

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/01717/TPO
FULL APPLICATION DESCRIPTION:	Felling of one cypress lawson tree protected by a tree preservation order and replacement with indigenous deciduous variety.
NAME OF APPLICANT:	Mr Ronan Freeley
ADDRESS:	Land Opposite To 55 South Street Durham DH1 4QP
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Michelle Hurton Assistant Planning Officer 03000 261398 michelle.hurton@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

SITE:

1. South Street lies within the centre of Durham (City Centre) Conservation Area fronting directly onto the River Wear and extending up to the ridge line of the steep slope of the river gorge. The street runs in a north / south direction dropping steeply down the gradient to its north end at its junction with Crossgate. Due to this land form and street pattern there are spectacular views out across the gorge and river to Durham Cathedral and Castle World Heritage Site and the Peninsula. The architectural character is both rich and varied with dwellings ranging from large three storey villas and town houses, to two storey brick/rendered cottages. The application site is located within the middle of the street on the east side opposite no. 55 South Street.

PROPOSAL:

2. Tree Preservation Order consent is sought to fell one Cypress Lawson Tree and to replace it with an indigenous deciduous species. The Cypress Lawson Tree is currently protected by a tree preservation order.
3. The application has been reported to committee by the request of Cllr Ormerod. The reasons for reporting the application to committee are loss of visual amenity for residents and detrimental effect on the conservation area.

PLANNING HISTORY

4. DM/15/02603/TCA - Felling of one conifer tree protected by a conservation area (section 211 notice) – Refused

PLANNING POLICY

LOCAL PLAN POLICY:

City of Durham Local Plan 2004

5. Policy E22 (*Conservation Area*) The Council will seek to preserve or enhance the character or appearance of the conservation areas by protecting trees, hedgerows, landscape features, views and undeveloped areas which contribute to the character or appearance of the area and its setting.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.durham.gov.uk/media/9160/Durham-City-local-plan/pdf/DurhamCityLocalPlan.pdf>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

6. Parish Council: No Response
7. Cllr Ormerod requested that the application be reported to committee

INTERNAL CONSULTEE RESPONSES:

8. Landscape (Trees): Objects to the felling of the tree - The 'amenity' test extends in so far that the removal of the tree would have a significant detrimental impact on the local environment and the enjoyment by the public. The tree has been assessed as a healthy specimen and is a notable and attractive feature in the visual environment of lower South Street which makes a positive contribution to the character of this part of the conservation area.

PUBLIC RESPONSES:

9. The application has been advertised with a press notice and on site by way of a site notice and neighbouring residents were also notified individually of the proposed development. At the time of report preparation, 14 letters of representation have been received from neighbouring residents.
12 are letters of support for the felling of the tree, referring to: Loss of view, non-native species, visual intrusion, detrimental impact upon the area, damage to church buildings, out of character, height, loss of natural light, overbearing eyesore.
2 are objection letters, in favour of keeping the tree: The tree enhances the area, more to do with house prices, lack of notification/public consultation.

APPLICANTS STATEMENT:

10. The original application to have this conifer removed was made in August 2015 and was supported by the majority of the affected residents of South Street as well as the tree owner, Durham Cathedral. Under the National Planning Policy Framework – Planning Practice Guidance Notes (Revision date 06 03 2014) the guidelines state that authorities need to exercise judgement when deciding whether it is within their powers to make a Tree Preservation Order.
11. Orders should be used to protect selected trees and woodlands “if their removal would have a significant negative impact on the local environment and its enjoyment by the public”. As we are proposing to replace this conifer (whose foliage is visible all year round) with a deciduous variety of tree, it surely is not credible to suggest that its replacement would have a significant negative impact on the local environment.

