

Trees Team
Southampton City Council
Civic Centre
Southampton
Hampshire
SO14 7LY

Your Ref: T2-676
Our Ref: TPOobj-KC/WORDSWORTH/001

Contact: Kevin Cloud
Telephone: 01489 896655

Date 24th November 2017

Without prejudice

Dear Mr Sanders

**Formal Objection to the serving of statutory tree protection cited as -
*The Southampton (Wordsworth House, 85 Anglesea Road) Tree Preservation Order
2017***

I have been instructed by my client, Wordsworth Management Company, to visit the land and assess the trees included in the above Tree Preservation Order (TPO); comment on the status, condition and suitability of the trees contained therein and submit this letter as formal objection to the TPO.

I request that the Council does not confirm the TPO for the reasons stated within this correspondence.

Qualifications and experience

I am an Arboricultural Association Registered Consultant, Fellow of the Arboricultural Association and associate of the Institute of Chartered Foresters. I am a former local planning authority (LPA) arboricultural officer and have been previously engaged by the Wordsworth Management Company to carry out a risk assessment of the trees at the above location.

Site visit

I attended the site on the afternoon of 7th September 2017 and carried out a survey of all trees on site as part of a tree risk management survey and reporting exercise. At the time of my visit the weather was clear and dry with good visibility.

Background

Following my site visit I produced a tree risk report for the client and submitted a conservation area notification for those tree works which required such. One tree, a black locust was in such condition that it was considered urgent to remove and this was undertaken via exception under paragraph 14(1)(c) of the *Town and Country Planning (Tree Preservation) (England) Regulations 2012*. During attendance to remove the black locust the tree surgeon made the decision that T2 (cherry) had further declined to a point that it too met the criteria for exception under paragraph 14(1)(a) of the *Town and Country Planning (Tree Preservation) (England) Regulations 2012*. Thus, T2 was removed at the same time.

The conservation area notification was submitted to the local planning authority (LPA) via the planning portal on the 29th September 2017. There is a six-week period for such notifications meaning that, if the local planning authority (LPA) decided to do nothing, tree works could commence on 10th November 2017.



Relevant documentation

In making this objection I have referred to and/or cite the following documents, guidance, standards and other relevant documentation:

- The TPO – *The Southampton (Wordsworth House, 85 Anglesea Road) Tree Preservation Order 2017* [hereafter referred to as “the TPO”];
- *Tree Preservation Orders: a guide to the law and good practice* (coupled with associated addendum May 2009) now cited as *Planning Practice Guidance* (document is now circulated online via the Planning Portal).
- *Tree Evaluation Method for Preservation Orders (TEMPO)* [hereafter referred to as TEMPO];
- *The Law of trees, forests and hedges* (Mynors, 2011);
- *British Standard 5837:2012 Trees in relation to design, demolition and construction*;
- *British Standard 3998:2010 Tree work – Recommendations*;

These documents provide guidance on statute or form nationally recognised industry protocols; thus, I consider them relevant best practice in this instance.

Regulation 6

This letter sets out the reasons for the formal objection in accordance with Regulation 6 of the *Town and Country (Tree Preservation) (England) Regulations 2012*. The closing date stated by the local planning authority, by which time objections should be made, is the 27th November 2017.

Regulation 7

I draw the authority’s attention to Regulation 7 paragraph 1 of the *Town and Country (Tree Preservation) (England) Regulations 2012* which states that:

“the authority shall not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it and not withdrawn”.

In addition, I note the comment in the attached information which states that;

“All valid objections or representations are carefully considered before a decision on whether to confirm the order is made”.

I would expect the matter to be heard at the appropriate committee with an opportunity for representations to be made by my client or appointed agent(s). I would be grateful for confirmation of the process at your earliest convenience.

Discussion with local planning authority

Planning Practice Guidance states that:

“Discussion between the LPA and any person who makes an objection is encouraged. Discussion can lead to a greater mutual understanding of each side’s point of view. This in turn can help clarify the main issues which will have to be considered by the LPA before they decide whether to confirm the TPO. Alternatively, discussions can lead to the withdrawal of objections”.

