Confirmation of tree preservation order for T1 – Beech tree

Location: Land North of Friar Row, Caldbeck

Recommendation

That the made Order TPO/12/2018 for the Beech tree at Land North of Friar Row, Caldbeck be Confirmed.

Introduction

A Tree Preservation Order was made on the 24th September 2018 following the refusal of planning permission for the erection of a dwelling at land north of Friar Row, Caldbeck. Officers considered that the tree merited protection following the legal process explained in this report.

Site

This is an infill site between a farmhouse (Friar Hall Farm) and its associated farm buildings to the east and an adjacent bungalow (Friargarth) to the west in a village location. The site is currently used as grazing land, however, historically it has been used as a site for a mobile home for which planning permission was granted (ref: 2/1977/0624).

To the north of the site is a redundant slurry store and trees. Beyond the slurry store is an attractive landscape of green fields.

To the south of the existing paddock, that was previously associated with Friar Hall Farm, is Friar Row. This is a historic village lane that provides residential access to village dwellings and pedestrian access to the church and footpaths that extend into the village and the wider countryside. Directly to the west of the site are more historic dwellings and, to the east, contemporary dwellings of single and two storey in nature. Directly to the east of the site is a contemporary bungalow, Friargarth.

Historic dwellings relate more directly to the road frontage as shown by Friar Hall Farm, whilst, the more modern dwellings are set back from the road frontage to provide for parking and garden areas.

To the south of the site beyond Friar Row is Cald Beck, which provides an attractive riverscape and is a tributary leading into the River Eden which is protected as a Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).
A historic and listed pedestrian bridge is sited opposite the development site and this provides pedestrian access to village paths and access to the grade 1 listed St Kentigern’s Church and church yard and the village amenities and facilities beyond.

Pedestrian routes from Friar Row also link extensive footpaths routes into the countryside to include the Cumbria Way.

Although the site is located in Allerdale, the boundary of the Lake District National Park is located directly to the south of the site at the river edge. The majority of Caldbeck falls within the Lake District National Park with only a single street (Friar Row) falling within Allerdale BC planning control.

The tree is a mature Beech situated within the south westerns area of the site, adjacent to Friar Row, being highly visible to public view. It has an estimated trunk diameter of 99cm at 1.5m above ground level. It is approximately 19-20 metres in height.

**Legal background**

The primary legislation relating to Tree Preservation Orders is the Town and Country Planning Act 1990 as amended by section 192 of the 2008 Planning Act. The 1990 Act provides the ability for secondary legislation to be made setting out the statutory framework for the making and confirming of Tree Preservation Orders. Currently this is the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.

**Policy and Guidance Framework**

Following the publication of the first National Planning Policy Framework (NPPF) in 2012, the government commenced the on-line National Planning Practice Guidance (NPPG) to replace guidance such as circulars. The NPPG is a live document that can be updated. At the time of this report it advised that:

“Local planning authorities can make a Tree Preservation Order if it appears to them to be ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’.

Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees

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1 A 3rd edition of the NPPF now applies (Feb 2019)
can be protected and how they can be identified.\textsuperscript{2}

**Amenity**

It is noted that ‘Amenity’ is not defined in the primary or secondary legislation so a judgement has to be made. The NPPG advises that 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. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future. It cites various criteria which can be used by councils to make the judgement:-

- **Visibility** - The extent to which the tree can be seen by the public. It should normally be visible from a public place, such as a road or footpath, or accessible by the public.

- **Individual, collective and wider impact** - Public visibility alone will not be sufficient to warrant an Order. The Council also needs to consider size and form; future potential as an amenity; rarity, cultural or historic value; contribution to, and relationship with, the landscape and; contribution to the character or appearance of a conservation area.

Where relevant the Council may also consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

**Expediency**

It may be expedient to make an Order if the Council believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. However, it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the Council may believe that certain trees are at risk as a result of development pressures. As explained in this report, this is the case here.

**History**

Planning permission 2/2018/0190 was refused on 17\textsuperscript{th} October 2018 for the erection of a dwelling. The reasons for refusal were as follows:-

1. The development by virtue of introducing a dwelling of the siting and massing proposed will neither preserve nor enhance the character and appearance of the Caldecott Conservation Area. The felling of the Beech tree (T1) and introduction of the form proposed results in the loss of one of the few fields that penetrate into

\textsuperscript{2} Paragraph: 005 Reference ID: 36-005-20140306 Revision date: 06 03 2014
the built envelope of the village and defines the historic character of the settlement. The loss is particularly harmful given the juxtaposition with the Bridge and Church. As such the proposal is contrary to the provisions of policy S27, S32 and DM17 of the adopted Allerdale Local Plan Part 1 2014.

