

Grid Ref: 114026 : 296041

Location: Hayne Court/Marley
Close Tiverton Devon
EX16 6UY



REPORT OF THE HEAD OF PLANNING AND REGENERATION

**CONFIRMATION OF TREE PRESERVATION ORDER 14/00002/TPO
HAYNE COURT/MARLEY CLOSE, TIVERTON**

Reason for Report:

To consider whether a Tree preservation Order should be confirmed in light of the objection that has been received.

RECOMMENDATION

That the Tree preservation Order be confirmed.

Relationship to Corporate Plan:

The proposal impacts upon the Corporate Plan Priority 'Caring for our Environment'.

Financial Implications:

None.

Legal Implications:

None.

Risk Assessment:

None.

Consultation carried out with:

1. Mid Devon District Council's Tree Officer.

1.0 DESCRIPTION/HISTORY

- 1.1 This application for a Tree Preservation Order was originally brought to Committee before the deadline for receipt of objections had expired. The application has been re-considered in light of new objections received.
- 1.2 The Tree Preservation Order was made in response to the loss of one significant tree and an enquiry to fell a further mature tree. The trees were protected by a Planning Condition at the time of planning consent. Condition 20 of planning permission granted under reference 90/01600/OUT explains that it is necessary to gain written permission from the Local Planning Authority before carrying out any works to the trees.

Written permission was not requested prior to the removal of one tree in this location and this Tree Preservation Order has been brought about by a written request to remove an additional tree in this location.

- 1.3 The row of trees here pre date the development significantly. The trees are representation of the landscape before development, which would have been agricultural estate land. The trees are situated in the gardens of properties at Hayne Court and Marley Close but also front onto the road towards Chettiscombe, Knightshayes and Bolham. Driving along this road to Bolham, past Knightshayes Estate towards Tiverton, it is apparent that the trees are a significant landscape feature.

2.0 AMENITY EVALUATION

- 2.1 For the surrounding area the trees have significant amenity value. Following an amenity evaluation of the trees it was deemed necessary to place further protection on them, in the form of a Tree Preservation Order.

3.0 REPRESENTATIONS

This particular tree is a Lime tree adjacent (and overhanging) number 10 and within the garden of number 11 Hayne Court, Tiverton

- 3.1 The tree is too close to the properties at 11 and 10 Hayne Court and blocks out our light.
- 3.2 The roots of the tree have caused movement in the fencing between the two properties which means this now needs repairing. It could also be causing unseen damage to the buildings themselves.
- 3.3 Over the past year in particular a lot of branches have fallen into the gardens, including a large one of about 3-4cm diameter into my garden. Fortunately this landed in an area where no damage was done but if it had landed on my plants, garden furniture, conservatory or one of my family, it could have done a lot of damage.
- 3.4 Over the last year in particular the tree appears to be diseased as it shed a huge amount of brown spotty and just brown leaves in early summer.
- 3.5 Last year it deposited much more sap than normal onto everything in the garden leaving a sticky coating on everything and causing damage and additional cleaning to plants, garden furniture and my conservatory roof.
- 3.6 A huge amount of debris including branches, diseased leaves, seed pods and autumn leaves are deposited in my garden. This costs me a significant amount of time to clear up and costs money to clean the gutters every year. Even with an annual clean, the gutters fill up and overflow every year, causing potential damage to my property.
- 3.7 The tree is in the garden of a rented property and is not maintained by the owner. The owner did tell me she would cut back the tree every 3 years but she has done no maintenance to the tree since 2008. In 2010 I had to spend a significant amount of

money myself to cut back the part of the tree overhanging my garden because the house had become so dark and branches had started to overhang the conservatory

A second objection was received from the owner of number 20 Marley Close. This objection has been summarised as follows:

- 3.8 It is unreasonable to create a Tree Preservation Order on the basis my neighbour has felled a similar tree without permissions.
- 3.9 The lime tree (T2) is old and not special, therefore not worthy of a Tree Preservation Order.
- 3.10 The lime tree (T2) is high maintenance which results in high costs.
- 3.11 The rural feel of the lane was lost when the lane was developed, and therefore the tree doesn't add to the amenity value of the area.
- 3.12 The owner of number 20 wishes to develop their garden, and therefore do not want a Tree preservation order which may restrict development.
- 3.13 The horse chesnut (T1) is potentially rotten.
- 3.14 The horse chestnut (T1) causes debris into the garden, whilst having overhanging branches in our garden.

