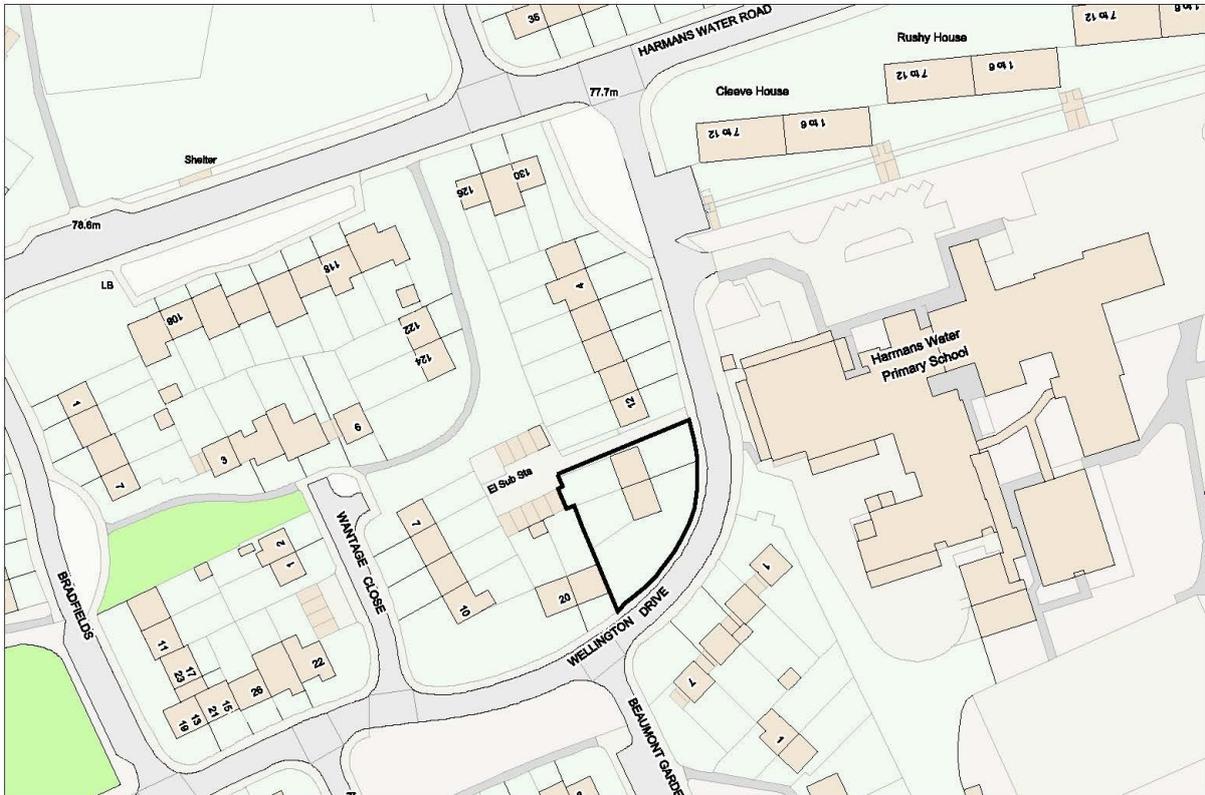


PLANNING COMMITTEE
11th. October 2018

CONFIRMATION OF TREE PRESERVATION ORDER (TPO) 1283
‘Land at 16 & 14 Wellington Drive, Bracknell – 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. The site of the TPO is within an established residential development and specifically occupies a prominent corner plot consisting of two semi-detached houses and adjoining public amenity space which is owned by Silva Homes.

4.2. The request for a TPO came from Silva Homes following its concerns that the trees in question were under threat of damage or removal. The owner of 16 Wellington Drive had requested permission of Silva Homes to remove the pines in the property frontage to install a driveway & parking (the property was previously owned by Silva Homes and there was extant covenant in respect of the trees). From further exchanges between the objector and Silva Homes it became evident that the trees were to be considered under threat of damage or removal. A request was made of the Council to assess their public amenity value and after due process TPO 1283 was served on 27/07/2018.

