen. It is multi-stemmed with two of the stems having an included bark union, which can ultimately prove to be a point of weakness. Additionally the central stem has a moderate volume of crown dieback and deadwood.

I would question the long-term viability of these trees given their position between two properties and their proximity to the utility lines. Ash, when mature, are large trees, far larger than the space afforded to them at 22 The Holme. As I'm sure you are aware the utility companies employ teams of arborists to ensure a 2m clearance between the lines and trees; this means that the form of these trees will always be compromised as a result of their cyclical pruning, which has in fact only recently been undertaken.

With regards to the conservation area notice I would say that these trees do not merit being protected by TPO given their impaired form and the requirement for them to be managed in the future due to their species, proximity to buildings and the power lines.

If the TPO is confirmed, and on the basis of an application being made for the same works I would say that a 40% crown reduction is excessive. I have told the owners this and explained why arboriculturally such an operation would not be good. They were very receptive to my explanation and noted that they only asked for 40% because that was previously granted, yet not undertaken. Personally I would advise that Trees 1 & 2 are currently left alone (but with a view that works to some degree will be required in the near future), that Tree 4 was crown reduced by 20% and that Tree 5 was removed completely due to its poor structural form and to allow Tree 4 to develop.

I hope that I have helped clarify matters. As always if you have any questions please do not hesitate to contact me.

Kind regards,

Charles Prowse *M. Arbor. A*

Arboricultural Consultant

01947 897001 / 07810 200968

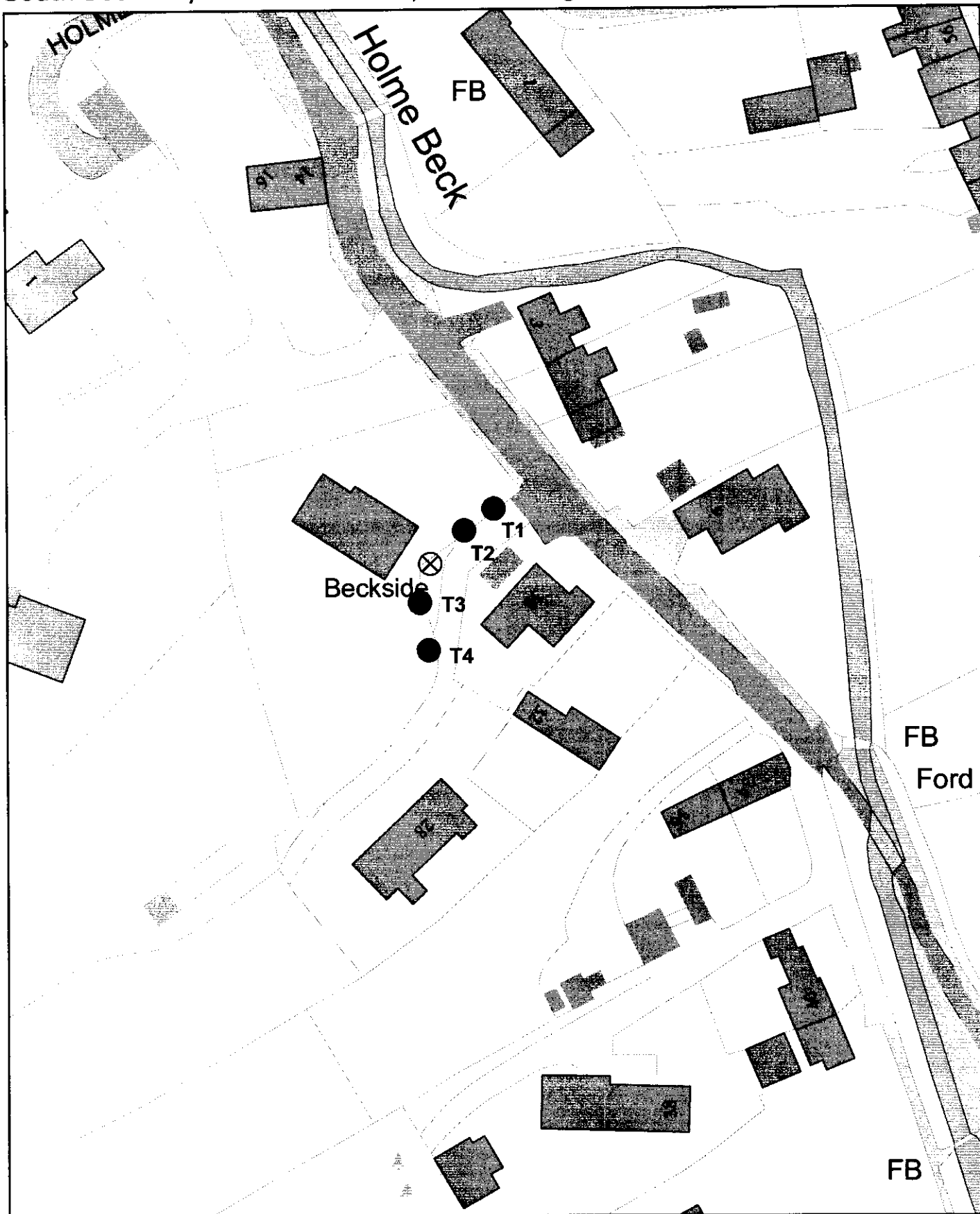
Wrens Nest, Underhill, Glaisdale, North Yorks, YO21 2PF

