

Planning Committee:

Item Number: 15

Application No: TPO 549

Town/Parish Council: Warwick
Case Officer: Rajinder Lalli

Registration Date:
Expiry Date:

Myton Hospice, Myton Lane, Warwick, CV34 6PX
Confirmation of Provisional Tree Preservation Order relating to an oak tree

This Tree Preservation Order (TPO) is being presented to Committee because objections have been received to it being confirmed

RECOMMENDATION

Planning Committee is recommended to authorise officers to confirm TPO 549 without modification.

BACKGROUND

The Council's Planning Enforcement Team received an email on 19 April concerning the apparent desire of one of Myton Hospice's neighbours to fund the felling of a mature oak tree within the Hospice's grounds because it was interfering with the performance of the solar panels installed at the neighbour's property.

The Council's Arboricultural Consultant visited the Hospice on 23 April to assess the tree and took the opportunity to discuss the proposed works with the site manager. Following the assessment a TPO was made and served on 27 April.

ASSESSMENT

The mature oak tree, sited in a gravel bed at the end of a line of car parking spaces, was of good form with few defects in the canopy and was likely to have a retention span well in excess of 40 years. Due to its scale and mass the tree was clearly visible to the occupiers of and visitors to the Hospice, as well as the staff, and from many of the neighbouring domestic properties, including those of Myton Lane and Bennett Drive.

The tree had significant public amenity and helps to soften the environment of the Hospice by providing a backdrop to some of the brick buildings: the tree is an attractive feature in its own right and as part of the overall landscape of the Hospice and its setting.

The tree carried pruning wounds on the main stem to around 2.5 m where branches had been removed to lift the tree's crown to provide headroom for passing and parking vehicles. The stem seemed sound with no decay pockets or cavities evident. The canopy appeared to be a good, regular fan-shaped form with an even radial spread when viewed from the Hospice. There was little dead wood evident in the crown and no indications of fungal fruiting bodies on the root buttresses, on the main stem or on the first order limbs.

The tree was deemed to be apparently healthy and of good vigour.

The Council's Arboricultural Consultant assessed the tree for its TPO quality using the nationally recognised TEMPO method of assessment. The tree scored 21; the TEMPO guidance is that where the score is 16 or more the making of a TPO is merited (if there are no other mitigating circumstances).

In summary the Council considered it expedient to make a provisional TPO under section 198 of the Town and Country Planning Act.

OBJECTION

The Council has received letters of objection to the making of the Order from two properties to the north, 17 and 19 Bennett Drive. In summary the objections are:-

17 Bennett Drive

1. the canopy of the tree is encroaching toward the property,
2. the tree occasionally casts dead branches, some of which fall into their garden
3. the tree is tall
4. the management of the tree represents a cost to the Hospice, if the tree were not there the Hospice would have more funds to support their work
5. the tree is on private land and so has no public amenity

19 Bennett Drive

1. an assumption that the expansion of the tree's roots will have a negative impact upon the foundations of the property
2. pruning and thinning the canopy will not have any positive benefit upon light levels
3. the tree's height throws their property into shade after 2.00 pm daily
4. the shade the tree casts prevents their solar panels from working at full capacity
5. a mistaken understanding of cost associated with the discharge of their duty of care by the Hospice
6. the management of the tree represents a cost to the Hospice, if the tree were not there the Hospice would have more funds to support their work
7. the description of the tree in the TPO is flawed on a number of grounds, the tree is not "sited in a gravel bed", is not "of good form", is not "clearly viable to the occupiers and visitors to the Hospice", does not provide "significant public amenity", and finally nor is it "an attractive feature in the overall context of the Hospice".

In mitigation, the conclusion of this letter of objection refers to a willingness to fund the felling of the oak and its subsequent replacement with a hornbeam, and "potentially the crafting of the oak into a piece of furniture that all residents and visitors to the Hospice can enjoy, at a difficult time in their lives."

KEY ISSUES

The Council did not consider that the proposal to fell and replace the apparently healthy mature oak tree by a neighbour was appropriate as it would have a

significant negative impact on the environment, and so the enjoyment, of the grounds of the Hospice.

The Council felt that the tree was of sufficient amenity importance to justify a TPO, and that the public benefit afforded by the tree outweighed any private inconvenience experienced by a very small number of individuals because of the tree.

In response to the objections that were raised:-

17 Bennett Drive

1. the encroachment of the tree's canopy toward the neighbouring properties can be managed by a careful and sensitive pruning regime and does not require the tree to be felled
2. all trees change with the passing seasons and they will bear pollen, petals, fruit, seed, leaves or needles which will simply drop, uncontrolled, to the ground or be carried freely on the wind, and dead wood will form in their canopies and may well fall to the ground, particularly from a mature tree
3. without doubt the tree is tall, but that is a characteristic of an oak tree as it seeks to stand tall as the locally dominant vegetation
4. there is a cost associated with managing the tree population at the Hospice but the value that the mature trees provide far outweighs the cost of their management
5. the location of the tree, on private land, does not exclude it from providing a public benefit

Overall, the Council was not persuaded by these objections and felt that they should be dismissed.

19 Bennett Drive

1. the encroachment of the tree's roots toward the property cannot be assumed but their presence/absence could be ascertained by careful hand digging of trial pits if that were to be required
2. it is accepted that any pruning regime of a normally vigorous and healthy tree will only provide a short-term benefit as the tree will seek to replace the lost leaf area by putting out new growth
3. the tree pre-dates the property and because of its maturity and relationship with the dwelling the shade it cast would have been predictable when the house was bought
4. the performance of the solar panels was always going to be sub-optimal because of the presence of the tree. The loss of a significant public amenity, particularly for a sensitive population, for the personal gain of a very small number of people cannot be countenanced
5. there is a cost associated with managing the tree population at the Hospice but the value that the mature trees provide far outweighs the cost of their management
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7. to debate about the semantics of the description does not seem to provide reasonable grounds to argue against the validity of the Order, particularly as the objector's comments do appear to be contradictory on occasion.

For example in response to "sited in a gravel bed" the objector says 'these are in fact car parking spaces on compacted gravel', in response to "the tree is clearly visible" the objector says 'the view from the neighbouring properties is only visible to a limited number, and then only by height as it appears over roofs'

Overall, the Council was not persuaded by these objections and felt that they should be dismissed.

The effect of the TPO is to allow the Council a measure of control over authorised tree work, not to thwart appropriate work. It will not prevent reasonable work, or the removal of the oak tree if evidence is presented that demonstrates, beyond reasonable doubt, that the tree represents a significant risk to persons or property. It will also enable the Council to require the planting of a replacement tree that will continue to be protected by TPO and which will make a positive contribution to the local amenity.

SUMMARY/CONCLUSION

It is not considered that the issues raised in two letters of objection to the TPO were sufficient to outweigh the significant contribution which the apparently healthy and vigorous mature oak tree makes to the public amenity in the immediate vicinity and the wider surrounding area and therefore it is expedient to confirm this TPO.