

Parish: Bagby

Committee

27 October 2022

date:

Ward: Bagby and Thorntons

Officer dealing:

Naomi Waddington

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Target date:

08 December 2022

22/00011/TPO2

Confirmation of Tree Preservation Order 2022/No.11

At: Thirsk Furniture Products Ltd, Unit B Johnson Way, Thirsk Industrial Park, Thirsk YO61 2QB

The report is brought to Planning Committee as an objection has been made to the Order

1.0 Site, Context and Proposal

- 1.1 This report considers the case for the confirmation of Tree Preservation Order (TPO) 22/00011/TPO2
- 1.2 Planning permission was granted in October 2022 under reference 22/00476/FUL for the construction of a single storey timber framed and timber clad office building, and siting of 2 container units. The proposed office replaces an existing container unit sited adjacent to and partially beneath the canopy of trees that are considered important to the setting of this commercial area and hence are the subject of a Tree Preservation Order.
- 1.3 Under consideration of application 22/00476/FUL the applicant was advised to seek the advice of an arborist to assess the impact of the office proposal upon the adjacent trees. The trees have a canopy that extends over the planning application site. A detailed report on the trees notes that they are likely to have grown from a hedge, the report notes defects and anticipates that the trees are likely to become a problem. Nonetheless the report advocates crown lifting to 5.2m over parking areas and 3m over footway and the proposal allowed for the retention of the trees. The applicant has advised they are committed to the retention of the TPO'd trees without harm and wish the trees to provide shade to the proposed office building, and are happy to accept the Tree Preservation Order. However, the arborist appointed by the applicant to assess office proposal has prepared an objection to the Tree Preservation Order, which the applicant has submitted. Therefore, the application is being brought to Committee to determine.
- 1.4 The Tree Preservation Order relates to a group of three Western Red Cedar trees located on the eastern boundary of Johnson Way. The trees are highly visible from public viewpoints along the main road through the Industrial Park, and contribute towards the character of the locality.

2.0 Relevant Planning History

- 2.1 14/01738/FUL Installation of a centralised dust extraction system. Approved 7th November 2014

2.2 22/00476/FUL. Construction of a single storey timber framed and timber clad office building, and siting of 2 container units (amended details received 09.06.22 and 11.08.22). Approved 5 October 2022

3.0 Relevant Planning Policies

3.1 The relevant policies are:

Local Plan Policy E4: Green Infrastructure
Local Plan Policy E7: Hambleton's Landscapes
National Planning Policy Framework

4.0 Consultations

4.1 Representations – One objection has been received, the comments are summarised as follows

- The supplied documentation contains technical errors in the way it is presented and the rationale for serving the order.
- The documentation does not align with the model order suggested by the current legislation.
- The TPO does not correctly represent the current state or location of trees on the site.
- The TPO has ignored the current and foreseeable damage caused by the tree.
- The TPO ignores accepted widely used and accepted scoring guidance in Tree Evaluation Method for Preservation Orders TEMPO.
- The order identifies the genus and species of the trees incorrectly.
- The TPO attempts to control the management of a tree with no regard for the current, and future difficulties associated with its retention and management.
- The TPO will result in elevated management costs for the tree owner and HDC
- The order should be revoked
- The reason for the order, that 'The trees are of amenity value to the wider area' could be applied to any tree
- No justification for the order is provided
- The trees may more accurately be described as an overgrown hedge, consisting of three trees
- Inappropriate species for the location
- Trees in 'fair' condition
- Early mature/mature with the potential to more than double in size in height and canopy spread if conditions allow.
- The order has not taken reduced vitality or future potential growth into consideration
- The order has not taken future maintenance requirements into consideration
- The order has not taken appropriateness of the species and future potential into consideration
- The order does not outline the trees position using northings and eastings to inform the land registry
- The trees are planted too close to hard surfacing with foreseeable damage very likely

- Tree damage to car park costly to repair
- Management of lower branches required in the short term
- Existing damage to pavement believed to be caused by roots
- The inspection to form the order was not completed by an Arboriculturalist familiar with botanical terms.
- There is a mechanism under TPO legislation that tree damage to car park can be recouped from LPA
- Trees offering a nuisance are exempt from TPO's.
- Flawed assessment, fails to identify the true state of the tree, which is not protectable under the TPO legislation and if becomes protected by TPO may result in a compensation claim for damage, demolition and rebuilding of the carpark .
- Question has the TPO been served from a strategic perspective to gain control over the site which is contrary to legislation.
- The tree owners wish to challenge the TPO which would stop them readily completing maintenance and repairs
- The TPO prevent normal management or intervention to abate a foreseeable nuisance
- The TPO will leave the landowner open to potential liabilities for foreseeable damage or result in cost to the Local Planning Authority through potential claims for compensation.

5.0 Analysis

- 5.1 The purpose of a tree preservation order is to protect trees which are deemed to be of significant amenity benefit to the local surroundings especially if they are in immediate risk of removal.
- 5.2 At this present time the trees do not appear to be in direct risk of removal. A recent planning application to construct an office building close to the trees has been approved, subject to measures including i) a Tree Precautionary Zone, ii) foundations constructed using pad stone or pile and beam type to minimise root disturbance, iii) the ground being de-compacted using air excavation with ground protection boarding used during the construction, iv) rain water feeds to direct water beneath the proposal to irrigate the root system, and v) crown lifting to 5.2m over parking areas and 3m over footway.
- 5.3 The representations received are correct in that the Council does not have the services of an inhouse arborist, and does not use the scoring guide TEMPO Tree Evaluation Method for Preservation Orders in order to make a Tree Preservation Order. The Council has however assessed the amenity value of this small group of trees, and considers the trees are of considerable amenity value and make a positive contribution toward the character and appearance of the street scene and the wider area. The wider area is a business park, and the presence of trees in this commercial landscape positively enhances character of the business park. It is acknowledged the objection advises the tree species are in the wrong place, are in fair condition, and will continue to grow if conditions allow. The trees may or may not be responsible for damage to the surface of some hardstanding. The representation states the trees are incorrectly identified but does not advise what the author believes the correct species is. The trees can clearly be identified by the map accompanying the Tree Preservation Order.

5.4 If the trees were to be felled or maintained inappropriately, this would have a detrimental impact on the amenity of the area. It is considered reasonable to confirm the TPO to ensure that any proposed maintenance work undertaken on the trees would be carried out in accordance with British Standard 3998 (Tree Works), thus ensuring the amenity benefit in the longer term.

6.0 Recommendation

6.1 It is therefore recommended that TPO 2022/No.11 Order is confirmed.