charles@elliottconsultancy.com www.elliottconsultancy.com

TREE PRESERVATION ORDER: 2011/03

11/11/2011

South Boundary of 22 The Holme, Great Broughton. TS9 7HF



HAMBLETON
DISTRICT COUNCIL

Civic Centre, Stone Cross, Northallerton DL6 2UU
Telephone: 0845 1211 555 Fax: 01609 767228

Reproduced by permission of Ordnance Survey on behalf of HMSO. © Crown copyright and database right 2011. Ordnance Survey Licence number 100018555



1:750



Our Ref.: PHA2012-32

Your Ref.:

20th October 2011

F.A.O.:

Mr & Mrs R. Davies,
22 The Holme,
Great Broughton,
North Yorkshire,

4 ROSEHILL WAY
STOKESLEY
NORTH YORKSHIRE
TS9 5AA

TEL: 01642 713395

Dear Sirs,

**Re: Tree Preservation Order 2011/003,
22 The Holme, Great Broughton.**

Further to the verbal instructions of Mr Davies I attended the above property on the 20th October 2011 and set out below my findings in regards to adjacent trees, and the placement of such subjects within a Tree Preservation Order.

Overview.

The line of trees inspected are east and south of the property 22 The Holme and growing within a hedge line with the trees considered to be of natural origin.

It is understood that the subjects inspected are within a Conservation Area and that Mr Davies requested to undertake works in regards to a lapsed permission granted of May 1996 where works had not been undertaken.

Tree Detail.

1. Fraxinus excelsior Ash.
Height 12.50 metres. Diameter Breast Height 300mm.

This subject is situated 9.1 metres east of the property within the boundary hedge and would be appraised as being in a satisfactory physical condition but in close proximity to overhead lines.

The tree has a clear stem of 5.50 metres above ground level before forming a crown with cables south of the crown.

2. Fraxinus excelsior Ash.
Height 12.50 metres. Diameter Breast Height 200mm.

This subject is situated 7.2 metres southeast of the property within the boundary hedge and would be appraised as being in a satisfactory physical condition but in close proximity to overhead lines south of the crown.

The tree has a clear stem of 5.50 metres above ground level before forming a crown.

N.B. Due to the close proximity of positions No' 1 and 2 which are 2.70 metres apart any works would have to treat the overall crowns as a single unit.

4. Fraxinus excelsior Ash.
Height 12.00 metres. Diameter Breast Height 220mm.

Situated south of the property within the hedge line this subject is suppressed by position No 5 which is 1.60 metres further to the south west.

It would necessitate the removal of position No 5 to improve the longer term condition of this subject.

5. Fraxinus excelsior Ash.
Height 12.00 metres. Diameter Breast Height 2 X 220mm + 285mm.

This subject is appraised as being in a poor condition with the triple leaders arising at 1.00 metre above ground level and included bark union at such junctions which would be considered a longer term weakness. Approximately 10% of the central of the three leaders was observed as dead.

This tree is 1.60 metres from a pole carrying overhead power lines which are south of the tree..

I would recommend the removal of this subject to allow position No 4 to develop.

Discussion.

It would be noted that an Ash tree can achieve a height of 23.00 metres and crown spread radius of between 7.5 and 10.00 metres radius or greater if allowed natural growth.

Therefore the growing space available to the subjects inspected is highly restrictive for natural growth and such subjects will require long term cyclical management.

This is further emphasised by the proximity of power lines and statutory undertaker's management to ensure clearance of such lines.

Peter Harris, M.Arb., F.Arbor.A., Arboricultural Consultant
Email. pharrisassoc@btconnect.com

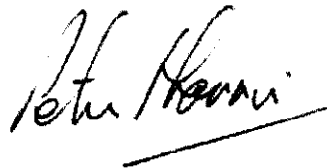
Conclusion.

I am aware of the report generated by Charles Prowse of the Elliott Consultancy (Arboricultural Consultants) and generally concur with such opinions especially in regards to the unsuitable nature of placing such subjects within a Tree Preservation Order as they do not merit such protection.

I have always understood that to generate such protection trees had to be of an amenity value, whilst this can be a highly subjective matter, in this instance I do not consider it appropriate for such trees to be included in such an order and therefore support Mr Davies objection.

I shall be pleased if I can assist further in any of the above matters.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Peter Harris", written over a horizontal line.

Peter Harris.

Report to: Planning Committee
February 2012

From: Mr and Mrs R Davies

Subject: TPO 2011/3 – 22 The Holme, Great Broughton, TS9 7HF

The original application we submitted was to do works to 5 trees, and to plant a new tree in a more appropriate position, not the works to 6 trees as stated by the council planners in their January meeting statement

In the planners January statement 1.4, T3 was felled 'only' after the council gave permission, as it was proven dangerous.

