

Parish: Husthwaite
Ward: Raskelf & White Horse
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Committee Date : 5th March 2020
Officer dealing : Mr Connor Harrison
Target Date: 6 December 2019
Date of extension of time (if agreed): 14 February 2020

19/02202/TPO

**Application for works to fell a Blue Atlas Cedar tree subject to Tree Preservation Order 2009 No: 6.
at Wilton Croft Low Street Husthwaite North Yorkshire
for Mr Keith Templeman.**

The application is referred to Planning Committee at the request of a Councillor.

1.0 Proposal and site description

- 1.1 The site is located within the Husthwaite Conservation Area and also within Development Limits.
- 1.2 The application is for the felling of a tree protected by a Tree Preservation Order located within the curtilage and to the West of Wilton Croft close to an outbuilding/garage and near to the boundary with 1 Elphin View.
- 1.3 This proposal seeks the removal of one Blue Atlas tree. The tree is protected under TPO 09/00006/TPO. The works are proposed owing to the impact of the tree on the outbuilding, the size of the tree relative to the property and the impact on the health of the occupier of 1 Elphin View.

2.0 Relevant planning and enforcement history

- 2.1 17/01788/CAT - Works to fell a silver birch tree in the rear garden – permitted.
- 2.2 14/01760/TPO - Proposed works to blue atlas cedar tree subject to Tree Preservation Order No 2009/09 - permitted.
- 2.3 13/02485/TPO - Proposed removal of blue atlas cedar tree subject to Tree Preservation Order No 2009/06 – refused 22 January 2014.
- 2.4 12/00260/TPO - Application for works to the blue atlas cedar to remove branches overhanging the outbuilding, the tree subject to Tree Preservation Order no. 2009/06 – permitted
- 2.5 09/02592/FUL - Demolition of existing garage and construction of a dwelling and new vehicular access, this proposal involved the felling of the blue atlas cedar tree and a laburnum tree - refused.

3.0 Relevant planning policies:

- 3.1 The relevant policy of the Development Plan and any supplementary planning policy advice are as follows;

Core Strategy Policy CP1 - Sustainable development

Core Strategy Policy CP16 - Protecting and enhancing natural and man-made assets
Development Policies DP1 - Protecting amenity
Development Policies DP28 - Conservation

4.0 Consultations

4.1 Parish Council - Support the application. The Parish Council have cited their belief that the tree is inappropriate within its setting, is the cause of structural issues and has a negative impact on a neighbour's health as reasons for their decision.

4.2 Neighbours and Site Notice - Two responses in support of the proposal. The responses address the following:

- Excessive discharge of pollen and general detritus associated with the tree in question and its impact on nearby properties.
- Inappropriate siting of a tree that will grow larger in time.
- Health impacts relating to the release of pollen from the tree.

5.0 Analysis

5.1 The issues to be considered include;

- i) whether the impact of the proposed tree removal would be a detrimental to the visual amenity, character and appearance of the immediate vicinity and to public amenity of the Husthwaite Conservation Area; and
- ii) whether the impact of the tree on nearby structures or
- iii) whether the impact of the tree on the health of individuals warrant the removal of the tree.

5.2 The tree is considered to be attractive and prominent within the surrounding area, being visible along a large section of Low Street. The tree is young-mature, appears to be healthy and, according to a tree report produced by an external consultant for the Council in 2013, has a lifespan estimated to be greater than 40 years.

5.3 The Local Planning Authority commissioned Arboricultural Consultant, Anthony Whitehead Associates Ltd, to assess the current submission. The Consultant reports sets out that the current submission is inadequate in its explanation of the requirement to remove the tree and does not provide evidence to support the applicant's concern that the tree may cause subsidence to nearby structures or is too large for its setting.

5.4 The Tree Preservation Order was placed on the tree in 2009. The information submitted by the applicant has drawn attention to the apparent structural damage caused to a nearby outbuilding. Following a site visit and inspection of the outbuilding it is considered that the past application of inappropriate mortar and vertical jointing of masonry has led to a deterioration of the fabric of the building. It is considered unlikely that the tree is responsible for the identified structural damage.

