

**Allerdale Borough Council**

**Planning Application TPO/15/2020**

**Development Panel Report**

**Reference Number:** TPO/2020/0015  
**Valid Date:** 30.09.2020  
**Location:** Cattle Pound at High Ellerbeck Bridge, Ellerbeck Row, Brigham.

**RECOMMENDATION**

**That the made Order TPO/15/2020 for the Alder tree at the Cattle Pound, High Ellerbeck Bridge, Ellerbeck Brow, Brigham be confirmed.**

**1.0 Summary**

<b><u>Issue</u></b>	<b><u>Conclusion</u></b>
<b>Tree Preservation Order</b>	The tree is of high amenity value, meeting the criteria under the TEMPO assessment for a TPO to be defensible therefore it is recommended that the TPO be confirmed.

**2.0 Introduction**

2.1 A Tree Preservation Order was made on the 30<sup>th</sup> September 2020 following concerns from a resident of Brigham that the tree was to be felled. The Parish Council had previously contacted the Local Planning Authority to ascertain as to whether the tree was protected and stated their intentions to remove it. Officers considered that the tree merited protection following the legal process explained in this report.

**3.0 Site**

3.1 This is a former cattle pound located at Ellerbeck Bridge and is protected as a Grade II Listed structure. The former use of the site as a cattle pound has ceased. The listed description states thus;

“BRIGHAM ELLERBECK BROW NY 03 SE (West side) Brigham 4/82 Cattle pound at High 3-3-67 Ellerbeck Bridge (previously listed as "Cattle Pond at Ellerbeck Bridge") II Cattle pound. Early C19. Calciferous sandstone rubble.

Low drystone wall with alternative large and small stone coping, enclosing a small roughly rectangular area between a field and the former road leading to a ford over the river. Now disused and overgrown but a rare survival in this area”

- 3.2 To the north and west of the site there are residential properties with agricultural land to the east and south which includes a number of trees. A watercourse (the Eller Beck) also runs directly adjacent to the site. Ellerbeck Brow is the main thoroughfare through the village of Brigham.
- 3.3 The tree is a semi mature Alder situated within the south corner of the site and is highly visible to public view.

#### **4.0 Legal background**

- 4.1 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.
- 4.2 The Council also have duties under the Listed Building Act 1990 to ensure that the architectural and historical features that the structure possesses are preserved. This is relevant in this case as the Parish Council are concerned that the tree is directly impacting on the structural integrity of the Pound.

#### **5.0 Policy and Guidance Framework**

- 5.1 Following the publication of the first National Planning Policy Framework (NPPF) in 2012<sup>1</sup> 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’.

- 5.2 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,

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<sup>1</sup> A 3<sup>rd</sup> edition of the NPPF now applies (Feb 2019)

what 'expedient' means in practice, what trees can be protected and how they can be identified."<sup>2</sup>

### **Amenity**

5.3 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**

5.4 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 known pressures for its removal. As explained in this report, this is the case here.

### **Heritage assets**

5.5 The NPPF with its complementary guidance details out to assess the impact on the significance of heritage assets.

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<sup>2</sup> Paragraph: 005 Reference ID: 36-005-20140306 Revision date: 06 03 2014

## **6.0 History**

- 6.1 The tree was assessed for a Tree Preservation Order following concerns being received from a resident of Brigham in September 2020 of the Parish Councils intention to fell the tree.
- 6.2 The tree was assessed using the tempo method (Tree Evaluation Method for Tree Preservation Orders) and scored a total of 14 – Tree Preservation Order defensible. A TPO was therefore placed on the tree on the 30 September 2020. At this time, the Parish Council was notified of the TPO and a copy of the order was later displayed at the site due to the land being unregistered and therefore the legal land owner unknown.

## **7.0 Representations**

### **Brigham Parish Council**

- 7.1 The Parish Council object to the TPO on the grounds that the tree is self-seeded and un-owned, does not contribute to the street scene, diminishes light to two adjacent properties, is out of line with the wildlife corridor, cattle pounds do not normally include trees, potential damage to listed enclosure and not appropriate to protect a young Alder with a TPO.

### **Other**

- 7.2 Five representations of support have been received for the TPO which refer to the tree being healthy, encourages wildlife, is not causing damage to the cattle pound enclosure, helps with flooding issues and adds character to the cattle pound.

## **8.0 Assessment**

### **Condition**

- 8.1 The TEMPO assessment carried out confirms that the tree is worthy of protection and is in fair/satisfactory condition.

### **Amenity**

- 8.2 The Alder tree is considered to be a prominent feature being the only tree situated within the cattle pound and is visible from various public vantage points on Ellerbeck Brow. It is of semi-mature age class and has a retention span of between 40 to 100 years. Although there are other trees adjacent to the site, the Alder tree subject of this report is the only tree within the pound and adds character to this unused site and provides amenity value.

The TEMPO assessment carried out resulted in a score of 14 – TPO defensible. 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 4 (40-100 suitable)
- c) Relative public visibility & suitability for TPO – score of 3 (medium trees or large trees with limited view only)
- d) Other factors – score of 1 (trees with no additional redeeming features)

Part 2: Expediency assessment

Score of 3 – foreseeable threat to tree.

Part 3: Decision guide

Total score of 14 – TPO defensible

**Expediency**

- 8.3 The tree was protected following concerns that the Parish Council intended to remove it. Having carried out the tempo assessment it was confirmed that the tree merits protection under a TPO and was under foreseeable threat which still exists should the TPO not be confirmed. Therefore it is considered expedient to confirm the tree preservation order.

**Heritage**

- 8.4 The listing describes the Pound as featuring sandstone rubble, drystone walls with alternative large and small stone coping (cock'n'hen), enclosing a small roughly rectangular area. Of note is that the "rear" wall does not feature the described cock'n'hen capping and this suggests it has been rebuilt. Indeed, this rear wall seems to match the wall that continues southwards alongside the dwelling fronting the Pound. Of note also is that the walls, including the three cock'n'hen capped sides are no longer dry stone and feature mortar joints. There have obviously been some repairs which, although not entirely sensitive to the Pound's historical and architectural qualities, have nevertheless assisted in its structural integrity. The tree sits within the walls and not against them and there is no sign of any structural failure to the walls as a result of the roots.
- 8.5 Furthermore, the legibility of the history of the Pound'so is not diluted in any way; the enclosed space is still visually open as the tree sits as a single slender entity in low grass. All of the Pound's sides are clearly visible as are their heights and detail. One would actually suggest that the tree complements the scene by softening the impact of the later dwellings to the

rear and reinforcing the rural, natural environment which would have been and still is the Pound's setting.

## **9.0 Conclusion**

- 9.1 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. There is negligible harm to the significance of the Pound as a heritage asset. It is therefore recommended that the TPO be confirmed.