The application was then changed to maintenance to 4 Ash trees.

We asked for the renewal of a previously approved application in 2006 by Mrs B Robinson. Attached is a copy of this approval, which as part of this statement, we would like to be read.

I have been informed by Mr Wood that there has been no changes to policy since 2006.

No works to these trees had been carried out.

We never intended to carry out the full works to the trees as the previous application sought, we only wanted to maintain the trees, with advice from our tree surgeon. The trees are close to my property, but even closer to my neighbours. As the TPO was served without any communication from the planners, we never had the chance to show our true intentions.

There has been 2 applications to 'fell' trees close to my property(11/02503/CAT and 11/02276/CAT) during our application. The planners chose to communicate with them, and gave them the opportunity to withdraw their application. For some reason we were never given that opportunity.

The planners employed an Arboriculturist, Elliott consultancy, to conduct a survey of the 4 Ash trees. Report attached for your reading. Their consultant, Charles Prowse, stated a TPO is not appropriate in this instance. We agreed with the recommendations of works to the 4 Ash trees he advised, as stated in his report.

Attached is the arboriculturist report we employed, Peter Harris, this report concurs with Elliott consultancy, that a TPO is not appropriate.

13th October 2011, We informed, Mrs B Robinson(planning officer) in a meeting we asked for, that we agreed to only do the works as recommended by the councils arboriculturist. In this meeting she told my wife and I that there was no need for the meeting as the TPO was being confirmed no matter what was discussed. We found this dismissive action unreasonable, and didn't understand why she was doing this, as we were fully cooperative with the council.

19th October 2011, In a meeting with Mr M Cann(Planning head), My wife said, the works will only be carried out as recommended by the councils arboriculturist. We never wanted to go as far as Committee, we thought this could have been resolved prior.

In numerous telephone conversations with Mr T Wood, I informed him we will only do the works as recommended by the councils arboriculturist. Mr Wood has only just informed me on the 3rd January 2012, that if we submit our intension to the works as recommended by the councils arboriculturist in writing, then this will be taken into account.

We never withdrew our original application, as we thought that we couldn't, and we have only just been informed that this was possible.

We have since withdrew our application and submitted an application to works in line with the Councils Arboriculturist recommendations, we have been fully cooperative with the Council.

In the councils January statement, section 4.1, the council states we will fell the tree if a TPO is not served. This is wholly untrue, we have never said or given any evidence to support this. If the TPO is not confirmed by the Committee, then the trees will be maintained to the councils arboriculturist recommendations.

The Councils January statement included a number of factual errors, which I have asked them to amend. As this is a legal process, I believe any errors that still remain would invalidate the Councils argument and render any approval of a TPO unsound.

We know a TPO is not needed in this instance. The trees are not at risk, and will not be at risk in the future. When you conduct your site visit, can you note that new trees have been planted, and also the maintenance of the 4 ash trees previously (excessive Ivy was damaging them). Is this the action of a person that needs a TPO?

PLANNING REPORT

Application Ref No 06/00957/CAT

Applicant
Mr I Bayley
59 The Garth
Coulby Newsham
Middlesbrough
TS8 0UG

Agent (if any) to whom correspondence should be sent

Tel:

Tel:

Date of application 3 May 2006

SITE ADDRESS

Beckside 22 The Holme Great Broughton North Yorkshire

APPLICATION DETAIL

Proposed works to 5 Ash trees

1.0 SITE DESCRIPTION AND PROPOSAL

1.1 The site forms a boundary along an access drive off The Holme and trees along a hedge line. The surroundings are residential in use, with many trees particularly along the bank of the beck alongside the road.

1.2 The proposal is to crown lift the trees and reduce by 40% to provide clearance to adjacent bungalow and telephone wires.

2.0 RELEVANT PLANNING HISTORY

2.1 None

RELEVANT PLANNING POLICIES:

3.1 The relevant Policies within Hambleton District Council District Wide Local Plan (1999), Planning Policy Guidance and/or Supplementary Planning Guidance are as follows;

HDWLP Policy HH11 - Trees in Conservation Areas.

4.0 CONSULTATIONS

4.1 Parish Council - no objections

5.0 OBSERVATIONS

5.1 The issue is whether the works will result in loss of amenity to the Conservation Area and require the making of a Tree Preservation Order.

5.2 The works proposed will reduce the height and volume of the trees significantly, however the origin of the trees is probably the hedge, and the reduction will reinforce the hedge-like character of the boundary. In this location where telephone wires are a consideration are the works are considered to be reasonable and will not significantly harm the appearance of the Conservation Area sufficient to justify the making of a tree preservation order.

SUMMARY

The works will not harm the amenity value of the trees in the Conservation Area and would not justify the making of a Tree Preservation Order.

6.0 RECOMMENDATION:

GRANTED subject to the following condition(s)

The reasons for the above conditions are:-