

PLANNING COMMITTEE
21st June 2018

CONFIRMATION OF TREE PRESERVATION ORDER (TPO) 1278
Land at 24, 28, 38, 42, 44 & 48 Stoney Road & 1 and 2 Priestwood Avenue,
Bracknell, Berkshire - 2018
(Director of Environment, Culture & Communities)



1. PURPOSE OF DECISION

- 1.1 The Council has decided to make a Tree Preservation Order (TPO) to retain and protect trees which have been assessed to be of amenity value and were judged to be at expedient risk of removal or other adverse effect. Representations have been made to the Council against the making of this TPO and they are the subject of this report.

2. RECOMMENDATION

- 2.1. That the Committee approves the Confirmation of this Tree Preservation Order.

3. ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

3.1. Borough Solicitor

3.1.1. Section 198 of the Town and Country Planning Act 1990 (as amended) and The Town & Country Planning (Tree Preservation) (England) Regulations 2012 is the statutory framework for making and confirming TPO's.

3.1.2. Further Department for Communities & Local Government (DCLG) provides guidance on TPO's in the Planning Practice Guidance (PPG) titled 'Tree

Preservation Orders and trees in conservation areas'. The guidance states that, TPO's should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and it's enjoyment by the public. Before a Local Planning Authority can confirm an Order, they should demonstrate that protection the tree would bring a reasonable degree of public benefit

3.1.3. The guidance advises that three factors in particular are of relevance, namely:-

- *Visibility* - The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, 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 authority should also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:
 - *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.*
- *Other factors* - Where relevant to an assessment of the amenity value of trees or woodlands, the authority may 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.

3.2. Equalities Impact Assessment

3.2.1. Not applicable

3.3. Other Officers

3.3.1. Chief Officer; Planning, Transport and Countryside has noted the report.

4. **BACKGROUND / RELEVANT PLANNING HISTORY**

- 4.1. Stoney Road is an established residential street consisting mainly of terraced housing.
- 4.2. The majority of properties along Stoney Road were once Council housing stock until those that were not purchased under the 'right-to-buy' scheme were transferred to Bracknell Forest Homes. It was the previous Council authority over the properties that allowed for their retention, protection and basic maintenance work.
- 4.3. Following an enquiry to the Tree Service checking on the status of an Oak tree at No. 38 (for which inappropriate pruning was the expedient concern) that tree and a number of other along Stoney Road were assessed for their amenity value. Accordingly TPO 1278 was served on 20/04/2018.

- 4.4. The nine trees protected by this TPO are seven Oaks, one Ash and one Birch located in eight sites; namely - 24, 28, 38, 42, 44 & 48 Stoney Road and 1 & 2 Priestwood Avenue.
- 4.5. Existing trees, that is individuals, groups, areas and woodlands are viewed and assessed for their amenity impact to evaluate their suitability for a TPO. This system is based on factors that assess: -
- Their health & condition
 - Their remaining longevity
 - Their relative public visibility
 - Specialist considerations such as 'veteran' status, historical interest etc.
 - The known (or perceived) 'threat' to their health & condition or existence
 - The impact of the trees on the landscape
 - Special factors such as proximity and orientation to the nearest habitable structure.
- 4.6. These factors follow criteria based on government guidance and 'best-practice' and the assessment system gives an indicative value that informs the Tree Service in considering whether or not to make a TPO.
- 4.7. Once the new TPO is served, affected residents have 28 days in which to make representation to the Council. Some representations are letters of support whilst others request clarification, but more commonly they are objections to the making of the Order. Objections can be made on any grounds; if valid objections are duly made, the Local Planning Authority cannot confirm the TPO unless those objections have first been considered.
- 4.8. The Order document contains details of how a resident can comment or object to the TPO. In serving the Order, the Council also includes advice and guidance in respect of the objector's right to make an application to manage their tree (even if the TPO has yet to be confirmed) and directs the objector to an application process and how to source Government advice on TPO procedures.
- 4.9. Any representation (support, objection or comment) is reviewed in respect of Council policies and to address the issues raised, either a delegated report is compiled for consideration by the Chief Officer: Planning, Transport and Countryside or it is brought before the Planning Committee.