I was contacted by the tree officer on the 3rd November 2017. It appeared from our conversation that the matter was a *fait accompli*. Thus, I felt a site visit or further discussion with the tree officer would not be a valid use of my time or client expense.

Summary of reasons for objection

1. Expediency - the TPO is unwarranted given the trees are in a conservation area;
2. Expediency – the trees are under good arboricultural management as may be proven by points 3 and 4;

3. Expediency – the council has protected trees to which it raises no objection to the works proposed in the conservation area notification;
4. Expediency – the works proposed fall within the acceptable criteria of *British Standard 3998:2010 Tree work – Recommendations*;
5. Expediency – the works are proposed to ensure long term retention of trees close to a busy road and traffic light junction;

1. Expediency

Reason for objection – The TPO is unwarranted given the trees are in a conservation area – the council’s tree team served the TPO well before the 6-week notification period without discussion. Discussion would have allowed the withdrawal of the notification to allow time for further discussion, clarification and amended tree works.

Planning Practice Guidance states that “A *Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the:*

- *cutting down*
- *topping*
- *lopping*
- *uprooting*
- *wilful damage*
- *wilful destruction*
-

of trees without the local planning authority’s written consent”.

In the same guidance from government it is made clear that “*Trees in a conservation area that are not protected by an Order are protected by the provisions in section 211 of the Town and Country Planning Act 1990*”.

To expand further section 211 of the *Town and Country Planning Act 1990* states that;

“Preservation of trees in conservation areas.

(1) Subject to the provisions of this section and section 212, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 198(3)(a) be prohibited by a tree preservation order shall be guilty of an offence”.

Therefore, it is clear that, in the absence of a notification to the local planning authority (LPA) of tree works, the trees are afforded one and the same protection.

As previously stated a conservation area notification was submitted to the local planning authority (LPA) via the planning portal on the 29th September 2017. There is a six-week period for such notifications meaning that, if the local planning authority (LPA) merely decided to do nothing, tree works could commence on 10th November 2017.

The date of the TPO is 30th October 2017. In my experience both as a consultant and previously as a local planning authority (LPA) arboricultural officer 10 days is sufficient time to engage with the originator of the notification and to discuss the concerns that the LPA may have. This then allows sufficient time to either clarify the reasons for the work or withdraw the notification if the works need to be amended or agreement cannot be reached in that time. Such a situation is common place as it allows for professional discussion and, most importantly, negates the need for the imposition of a TPO, at cost to the public purse, upon trees which have protection from their position in the conservation area.

Planning Practice Guidance states that “*Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO*”.

Only 2 out of 10 trees noted in the report were scheduled for removal. The two removed were done so under exception as noted above. Therefore, the trees would continue to be in place subject to pruning. Given that quantum of pruning appears to be the tree officers only concern I reamplify that it is common place for tree officer to contact arboricultural consultant and discuss the way forward, in advance of a TPO being placed on the trees, and I reiterate that I consider that 10 days is more than adequate time to seek such resolution or agreement rather than defer straight to TPO.

Therefore, I find the TPO was not expedient given that the trees already have protection from the conservation area status – to the same level as that of TPO – and ample time existed to discuss the matter fully. I consider that no person, if faced with the decision of withdraw the conservation area notification or forge on and receive a land charge on their property in the form of a TPO, would commit to the latter. As such, outside of the lack of expediency, I question internal procedure at the authority and the use of resources towards the heavy option of a TPO as opposed to the lighter touch of professional discussion.

2. Expediency

Reason for objection – The trees are under good arboricultural management.

Planning Practice Guidance also states that *"it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management"*.

Wordsworth Management Company have a duty of care in law under the Occupiers Liability Act. They are fully aware of this duty and that they are owners of trees which are within falling distance of dwellings, parking, public highway and a traffic light controlled junction.

They are also aware that their trees fall within a conservation area. For these reasons they engaged the services of an Arboricultural Association Registered Consultant to survey the trees and offer a risk assessment and recommendations on their trees.

Government guidance states that *"Local Planning Authorities (LPAs) should be able to explain to landowners why their trees or woodlands have been protected by a TPO. They are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way"*.

