

**PLANNING COMMITTEE AGENDA - 1st February 2023**

**Applications of a non-delegated nature**

<b><u>Item No.</u></b>	<b>Description</b>
01.	22/02321/TPO - Application to fell one Common Beech tree (T001) protected by Tree Preservation Order 96/00015/TPO close to ground level at All Saints Church, Fore Street, Culmstock.

**RECOMMENDATION**  
Grant consent.

Application No. 22/02321/TPO

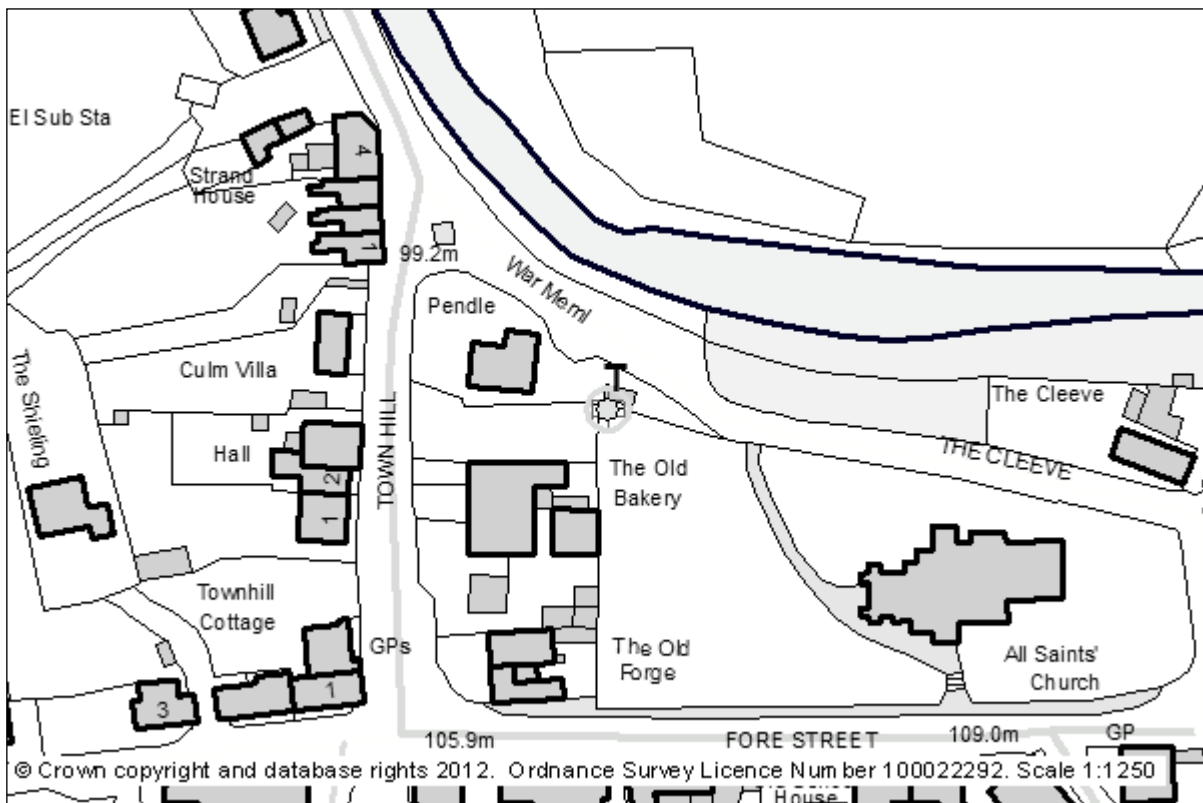
Grid Ref: 310248 : 113535

Applicant: Mr Tim Jarratt

Location: All Saints Church  
Fore Street  
Culmstock  
Devon

Proposal: Application to fell one Common Beech tree (T001) protected by Tree Preservation Order 96/00015/TPO close to ground level

Date Valid: 6th December 2022



**APPLICATION NO: 22/02321/TPO**

**Site Visit: Yes    Date of Site Visit: 15<sup>th</sup> December 2022**

**REASON FOR REFERRAL TO COMMITTEE**

This application is required to be considered by the Planning Committee, in line with the Council's adopted Scheme of Delegation, as Mid Devon District Council is the landowner, and the application is submitted by the Council's Tree Officer.

**RECOMMENDATION**

Grant consent

**PROPOSED DEVELOPMENT**

Application to fell one Common Beech tree (T001) protected by Tree Preservation Order 96/00015/TPO close to ground level.

This application relates to a Common Beech tree (*Fagus sylvatica*), which is subject to a Tree Preservation Order (TPO). It is located in the north west corner of the churchyard of All Saints Church, Culmstock. The tree is sited close to an adjoining residential properties and has been identified as having a high volume of the fruiting body of the decay pathogen *Meripilus giganteus* at the base of the tree, on the western, northern and eastern sides, within 2 metres of the stem. As a result of this, structural roots have been compromised, meaning that they now offer little in terms of physiological functionality, and will degrade further in the long-term. This poses a risk to neighbouring residents and properties. It is therefore proposed to sectional dismantle and fell.

**APPLICANT'S SUPPORTING INFORMATION**

Application form, site location plan and tree survey report.

