

PLANNING COMMITTEE

DATE: 31 OCTOBER 2018

Tree Preservation Order: 18/00004/TPO

Grid Ref: 301700 : 106580

Location: 24 Hawthorn Close
Cullompton
Devon
EX15 1SL

Proposal: Tree Preservation Order for 1 Oak tree



TREE PRESERVATION ORDER: 18/00004/TPO

REPORT OF THE HEAD OF PLANNING AND REGENERATION

Reason for Report:

To address objections and support for the Tree Preservation Order

RECOMMENDATION

That the Tree Preservation Order 18/00004/TPO is confirmed.

Relationship to Corporate Plan:

The proposal impacts upon the Corporate aim of 'Protecting the natural environment'

Financial Implications:

None

Legal Implications:

Tree Preservation Orders are made under the Town and Country Planning Act 1990 as amended by the Town and Country Planning (Tree Preservation) (England) Regulations 2012. Local Planning Authorities can make a Tree Preservation Order if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area.

Risk Assessment:

None

Consultation carried out with:

1. The landowners have been notified of the imposition of the Tree Preservation Order and provided with the opportunity to object to its confirmation.

PROPOSAL:

Tree Preservation Order for 1 Oak tree

RELEVANT SITE HISTORY/DESCRIPTION:

92/00710/ARM - PERMIT date 9th October 1992

Reserved matters for the erection of sixty two, two storey detached and terraced dwellings together with construction of vehicular access

AMENITY EVALUATION:

The wider landscape amenity value is limited for the tree although it can be seen from various locations. The tree predates the development and is likely to have been a consideration at the time of Planning Consent.

It is situated on what is likely to have been an old hedgerow and in recent history a neighbouring Oak tree was felled as it was dead. This now the only remaining Oak tree in this immediate area.

When looking at aerial photographs the tree is situated at the bottom of several gardens, the ownership of the tree is unknown.

The amenity value of the tree was scored at 14.5. A score of 15 means that a tree merits consideration for protection with a Tree Preservation Order. MDDC Tree Officer was contacted by the appointed arborist to remove the tree and confirmed that there was no TPO, although the amenity score was 14.5 following a site visit the tree was still worthy of consideration for TPO, but the arborist believed that all of the residents wanted the tree felled. When the tree was scheduled to be felled the police were called and MDDC received many calls and emails requesting the tree be protected, as a result a Tree Preservation Order was made.

REPRESENTATIONS:

Letters of support and objection to the TPO have been received, the points raised have been summarised below:

3 letters of support (1 of them from 4 people)
4 letters of objection

Support comments

- 1) The tree influenced the choice of plot when purchasing the house.
- 2) Essential wildlife habitat, increases biodiversity, increases visual amenity.
- 3) The tree is an essential part of the layout and character of the estate contributing to its popularity.

Objection comments

- 1) No mention of an Oak tree on the deeds.
- 2) Concerns regarding the root spread of the tree.
- 3) Damage to the property.
- 4) Causing the garden to flood-due to roots obstructing drainage.
- 5) Lifting fence panels and paving slabs.
- 6) Large branches fall onto garden and shed – health and safety issue.
- 7) Concern of whole tree failure.
- 8) Residents were prepared to work together to pay for tree maintenance/removal.
- 9) If the TPO is confirmed the council should maintain the tree.
- 10) The Oak tree is not suitable for a residential area.
- 11) The tree has grown, it was much smaller in 1992 when the houses were built.
- 12) No maintenance.
- 13) Unsuitable size for its location.
- 14) Only a few residents are prepared to pay for maintenance.
- 15) If the TPO is confirmed the council should pay for crown reduction work.
- 16) It is not known who is responsible for the tree.
- 17) Higher than the houses and overpowering them.
- 18) Want to know who will be responsible for the tree in the future.
- 19) Increasing storms will increase the risk of failure.
- 20) The neighbourhood included all those affected by sending a letter and the majority of residents were in favour of felling the tree.
- 21) Low amenity value

Two letters of support were sent anonymously, the comments within these letters raise some additional comments regarding the value of the tree within the community. These comments included the following:

- 1) It is proven that people are more likely to buy houses when there are trees and green spaces, and also that houses are more valuable in 'leafy' areas. This part of Cullompton still feels connected with the countryside of Mid Devon so it is fair to assume that for some people the presence of the tree is seen as a very positive

addition to the neighbourhood.

2)The presence of the tree certainly adds to the wildlife and biodiversity of the area. The presence of nesting birds caused the police to be alerted when the tree was due to be removed.

3)Although MDDC Tree Officer could find no evidence in a Planning search it is likely that the tree had been retained intentionally, the design and layout of the development close to the tree shows from aerial photographs that the tree is almost a central point to the rear back gardens of several properties.

