

PLANNING COMMITTEE

5th NOVEMBER 2013

REPORT OF THE TEMPORARY HEAD OF PLANNING

A.1 Provisional Tree Preservation Order - 13/00011/TPO

11 Blake Drive, Clacton on Sea, CO16 8ED

1.0 Purpose of this report

- 1.1 To determine whether the provisional Tree Preservation Order (TPO), made in respect of two Oaks on land within the curtilage of 11 Blake Drive, Clacton on Sea, should be confirmed, confirmed in a modified form or allowed to lapse.

2.0 Background

- 2.1 On 14 May 2013 an enquiry was received by the Council from a tree surgeon who wished to establish whether two Oaks situated at 11 Blake Drive were the subject of a TPO as the owner of the land was considering having them felled.
- 2.2 The Council's Tree and Landscape Officer advised the tree surgeon that they were not protected but was aware that they featured prominently in the street scene. The tree surgeon was also advised that an inspection would be carried out to determine whether or not they should be made the subjects of a TPO.

3.0 Site assessment and amenity value

- 3.1 On the 15 May 2013 a site visit was made to assess the health, condition and amenity value of the trees.
- 3.2 The trees appear to be remnants of a field boundary that were retained when the land was developed. They are situated in a narrow strip of land adjacent to the path to 11 Blake Drive and close to the garage.
- 3.3 They were found to be in good condition with no obvious structural or biological defects. The trees were found to be well formed with a dense healthy canopy. They are clearly visible from the surrounding public highway meaning that their amenity value is high.
- 3.4 Both trees met the criteria under which they are assessed to determine whether or not they merit protection by means of a TPO.
- 3.5 Therefore a new TPO was made to protect both Oak trees. The order took effect for a provisional period of 6 months commencing on 22 May 2013.

4.0 Representations/Objections

- 4.1 Following notification of the making of the Order to the owner of the property and adjacent properties, three letters of representation were received, two objections and one supporting the action taken by the Council.
- 4.2 The owners of 11 Blake Drive and 5 Blake Drive have lodged an objection to the provisional TPO and an anonymous correspondent has written in support of the

TPO. The representations must be fully considered to determine whether or not to confirm the Order in light of the objections.

4.3 In summary the objection from the owners of 11 Blake Drive are as follows:

1. *The owners had been advised in writing in 1997 that the trees were not covered by a Tree Preservation Order, were not situated in a conservation area and that works to them could be carried out without the consent of the Council.*
2. *They have received numerous complaints from neighbours concerning branches, leaves and acorns falling and covering the road and adjacent properties creating a potential hazard. The lower branches of T2 are threatening damage to the garage of 11 Blake Drive.*
3. *The separation distance between the trunk of T2 and the garage ranges from 660mm to 813mm and the lower branches are resting on the garage roof in several places.*
4. *The spread of the crown of the trees is such that debris falling from the trees accumulates in the gutters of the owners and their neighbours (no's 5 and 9) garages making it impossible to keep them clear.*
5. *The roots of T2 appear to be lifting the pathway running behind the garage and between the garage and T2. The pathway is showing sign of severe cracking and is raised by 76mm. There is no sign of damage to the garage at the present time.*
6. *The trunk of T2 has increased in girth over time restricting access to the house to such an extent that that household items cannot be moved along the path. This also affects anyone with a walking aid or wheelchair trying to gain access to the property. The Owner questions whether or not this meets the District Councils own guide to access.*
7. *The owner questions the amenity value of the trees and believes that they are too large for their location. The trees have been well maintained for 30 years however they are now causing an ever increasing range of problems and worry. The owner wishes the council to indemnify them against damage to 11 Blake Drive and surrounding properties and refer to paragraph 17 of Protected Trees – A Guide to Tree Preservation Order Procedures.*
8. *The house is on the market and prospective buyers have raised concerns about the trees – the owner would like urgent consideration given to their appeal as they believe that no works can be carried out to the tree.*
9. *The owner believes that this is the wrong tree for this position and that whilst, at the present time, it would still possible for the tree to be felled using traditional methods it will soon not be possible to fell the tree without damage to property and use of a boom crane.*

4.4 To address these objections:

1. The Council has the power to make a TPO at any time if a tree makes a positive contribution to the appearance of the area and this is particularly appropriate when trees are at risk of being removed.
2. The issue of the debris falling from the trees is not sufficient justification to fell a mature Oak tree. It would set a dangerous precedent if a tree with a considerable

future life expectancy were to be felled for such a reason. With regard to the branches touching the roof of the garage a site meeting was held with the owner of the 11 Blake Drive during which they were advised that branches touching, and likely to cause damage, to the roof of the garage could be removed without the need for a formal application to be made to the Council because of the imminent risk of damage to the garage.