**RELEVANT PLANNING HISTORY**

95/00382/CAT - WD date 13th April 1995

Consent to fell a Holly tree, multi stemmed Ash and Cherry Laurel trees growing on or close to the churchyard wall, which is situated within a Conservation Area

96/01633/CAT - REFUSE date 18th December 1996

Consent to raise head and reduce branches of Copper Beech situated in the Conservation Area

**DEVELOPMENT PLAN POLICIES**

None applicable to this development

National Planning Practice Guidance - *Tree Preservation Orders and trees in conservation areas*

## **CONSULTATIONS**

### **SILVERTON COUNCIL**

Support the application

## **REPRESENTATIONS**

This planning application has been advertised by means of a site notice, neighbour notification letters and by advertising in a local newspaper in accordance with the legal requirements for publicity on planning applications, and the Council's Adopted Statement of Community Involvement (October 2016).

No comments have been received.

## **MATERIAL CONSIDERATIONS AND OBSERVATIONS**

The application is made to a Common Beech tree protected by Tree Preservation Order (TPO) 96/00015/TPO, located in the north west corner of the churchyard of All Saints Church, Culmstock. The works would comprise sectional dismantling and felling the tree close to ground level.

When considering an application relating to works to trees protected by a TPO, the Planning Practice Guidance outlines that the Local Planning Authority may grant consent unconditionally; grant consent subject to such conditions as it thinks fit; or refuse consent. The authority must decide the application before it, so it should not issue a decision which substantively alters the work applied for. The authority could, however, grant consent for less work than that applied for. The authority should make absolutely clear in its decision notice what is being authorised. This is particularly important where the authority grants consent for some of the operations in an application and refuses consent for others.

In assessing this application, it is important to consider the amenity value of the tree. In this case, it is a prominently located mature tree. The tree does however suffer from a high volume of the fruiting body of the decay pathogen *Meripilus giganteus*. Root excavations have identified dead and compromised structural roots, which are visible across the northern quadrant, between the tree base and boundary wall. Due to the proximity to neighbouring residential properties, it is proposed to fell the tree.

The tree has been assessed as being potentially dangerous and a risk to adjoining properties as a result of its height, and structural deficiencies. In cases such as this, it is usually necessary to fell the tree, fence it off or reduce it. In this case felling is considered to be the most appropriate course of action.

It is concluded that the proposals have been appropriately justified, and are considered necessary to prevent damage to local properties. It is therefore recommended that consent is granted for the proposed works to fell this tree. It is however appropriate to condition the planting of a replacement tree, with a Common or Copper Beech considered to be the most suitable replacement. A condition is proposed to secure this replacement planting.

## **REASON FOR GRANT OF CONSENT**

The proposal to fell one Common Beech tree (T001) protected by Tree Preservation Order 96/00015/TPO is considered acceptable and viewed as prudent management, and should be subject to replacement tree planting to be secured by condition.

## **CONDITIONS**

1. The works hereby permitted shall be carried out within two years of the date of this consent.
2. All works shall be carried out in accordance with BS3998:2010 Tree Work Recommendations and/or European Pruning Guide (AA Guidance Note. 5) by an appropriate experienced and qualified tree surgeon.
3. The tree(s) that is to be removed shall be replaced by Common or copper beech, heavy standard (10/12) in accordance with BS8545:2014 Trees: from independence in the landscape – Recommendations. The tree shall be planted within 10m of the felled tree, or other such species and location as may be agreed in writing with the Local Planning Authority. The replacement tree should be planted in the next growing season following the felling of the tree and in accordance with the above specification should they be damaged, uprooted, destroyed or die.

## **REASON FOR CONDITIONS**

1. To ensure the works carried out remain appropriate to the conditions of the tree and in the interests of visual amenity.
2. To ensure the works are carried out in accordance with best Arboricultural practice.
3. In the interests of replacing the amenity lost by the removal of the tree.

## **INFORMATIVES**

1. **WILDLIFE AND THE LAW.** The protection afforded to wildlife under UK and EU legislation is irrespective of the planning system and any activity undertaken on the tree(s) must comply with the appropriate wildlife legislation.

**BREEDING BIRDS.** Nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended) and if discovered must not be disturbed. If works are to be carried out during the breeding season (from February to August, possibly later) then the tree(s) should be checked for nesting birds before work begins.

**BATS.** The applicant and contractors must be aware that all bats are fully protected by law under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Natural Habitats and Species (Amendment) Regulations 2012, also known as the Habitat Regulations. It is an offence to intentionally or recklessly damage, destroy or obstruct access to structures or places of shelter or protection used by bats, or to disturb bats whilst they are using these places.

Trees with features such as rot holes, split branches or gaps behind loose bark, may be used as roost sites for bats. Should a bat or bats be encountered while work is being carried out on the tree(s), work must cease immediately and advice must be obtained from the Governments

advisers on wildlife, Natural England (Tel. 0845 1300 228). Bats should preferably not be handled (and not unless with gloves) but should be left in situ, gently covered, until advice is obtained.

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between different people when carrying out their activities. This is called the Public Sector Equality Duty or "PSED". No persons that could be affected by the development have been identified as sharing any protected characteristic.

The Human Rights Act 1998 came into force on 2<sup>nd</sup> 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.

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.