12. In the Durham County Council Tree Management Policy Document (Dec 2013) section 9 covers Dealing With Tree Care and point 9.2 on page 8 states “It is important that individual issues are dealt with **consistently** and that decisions are balanced against the positive contribution that trees make to the environment and enjoyment of the County by local residents and visitors”. The key word here is **consistently** as the following information and two examples will illustrate:
- Planning Application no. DM/15/01437/TCA – Felling of 1No conifer tree at 32 South Street, Durham, DH1 4QP. (The Tree Evaluation Scoring System TEMPO appears not to have been used).
13. The Council gave the go ahead (as confirmed and signed off by Mr S Timmiss, Head of Planning) for this similar sized conifer to be felled (and not replaced) in May 2015. The Delegated Report states “The Senior Tree Officer has been consulted and considers the tree does not warrant an individual tree preservation order, as such has offered no objection to the works. Officers consider that the works proposed would not be detrimental to the character or appearance of the conservation area in accordance with policy E22 of the City of Durham Local Plan 2004”.
14. This conifer at no. 32 South Street was felled (and not replaced) in July this year. It did not block or restrict any views whatsoever either to or from the World Heritage Site unlike the tree opposite no. 55 South Street.
- Planning application no. DM/16/02320/TCA – Felling and Removal of 1No. Conifer Tree and 1No Laburnum Tree at 8 Quarryheads Lane, Durham, DH1 3DY. (Again the TEMPO scoring system appears not to have been used).
15. The Council gave permission (as confirmed and signed off by Mr S Timmiss, Head of Planning) for this similar sized conifer and a laburnum to be felled (and not replaced) on 22nd of August this year and these trees were subsequently felled almost immediately. These trees likewise, did not block or restrict any views either to or from the World Heritage Site. The Tree Officer’s comments were identical to the case above i.e. there was no merit in retaining these conifers for the benefit of both residents and visitors.
16. It is inconceivable that the conifer we wish to fell (and are proposing to replace with a deciduous species) in the words of the tree officers “is of high amenity and aesthetic value and makes a positive contribution to the character of the area” whereas, with regard to the above other two conifers, they state that felling (and not replacing them) “would not be detrimental to the character or appearance of the conservation area”. There is no logic to these two conifers (one on the same street) being viewed in such a different light – it is totally **inconsistent** and contrary to the Council’s own guidelines as outlined above.
17. The LPA state that “although permission has been granted to fell other trees in the conservation area, each case is dealt with on its own merits“. It surely cannot be argued with any conviction that one particular conifer should be granted such elevated status, while other almost identical specimens can be felled with impunity. Despite clearly and regularly stating our commitment to replace this conifer with a deciduous variety (at our own expense) and of the Council’s choice, the LPA have consistently failed to respond to this offer or make any comment whatsoever. Other trees recently felled on South Street include a beautiful Chestnut tree, a wonderful Lime tree (which had a Tree Preservation Order in place) and an Apple tree, none of which have been replaced.

18. Finally, I refer to Statutory Instruments 2012 No. 605 – The Town and Country Planning (Tree Preservation) (England) Regulations 2012. Part 2 on the bottom of page 3, point numbers 2, 3 and 4 state that a Tree Preservation Order must include a map attachment giving a clear indication of the position of the tree to which the order relates. It also states that in the case of any discrepancy between the map and the Schedule to that Order, then the map shall prevail.
19. Given that the official TPO shows T1 as being sited next to a single garage adjacent to some other conifer trees, whereas it is in fact sited further south, approximately 5 metres away. It is actually next to one of a pair of adjoining garages, therefore it is clear that the map included in the original Order is unreliable and inaccurate. By bringing this error in the Order's map to your attention, we request that the TPO is varied/revoked to allow the tree to be replaced by a deciduous species as proposed.
20. The tenants who leased the land on which the conifer is situated (but did not own) have now sold their property no. 21 South Street and relocated to Scotland and on this basis, are no longer affected by the tree, unlike remaining residents. As the chief instigator behind the mission to save the tree has now departed from Durham, we request that the wishes of the remaining residents are granted. The tenants instigated an online petition to save the tree sometime early in September 2015. It would appear that following some discussion/consultation with the Tree Officer in an online update on 21st September 2015 the tenant stated that "the Tree Officer said he needed 100 signatures to "stand up and take notice" and thanks to you all we got there."
21. There were some 109 signatories to the petition of which the majority were from people residing outside County Durham, spread throughout the UK and a significant number from overseas including many from the United States.
22. As Lisa Morina and Simon Chivers appear to have been recipients of information in relation to this petition, did it influence their deliberations in relation to the tree? If this is the case should it have been disclosed as a material fact and included on the Council's website? It is unacceptable if this petition was given any credence whatsoever as the views of local residents (and tax payers) do not seem to count at all. As Lisa Morina stated in an earlier email on 12th October 2015 that tree works applications in Conservation Areas differ from others "as the views of local residents are not needed to be sought and are not needed to form part of the material considerations for the determination of the application".
23. Unauthorised Tree Work – In January this year some lopping work was undertaken to the tree re Order no. TPO/00013/2015. This was reported to the LPA who agreed to investigate the matter. The Council's response is that the Senior Arboricultural Officer (Simon Chivers), in an admirable spirit of cooperation with the tenants, "managed to gain access onto the subject site to assess the work". The report continues "the owner advised that they were under the impression that they had consent for the tree works as they enlisted the services of a reputable qualified arboriculturalist to deal with the whole process". This does not stand up to scrutiny at all, as the LPA know perfectly well that the tree owners are the Cathedral (who were not informed) and not the tenants.
24. In the absence of any hidden agenda, the LPA appear to have gone to extraordinary lengths to preserve this conifer, encouraged with considerable zeal by the petition organiser who appears to have been the driving force and instigator of the campaign. We are aware that this is consuming considerable amounts of time and effort on behalf of all concerned. However, if no satisfactory resolution is reached at this juncture we are prepared to take the matter further.