- 5.5 It has not been proven that the tree needs to be felled due to its impact on nearby structures nor that any damage to these structures can be ascribed directly to the tree. If subsidence is to be claimed as a reason for felling the tree then additional information by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots and repair proposals would reasonably need to be submitted for consideration. If the reason is other structural damage, written evidence from an appropriate expert, including description of damage and possible solutions, is required. The application states that no evidence is submitted to address these issues. No other details have been supplied to explain how else these matters might be addressed.
- 5.6 The application makes reference to the impact of the tree on the health of a neighbour, with a doctor's note submitted in support of this claim.
- 5.7 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.8 The public sector equality duty (PSED) is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act. This application raises the issue of the potential impact of pollen on health.
- 5.9 Officers have taken into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.
- 5.10 The retention of the tree could impact on an individual(s) with a protected characteristic. However, no direct connection between this tree and health has been proven.
- 5.11 It is considered, in assessment of Policy DP1 that the personal wellbeing and private amenity of an individual does not outweigh the environmental and public good that would be maintained through the retention of the tree. Without evidence demonstrating the direct impact of this tree or of danger presented to the wider public, it is considered that the tree should not be removed under health grounds.
- 5.12 It is acknowledged that The Town and Country Planning (Tree Preservation) (England) Regulation 2012 allows for the unobstructed removal of trees where the works are "urgently necessary" to remove an "immediate risk of serious harm" (Part 3, Reg. 14). It is considered that the tree does not pose an immediate risk, given that the pollination window for this tree is chiefly in early autumn and is therefore several months away. The annual pollination would also allow for measures to be taken in order to mitigate the impact of the tree, meaning that the "serious harm" resulting from a release of pollen would not resemble the conventional use of this

regulation (i.e. the removal of a failed or failing tree); the potential harm caused is reasonably foreseeable and so can be prepared for accordingly.

- 5.13 Anthony Whitehead Associates Ltd rejects the assertion that the tree is too large for its current position. Whilst the tree is large, it does not appear to have outgrown its setting and does not present a disproportionate impact to the residential amenity of nearby dwellings due to its size alone. It is therefore considered to be appropriate to its location. The applicant states that the tree will become too large for its position "over time", at which point felling may be a consideration - it is held that, at the present time, the tree is adequately sited and could in time be managed to enable its retention in this location.
- 5.14 It is considered that the removal of the Blue Atlas tree would have a negative impact on the character of Husthwaite and the wider area. It is noted that permission was given for minor works to the tree in a previous application in 2012 and that applications proposing works for the ongoing management of the tree in a similar manner could be supported.

Conclusion

- 5.15 On balance, the considerable public amenity value of this tree and the fact that there is no evidence to indicate that it is responsible for structural damage at the present time means that removal is not recommended. On the basis of the independent advice provided by an external consultant (A Whitehead) it is also considered that removal of the tree due to its potential future impact on the site is also not a reason for removal. The impact of the tree on a neighbour's health does not constitute a planning reason for the removal of a tree under the legislative guidance provided by The Tree and Country Planning (Tree Preservation) (England) Regulations 2012. It is considered that the works to the Blue Atlas would be unduly detrimental to the locality and Conservation Area and would not be in accordance with Local Policies CP16 and DP28.

6.0 RECOMMENDATION:

- 6.1 That subject to any outstanding consultations the application be **REFUSED** for the following reason:

1. There is insufficient evidence to justify felling the Blue Atlas Cedar Tree which is of high visual amenity and contributes positively and significantly to the character and appearance of the Husthwaite Conservation Area. The proposal is therefore contrary to Policies CP16 and DP28 of the Local Development Framework which seeks to preserve and enhance the District's natural assets. The proposal is also not in accordance with The Town and Country Planning (Tree Preservation) (England) Regulation 2012 insofar as the removal of a protected tree has not been shown to be an unavoidable consequence of the reasons given for felling surrounding the application. It has also not been shown that mitigation actions preceding the felling of the tree have been fully explored by the applicant.