

PLANNING COMMITTEE
21 January 2016

CONFIRMATION OF TREE PRESERVATION ORDER (TPO 1193)
LAND AT 38 ISIS WAY, SANDHURST, GU47 9RD – 2015
(Director of Environment, Culture & Communities)

1. PURPOSE OF DECISION

- 1.1 Under section 198 of the Town and Country Planning Act 1990, the Council has made a Tree Preservation Order (TPO) to retain and protect trees that are assessed to be of amenity value and were judged to be at expedient risk of removal or other adverse affect. Objections have been raised and they are the subject of this Committee 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. Guidance on Tree Preservation Orders and their making and confirmation has been provided in a Communities and Local Government (CLG) booklet titled "Tree Preservation Orders: A Guide to the Law and Practice". That guidance indicates that in the Secretary of State's view TPO's should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and it's enjoyment by the public. Local Planning Authorities should be able to show that a reasonable degree of public benefit would accrue before TPO's are made or confirmed.

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

- Visibility - the extent to which the tree can be seen by the public
- Individual impact -The Local Planning Authority should assess a tree's particular importance by reference to it's size and form, it's future potential as an amenity taking into account any special factors
- Wider impact - the significance of the tree in it's local surrounding should be assessed

3.2. Borough Treasurer

3.2.1. The Borough Treasurer has noted the report. There are no significant financial implications arising from the recommendation in this report.

3.3. Equalities Impact Assessment

3.3.1. Not applicable

3.4. Strategic Risk Management Issues

3.4.1. Not applicable

3.5. Other Officers

3.5.1. Head of Planning has noted the report.

4. **BACKGROUND**

4.1. On the 22nd. July 2015 the owner of 38 Isis Way made an enquiry in respect of a Restrictive Covenant on the property and requested consent to remove the Oak in the front garden.

4.2. A visual assessment of the tree revealed that the tree has significant amenity impact on the landscape and there were no obvious signs that the tree was causing damage or nuisance to adjoining property. After consultation, Development Management accepted that the tree had amenity merit and warranted consideration for protection.

4.3. Existing trees, that is individuals, groups, areas and woodlands are viewed and assessed for their amenity impact using a system to evaluate the suitability of trees 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.

4.4. These factors follow criteria based on government guidance and 'best-practice' and the assessment system follows policy developed by the Tree Policy Review Group (2007). The assessment gives a value that informs the Tree Service in considering whether or not to make a TPO.

4.5. On the 5th. August 2015 the Oak was protected by TPO 1193

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 objections are duly made, the Local Planning Authority cannot confirm the TPO unless those objections have first been considered.

5. **DETAILS OF RESIDENTS' OBJECTIONS**

5.1. There were two letters of objection lodged by residents of 38 and 40 Isis Way and a petition titled 'I hereby agree with the opposition of the Tree Preservation Order: TPO 1193 in the attached letter...' which was signed by 17 other residents in Isis Way, in support of the objection from the resident of 40 Isis Way.

5.2. TPO 1193 protects one mature Oak in the front garden of 38 Isis Way, Sandhurst.

5.3. The issues raised by the owner of the Oak (No. 38) as part of the objection to this particular tree relate to: -

- Challenging the amenity value of the tree;

- Concerns about potential damage to the adjoining neighbours driveway;
- Concerns about the potential for the tree to cause subsidence damage to sewer pipes;
- Concerns about sap ('honeydew') which falls onto parked cars;
- Concerns about the risk to persons and property by falling branches;
- The maintenance implications caused by falling leaves, fruit, sticky sap/honeydew, blocked gutters etc.;
- Concerns about shading and the subsequent loss of sunlight & ambient light to the garden and house.

5.4. The issues raised by the adjoining neighbour (No. 40) as part of the objection and subsequently supported by 17 other residents to this particular tree relate to: -

- Concerns about the risk to persons and property by falling branches;
- Concerns about potential damage to their driveway structure;
- The maintenance implications caused by falling leaves and twigs blocking gutters;
- The maintenance implications caused by falling sticky sap ('Honeydew'), onto parked cars and doors/windows;
- Concerns about shading and the subsequent loss of sunlight & ambient light to the house.

6. TREE SERVICE PROCEDURE

6.1. The Tree Service acknowledges any communications and provides advice and guidance in respect of the correspondent's right to make an application to manage the tree by using an application form and how to source Government advice on TPO procedures. The correspondence is reviewed in respect of Council policies and to address the issues raised, a report is compiled and subsequently brought before Committee.

6.2. In the case of multiple communications that raise similar points or issues, the report contains the Council's response to address the range of issues raised.

6.3. The Council's response to the objections include: -

- The amenity assessment undertaken on the tree has been developed by the Council and is based on Central Government Guidelines, industry 'best practice' and the Council's own tree policy.
- The tree is visible from public vantage points along Isis Way and 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 its safe condition. It is therefore strongly advised that if the objector/tree-owner considers the tree to be in any way dangerous, hazardous or unsafe, that they seek independent professional advice.
- 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'. These matters can be addressed effectively by regular inspection and maintenance of the tree.
- In respect of potential or actual damage to any property by the Oak's roots; no evidence was visible nor any presented in respect of root damage to property. If the objector believes they are experiencing problems with tree-roots damaging

any structures on their property, they are advised to provide supporting evidence as part of a 'TPO application' in order for the Tree Service to re-assess the situation taking in to account that information.

- The underlying soil-type in the Sandhurst area is sand, which is not a shrinkable soil (this all but removes the risk of subsidence to the house foundations).
- The tree is located to the West of the frontage of 38 Isis Way and South of the frontage of 40 Isis Way; accordingly the Oak will prevent direct sunlight from falling onto 38 in the afternoon and for most of the day over the frontage of 40 Isis Way. In respect of ambient light to both properties; the situation could be improved by modest pruning of the Oak to increase ambient light levels underneath the crown of the tree. This would require a 'TPO application' to obtain a grant of permission.
- The proximity of the tree to the adjoining houses is considered to be manageable by having the tree routinely inspected and any appropriate maintenance carried-out. The distance between tree and house is not exceptional as the Council confirmed TPO 1176 (Oxford Rd, Sandhurst) where a number of Oak were in positions similar to this Oak.

7. SUPPORTING PLANNING INFORMATION

- 7.1. Development Management support for TPO 1193 provided on 21st. July 2015 subject to consideration of proximity of tree to properties.

8. CONCLUSION

- 8.1. The Council has followed due legislative process, procedure and policy and has stated the reasons for protecting the tree. 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