

15th February 2024

James Royston Arboriculture Ltd

The Media Centre
7 Northumberland Street
Huddersfield
HD1 1RL
01484 483 061

Acumen Designers and Architects Ltd
Headrow House
Old Leeds Road
Huddersfield
HD1 1SG

I write in response to consultation comments made by Kirklees officer D. Atkinson dated 6/2/24.

“The Horse Chestnut (T2) and Lime tree (T1) are protected by Tree Preservation Order 87/91.

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the:

- *cutting down*
- *topping*
- *lopping*
- *uprooting*
- *willful damage*
- *willful destruction*

of trees without the local planning authority’s written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State’s view, cutting roots is also a prohibited activity and requires the authority’s consent.”

The above statement is correct in that, apart from specific exemptions, no work can be undertaken to a protected tree without prior approval from the council. This must be remembered when considering the comments made by the enforcing officer.

“The Arboriculture Impact Assessment (AIA) submitted for the application Ref: 230329 AIA doesn’t include the Tree Survey (TS) on which it is based Ref: 230329/TS.”

The tree survey is a separate document which, in accordance with BS5837:2012, should usually be undertaken without consideration of any development intentions for the site. The council's website shows that the tree survey was submitted to the council on 19/5/23.

“There also appears to be change in the valuation/condition assessment of the trees between the AIA and the TS. T2 has changed from Category U in the TS to being retained within the AIA.

Category U trees are those in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years and a serious, irremediable, structural defect, such that their early loss is expected due to collapse. This can mean trees considered to be in this condition aren’t retainable on site irrespective of development, for example dead trees.

The recommendation at the TS stage was to remove T2, but there is no explanation for the change.”

The submitted impact assessment does not mention the retention category or the valuation of tree T2 – it has not changed at any time. The tree survey makes it clear that this tree is a dangerous tree, and it is recommended for removal. Later communications received from the planning officer seemed to suggest that the tree officer doubted that the tree is dangerous, so the tree was then shown as being retained in response. The retention category/valuation of the tree has not been changed – it is still a dangerous tree which should be removed to abate hazards to the public – but, as we can see from the officer's opening paragraph, this work cannot be undertaken if the officer does not believe the tree to be dangerous. The impact assessment was therefore completed on the understanding that this dangerous tree had to be retained.

In response to this officer's consultation response, we are now working to the belief that the tree officer agrees that tree T2 is dangerous and that it should be removed. An amended impact assessment has therefore been created which shows this tree being removed for this reason.

“From BS5837:2012 section 5 (5.2.3.g) a consideration is the proposed end use of the space adjacent to retained trees.

For this development the proposed parking for the new dwelling will be under the of the Lime (T1). It will also restrict the parking of the current dwelling (33a) to being under the Lime tree and Horse Chestnut. Lime trees can drop a large amount (perceived or otherwise) of debris (i.e. twigs, epicormic growth and dead wood of various sizes).

An example of car parking and the debris from a protected Lime tree contributing to pressure to remove/undertake works on it is application 2023/TWA/93277/W.”

Application 2023/TWA/93277/W did include a request to remove a lime tree, but not because of car parking and/or falling debris. In reality, the application was made because the tree is pushing over a wall. Additional reasons were that the tree had dropped a large branch which had damaged cars parked beneath it. As is stated in the council's decision note in response to this application,

“It is not uncommon for twigs and branch wood to become dislodged in high winds, but that does not usually constitute a serious hazard, nor would it designate the tree as 'dangerous'. It could be alleviated by maintenance of the trees which would include crown cleaning.”

“Falling branches are a safety hazard. However, in the absence of a systematic tree survey, and on the basis of what I have seen, I am not persuaded that the regular cleaning out of deadwood would fail to reduce the risk of such incidents to a safe level.”

Application 2023/TWA/93277/W made no mention that falling sap was a concern for the applicant, but the responding officer volunteered the following useful advice,

“The cost of cleaning cars would not justify the loss of this tree and the amenity it provides. No evidence has been provided to show why the car cleaning can not be undertaken by the car owner at no cost, or to show that alternative remedial options have been considered, using a car cover as an example.”

This clearly explains that any minor inconvenience arising from the practice of parking cars beneath large trees can be easily addressed by a) washing the car, b) using a car cover, and c) undertaking good tree maintenance.

Horse Chestnuts (T2) similarly seasonally produce and drop conkers, that can (perceived or otherwise) potentially damage cars parked underneath. An example of Conkers contributing to pressure to remove/undertake works on a protected Horse Chestnut tree is application 2023/TWA/92379/E.

Application 2023/TWA/92379/E was not submitted because of falling conkers. The application was submitted because the tree is pushing over a wall and because it is a dangerous tree. Conkers are only mentioned in the application because the tree is suffering a serious infection which is preventing it from producing full sized conkers at the right time of year – conkers are only mentioned as a diagnostic indicator, and no mention was made that falling conkers are causing any kind of nuisance (perceived or otherwise).

In response to application 2023/TWA/92379/E the officer provided the following comments,

“As a legal charge on the land the presence of a protected tree shows during the land searches prior to purchasing a property. This is to allow any potential buyer the opportunity to consider the constraints, long term implications and maintenance requirements of living in close proximity to mature protected trees. With this in mind the issues described should have been a material consideration prior to purchasing this property.”

“It is not uncommon for twigs and branch wood to become dislodged in high winds, but that does not usually constitute a serious hazard, nor would it designate the tree as 'dangerous'. It could be alleviated by maintenance of the trees which would include crown cleaning.”

This clearly explains that any concerns arising from falling twigs and branchwood can be easily addressed by undertaking routine tree maintenance. And that anyone purchasing a property which includes large trees would be expected to be aware that such routine maintenance will be needed before they buy the property.