The *Tree Evaluation Method for Preservation Orders (TEMPO)* is an industry recognised tool for assessing trees in terms of their suitability for TPO.

TEMPO considers all of the relevant factors in the decision-making chain. In this connection it is helpful to revisit the wording of central government advice:

"Although a tree may merit protection on amenity grounds it may not be expedient to make it subject of a TPO".

TEMPO provides for the lowest possible score for expediency where the TPO is clearly "precautionary only". I consider that, given the position of the trees in the conservation area, the presence of an arboricultural report and with 2 weeks to run on the notification of intent to prune (not fell) the trees that the TPO can only be very much "precautionary only" and that dialogue between professionals could have avoided use of public funds on a TPO.

3. Expediency

Reason for objection – the council has protected trees to which it raises no objection to the works proposed in the conservation area notification.

I received an email from the local planning authority (LPA) tree officer (Will Taylor) on 3rd November 2017 in which he states that;

"I wanted to inform you that I had some objections to some of the proposed work, though not all, and because of this I have placed a TPO (Tree Preservation Order) on a total of five of the trees on site".

He continues that;

"T5 Cedar – *I thought the proposed proximity prune from the building was reasonable but have TPO'd because the tree is worthy of protection and it made sense to do whilst covering other trees on site".*

It appears then, that albeit the local planning authority (LPA) tree officer raises no objection to the work that it is somehow expedient to protect the tree with a TPO even though it is protected by the its location within the conservation area.

This is not the case. The law and guidance make clear that;

"It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area".

I refer to the Secretary of State's view that *"TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public".*

It appears then that the only result of the TPO on this tree is that a repetition of paperwork, time and administration will be incurred. The result being the same outcome – the tree remains and gets pruned. In my opinion this is a miss use of the legislation and the powers of the tree officer causing a greater level of unwarranted bureaucracy.

4. Expediency -

Reason for objection – the works proposed fall within the acceptable criteria of *British Standard 3998:2010 Tree work – Recommendations*.

In his email of 3rd November, the tree officer writes that;

"T6 and T7 Oaks, T8 London Plane and T9 Maple – *The reduction on these trees seemed unnecessary to me and a little excessive due to their good physiological and structural condition".*

I refer here to *British Standard 3998:2010 Tree work - Recommendations* which states that *"Well planned and properly executed pruning can reduce the probability of structural failure and so reduce risk to people and property, while sometimes prolonging a tree's safe life".*

During my survey I observed a number of aspects within the crowns of the trees which require remedial work. Some of this work is exempt from the need for notification, such as removal of dead wood or removal of dense ivy.

The decision to carry out tree works relates to a number of aspects. This includes the location of the tree and the target evaluation (what's beneath it). The impact upon the tree to which reference back to BS3998 will follow. But also, one has to consider the programming and efficacy of intervention. In this case I consider that the trees required some intervention in order to remove build-up of moderate (25-100mm diameter) and major (<100mm diameter) dead wood and to address the ivy which may or may not be masking further biomechanical defects.

Furthermore, I understand that my client has been approached by the highways authority to address interference of tree crowns with the traffic lights. As such intervention is required. I consider that, given the obvious need for traffic management and any delays to traffic flow that

may occur, it would be prudent to formatively prune the trees at that time in such a way as to prevent the need for further disruption and a larger extent of pruning at a later date.

The tree officer, in expressing his personal opinion, states that the work seems “unnecessary” and a “little excessive”.

On the first matter I refer again to government guidance which states that if “*the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work*”. Of course, this refers to an application to a TPO tree not a notification where I would consider that the matter of arboricultural need in the eyes of the tree officer should weigh much less.

On the matter of whether the pruning is “a little excessive”. To me the use of the word “little” should once again, at worse, flag up a need for a discussion and agreement NOT the serving of a land charge on my client’s property.

At this juncture I turn to *British Standard 3998:2010 Tree work – Recommendations*. The TPO and email from the tree officer do not reference this document in any way. By contrast it is referenced within my tree report.

