

Tree Preservation Order: 18/00004/TPO

Grid Ref: 301700 : 106580

Location: Hawthorn Close, Mead Close, Clover Drive Gardens
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: Objections and support received 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. 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

REPRESENTATIONS:

The following representations have been received, the comments have been summarised as follows

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1x letter of support from 4 persons (Dienes), 2 further letters of support:

- 1) The tree positively 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.
- 4) The tree is enjoyed by hundreds of residents.
- 5) The tree has a long life expectancy
- 6) Screening and privacy is provided by the tree

7) Will reduce the risk of flooding

4 letters of objection have been received:

- 1) No mention of the 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 the garden shed- health and safety issue
- 7) Concern of whole tree failure
- 8) Residents were prepared to work together to pay for 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

MDDC Tree Officer response to letters of support for the TPO:

- 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) The original plans for the development of the area show the location of the hedgerow and two trees in this area. The tree was 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. The tree provides screening between properties and softens the development.
- 4) The tree is visible throughout the surrounding housing development and is likely to be viewed and enjoyed by a number of residents and visitors. The tree could be viewed as a landmark within the development that would assist with wayfinding.
- 5) The tree has recovered well from the initial development and is healthy and vigorous. It is likely to have a good life expectancy in this location of up to 100 years, although it will probably require some maintenance due to the proximity of gardens and property.
- 6) The tree does provide some screening and privacy from the properties by reducing the sense of being 'overlooked' between the immediate dwellings.

7) This particular tree is unlikely to contribute to the overall reduction in flooding.

MDDC Tree Officer response to objections:

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, as part of usual maintenance. 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 some areas of 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 the Tree Preservation Order is confirmed, 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 arboricultural 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 the 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. In this scenario the Tree Preservation Order is served on the actual tree with all interested parties notified.

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.

MATERIAL CONSIDERATIONS AND OTHER OBSERVATIONS

This Tree Preservation Order applies to a mature Oak tree situated on the garden boundary of several properties. The tree is in seemingly good health with a healthy crown of good vigour. It was not possible to inspect the base of the tree but no obvious structural defects were visible from those parts of the tree that could be seen. The tree has been pruned in the past, most likely to control its crown size in this location where people feel that the tree has encroached over gardens.

The tree is visible in the wider landscape from several viewpoints as it is substantially taller than the surrounding residential development. It softens the development and breaks up the gardens to provide some screening for the residents in this location.

When looking at aerial photographs it is clear that the tree, which predates the housing development by decades, has been located to be retained at the bottom of several gardens, this may have been a consideration at the design stage of the development. The Planning Permission from 1992 does not show the tree within any of the dwelling plots and there is no

known owner of the tree. Land Registry plans do not show this tree in any particular property.

The Oak was originally in a hedgebank. In recent history a neighbouring Oak tree was felled as it was totally dead, this is now the only remaining Oak tree in this area.

The amenity value of the tree was assessed and scored 15. This means that it is worthy of consideration by Tree Preservation Order, using the TEMPO method of assessment. MDDC Tree Officer was contacted by an arborist to carry out a TPO check on the tree. It was confirmed that the tree did not have a Tree Preservation Order on it. MDDC Tree Officer was familiar with the tree and had a discussion with the arborist regarding possible alternatives. Residents had united to pay for the removal of the tree and the arborist was under the impression that all of the residents unanimously wanted the tree to be removed.

MDDC Tree Officer inspected the tree and carried out an amenity evaluation. Although the tree scored fairly low it would have been ideal to retain it but as the residents were in agreement that they wanted the tree to be felled a TPO was not made at that time.

When the appointed arborist arrived on site to remove the tree he was stopped and the police were called as there were nesting birds in the tree. This triggered several residents to contact the council requesting immediate protection for the tree. MDDC Tree Officer contacted Ward Members in Cullompton to explain the situation. The MDDC Tree Officer had further contact from the arborist to say he was returning to the site to fell the tree in the next week or two. The MDDC tree officer made the decision to put the Tree Preservation Order on the tree due to there being time constraints to negotiating over works and the immediate threat to the tree.

MDDC Tree Officer considers that this tree is worthy of protection by the Tree Preservation Order. The tree adds benefits to the immediate and wider landscape. Other positive attributes are the additional biodiversity and screening that it offers to the area. In many ways the layout of the dwellings, in relation to the tree have minimised conflict between the tree and residential properties. The tree is not in significant conflict with any of the dwellings, although there may be some with the garden areas of the property, causing some shading and minor disruption due to the root growth.

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.

The trees amenity value is significant enough to warrant protection by Tree Preservation Order, it was considered worthy of retention when the existing houses were built and was incorporated into the design and layout of the development where it now stands.

MDDC Tree Officer recommends that the Tree Preservation Order 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.