Tree Officer's considerations

The MDDC Tree officer considers that the tree provides screening between properties and softens the development. It is a mature Oak tree but not of very large size, possibly pruned in the past and is not in direct contact with any properties. The tree appears to be in good health although a detailed inspection has not been completed. There was no obvious sign of decay, disease or structural weakness. The crown seems healthy and vitality is normal.

The tree does have amenity value and can be seen from various locations, albeit a glimpse, from several viewpoints within the local area.

The MDDC Tree Officer has the following comments in response to the objections to the making of a Tree Preservation Order that have been received. The numbering of the following comments relate to the numbering of the objections in the report above.

- 1) It is unlikely that an Oak tree would be mentioned on deeds and documents relating to the sale of property. Trees ownership is usually determined by whether it falls within a boundary line.
- 2) The root spread of the tree is likely to be considerable. It is possible that roots were damaged at the time of the development but the tree is showing no signs of ill health so by now will have established new roots. In this location the roots will be opportunistic and grow where they are able.
- 3) The tree may shed debris onto shed roofs and fences may require repairing when in close proximity to the growing tree. There is no reason to suggest there is a risk of tree failure.
- 4) The tree is unlikely to cause the garden to flood as there is very rarely drainage for water runoff installed beneath garden soil. There may be other reasons for flooding and there may be some leaf clearance maintenance work required.
- 5) At the time of MDDC Tree Officers site visit, it was possible to see that the fencing required repair but this may have been the case whether the tree was present or not. Paving slabs will be lifted by the tree and if it is deemed necessary to confirm the Tree Preservation Order, the patio slabs could be laid in way to reduce the lifting.
- 6) There was no signs that large branches were going to fail at the time of the site visit but if the branches falling from the tree onto the shed roof are mainly dead all deadwood can be removed without the need for an application if deemed necessary, although there is no clear owner of the tree identified.
- 7) As stated there were no obvious reasons to suggest that the tree was likely to fail.
- 8) The residents may still need to work together to maintain the tree with or without the Tree Preservation Order. The difficulty is that it has become apparent that not all the residents are in support of removing the tree.
- 9) If the TPO is confirmed the council will not be responsible for the tree nor contribute to the maintenance of the tree

- 10) In Mid Devon the majority of our trees now in developed areas are Oak trees, typically hedgerow Oaks, such as this, which predate the developments. They contribute significantly to our Green Infrastructure; however they are more successfully retained in the longer run when they are located on Green Open Space within the Planning Process.
- 11) Trees will continue to grow, particularly following pruning. This tree has the potential to get larger still.
- 12) Ideally maintenance of trees is kept to a minimum, crown reduction works may be considered to maintain a particular size of canopy or to address a defect. General removal of deadwood may also be regarded as maintenance. However it may be that no maintenance of the tree has been required until now, when residents feel the tree has got too big.
- 13) While some residents may feel that the tree is an unsuitable size for the location others may not. This typically relates to who is living closest to the tree. Currently MDDC Tree Officer does not feel that the tree is overbearing to any residents but this is a subjective viewpoint.
- 14) It is likely that only the residents who wanted to remove the tree would be prepared to pay for it.
- 15) The council will not pay for any maintenance works
- 16) The fact that the tree has no definite owner complicates the situation significantly. At this point MDDC Tree Officer does not know that there is any way of resolving this issue.
- 17) The tree may be higher than the houses, this would be typical for the majority of mature trees.
- 18) Future responsibilities for the tree may remain unclear.
- 19) There does seem to be a pattern of more extreme winds and storms, possibly due to climate change. If the tree is in good health it should be able to resist storms.
- 20) While it is believed that everything was done to communicate the felling of the tree within the community, there were strong objections which came to light when the tree was due to be removed.
- 21) It is agreed the amenity value of the tree is not significant in the wider landscape but it does have value and can be seen from several vantage points. The retention of the tree was considered desirable during the planning process.

SUMMARY:

This mature, healthy Oak tree has no clear owner and therefore the responsibility for it lies with no one in particular.

The residents discussed the matter and worked together to arrange the felling of the tree. It then became apparent that there were several objections to the tree being removed.

While the tree does not have significant amenity value, it was considered worthy of retention and incorporated into the design and layout of the development where it now stands. It fell slightly short of the amenity rating required for making a TPO but this is a guide only and having taken into account additional values such as biodiversity, screening and softening of the development, MDDC Tree Officer decided to make the Tree Preservation Order as the tree surgeon was due to return to site to fell the tree and it was requested that MDDC placed a TPO on the tree so the matter could be fully discussed.

The Tree Officer has reviewed the amenity value of the tree and has taken into account its biodiversity, screening and development softening values. The Tree Officer has concluded that the Tree Preservation Order is warranted in this case and should be confirmed.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.