

**North East Derbyshire District Council**

**Planning Committee**

**14th May 2024**

**Proposed Confirmation of tree Preservation Order 296 (296/2023) in respect of an Ash Tree adjacent to Eckington Friendship Club, Berry Avenue Eckington.**

**Report of the Planning Manager (Development Management)**

**Classification:** This report is public

**Report By:** Stephen Kimberley

**Contact Officer:** Adrian Kirkham

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**PURPOSE / SUMMARY**

- Tree Preservation Order 296 was made in its provisional form on 18<sup>th</sup> December 2023. The effect of this is that the Order applies for six months or until confirmed or modified.
  - Before deciding to confirm an Order, the Local Authority must take into account all 'duly made' objections and representations that have not been withdrawn.
  - One duly made objection has been received.
  - No representations of support have been received.
  - The Planning Officer believes that there is a foreseeable threat to the tree. This would likely result in the loss of the tree should TPO 296 not be confirmed in the interests of amenity.
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**RECOMMENDATIONS**

1. To confirm TPO 296/2023 in respect of a single Ash Tree situated adjacent to Eckington Friendship Club Berry Avenue Eckington

Approved by the Portfolio Holder – Cllr Pickering, Cabinet Member for Environment and Place

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**IMPLICATIONS**

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**Finance and Risk:** Yes  No

**Details:** There is no financial or other risk from the confirmation of the Order as the option remains for the tree owners to make an application to seek to undertake works to or remove the tree.

On Behalf of the Section 151 Officer

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**Legal (including Data Protection):**                      Yes                       No

**Details:** All proper legal processes have been followed, the landowners have been advised of the making of the provisional Orders and given the opportunity to make comments. Provisional TPOs must be confirmed within 6 months of their making, to retain effect. Failure to confirm the orders within that time would mean they no longer have effect and any protection is lost.

On Behalf of the Solicitor to the Council

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**Staffing:**                      Yes                       No

**Details:** There are no significant implications on staffing resources arising from the action recommended in this report

On behalf of the Head of Paid Service

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## **DECISION INFORMATION**

<b>Decision Information</b>	
<b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <b>NEDDC:</b> <b>Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></b> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>District Wards Significantly Affected</b>	None
<b>Consultation:</b> <b>Leader / Deputy Leader <input type="checkbox"/> Cabinet <input type="checkbox"/></b> <b>SMT <input type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/></b> <b>Members <input type="checkbox"/> Public <input checked="" type="checkbox"/> Other <input type="checkbox"/></b>	Yes  Details: Affected land owners have been consulted in line with legislation.

**Links to Council Plan (NED) priorities, including Climate Change, Equalities, and Economics and Health implications.**

(A) A Great Place that Cares for the Environment  
(C) A Great Place to Live Well

## REPORT DETAILS

### 1 Background

- 1.1 The Planning Officer undertook an initial inspection of the tree adjacent to the Eckington Friendship Club on the 29<sup>th</sup> November 2023. This was in response to an application made under 23/00989/CATPO to undertake works to the tree. The inspection was undertaken from the public domain along the B6052 High Street and the adjacent Berry Street.
- 1.2 Section 198 of The Town and Country Planning Act 1990 affords the power for a local authority to make a TPO where it appears to the authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its area. This was considered to be the case here to protect the tree from inappropriate work.

- 1.3 A Tree Preservation Order (TPO 296), specified by an individual tree was subsequently made and served on 18<sup>th</sup> December 2023. The effect is that the provisional Order applies for six months or until confirmed or modified.

## **2. Details of Proposal or Information**

- 2.1 The land on which the tree sits is an open area of grass which surrounds the Eckington Friendship Club (Community Church). It is positioned adjacent to the main road to the front of, and close to the car park of, the Rose and Crown.

There is a Pelican crossing immediately to the south of the tree's location and part of the canopy overhangs this and the adjacent roadway. In November 2023 an application was received from the owner giving notification to fell the Ash Tree as it lies within Eckington High Street Conservation Area (23/00989/CATPO refers).

An application under the same legislation was allowed in 2020 but this was for a crown lift, crown clean and removal of dead stubs (20/00150/CATPO refers).

The application in respect of 23/00989/CATPO stated that the owner wished to fell the tree as it was occasionally dropping branches on to the pavement, that there was some ash dieback (DB) in the crown and that the roots were lifting a concrete path and showing cracks on drainage inspection hatches. They advised they would plant some fruit trees in place of the tree. No arboriculturists report or other information was provided to support the application.

- 2.2 The Planning Officer inspected the tree on the 29<sup>th</sup> November 2023. At that time there was little evidence of any branches having fallen. Due to the time of year there was also no evidence of Ash DB. Cracks in the nearby concrete path were noted but no major upheavals in the path.