4.0 MATERIAL CONSIDERATIONS AND RESPONSE TO THE OBJECTION

- 4.1 The Council's Tree Officer is in agreement that the tree is situated in very close proximity to the properties. This should have been addressed at the design stage of the planning process. With regard to the blocking of light there is no legal 'right to light' with regard to trees. The tree is situated to the north west of the property of 10 Hayne Court.
- 4.2 Where direct damage has been caused by roots to the garden fence, simple design solutions would be available at the time of repair to stop future damage. It is unlikely that tree roots will extend beneath the house and foundations although over time they may run adjacent to the foundations. The Council's Tree Officer has not carried out a soil analysis but assumes that the soil here is not a shrinkable clay type. Where there are shrinkable clay soils and mature trees, consideration must be given to the possibility of indirect subsidence damage but modern building standards mean that indirect damage to newer buildings is unusual. There is no evidence to suggest that the tree is causing any damage to the properties.
- 4.3 The owner of the tree has a duty to ensure that their tree is in a safe condition. A Tree Preservation Order does not stop good tree management but offers some control to encourage industry best practice. Where branches are dead or dangerous they can be removed without application, where possible we do ask for a 5 day notification.
- 4.4 Foliar diseases are not uncommon and mostly do not have a detrimental effect on the tree. It may be necessary to identify the disease before further comments can be made but it is unlikely to be anything significant and may be worse in some years than it is in others. If the tree is proven to be diseased in a way which requires

attention the Tree Preservation Order will allow for this as it allows for good management.

- 4.5 The 'sap' that the tree deposits is typical for Lime trees. It is not sap but honeydew created by aphids that are feeding on the leaves. This honeydew is not regarded as a legal nuisance. This is something which may be worse some years than it is in others and the good warm summer last year may explain why there was more aphid activity.
- 4.6 Trees do create debris in the form of leaves, seeds, twigs etc. This is unavoidable. There are several options available to ensure that gutters do not get blocked. Gutter barriers may be used or a gutter brush system. There will be an expense in having these systems installed but it would reduce the need for annual maintenance.
- 4.7 The owner of the tree has a duty to ensure that the tree is in a safe condition. Where branches overhang into adjacent properties the owner is not obliged to have the pruning work carried out. While it would be a recommendation to discuss the matter with the tree owner the cost of the pruning of overhanging branches is likely to fall to the person requesting the work. A tree owner does not have to stop the branches of a tree from growing over their neighbour's fence.
- 4.8 Whilst the development of the surrounding area may have reduced the rural setting of the area, the trees are considered to be a significant feature of the original agricultural estate land and worthy of retention.
- 4.9 The trees are subject to condition 20 of planning permission 90/01600/OUT. Therefore, the development of the garden involving tree T2 at number 20 Marley Close would be subject to the expressed consent of the Local Planning Authority. Future developments will be considered on their own merit; however, development may be restricted due to the significant amenity value of the trees.
- 4.10 The Local Authority Tree officer did not consider the horse chestnut to be in a dead or dangerous condition. As mentioned previously, if the tree is dead or dangerous it can be removed without application, where possible we do ask for a 5 day notification.

5.0 CONCLUSION

- 5.1 The trees included in this Tree Preservation Order are worthy of this protection. The difficulty is the close proximity of the trees to the properties.
- 5.2 There are steps that can be taken to alleviate the perceived nuisance, i.e. installing gutter protection systems. There would always need to be a certain level of acceptance with regards to living with the trees. There will be some shading caused by the trees and the gardens will be harder to maintain.
- 5.3 The benefits of the trees to the wider community also need to be a consideration and this is why the Tree Preservation Order was made. The trees are a very significant feature of this area. The Pine trees at the junction of Chettiscombe Road and Lea Road were not included in the Tree Preservation Order as they are under the management of Devon County Council.
- 5.4 It is recommended that the Tree Preservation Order be Confirmed.

Contact for any more information

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Background Papers

None

File Reference

14/00002/TPO

Circulation of the Report

Cllrs Richard Chesterton
Members of the Planning Committee