3. The removal of branches touching the garage roof has been addressed in the previous paragraph.
4. The fact that debris falls and blocks the gutters is a problem that could be overcome by alterations to the guttering and whilst it is acknowledged that there is a degree of inconvenience caused by falling debris this issue is not sufficient justification to fell such an important tree.
5. There does appear to be some disruption to the surface of the pathway as described by the property owner however no information has been made available in respect of the method of construction of the path and again some relatively minor damage is not considered sufficient reason to fell the trees. If the owner believed that there was a real risk of damage to the garage then an application with supporting evidence could be made under the TPO.
6. It is a fact that the position of the T2 causes a narrowing of the pathway to about 660mm however there is currently sufficient space between the tree and the boundary fence to allow household items to be delivered to, or removed from, the dwelling. The issue relating to access for disabled persons is less easily resolved although at this stage it does not appear to be such a problem to justify the Council deciding not to confirm the TPO.
7. The trees have high visual amenity value making a positive contribution to the character and appearance, in part, because of their stature. It would not be unreasonable for periodic works to be carried out to the trees to control their size and growth potential. Any application to carry out such works would be looked upon favourably by the Council. With regard to the owners wish for the council to indemnify them against damage to 11 Blake Drive and surrounding properties the legislation relating to Tree Preservation Orders makes no provision for an indemnification agreement to be entered into: however, Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 makes provision for the payment of compensation if a person establishes that loss or damage has occurred as a result of a refusal of a consent, the grant of a consent subject to conditions or the refusal of any consent, agreement or approval required under such a condition. This would only apply to applications for consent to carry out works to the trees.
8. The fact that the property is on the market does not affect the process of making a decision whether or not to confirm the TPO. Concerns over the size of the tree could be addressed by future applications to carry out works to reduce its crown. Applications can be made at any time prior to the confirmation of the TPO.
9. The trees are large and impressive specimens that make a positive contribution to the appearance of the area. It is considered that the issues set out and addressed by are not sufficient to justify the removal of the trees or to persuade the Council not to confirm the TPO . The practicalities of carrying out works to the tree: be it pruning or felling are issues that are routinely dealt with by competent and qualified tree surgeons.

4.5 The objections from the owners of 5 Blake Drive can be summarised as follows:

1. *The owner has concerns about the leaves and acorns that fall from the tree and the hazard caused by them. One of the owners of 5 Blake Drive who suffers with arthritis slipped on an acorn, fell and injured her knee and back. If further accidents occur they will hold the owner and the Council responsible for allow the tree to grow and expand over their property.*
2. *They object to the Tree Preservation Order for health and safety reasons.*

4.6 To address these objections:

1. The problems caused by the leaves and acorns falling from the trees are not sufficient justification for the removal of the trees. As stated above it would set a dangerous precedent if a tree with high amenity value and a considerable life expectancy were to be felled for such a reason. The Council is not responsible for incidents that may occur as a result of debris, leaves or acorns that may fall from the tree. The production of acorns and falling leaves is an issue that will continue to arise seasonally across the district and cannot be addressed by felling trees to stop the production of leaves and acorns. Whilst in principle this could be dealt with by Common Law the courts consider problems associated with leaves and debris falling from trees to be 'part of normal life' and would be unlikely to issue an injunction to address this matter if it were to be put before them.
2. The owner of the trees is responsible for their management and maintenance and as they trees are in good condition there is no immediate danger posed by either tree.

4.7 The contents of the anonymous letter can be summarised as follows:

1. *The correspondent thanks the Council for not letting the trees be cut down. They state that the trees were there before the houses were built and that the trees are very old.*

5.0 Conclusions

- 5.1 There is a statutory duty on local planning authorities, set out in Part 8 of The Town and Country Planning Act 1990, in the interests of public amenity to make provision for the protection of trees.
- 5.2 The trees are mature, healthy specimens and have considerable amenity value to the locality. Their removal would have a significant detrimental impact on the local environment and its enjoyment by the public.
- 5.3 Following consideration of the representations made by the residents it is felt there is no substantive reason why the order should not be confirmed.

6.0 Recommendations

- 6.1 That Tree Preservation Order 13/11 is confirmed without modification.

Background Papers

None