

# Forest Heath District Council

## **DEVELOPMENT CONTROL COMMITTEE**

**7 DECEMBER 2016**

**DEV/FH/16/041**

### Report of the Head of Planning and Growth

#### **TREE PRESERVATION ORDER 2016 (NO. 8) – LAND AT ST JOHNS CHURCH, BECK ROW**

##### **Synopsis:**

A Tree Preservation Order (TPO) was made on 9 trees on the land belonging to St Johns Church, Beck Row. The TPO was made on the 22 July 2016 and was served to protect 7 Irish Yew trees, a Common Yew tree and a Norway Maple. The TPO was made because of a proposal to remove the Irish Yew which would have a negative affect on the local area as the trees have a high amenity, historical and cultural value.

An objection has been received from the Parish Priest. The reasons for the objection have been considered and a modification proposed to partially address those reasons.

It is recommended that Members **CONFIRM** the TPO with modifications as detailed in this report.

##### **Commentary:**

1. The District Council's Standing Orders allow for the making of provisional Tree Preservation Orders by Officers, subject to reporting any representations relating to such action to the Development Control Committee.
2. A Tree Preservation Order was made on 22<sup>nd</sup> July 2016 to protect trees on the land belonging to St Johns Church, Beck Row (Working paper 1).
3. The reason for the Tree Preservation Order was that:

*These trees within the churchyard of St Johns Church in Beck Row frame views of the church and as such are of high public visual amenity. Yew trees are synonymous with church yards and as such have a high cultural*

*and historical value in this context. This Tree Preservation Order is required to ensure the trees are retained and managed appropriately.*

4. The trees are located around the church yard, most of them being situated in front of the church either side of the pathway. Concern arose because of a proposal to remove the trees which have a high amenity value.
5. A representation has been made in relation to the Tree Preservation Order by the Parish Priest including a statement from a local person who has maintained the war graves situated in the church yard. There is no issue with the protection of the Common Yew tree (T8) and the Norway Maple (T9). The main reasons for the objection relating to trees T1 to T7 (all Irish Yews) are as follows:
  - That the trees are Irish Yew which is a hybrid shrub, non native to the area and does not have the historic importance or longevity of English Yew. A Tree Preservation Order cannot be made on a shrub.
  - The specimens are relatively immature possibly post dating adjacent graves dating from the 1930's and 1950's
  - The church originates from the late Victorian era and post dates the time when Yew Trees were planted in churchyards to keep the devil away and to protect the souls of the departed from the Plague
  - The Irish Yews obstruct the views of the church which is floodlit at night and as a result the church is not perceived as the hub of the community
  - The Yew obstruct visibility of the war graves
  - There is concern that the trees will cause damage to the recently laid tarmac path, impede access to the church, and the berries potentially cause a slip hazard. There is also concern that the roots are damaging the drains, and the foundations to the church; roots have been found in a soak-a-way which was replaced.
6. Officers have considered the objections carefully along with the information submitted alongside the representation. A site meeting has been arranged with Reverend Rosemary Rycraft to discuss the issues raised.
7. A Tree Preservation Order protects trees and woodlands. The term 'tree' is not defined in the Act, nor does the Act limit the application of TPOs to trees of a minimum size. The dictionary defines a tree as a perennial plant with a self-supporting woody main stem, usually developing woody branches at some distance from the ground and growing to a considerable height and size. But for the purposes of the TPO legislation, the High Court has held that a 'tree' is anything which ordinarily one would call a tree. Pictures of the Irish Yew in the churchyard are included in Working Paper 2 for reference. Your Officers opinion is that the trees can be protected by a Tree Preservation Order.

