

31/21/0021/T

MR JAMES

Application to carry out management works to one Oak tree included in Taunton Deane Borough (Ruishton No.1) Tree Preservation Order 2008 to the rear of 40 Newlands Road, Taunton (TD1051)

Location: 40 NEWLANDS ROAD, RUISHTON, TAUNTON, TA3 5JZ

Grid Reference: 326652.124632

Pruning of Tree(s) covered by TPO

Recommendation

Recommended decision: Conditional Approval

Recommended Conditions (if applicable)

1. The proposed work shall be completed before the expiration of two years from the date of this permission.

Reason: To ensure that the works hereby approved are carried out in accordance with the Town and Country Planning (Tree Preservation) (England) Regulations 2012

2. The following works are approved:

Oak tree T1 of TPO TD1051 - crown-reduce overall height and spread by 3-4 metres branch length to available growth points.

Reason: To reduce the risk of further branch losses, and to enable the tree to be retained and managed for its future environmental benefits.

Notes to Applicant

1. WILDLIFE AND THE LAW. Any activities undertaken on trees must take into account the protection afforded to wildlife under UK legislation.

BREEDING BIRDS. Nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and if discovered must not be disturbed. If works are to be carried out in the breeding season (February to August, possibly later) then the tree(s) should be checked for nesting birds before work begins.

BATS. The applicant and contractors must be aware that all bats are fully protected by law under the Conservation of Habitats and Species Regulations 2017 (as amended), also known as the Habitats Regulations, and by the Wildlife and Countryside Act 1981 (as amended). It is an offence to damage, deliberately destroy or obstruct access to structures or places of shelter or protection used by bats, or recklessly or intentionally disturb bats while they are using these places.

TREES with features such as rot and woodpecker holes, split branches or gaps behind loose bark, or covered with ivy with stems over 50mm may be used as roost sites for bats. Should a bat or bats be encountered while work is being carried out on the tree(s), work must cease immediately and advice must be obtained from the Government's advisers on wildlife, Natural England (tel. 0300 060 3900). Bats should preferably not be handled (and not unless with gloves) but should be left in situ, gently covered, until advice is obtained.

Proposal

To crown-reduce one mature oak tree protected by Tree Preservation Order by 3 to 4 metres branch length, height and lateral spread.

Site Description

The tree is growing to the rear of 40 Newlands Road, and due to its size and location overhangs six other gardens in Newlands Road and Coronation Close.

Relevant Planning History

The previous application to prune the tree was made in 2019, reference 31/19/0018T.

Consultation Responses

RUISHTON & THORNFALCON PARISH COUNCIL - No comment.

Habitats Regulations Assessment

Not required for this application.

Representations Received

One (near neighbour at 36 Newlands Road), objecting to the application for the

following reasons:

- a) It is alleged that the TPO is invalid due to errors in the process of serving and confirming it in 2008;
- b) The letters received regarding the two current applications are the first to have been received from the council with regards to the tree;
- c) The trunk of the tree blocks the shared access to the rear of the property;
- d) The proposed 3 metre reduction would not make the tree acceptably safe and would not resolve the issue.

Planning Policy Context

Local finance considerations

Determining issues and considerations

The issue with this application is whether the proposed works are justified and in accordance with good arboricultural practice.

The tree in question is a large, mature English Oak, thought to be in excess of 100 years old. It is the largest tree in the area, and one of the largest in Ruishton parish.

The tree is growing to the rear of 40 Newlands Road, outside of the rear fence line but in a shared access corridor that runs between the rear of properties in Newlands Road and Coronation Close. Due to its size and location it therefore overhangs (to varying degrees) 36, 38, 40 and 42 Newlands Road and 17, 18 and 19 Coronation Close. Ownership of the tree has not been fully confirmed but it appears that the boundary line between 40 Newlands Road and 18 Coronation Close may pass through the substantial trunk of the tree, with the majority probably on the Newlands Road side. It is approximately 17 metres from the conservatory of 40 Newlands Road (21.5 metres from the house), and 28 metres from the nearest house in Coronation Close. Under the current guidance for trees in proximity to development (BS5837), the houses would be considered far enough away from the tree and sufficiently outside its notional Root Protection Zone, using the British Standard's guidance. In urban and suburban areas it is not unusual for large trees to overhang private gardens and to be in close proximity to buildings.

