

31/21/0022/T

MRS R JAMES

Application to fell one Oak tree included in Taunton Deane Borough (Ruishton No.1) Tree Preservation Order 2008 at 40 Newlands Road, Ruishton (TD1051)

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

Grid Reference: 326652.124632

Felling of Tree(s) covered by TPO

Recommendation

Recommended decision: Refusal

- 1 The tree is over 100 years old, very prominent in the landscape, has numerous environmental benefits and amenity value. Although it has recently shed a large branch, no evidence has been provided to demonstrate that the tree is diseased, significantly decayed or likely to shed further branches even if management works are carried out.

Recommended Conditions (if applicable)

Notes to Applicant

1. Any dead wood can be removed without consent under Section 198(6) of the Town and Country Planning Act 1990. This work should be carried out in accordance with British Standard BS3998: 2010.
2. The case officer has recommended that the alternative application to crown-reduce the tree (31/21/0021T) is approved.

Proposal

To fell one mature oak tree protected by Tree Preservation Order TD1051.

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 31/19/0018T.

Consultation Responses

RUISHTON & THORNFALCON PARISH COUNCIL - No comment.

Habitats Regulations Assessment

Not required for this application.

Representations Received

One, from a near neighbour at 36 Newlands Road, in support of the application for the following reasons, in summary:

- a) The Tree Preservation Order is alleged to be invalid as the owners of 36 were not informed of the TPO when it was served in 2008;
- b) The tree blocks a shared legal right of access and could be declared a 'legal nuisance';
- c) The tree has been mis-managed over a long period, to the point of it dropping large limbs that would certainly kill;
- d) The tree 'presents a Risk Management view where the likelihood and impact of injury/damage are both 'High'.'

One, from a near neighbour at 19 Coronation Close, objecting to the application for the following reasons:

- a) The tree is a landmark that can be seen for miles around;
- b) The tree was present before the houses were built and the residents moved in. It should therefore have been predictable that it would grow, shed debris and branches occasionally;
- c) The tree has a lifespan of many generations of humans;
- d) The oak has environmental benefits way beyond what is visible above ground due to its mycelial networks, and it supports much biodiversity.

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. This general view has not been refuted by the agent for the current applications.

'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 having a detrimental effect on 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 because of factors such as decay or

disease, it is difficult to justify its complete removal by felling. The agent's alternative application (31/21/0021T) to manage the risk of further branch losses by significantly reducing the crown of the tree by 3-4 metres branch length is considered more 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 representation in support of this application:

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.

Although the tree overhangs several gardens, it is some considerable distance from the houses and under guidance for serving Tree Preservation Orders such as that given by the Wessex Tree Officers' Group would have been sufficiently distant from these structures and would have easily scored sufficient points to merit protection;

b) 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. Whether there is a legal duty to provide wheel-chair access to the rear of the house would require investigation by legal specialists, as would the assertion that the tree is a 'legal nuisance';

c) The Council responds to proposals to manage protected trees. Since the TPO was served, there has only been one application to prune the tree, in 2019. At this time, two options were presented to the Council, to crown-reduce the tree entirely or to crown-raise the tree by removing or shortening some of the lowest branches. The main reason for the proposed works was to reduce the amount of shading in the gardens on the east side, rather than there being any evidence that the tree was decayed, diseased or unsafe. The option to crown-raise the tree was therefore

recommended by the case officer. In hindsight, given what has now happened, it is agreed that in this case the first option to reduce the whole tree would probably have prevented the recent limb failure. Each tree and situation is different, and it is not generally considered that overall crown-reductions of healthy trees should be 'permitted development' and therefore allowed in every case, mindful that major tree surgery can also lead to ingress of decay pathogens and disease.

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.

Initial assessment by Arboricare following their site visit in September was that removal of the tree was unnecessary and undesirable, and that it could be managed by careful crown-reduction by skilled arborists. This was a verbal opinion at the time, but no written confirmation of this was received, other than the Resistograph test results, as only the on-site inspection and Resistograph test had been requested by the Council. It should be noted that the agent for the current applications has agreed to apply for both crown-reduction and felling. If he considered that the tree was unacceptably dangerous I suspect that he would have simply applied to fell.

The tree has also been assessed by the Council's own Arboricultural Supervisor in the Open Spaces Team, Dan Mancini. In his view, if the tree belonged to this Council he would recommend significant crown-reduction of 3 to 4, possibly 5 metres in places, given what has happened and its location, but not felling.

Considering all the above points, it is concluded by the case officer that there is insufficient evidence to justify the entire removal of this old tree. It is therefore recommended that the Council refuses felling but allows the crown-reduction proposed under 31/21/0021T. 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