

APPENDIX THREE

TREE PRESERVATION ORDERS COMMITTEE – 9TH JUNE 2008

THE BOROUGH OF DUDLEY (15 SANDHURST ROAD, HALESOWEN) (TPO/0015/WOR) TREE PRESERVATION ORDER 2007

The Borough of Dudley (15 Sandhurst Road, Wordsley) (TPO/0015/WOR) Tree Preservation Order 2007 was served on the persons known to be affected on the 8th August 2007. The order was served as a precautionary measure following the pruning of the tree by the residents at a neighbouring property.

The preservation order covers a mature oak tree that is situated in the front garden of 15 Sandhurst Road. The property is located approximately on third of the way down Sandhurst Road from the junction with Camberley Road. The tree is prominent in the street scene and is considered to provide a high amount of amenity to the surrounding area.

Following the service of the order objections were received the owners of 13 & 76 Sandhurst Road, and also another local resident. However the local resident requested to remain anonymous, whilst allowing their objections to be considered. As such a copy of their letter has not been included with the appendices, although their objections are considered below.

As the objections cover a number of similar points, rather than responding to each individual objection, where necessary each separate objection topic has been considered. The objections are:

1. The tree is too big and out of scale with the street scene. The tree is inappropriate for a residential area.
2. The tree has no beauty and adds nothing to the street scene. It is an eyesore.
3. The past pruning to the tree adds has made the tree more of an eyesore.
4. The tree obstructs light from the properties.
5. The tree overhangs / obstructs the highway.
6. There are concerns over the safety of the tree, in relation to its surroundings.
7. The tree drops debris and sticky sap that can damage cars parked underneath.
8. The leaf drop in the autumn causes neighbouring properties significant work.
9. A TPO will allow the tree owner to claim that they are unable to carry out any tree works.
10. A TPO will delay any urgent works that are required in the future.
11. Neighbours will be responsible for the cost of any future works, which is unfair.
12. The neighbours will have to bear the cost of any future TPO applications.

13. The tree should not be protected until it has been pruned back.
14. The tree could cause damage to services / utilities in the road way.

Responses

After consideration the following responses have been made to the objections.

1. The tree is too big and out of scale with the street scene. The tree is inappropriate for a residential area.

The tree is a relatively large, mature specimen that is located in close proximity to the properties on its northern side. However it is considered that as the tree forms a focal point in the street it is not overly inappropriate for its setting.

2. The tree has no beauty and adds nothing to the street scene. It is an eyesore.

The question of aesthetic value is a subjective one and not easily argued. It is accepted that with some appropriate pruning of the crown (crown lifting, thinning and cleaning); the tree's appearance could be improved. However its current state is considered to be far from an eyesore.

3. The past pruning to the tree adds has made the tree more of an eyesore.

It is agreed that the pruning that was carried out just prior to the service of the TPO did little for the overall appearance of the tree, but as is stated above it is considered that the tree still provides a positive contribution to the visual amenity of the surroundings.

4. The tree obstructs light from the properties.

This objection was received from a resident to the south of the tree. As such the tree will not obstruct any direct sunlight from the objector's property. It may obstruct some diffuse daylight, although this is not considered sufficient to prevent the confirmation of the TPO.

5. The tree overhangs / obstructs the highway.

A substantial portion of the crown on the southern side of the tree, does overhang the highway. This has been inspected on behalf of the highways department by a tree inspector, and is considered to be in line with the appropriate regulations.

Regardless of the TPO the owners of the property will have a statutory obligation to ensure that the tree does not obstruct the highway within limits set out in the Highways Act 1980.

6. There are concerns over the safety of the tree, in relation to its surroundings.

During the Tree Protection Officers visit to assess the tree an amount of minor deadwood was observed throughout the crown. It would be advisable for this to be addressed. However no significant defects were observed that should call the trees safety into question.

Regardless of the condition of the tree at the time of the service of the order the owners of the tree have a common law duty of care to ensure that the tree is maintained in a safe condition. This duty of care applies regardless of whether the tree is the subject of a Tree Preservation Order.

7. The tree drops debris and sticky sap that can damage cars parked underneath.

It is accepted that the tree does drop sap and other debris onto what ever is situate directly underneath the crown of the tree. However this is considered to be an acceptable problem, especially when viewed in light of the numerous benefits that trees in urban areas provide.

8. The leaf drop in the autumn causes neighbouring properties significant work.

As above the increased work associated with cleaning up leaves is considered an acceptable problem associated with tree in urban areas.

9. A TPO will allow the tree owner to claim that they are unable to carry out any tree works.

Tree Preservation Orders do not prevent the appropriate maintenance of trees. Anyone, not just the tree owners, who wish to carry out works to a protected tree, can make an application to the council to obtain the relevant permission. If the works that are applied for are justified and appropriate they will generally be approved.

10. A TPO will delay any urgent works that are required in the future.

There are a number of exemptions within the TPO that allow for works to dead, dying or dangerous trees, or trees that are causing statutory nuisances to be worked upon without having to go through the 8 week application process.

Where works are for the purpose of general maintenance then the 8 week application period is not considered to be an excessive delay.

11. Neighbours will be responsible for the cost of any future works, which is unfair.

The service of a TPO on the tree does not alter the responsibility of the tree. Even without a TPO on the tree there would not have been an obligation on the tree owner to carry out the works on behalf of their neighbours.

One difference that the TPO will make is that the neighbouring properties will need to get TPO permission prior to exercising the common law right to remove / prune the overhanging branches. This could lead to the approval for works of a lesser nature than the neighbours want, and therefore could lead to an increased maintenance cost as the works need to be repeated on a more frequent basis.

12. The neighbours will have to bear the cost of any future TPO applications.

As there is no cost for the making of a Tree Preservation Order application, and no cost is foreseeable. As such this objection is not considered sufficient for the no confirmation of the order.

13. The tree should not be protected until it has been pruned back.

With a view to the works that were carried out just prior to the service of the preservation order it is considered that if the tree was allowed to be pruned to the neighbours' satisfaction prior to the permanent protection of the tree, the amenity value of the tree could be vulnerable. As such the confirmation of the order is considered appropriate.

14. The tree could cause damage to services / utilities in the road way.

As the tree has already reached the mature stage of its life, it is unlikely that there will be any expansion in its root system. As such the tree is unlikely to cause any further damage to the highway.

However if any further damage were caused then this could be a sufficient reason for major tree works.

After considering all of the objections put forward, the tree is still considered to be an asset to the amenity of the area, and as such it is recommended that the TPO is confirmed without modification.

Members need to consider whether the objections raised are sufficient to prevent the confirmation of the preservation order.

RECOMMENDATION

It is recommended that the Tree Preservation Order is confirmed without modification.