Table B1, page 54, of BS3998:2010 indicates situations where pruning of trees is considered to be either;

“*** often appropriate”;
“** occasionally appropriate”;
“* done mainly for other reasons but of indirect value” or;
“x inappropriate”.

Within the table, under “*general pruning of the tree*”, crown reduction is given three stars (often appropriate) in respect of;

“*Maintain health and structural longevity by means of good structural integrity*”;
“*To protect people and property from tree failure*”.

Within the table, under “*pruning of selected branches or stems*”, “*formative pruning*” is given three stars (often appropriate) in respect of;

“*To protect people and property from tree failure*”;
“*To prevent interference between trees and infrastructure, in particular roads, paths, railways, waterways and signage*”.

I therefore conclude that pruning large mature trees in proximity to a busy road and traffic light junction fits well within these aspects; highlighted as “*often appropriate*” within the relevant industry standard (BS3998).

In respect of the quantum of pruning, I have reviewed the trees and balanced the reduction of crown extent to the road with the extent of pruning based upon guidance within BS3998.

British Standard 3998:2010 Tree work - Recommendations states that “*wherever practicable, pruning should be restricted to healthy, small-diameter parts of the tree, as this will minimize the size of the resultant wounds and provide the greatest opportunity for these to be occluded*”.

The standard continues that “*the number and size of cuts should generally be limited so that their total cross-sectional area does not exceed one-third of that of the stem, when measured at 1.5 m above ground level*”.

My assessment of the situation is that, in all cases, the length reduction of the crown would result in a prune wound diameter of no more than 50-75mm. The number of cuts required resulting in the works falling well within the criteria above.

In all cases, the trees would remain, subject to a reasonable degree of crown reduction, therefore impact to local amenity is slight.

By comparison, preventing the work at this stage will, in my opinion, create an issue as the trees age and extend further across the road whereupon either tree failure will be more likely to occur or large-scale pruning (accompanied by larger prune wounds likely to be outside the best practice criteria of BS3998) will be required.

As such I consider the reasoning behind the TPO flawed and its expediency not proven.

5. Expediency

Reason for objection - the works are proposed to ensure long term retention of trees close to a busy road and traffic light junction

Wordsworth House is bordered by the A35 Winchester Road to the north; Wordsworth Road to the east and Anglesea Road to the west. As such a significant amount of each tree extends over public highway and to a large extent the traffic light controlled junction of Anglesea and Winchester roads, including the traffic holding at any time awaiting light change.

Wordsworth House Management Company has a duty of care obligation under the Occupiers Liability Act to manage its trees so as to reduce risk of harm. It also has further obligation under the Highways Act to ensure clear and safe use of the adjacent roads.

The most helpful way for the local planning authority (LPA) to involve itself would be professional dialogue on the matter. Instead it chose to impose a TPO and lengthen the process by which the management company can discharge its duty with ultimately the same aim – retained trees subject to periodic pruning.

Conclusion

The serving of a TPO is a heavy handed and unnecessary action by the local planning authority (LPA). Simple dialogue between the tree officer and the arboricultural consultant could have seen the removal of the conservation area notification and a discussion on what works would be agreed. The serving of the TPO 2 weeks before the end of the conservation area deadline proves that more than sufficient time was available for the tree officer to do this.

The conservation area notification submitted detailed works to trees to retain them in a low risk state adjacent to a busy A road with traffic light junction under the trees. There was no intention to remove trees merely prune them – the work specified falls within the guidance of the industry standard *British Standard 3998:2010 Tree work - Recommendations*.

One of the trees has been made subject to TPO, in the words of the tree officer because although no objection to the works "it made sense to do whilst covering other trees on site". This is a misuse of the powers to make TPOs within the legislation and merely adds bureaucracy and spend of the public purse in a situation where no objection was found by the local planning authority (LPA) to the works suggested.

For the reasons detailed above, on behalf of my client, Wordsworth House Management Company, I formally object to the serving of the *Southampton (Wordsworth House, 85 Anglesea Road) Tree Preservation Order 2017*.

I respectfully request that Southampton City Council does not confirm the order and that it is allowed to lapse.

I trust the above information is sufficient for you to consider. Should any points require clarification then please contact me via email.

Yours sincerely



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