“The current property could foreseeably notice the issues above when cars are parked under the canopies. However, the existing garage, and a section of driveway aren't under the canopies of the trees, so the car/s could be parked in the garage protected or at least in a less impacted zone. This gives the current residents a choice, which the future residents will not.”

The officer has stated the concerns to current residents would be falling leaves, twigs and deadwood. However, as has been stated by the officer in his responses to the two applications referenced above, such concerns are trivial and very easily dealt with. Deadwood would be removed as part of any normal and routine tree maintenance. He also states that, falling twigs and leaves are not a concern in terms of posing a hazard, and any perceived problems arising from this can be easily resolved through washing the car or using a car cover.

“The relationship of buildings to large trees can cause apprehension to occupiers or users of nearby buildings or spaces, resulting in pressure for the removal of the trees and this is the concern here. That once occupied and following a growing season, the development and change in relationship to the trees it will result in pressure from residents to prune and/or remove the trees to abate issues they cause to them.”

KC Tree recognise that any such works would require consent from the Council, but when exercising that control in the future, the Council would have to take into account the existing situation including the presence of the proposed dwelling.”

It is not clear from this comment what the officer is referring to when discussing 'apprehension', but it is assumed that he is referring to apprehension that the tree might be perceived to be dangerous in that it might fall over or drop large limbs.

At the current time the tree is within falling distance of an existing dwelling, a school route, and various gardens etc. If the tree were genuinely dangerous then it should be removed whether development occurs or not.

If the tree is not dangerous now, but becomes dangerous at some time in the future, then it would also need to be removed at that time, whether development occurs or not.

Previous comments from the officer indicate that he does not accept that tree T1 is dangerous, and that he would expect evidence of a sort which would be extremely difficult to obtain before he would consider otherwise. Therefore, based on the comments of the officer acting in his role as the enforcing authority, we must move forward on the understanding that the tree is not deemed dangerous by the council – whatever recommendations the tree survey might make.

On that understanding, we are dealing with the possibility of a perceived danger rather than a genuine danger.

The council has never allowed a protected tree to be felled or heavily pruned just because someone has some apprehension about it. An applicant has to be able to provide evidence that a tree is actually dangerous before an application can even be validated.

Further, if anyone were to feel threatened by tree T1 it would be the occupants of the existing dwelling rather than the proposed. Tree T1 is located significantly closer to the existing dwelling than it is to the proposed, it leans towards

the existing dwelling, and it is growing at a higher elevation in relation to the existing than the proposed. An online search of the planning history of this site reveals that even though the existing dwelling experiences the impacts of living in close proximity to tree T1 significantly more than the occupants of the proposed, there has never been any application to prune or fell this tree. This shows that living in close proximity to this tree doesn't cause any significant problems to residents.

As far as I am aware, no protected tree in Kirklees has ever faced any meaningful pressure of any kind for it be removed merely on the grounds that someone feels apprehension about it. And I unaware of any mechanism by which someone would be able create any kind of meaningful pressure to remove a tree for this reason.

“Kc Trees accept that prospective buyers of the proposed dwelling would be aware of the existing trees at the time of purchase. However, the effects of the trees on everyday living conditions may not be fully appreciated, particularly as the trees continue to grow over time.”

I repeat the officer's comments made in response to application 2023/TWA/92379/E.

“As a legal charge on the land the presence of a protected tree shows during the land searches prior to purchasing a property. This is to allow any potential buyer the opportunity to consider the constraints, long term implications and maintenance requirements of living in close proximity to mature protected trees. With this in mind the issues described should have been a material consideration prior to purchasing this property.”

The officer makes it very clear that any future occupant of the proposed should make themselves aware of the long term implications and maintenance requirements of living in close proximity to a protected tree at the time of purchase. And in this case the long term implications and maintenance requirements would be trivial. In his responses to applications 2023/TWA/92379/E 2023/TWA/93277/W the officer has told us what these implications and requirement will be – trees should be regularly deadwooded, and cars might either need cleaning a bit more often, or they can be protected with a car cover.

Additionally, the updated impact assessment shows a carport which will remove the need for these very minor implications at the proposed dwelling.

“Overall, there is an objection to the proposal from a KC Trees perspective. KC trees are not convinced that the AIA has given due consideration to the proposed end use of the space adjacent to retained trees and it is considered that this would place additional pressure on the trees for the reasons mentioned above and the proposal conflicts with adopted KC Local Plan Policy LP24 (i) and LP33.”

Policy 24 (I) states, *the retention of valuable or important trees and where appropriate the planting of new trees and other landscaping to maximise visual amenity and environmental benefits;*

Policy 33 states, *The Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity.*

Proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment, including the Wildlife Habitat Network and green infrastructure networks.

Proposals will need to comply with relevant national standards regarding the protection of trees in relation to design, demolition and construction. Where tree loss is deemed to be acceptable, developers will be required to submit a detailed mitigation scheme.

The layout has been designed with these policies in mind, and no valuable or important trees will be removed or threatened. Tree T2 is to be removed because it is a dangerous tree, and would be removed whether development occurs or not. Should tree T1 become dangerous at some time in the future, then it would also need to be removed whether development occurs or not. This proposal has no impact on the long term retention of either trees.

The layout and design has fully considered trees in relation to design, demolition and construction in accordance with BS5837:2012, Kirklees Policies, and past commentary and guidance provided over the years by Kirklees officers.

I hope this provides all the necessary information and meets your requirements, but if you have any queries please don't hesitate to contact me.

Yours sincerely,

James Royston *MSc Arboriculture and Urban Forestry, BSc (Hons) Forestry.*
LANTRA accredited Professional Tree Inspector