Following the site visit and review some evidence of Ash DB has been identified.

It was also determined that whilst part of the canopy may cross into the Conservation Area the main trunk of the tree was not within the Conservation Area.

The assessment of DB showed the remaining crown as being approx. 75% whereas the normal intervention level would be at a level of 50% remaining crown. Additionally, research in Denmark indicates that the majority of Ash trees suffering from DB in a woodland setting have survived for over 10 years. In addition, as the tree is not in a woodland site, it is likely to survive longer due to factors such as the lack of secondary fungi.

- 2.3 An assessment of the tree was undertaken (a TEMPO assessment) which identified the tree was meriting protection by formal TPO as it provided a high level of amenity to the area.

### 3 Location Plan and Photos

3.1 The tree is located at T1 as shown in Figure 1 below.



Figure 1: TPO 296 in its currently provisional form and showing the position of T1 which is described within the First Schedule of the Order.

3.2 The tree is shown in Figures 2 – 6 below.



Figure 2: From the High Street looking westwards



Figure 3: Looking Eastwards



Figure 4: From Berry Avenue.



Figure 5: Streetview photo from May 2023 showing the base of the tree and position of concrete path to side.



Figure 6: Streetview photo from May 2023 showing the crown of tree.





Figure 7: Photo from April 2024 showing new pathway

#### **4 Representations**

4.1 One **Objection** has been received which raises the following for consideration:

1. Whist acknowledges that the mature Ash tree adds to the biodiversity of the area there are concerns regarding the potential danger to inhabitants of the local area. The tree frequently drops branches and there are concerns that someone may be significantly injured if hit by one of these branches. As the canopy also stretches over the adjacent road and car park of the Rose and Crown, passing traffic and cars parked nearby may also be damaged.
2. There is also evidence that tree roots are damaging a nearby pathway.
3. The recent application under 23/00989/CATPO to fell the tree was refused. The applicant believes that the tree is not within the Conservation Area and therefore not covered by that legislation.
4. The owner is already addressing the potential loss of biodiversity by planting six fruit trees in part of their grounds.

#### **5 Officer Comment**

5.1 No evidence has been submitted either in the original application or in the objection letter to support the allegations made. It is acknowledged that branches may be shed but this is the case with all trees. The risks of branches

falling can be mitigated by works other than the felling of a tree. It is noted that the 2020 application was partly for the removal of dead branches so as to minimise the risks of falling branches for pedestrians.

It is considered that should this Tree Preservation Order be confirmed an application for a crown lift, clean and removal of dead branches similar to that approved in 2020 would be likely to receive permission and so mitigate many of the issues raised regarding safety raised.

- 5.2 No evidence was submitted in 2023 to support any potential other damage. On site, whilst cracks are visible, there is no sign of any major upheaval. It is noted that at the time of a site visit in April 2024 the concrete pathway had been replaced by a tarmac surface pathway (Figure 7).
- 5.3 It is accepted that the main trunk of the tree is not within the Conservation Area. Whether or not the tree is within the Conservation Area has no influence on its amenity value, which is considered significant. However, the threat to the tree is increased by the fact it is not within a Conservation Area making it more important that a Tree Preservation Order be served to protect the tree.
- 5.4 Improvements to an area's biodiversity are always welcomed but this additional activity does not impact on or reduce the amenity value of this tree. It is also considered that due to the maturity and size of the tree it offers a much greater biodiversity impact that may not be offset by the identified fruit trees.

## **6 Reasons for Recommendation**

- 6.1 A tree preservation order (TPO) is normally made to protect trees in the interests of amenity, and this involves an assessment of the tree's visibility, impact (including the contribution to the wider landscape) and the trees size and form. Before confirming an Order, the Council should satisfy itself that the tree would bring a reasonable degree of public benefit in the present or future. In this case, Officers consider that the tree offers a significant level of amenity to the area being readily visible from public viewpoints along the highway. The trees have been assessed by the Planning Officer and are considered worthy of the special protection afforded by a TPO in the interests of amenity.
- 6.2 A Local Authority may make a TPO where it appears to the authority that it is expedient in the interests of amenity. Intentions to fell trees are not always known in advance and Government Guidance advises it may sometimes be appropriate to proactively make Orders as a precaution. The Planning Officer believes there is a foreseeable risk of losing the tree if it is not formally protected.

## **7 Alternative Options and Reasons for Rejection**

- 7.1 To decide to not make the TPO. This option is not recommended because it would leave the tree unprotected and could lead to the tree being removed which would be detrimental to local amenity.

## DOCUMENT INFORMATION

Appendix No	Title
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet you must provide copies of the background papers)	