- 4.3. This TPO protects a Group of three pines (two in the frontage of 14 Wellington Drive and one in the frontage of 16 Wellington Drive). Of primary concern to the Council were the trees in front of No. 14; but the TPO includes the one in front of No. 16 due to its amenity value and to maintain cohesion and visual amenity impact of the group within the landscape.
- 4.4. 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.
- 4.5. 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. 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 made by the owner of 14 Wellington Drive, in the form of an objection.
- 5.2. The issues raised as part of the objection to this TPO relate to: -
- The maintenance implications caused by falling foliage and fruit
 - The neglected state of the tree and lack of tree-maintenance
 - Personal stress and upset caused by the trees
 - Infestation of pests from the tree
 - Damage to parked cars caused by the trees
 - Neighbours parking on grass verges

6. CONSIDERATION OF ISSUES

- 6.1. The objector recalls an incident which involved an elderly relative who it is claimed fell due to “the mess caused (*by the trees*) at the front of the property”, in spite of the property owner having maintained the front garden and the fear that the objector (currently pregnant) may suffer the same fate. Unfortunately the objection does not provide any further detailed explanation, argument or evidence to support the statements. Falling debris from trees (such as needles, cones, twigs and small branches etc.) is the natural consequence of tree growth. The level and quality of maintenance of a property is the responsibility of the property owner and the Council does not accept that removing trees is an appropriate remedy to manage the risks identified. Whilst sympathising with the difficulty encountered in maintaining a property; the sort of debris in this case is not recognised in English Law as a ‘legal nuisance, and the judiciary regard falling foliage, etc. as ‘incidental to nature’.
- 6.2. Furthermore the objector stated that the trees had “caused a lot of upset and damage to my home”, resulting in personal stress to the objector during her pregnancy. Although it is regrettable that a mother-to-be should have a troublesome pregnancy, it is not made clear what the ‘upset’ was and no evidence was presented of ‘damage’ to the objector’s property.
- 6.3. Even if the Council was to assume that the cause of the ‘upset’ was (as stated by the objector) the increased incidence of insects (spiders & ants); even then, trees naturally provide habitat for various forms of wildlife which cannot be excluded from the surrounding environment. Although the recent protracted period of hot and dry weather may have promulgated an increase in the number of insects; again this cannot be legislated against as it is a natural phenomenon within our environment. Typical control measures would be to prevent the insects from entering the property and/or controlling their numbers by trapping and the use of natural remedies.
- 6.4. The objector has provided a ‘Statement of fitness for work’ from her GP dated 29/08/2018 which states that the objector is ‘depressed’ (and so unfit for work). As regrettable as this is, there is no further detail to specifically implicate the tree/s as the cause of the depression.
- 6.5. The matter of any grant of permission or right, to park cars on the property frontage is not a matter for this Planning Authority. Notwithstanding, the Committee is directed to the principal response in section 6.1 of this report (latter part). In short, there is no precedent in law that falling foliage or ‘honeydew’ is a legal nuisance that would automatically allow for a claim for damages. The primary case-law which would apply in this matter, states that a landowner would not be held liable for anything that is naturally present on a landowner’s land (in this case leaves, twigs and detritus from any wildlife) that fall onto the ground or onto other property. For any liability to be considered it must be some special use of that land bringing with it increased danger to others and not merely by the ordinary (in this case specifically ‘natural’) use of land. The presence of aphids within trees and their production of honeydew from the sap within those trees would be considered the natural use of land.
- 6.6. The objector takes issue with the advice from Silva Homes about not parking cars on the frontage of properties in Wellington Drive. The objector has provided photographic evidence of various neighbours who park their cars on grass verges and on property frontages with or without the benefit of authorised vehicle cross-overs and asks why

she should not be able to do the same. The objector is advised to apply to the Highway Authority for permission to install a vehicle cross-over to be able to access her property frontage. However, the regular parking of cars within the root protection area of protected trees (without appropriate surfacing) causes soil compaction which harms trees. The objector is advised that if the Highway Authority grant permission for a vehicle cross-over, then an application will be required for the installation of a car-park surface within the root protection area of these protected trees.

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 trees are visible from public vantage points and as a group there are few amenity trees of the same quality and impact in the immediate landscape
- 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 trees to be in any way dangerous, hazardous, unsafe or are causing legal nuisance, that they seek independent professional advice.

7. SUPPORTING PLANNING INFORMATION

7.1. 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.

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: -

XX day of Month Year

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

Tree Service photographs of G1 (Pine x 3)



Objector's photographs of cars parked on grass verges and property frontages.

