

REPORT FOR THE PLANNING COMMITTEE, 26 FEBRUARY 2014

Objection to Tree Preservation Order TD1114, (Milverton No.1) 2013, High Street, Milverton. The Tree Preservation Order protects one oak tree.

RECOMMENDATION

That the Tree Preservation Order be confirmed.

Background

The Tree Preservation Order (TPO) was served on 13 November 2013.

The TPO was served in response to telephone calls from residents of Milverton on the morning of 13 November, who informed this Council that tree surgeons were at the site in question and were about to fell two oak trees. A site visit was carried out that morning by the Landscape Support Officer and after lengthy discussion with the owner of the trees Mr Lee, and with his tree surgeon, a TPO was served that afternoon to protect one of the two oak trees.

Procedure

A Tree Preservation Order comes into force on the day that it is served for a period of 6 months. The TPO lapses after that date unless it has been confirmed by the Council. If there are no objections to the TPO, it can be confirmed. If any objections are received, the points raised must be considered and a decision made as to whether to confirm the TPO, either with or without modification. The decision whether to confirm a TPO that raises objections is taken by members of the Planning Committee.

When deciding whether to serve and confirm a TPO, the present or future public amenity value of the trees must be considered. Tree Preservation Orders are served to protect selected trees if their removal would have a significant impact on the local environment. TPO trees should therefore be visible from a public place, such as a road or footpath.

In assessing a tree's amenity value, consideration must be paid to its visual impact, its health and structural integrity, its life expectancy and its suitability to the location. The tree's potential impact on highways, services and structures should be considered.

Note: In considering whether to confirm the Tree Preservation Order in question, the tree's suitability for TPO has been scored using the Amenity Evaluation System. The score sheet and guidance notes have been attached to this report.

Representations

The objection was received by letter on 2 January from the owner of the tree, Mr Lee.

The reasons given for objection can be summarised as follows:

- a) It had been confirmed earlier in the year by the Landscape Support Officer that the tree in question was not protected by a TPO;

- b) The recent death and removal of the adjacent oak tree has left the remaining tree vulnerable to the prevailing winds and imbalanced due to its previously restricted growth;
- c) The tree is adjacent to a highway, footpath and houses. Its roots have damaged the adjacent retaining wall and are thought to be preventing the repair of the wall.

Determining Issues and Considerations

The tree in question is thought to be a Lucombe Oak (*Quercus x hispanica* 'Lucombeana'). It is growing on the boundary of Mr Lee's field on the north side of the High Street in Milverton. It is a very large specimen, height and spread approximately 22 metres, trunk girth 4 metres plus. The estimated age of the tree is between 150 and 200 years. Lucombe Oak trees are characteristic of the West Country but are quite rare.

Because of its size, the tree is very prominent in the landscape. From the High Street it is a very impressive sight, but it can also be seen from many other more distant vantage points, such as the churchyard, Milverton Court and the public footpath and properties to the north.

The TPO tree was adjacent to a second oak tree, growing approximately 10 metres away to the west. This second tree was felled on 13 November due to the fact that it was in an advanced state of decline, which could be clearly seen on site. However, initial visual assessment of the TPO tree on that day did not indicate that it was also in decline. There were no obvious signs of decay or disease, and the foliage appeared normal for the species. On site on November 13, Mr. Lee's tree surgeon stated that he did not know why one of the trees had died. He also stated that he could see no problem with the health of the remaining tree (now TPOd), but thought that it might be more vulnerable to the prevailing wind once the dead oak had been felled.

In response to the points raised in Mr. Lee's objection:

- 1 Enquiries that ask whether a tree is protected by TPO or conservation area are received by the Landscape Support Officer on a daily basis. Mr Lee would have been informed on 5 June that the trees were not protected by a TPO and were outside the conservation area. This information would not necessarily mean that the Council was in favour of the trees being felled. The Officer does not recall the alleged conversation with Mr Lee on 5 June in detail, but recalls that Mr Lee was concerned about the health and safety of the trees, which apparently lead the Officer to provide a list of local arborists who would be able to carry out a professional assessment of the trees. It was not thought at the time that Mr Lee was intent on felling the trees without such an assessment. Also, the size and significance of the trees was not understood at the time.
- 2 Although the TPO tree is now more exposed to the prevailing wind, it is considered that, so long as the main structure and roots of the tree are sound, it should be able to withstand this increase in exposure. The TPO tree is larger than the oak that was felled and will have been exposed to strong winds throughout its development. The proximity of the two trees has influenced the growth of the TPO tree, but its current form is not considered to be excessively imbalanced, aesthetically or from a safety point of view.

- 3 The fact that the tree is adjacent to a highway, footpath and houses does not necessarily imply that it is dangerous and should be felled. However, due to it being in this location, the Council would recommend that it is regularly inspected by a professional arborist so as to ensure that it is as safe as a large tree can be. Under the TPO legislation, dead or dangerous trees or branches can be removed (5 days written notice should be given to the Council of this work unless the danger is imminent). It should be noted that residents of the nearest houses (8 Lower Fairfield and Court Cottages) expressed their support for the TPO on site on 13 November.

The tree is growing in an elevated position on a bank that is retained by a stone wall, height 1.2 metres from road level. It appears that the growth of the tree's roots has contributed to the wall being pushed out towards the road. The Officer is not convinced that the wall cannot be repaired without felling the tree. The tree has significant amenity and cultural value and it is considered that a solution to keep both the tree and to restore the wall should be found.

Once confirmed, applications can be made to carry out management work to a TPO tree, where the merits of the proposed work can be considered against any supporting evidence. It is therefore recommended that the Tree Preservation Order be confirmed.

Note: Subsequent to the TPO being served, further investigation on site has revealed that the tree that died was severely infected by a Phytophthora fungus and was also infected with Honey Fungus. These would have combined to cause the tree's demise. The TPO tree is showing some signs of a minor infection by Phytophthora, but no Honey Fungus has so far been detected. The presence of Phytophthora does not necessarily mean that the TPO tree's demise is also imminent, as current research indicates that trees can recover from this type of infection. However, the Council would strongly recommend that a more thorough inspection of this tree is carried out by an experienced arborist so as to determine the extent of the disease, and to ascertain whether there are any other health and safety issues with the tree. This would involve removal of the ivy around the trunk so that a thorough assessment could be made of the main structure of the tree. It should also include the use of an air-spade to determine whether there was any decay in the root system, and may require use of a Resistograph to measure the extent of any decay in the trunk.