25. It is time that the LPA drop the pretence that this conifer has significant merit and adds enormous benefit and amenity to the environment when no such merit is attached to other almost identical trees in the immediate vicinity. Given the strength of feeling and support from South Street residents, we request that permission is granted to fell the tree and replace with a deciduous variety at our own expense and a line drawn under this matter.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=O7QMB1GD0BK00>

PLANNING CONSIDERATIONS AND ASSESSMENT

26. The relevant considerations for an application for works to a tree covered by a tree preservation order are explained in planning practice guidance. These are principally as follows: assess the amenity value of the tree, whether or not the proposal is justified, whether any loss or damage is likely to arise if consent is refused.
27. The Cypress Lawson tree at South Street is a notable and attractive feature in the visual environment of Lower South Street and is considered to make a positive contribution to the character and appearance of this part of the Durham (City Centre) Conservation Area.
28. The tree which is the subject of this application is of high amenity value and due to its prominent position within South Street, it is highly visible from surrounding viewpoints up and down South Street. The tree contributes a large degree of character to the area and its loss would inevitably be of detriment to the appearance of the street scene.
29. At present the tree is not considered dead, dying or dangerous and officers feel that the tree is of high amenity and aesthetic value and makes a positive contribution to the character and appearance of the conservation area. This is of benefit to both residents and visitors of the area alike. The tree is a cultivar of Lawson's Cypress, a tree with a large number of cultivars from forest trees to dwarf trees which vary in their life expectancy. This tree in particular is estimated to be around 90 – 100 years old with a substantial remaining safe useful life expectancy.
30. Planning Authorities and the surrounding populace must acknowledge that whilst trees have a role in the community, they can also be a physical and maintenance liability to the individuals responsible for them. In this case, however, officers are concerned with the works proposed here, and it is considered that the removal of the tree would have a significant impact upon the area visually. The justification given for the removal of the tree is that it obscures the views both to and from the World Heritage Site for most of South Street's residents.
31. When assessed against the Council's scoring system for deciding whether to exercise control through a Tree Preservation Order, known as the TEMPO system, the tree was scored 20 which is in excess of the score of 16 where a Tree Preservation Order is clearly justified. This takes account of factors such as condition, remaining longevity, public visibility and threats. The tree is also considered to be growing in a sustainable location in relation to nearby buildings.