2. The setting of both the Church of St Kentigern and the Packhorse Bridge will not be preserved by the introduction of a dwelling of the siting and massing proposed. Much of the historic setting of these assets has been lost but the application site is one of the remaining fields in close proximity that defined this historic setting and materially contributes to the significance of these assets. The development would result in the irrevocable loss of the field and harm to the significance of the assets, this harm not being outweighed by the minimal public benefits arising from the proposal. As such the proposal is contrary to the provisions of policy S27, S32 and DM17 of the adopted Allerdale Local Plan Part 1 2014.

3. The extent of damage to the significance of the conservation area has not been appraised in detail by the applicant at variance with paragraph 189 of the NPPF 2018

4. The cumulative adverse impact would demonstrably and significantly outweigh the benefits of the proposal.

The Council used an external specialist to assess the trees within the site, including the specimen now subject of this Order. The specialist used TEMPO (Tree Evaluation Method for Preservation Orders) to assess the trees for their amenity value. The value is explored in more detail in the assessment section of this report. The expediency was judged to be there due to the clear intention for the land to be developed.

The Order was then made on 24th September 2018 and, as per the 2012 Regulations, the necessary publicity undertaken.

Following the expiration of the publicity period and consideration of all representations received, the Council can confirm the Order, either without modification or with modification, to provide long-term tree protection. They may also decide not to confirm the Order, which will stop its effect. The Council cannot confirm an Order unless they have first considered any duly made objections or other representations.

**Representations**

**Owner**

Objection to TPO stating that LPA have agreed in writing to support the removal of the tree and pending an ongoing complaint in relation to the handling of the planning application and the TPO process.

**Caldbeck Parish Council**

The Parish Council object to the TPO on the grounds that the tree is not of any great
significance or importance in the village, the tree does not merit protection under the TEMPO assessment carried out on behalf of the Parish Council, the TPO was made to thwart the planning application, the tree has a limited future lifespan (10 – 20 years) and suffers from soft rot. 2 other mature Beech trees would remain.

**Assessment**

**Process**

Having considered the objections received, it is concluded that the application and TPO process were adhered to. Although the report recommending that a TPO was received after the TPO was made, officers had received the relevant advice that the tree merited protection prior to making the TPO. The TEMPO assessment carried out on behalf of the Council confirms that the tree is worthy of protection. The tree referred to as suffering from soft rot is the adjacent Beech tree and not the tree subject of this TPO.

**Amenity**

The Beech tree is considered to be a prominent feature visible within the landscape and from various public vantage points. It is of old-mature age class and has a large dominant crown shape. The loss of the tree would be of significant impact which replacement planting could not mitigate for many years. The tree is in a fair condition and has a retention span of between 10 and 20 years. Although there are other trees on the site, the Beech tree subject of this report is the most visible from the road and therefore provides the highest amenity. Whilst the other trees on site are not included in the TPO, they are protected by virtue of them being within the Caldbeck Conservation area and the Beech tree subject to the TPO forms a principal member of this group of trees which are considered important for their cohesion.

The TEMPO assessment carried out on the Council’s behalf resulted in a score of 16 – definitely merits TPO. This score was reached following the following criteria (listed with scores and definitions):

Part 1: Amenity assessment

a) Condition and suitability of TPO – score of 3 (fair/satisfactory)  
b) Retention span (in years) & suitability for TPO – score of 1 (10-20 just suitable)  
c) Relative public visibility & suitability for TPO – score of 5 (very large trees with some visibility, or prominent large trees)  
d) Other factors – score of 4 (tree groups or principal groups important for their cohesion)

Part 2: Expediency assessment

Score of 3 – foreseeable threat to tree.

Part 3: Decision guide

Total score of 16 – definitely merits TPO
Whilst the initial TEMPO assessment carried out was in relation to two Beech trees on the site, it was concluded not to include the second tree in the TPO due to a presence of a fungus affecting its future health. Officers have re-evaluated the assessment and consider that the Beech tree subject to the TPO merits the same scores as the initial assessment.

**Expediency**

The tree was protected following the submission of a planning application to develop the site which resulted in a foreseeable threat to the tree. The planning application was refused by Development Panel in October 2018. An appeal against the refusal to grant planning permission has been made to the Planning Inspectorate and is presently pending. Should the Planning Inspectorate allow the appeal, this will ultimately allow the removal of the tree to facilitate the approved development and would override the protection afforded by the TPO. However, should the appeal be dismissed and also whilst its outcome is pending, it is considered that there remains a foreseeable threat to the tree. Therefore it is considered expedient to confirm the tree preservation order.

**Conclusion**

The tree is considered to make a significant contribution to amenity, meets the decision criteria under the TEMPO assessment and the expediency test is also met. It is therefore recommended that the TPO be confirmed.