Early in September 2021 the tree shed a primary limb from the lowest tier of limbs at about 4 metres above ground level. The limb fell into the garden of 19 Coronation Close, whilst still being partially attached to the trunk, and has remained there since. The limb was shed on a calm day when there was no wind.

Initial assessment, by Arboricare, as to the cause of the limb failure concluded that it was likely due to a phenomenon known as 'summer branch drop', probably exacerbated by the extended length and weight of the branch. No significant decay was found in the wound, or at the base of the tree, where tests were carried out using a Resistograph, which measures the amount of resistance in the wood and therefore the extent of sound wood or decay in the tree.

'Summer branch drop' is a term used to describe the phenomenon where branches on mature trees are shed even though there are no obvious reasons such as decay,

disease or high winds. It is generally associated with late summer after periods of hot and dry weather, and as the application states is quite common in oak trees, as well as other species such as cedar or sweet chestnut.

A small amount of *Armillaria* (Honey Fungus) mycelium was identified in the soil during the initial assessment, but there is no evidence that it is affecting the oak tree - this fungus is generally prevalent in gardens.

A potential crack was found in the low limb overhanging the garden of number 40 Newlands Road. Although on closer inspection this was considered not to be serious, it was decided to shorten this branch almost to the main trunk, to be sure that any risk was removed.

Although the branch that fell would have been lethal had it hit someone, statistically the risk of death or serious injury caused by 'summer branch drop' is very low, thought to be less than one in one hundred million (less than a short car journey).

Given the size, age and the environmental importance of this tree, combined with the lack of evidence that it is in poor health, the application's proposal to manage the risk of further branch losses by significantly reducing the crown of the tree by 3-4 metres branch length is considered reasonable and preferable to felling the entire tree. Such a crown-reduction would significantly reduce the sail area of the tree and the end weight of the branches, thereby lessening the forces on the main unions. The re-growth could then be managed in the future as required, depending on the rate of growth. Although this would result in on-going expenses, the presence and likely growth of the tree has always been known to the owners and surrounding neighbours, as the tree has been mature for many decades.

In response to the points raised in the objection:

a) When the TPO was served in 2008, letters were sent to the properties immediately around the tree that were considered to be 'adjoining properties' to the main owners at 40 Newlands Road. Whether number 36 represents an adjoining property because of the shared access is open to debate and interpretation. As the 2006 guidance stated, '*Adjoining land*' is intended to mean land which has a common boundary with the parcel or parcels concerned' - number 36 does not adjoin number 40. Advice recently received from the Council's legal team has concluded that number 36 did not need to be served with notice of the making and confirmation of the 2008 Order, as it was not an adjoining property, and therefore there has been no failure to meet the requirements of the 1999 Regs which were in force at the time. In any event, the Council does not consider that there has been substantial prejudice to number 36 in this case arising from the making of the Order. It should also be noted that any challenge to the High Court should be made within 6 months of confirmation of the TPO, which was served thirteen years ago.

In practical terms, if there was any doubt about the validity of the current TPO the Council could serve a fresh TPO to protect the tree, at which point all those affected would be notified.

b) According to the Council's records, a consultation letter was sent to 36 Newlands Road in 2019 when the previous application to prune the tree was made (31/19/0018T). Amongst the documents for this application is an email from Mr Sawyer with regards to the agent's quote for the proposed works. The current

applications are therefore not the first formal contact between the Council and Mr Sawyer regarding this tree;

c) Although the trunk of the oak tree does fill much of the shared access to the rear of 38 and 36 Newlands Road, there is still space to pass between the tree and the fence - just under a metre. (Unfortunately the garden of 38 extends further than that of 40). The issue of the raised roots could be improved by either cutting of the roots or application of a surface such as gravel - subject to a more detailed assessment on site;

d) It is not easy to quantify the increased safety provided by reducing the tree by 3 to 4 metres, but this method of reducing risk of branch failures (crown-reduction) is described and recommended in the British Standard for Tree Works BS3998 (2010). A Quantified Tree Risk Assessment (QTRA) could be carried out by a suitably qualified professional, at some expense. Details of the QTRA approach can be seen in the internet.

To conclude, it is therefore recommended that the Council grants conditional approval for the tree to be crown-reduced by 3 to 4 metres. It is recommended that further detailed assessment of the main unions at 4-5 metres above ground level is carried out. If any further evidence is gathered that may affect the proposed management of the tree, the Council would react accordingly.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

Contact Officer: Mr D Galley