32. It is considered that the tree is a notable feature of the visual environment of lower South Street and that it only obstructs views to the ash tree behind and a small number of views of the World Heritage Site. It is not unusual for trees within the city to obstruct views of the World Heritage Site when standing directly behind them. They nevertheless make an important contribution to its setting. It is acknowledged that the tree is visible in views back from the World Heritage Site to South Street, however it does not obscure the greater part of the street scene in those views.
33. The tree is a non-native species, but many tree preservation orders relate to non-native ornamental species and the tree is viewed in the context of a domestic garden where non-native trees are a typical feature. Several support letters have been received in relation to the tree being of a non-native species and that it should be felled and replaced with a native deciduous tree as it is out of character with the area and is an overbearing eyesore which has been left to grow to a height which is out of proportion with the area. Officers feel that given the location of the tree being within a domestic garden with other non-native trees present that the tree is not out of character with the area and actually enhances the area and brings character and aesthetic value to the street scene. In relation to the height of the tree, as there are other tree species within the vicinity of the tree in question of a similar height, it is not considered that the tree is of a height that is out of character with the area.
34. Two objection letters have been received stating that the tree enhances the area and should not be felled as the reasons for its removal is to increase house prices within the area. It is considered that the tree does enhance the visual amenity of the area, however increasing house prices is not a material planning consideration and cannot be taken into account.
35. In relation to the points raised within the applicant's statement, all applications to fell trees within conservation areas are assessed on their own merits. In relation to the two trees mentioned, firstly DM/15/01437/TCA was considered not to have made an important contribution to the visual amenity of the area due to its limited visibility with the tree being located to the far rear boundary of the property. Secondly DM/16/02320/TCA was of the leylandii species, and the tree officer's judgement was that this particular species was not suited to its location and was not considered to be physically sustainable and therefore did not warrant a Tree Preservation Order being placed upon it.
36. With regard to the other trees mentioned, the felling of the lime tree was agreed after two internal tests were undertaken by two different types of decay equipment, one of which was undertaken by Durham County Council tree officers. It was found that the percentage of decay within the lime tree was deemed to be too high to retain such a large specimen. In relation to the chestnut tree, also located at the same property, this tree contained a lean towards the neighbouring properties within South Street and the tree was losing leaves early due to a strain of Phytophthora, a pathogen that causes the tree to shed limbs and branches early eventually causing severe decline. The apple tree didn't warrant an individual order. There was a landscape plan submitted for this property and replacement trees are to be planted within the rear.
37. It is acknowledged that the location of the cypress tree on the tree preservation order map is shown to be in the incorrect location, which is an anomaly and will be rectified through the appropriate formal procedure to show the correct location on the order. However it is not considered that the document is unreadable as the order only refers to one tree within the schedule and one T1 located on the map. Furthermore, this does not provide grounds for revoking the Tree Preservation Order.

38. In relation to the petition which was received for the cypress Lawson tree, this did not influence the decision to place a tree preservation order upon the tree. Petitions are not taken into account when making decisions on placing tree preservation orders upon trees, the assessment is done using the TEMPO system, as described earlier in this report.

39. Finally in regards to the unauthorised works carried out, some pruning works had taken place without the appropriate formal consent, however, this was inspected by a tree officer who referred the unauthorised works to the Planning Enforcement Team. As a result, a retrospective application was requested and received. The pruning works had removed branches which were overhanging the garages underneath the canopy. It was considered that the works carried out were done in a satisfactory manner and would have been approved had an application been submitted prior to any works being carried out. With this in mind, it was not considered expedient to take any further action.

CONCLUSION

40. The tree in question is not dead, dying or dangerous and officers consider that it contributes to the character and appearance of the conservation area and is of high amenity and aesthetic value which makes a positive contribution to the character and appearance of the street scene. The removal of the tree would be contrary to Policy E22 of the City of Durham Local Plan 2004.

41. Under the constitution, a decision on this application cannot be made by the planning committee. Instead the power is delegated to the head of planning and therefore a decision must be made in accordance with this procedure.

RECOMMENDATION

That the committee be **MINDED TO REFUSE** for the following reasons, with the final decision to be made and issued by the Head of Planning under delegated powers, in accordance with the Committee's wishes:

1. The proposed tree felling, submitted with insufficient justification, would be detrimental to the character and appearance of the Durham (City Centre) Conservation Area and the local street scene in terms of visual amenity, and would be contrary to Policy E22 of the City of Durham Local Plan, and the Tree Preservation Order that protects it.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at the recommendation to refuse the application has been consistent in advice with regards the application and has considered the possibility of a positive outcome in accordance with the NPPF but it has not been possible in this instance

BACKGROUND PAPERS

- Submitted application forms, plans and supporting documents provided by the applicant.
- The National Planning Policy Framework (2012)
- National Planning Practice Guidance Notes
- City of Durham Local Plan 2004
- Statutory, internal and public consultation responses



Planning Services

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Felling of one cypress lawson tree and replacement with indigenous deciduous variety protected by a tree preservation order at Land Opposite To 55 South Street, Durham, DH1 4QP

Comments

Date 26 September 2016

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