8. Historically Yews are found in churchyards and there are many theories why this is. Wikipedia lists a number of these including; that yews were planted at religious sites as their long life was suggestive of eternity, or because being toxic they were seen as trees of death. Another suggested explanation is that yews were planted to discourage farmers and drovers from letting animals wander onto the burial grounds, the poisonous foliage being the disincentive. Yew trees are still commonly planted in churchyards purely because of their historical context. The distinctive feature of Irish Yew is its columnar shape that makes it a popular choice of Yew varieties in situations such as this because it is less visually obstructive than the wide spreading Common Yew yet it retains this historical context associated with the species.
9. Examination of the photographs of the Yew trees submitted by the objector indicates that the height of the trees has been reduced in the past and this might be an indication why the width of the trees has increased. The shape of the trees could be addressed through pruning.
10. The Irish Yew trees (T1-T7 on the plan) that are causing concern are considered to be in *'good health and are attractive visual amenities which provide a variety of benefits including individual aesthetic quality, screening, and wildlife habitat'* (tree assessment report dated August 2015 and submitted with the representations). This report recommends that a reduction to the Common Yew is required to reduce some of the over extended limbs, but no work is proposed to the Irish Yew trees. There is no issue with the reduction of the Common Yew tree subject to the necessary consent.
11. The Tree Preservation Order has been made to retain the trees within the churchyard because they contribute to the amenity of the locality. This has been assessed using the TEMPO template (working Paper 2). However management of the trees, including improving the views to the church, and to the war graves and the visual relationship with the community would be supported. This could include either reducing the width and/or the height of the trees, but would be subject to a tree works application made to the Council.
12. The concern that the trees are causing damage to the fabric of the church has been considered, and a site visit undertaken. The arboricultural report submitted by the applicant reported that no direct or indirect evidence of damage was observed. No further evidence of damage to drains and the churches foundations has been submitted. No evidence of the drain runs was found in the vicinity of the trees. Whilst the photograph of roots in the old soakaway is noted this evidence in itself does not form a reason to remove all the trees.

13. The location of the trees in relation to the newly built path was noted, and it is considered that management, through pruning or sensitive reduction of the trees and regular clearing of any berries in the relevant season would eliminate the main issues of concern including those of visibility. However Trees T2 and T3 which are located on either side of the church porch and closest to the church are very close to the path and to a grave such that the sustainable retention of these trees into the future is not certain. Taking this into consideration and because removal of these two trees from the tree preservation order would also contribute to alleviating the issues relating to visibility of the church it is recommended that the tree preservation be modified to omit these two trees.

### **Finance/Budget/Resource Implications:**

14. Works to or removal of a tree or trees covered by a TPO will require the formal consent of the local planning authority before any work can be carried out. Currently all such applications are submitted to the local planning authority and do not attract a fee. The Council's Planning Services and Arboricultural Officers will deal with subsequent applications arising as a result of the TPO without any additional fee income. There may also be appeals should TPO consent be refused.
15. Should an application for works to a preserved tree (or for its removal) be refused, the local planning authority may in certain circumstances, be liable to pay compensation to the affected property owner, should the trees cause damage to a property. Such claims are, however, rare and, in this instance, considered unlikely given that the condition and location of the trees can be considered fully when deciding where to locate new dwellings and other facilities associated with any development.

### **Environmental Impact and Sustainability**

16. Removal of any trees, which are considered to be worthy of protection in the public interest, would detract from the visual amenity of the local environment and in this case would effect the amenity of the future development.

### **Policy Compliance/Power**

17. The local planning authority has powers under the Town & Country Planning Act 1990 and the Town & Country Planning (Trees) Regulations to make a TPO if it appears expedient in the interests of amenity to do so.
18. The making of a TPO in this instance, is in line with the powers and policies of the Council.

### **Performance Management Implications**

19. The applications determined under the TPO provisions and any subsequent appeals are not currently the subject of any national or local performance indicators.

### **Legal Implications**

20. This provisional TPO is served on the owner and occupier of the land affected by the TPO, and also on owners and occupiers of adjoining land, who had a period within which to make objections or representations to the Order. The statutory consultation period expired on 4 July 2016.

### **Human Rights Act and Diversity Implications**

21. These matters have been assessed in relation to and are considered to comply with the requirements of the Human Rights Act 1998. In relation to Article 6, interested parties have been advised of the making of this provisional Tree Preservation Order and their views have been considered within this report. Any interference with Rights under Article 8 and Article 1 of the First Protocol are necessary in the public interest.

### **Crosscutting Implications**

22. None

### **Risk Assessment**

23. As set out above, the Council may, in certain circumstances, be required to pay compensation to owners of properties damaged by preserved trees, if the Council has refused consent to carry out works to the affected tree and such works may have prevented the damage. These claims, however, are rare.

### **Council Priorities**

24. The Council is keen to safeguard the built and natural environment.

### **Recommendation:**

25. **It is recommended that the report be noted and Members CONFIRM the Tree Preservation Order with modifications as reported, namely that trees T2 and T3 are omitted.**

Documents Attached:

Working Paper 1 – TPO including schedule and plan

Working Paper 2 – photographs of the trees

Working Paper 3 - Tempo Assessment

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