5. SUMMARY OF REPRESENTATIONS

- 5.1. One representation was received from 44 Stoney Road which objected to the Order for six reasons.
- 5.2. The issues raised as part of the objection to this TPO relate to: -
- Concerns that future pruning to improve shading issues will be prevented.
 - Damage caused to the driveway
 - Bird droppings and sticky sap/honeydew falling onto parked cars on driveway
 - Blocked drain gullies (on objectors property and the Highway) causing localised flooding of property
 - Concerns about damage to house foundations
 - A TPO blights the sale value of the property

6. CONSIDERATION OF ISSUES

- 6.1. It is presumed that the Oak in front of No. 44 Stoney Road had been maintained by the Council (and/or Bracknell Forest Homes) in the preceding years. That pruning may have been for a variety of reasons and in carrying-out that pruning, there may have been additional benefits in terms of more light falling onto the frontage of that property. The property frontage faces West towards the Oak, so it is accepted that direct sunlight may be interfered with during the morning; but after late morning, the sun would fall onto the front garden and more importantly (for the reasonable use of the property) onto the rear garden. In the event, pruning for reason of direct sunlight is not a material consideration that the Council must consider or might accede to; each case is taken on its merits and should there be a case of inordinate shade which some pruning would alleviate, without harm to the form and condition of the tree, the Council is unlikely to unreasonably refuse such an application.
- 6.2. Damage to structures such as driveways can be repaired without the need to remove the whole tree. If the property owner can demonstrate that the damage is the result of the protected tree, then that evidence can be used to support an application to the Council for management.
- 6.3. Trees do provide a wildlife habitat and structure for birds (feeding, nesting and as perches). If a tree owner is troubled by bird-droppings, pruning the tree is unlikely to be the solution, as the birds will continue to sit in the pruned tree and foul the parked car, footpath or driveway underneath. In spite of this particular nuisance, healthy trees are considered an environmental asset whilst bird-droppings are not a matter that the Council or property owner can control as it is a natural process of our wildlife and environment. As such an application to manage a protected tree for those reasons would be insufficient grounds to justify its pruning or removal.
- 6.4. Falling debris from the tree (such as leaves, seed & fruit, twigs and small branches etc.) is the natural consequence of tree growth. Whilst sympathising with the difficulty encountered in maintaining a property; the sort of debris described is not recognised in English Law as a 'legal nuisance, and the judiciary regard falling leaves; fruit etc. as 'incidental to nature'. If the public Highway (footpath or road) is littered with leaves and fruit the Council does have an obligation and the appropriate action is to clear debris from the Highway. In this case street-cleansing is a year round operation and the frequency of cleansing is dependent on many factors although particular regard will always be given to the circumstances. High amenity areas such as the town centre and local shopping parades are cleansed daily. Other areas of land will be monitored and cleansed to meet the standards contained within the Environmental Protection Act 1990 and code of practice for litter and refuse. The service covers all our public sites and adopted roads managed by the Council.
- 6.5. In respect of alleged damage to the structure of the house by the activity of tree-roots, no evidence was presented by the objector. If the objector believes they are experiencing problems with tree-roots damaging any structures on their property, they should in the first instance contact their building insurer to investigate and any evidence that an investigation might provide can be used as supporting evidence in an application to the Council for appropriate management of the tree. If there is evidence that a protected tree is damaging a property and it is sufficiently compelling, then the Council would not unreasonably refuse a grant of permission to prune or remove it.
- 6.6. There is no research available to the Council that demonstrates that a Tree Preservation Order de-values property. To the contrary, the presence of trees (protected or otherwise) in a locality and on individual property is found to frequently

enhance its attractiveness and hence value and this is supported by the conclusions of various studies (CABE Space 2005 and Morales at al 1983).

- 6.7. The Council's response to the objections also include: -
- The amenity assessment undertaken on the trees has been developed by the Council and is based on Central Government Guidelines, industry 'best practice' and the Council's own policy.
 - The Council's amenity assessment is not a full & detailed tree-survey; and although now protected, this does not remove any legal responsibility from the tree-owner to ensure their safe condition. It is therefore strongly advised that if the objector/tree-owner considers the tree/s to be in any way dangerous, hazardous or unsafe, that they seek independent professional advice.

7. SUPPORTING PLANNING INFORMATION

- 7.1. Policy CS 7 requires design to respect local character and enhance the landscape
- 7.2. Retention & protection of trees is also a key responsibility of Local Authorities under section 197 of the Town & Country Planning Act 1990.

8. CONCLUSION

- 8.1. The Council has followed due legislative process, procedure and policy and has stated the reasons for protecting the trees. The various objections and specific issues raised by correspondents have been addressed within this report.

End of Report

Contact for further information: -

Jan Polnik
Principal Tree Officer 01344 354115
jan.polnik@bracknell-forest.gov.uk

CONFIRMATION OF ORDER

This Order was confirmed by Bracknell Forest Borough Council on the

Signed on behalf of the Bracknell Forest Council

Signature: -

Name: - Andrew Hunter / Max Baker

Position: - Chief Officer: Planning, Transport & Countryside / Head of Planning
(Authorised by the Council to sign in that behalf)

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Bracknell Forest Borough Council on the: -

Signed on behalf of the Bracknell Forest Council

Signature: -

Name: - Andrew Hunter / Max Baker

Position: - Chief Officer: Planning, Transport & Countryside / Head of Planning
(Authorised by the Council to sign in that behalf)

Appendix

Copy of TPO plan showing location of individual trees

