

**REPORT FOR THE SOMERSET WEST AND TAUNTON PLANNING COMMITTEE,  
15<sup>th</sup> SEPTEMBER, 2022**

**Objection to Somerset West and Taunton (Ruishton No.1) Tree Preservation  
Order SWT54, served 17<sup>th</sup> March 2022**

The Tree Preservation Order protects one oak tree that is growing to the rear of 40 Newlands Road, Ruishton.

**RECOMMENDATION**

It is recommended that Tree Preservation Order SWT54 is CONFIRMED, unmodified.

**Background**

1. Tree Preservation Order (TPO) SWT54 was served on 17<sup>th</sup> March 2022. The grounds for serving SWT54 were stated on the Notice as follows:

*Tree Preservation Order SWT54 is intended to replace TPO TD1051, the validity of which has been brought into question due to an administrative error in serving and confirming TD1051. The oak tree has amenity value, being a mature specimen that is widely visible.*

2. The original TPO, TD1051, was served in 2008. Its validity was brought into question during and after the processing of TPO applications 31/21/0021T (registered 12<sup>th</sup> November 2021) and 31/21/0022T (registered 3<sup>rd</sup> December 2021). Application 31/21/0021T was to carry out management works to the tree, whereas 31/21/0022T was an application to fell.

3. The decisions for the above applications were determined by the planning committee on 8<sup>th</sup> February 2022. The committee resolved to approve the application to crown-reduce the tree but to refuse the application to fell.

4. Following the planning committee meeting a formal complaint was made by the neighbour Mr Sawyer at 36 Newlands Road, who stated that he should have been informed of TD1051 when it was served and confirmed in 2008. After re-consideration of this it was agreed by the council that Mr Sawyer should have been notified of TD1051 and that TD1051 was therefore invalid. Given that the planning committee had resolved to refuse the application to fell the tree, a new TPO, SWT54, was served and this report now seeks confirmation of that order.

5. The council's decision to refuse the felling of the tree under application 31/21/0022T has been appealed by the applicants. A decision from the Planning Inspectorate is still pending.

## **Procedure**

6. 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.

7. 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.

8. 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.

## **Representations**

9. Two objections to the TPO have been received, one from the owners of the tree at 40 Newlands Road and one from a neighbour at 36 Newlands Road.

### **The reasons given for the objections can be summarized as follows:**

10. a) The tree is dangerous due to its size in relation to its proximity to the adjacent houses and gardens, the potential for further shedding of branches due to 'summer branch drop' and due to the potential effects of winter storms.

b) The tree's size is inappropriate in this residential location.

c) The rear access to number 36 will be reduced as the tree grows. The access should be at least 1200mm in width but is currently 740mm. The tree's roots have raised the ground, making it more difficult to pass.

d) Because of errors in the serving of the original TPO, TD1051, the ability of the planning committee to determine applications 31/21/0021T and 31/21/0022T were compromised.

e) The boundaries on the TPO plan are not accurate.

f) The tree drops acorns and 'small to large branch-ends'.

11. It should be noted that the council received objections to the felling of the oak tree under application 31/21/0022T from some neighbours, including 19 Coronation Close where the branch that fell landed.

## **Determining Issues and Considerations**

12. The tree is a mature English Oak, well over 100 years old. It 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. It has now been confirmed that the tree is entirely within the boundaries of land relating to 40 Newlands Road.

13. Because of its size and age, the tree is widely visible from numerous neighbouring and nearby properties. It is also visible from public roads Newlands Road, Newlands Crescent, Coronation Close and beyond. It is therefore considered to have a high public amenity value.

### **In response to the points raised by the objectors to the TPO:**

14. a) In September 2021 the tree shed a large primary limb. It was concluded at the time by the agent (arborist) for applications 31/21/0021T and 31/21/0022T that the reason the tree shed the limb was most likely due to a phenomenon known as 'summer branch drop'. No significant decay was found in the wound, or at the base of the tree, where tests were carried out by Arboricare using a Resistograph. There were no obvious signs of disease or decay in the tree, and the tree appeared to be essentially a healthy specimen, a view echoed by the agent for the TPO applications, RFP Tree Services, as well as Arboricare and the council's Open Spaces Arboricultural Manager.

15. A small amount of Armillaria (Honey Fungus) mycelium was identified in the soil during the initial assessment by Arboricare, but there was no evidence that it was having a detrimental effect on the oak tree.

16. The TPO application was not supported by an arborist's report that explained the reasons why the tree was unsafe and needed to be felled. A Quantified Tree Risk Assessment could be undertaken by an arborist qualified to carry out such tests, but this would be initiated and paid for by the owners.

17. The risk of further branch losses could be mitigated by carrying out crown-reduction of the tree by approximately 3-4 metres, as recommended and approved in the decision for 31/21/0021T.

18. b) The tree 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 Area, 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. Crown-management, such as crown-lifting and crown-reduction, can lessen the overhang, as was approved

under TPO application 31/19/0018T in 2019 and has been approved under 31/21/0021T. Application 31/19/0018T was made on the basis that the tree was casting excessive shade, not on the grounds of safety.

19. c) The width of this tree's trunk will increase very slowly. The gap between the tree and the current fence line of 38 Newlands Road, which extends beyond 40 Newlands Road, is unlikely to decrease significantly for decades. It is currently easy for able people to pass between the tree and the fence. The raised path caused by the tree's roots could be improved by modifying the surface materials, and possibly cutting some root, subject to further detailed investigation.

20. The suggestion that the shared access should be at least 1200mm in width, and that this is the legal minimum, has not been supported with evidence. The case officer's legal advice is that there is no maximum or minimum width of a private right of way as defined in law. The minimum width may be specified in the title deeds for the properties served by it.

21. d) Errors in the serving and confirming of TD1051 have been acknowledged, and apologies given. The matter now under consideration is the new Tree Preservation Order SWT54 and whether it should be confirmed. Whether the original TPO was valid or not would not alter the arguments presented to the planning committee for and against the felling of the tree, such as tree health, safety, size, location and access. These were considered by the committee and a conclusion reached, that the tree should be retained and crown-reduced.

22. e) The TPO plan has been created from the current 'Mapinfo' GIS mapping system that the council uses. The purpose of the plan is to make it clear which tree is protected by the TPO. It is not necessary for the TPO plan to accurately depict the current spread of the tree's canopy. It is also not necessary for the TPO plan to show land-ownership information, as set out on Land Registry maps. It is clear from the plan for SWT54, in combination with the TPO schedule, that it is the oak tree to the rear of 40 Newlands Road that is protected.

23. f) The shedding of acorns, leaves, twigs and larger branch pieces is a natural occurrence with oak trees. Removal of significant deadwood is permissible under the TPO legislation, subject to giving the council 5-days' written notice of this. The crown-reduction granted approval under application 31/21/0021T would, in a modest way, lessen the amount of 'debris' falling from the tree.

## **Conclusion**

24. In conclusion, the planning committee resolved to refuse the felling of this oak tree at its meeting in February 2022 as there was insufficient evidence to justify its removal under application 31/21/0022T. No further information or evidence has been provided that is thought to alter this conclusion. It is therefore recommended that the new Tree Preservation Order SWT54 is confirmed, unmodified.