

PROVISIONAL TREE PRESERVATION ORDER - TPO/18/09

Cedarwood, Moors Lane Great Bentley.

1.0 PURPOSE OF THE REPORT

To determine whether the provisional Tree Preservation Order (TPO), made in respect of 1 Oak tree at the above address should be confirmed or allowed to lapse.

2.0 BACKGROUND

As the result of Section 211 Notice served on the Council and giving 6 weeks prior notice of the landowner's intention to reduce and re-shape 2 Prunus and fell an Oak a site visit was made to consider whether the proposed works were acceptable or whether any of the trees should be made the subject of a tree preservation order.

3.0 SITE ASSESSMENT AND AMENITY VALUE

The primary purpose of the site visit made on 26 June 2017 was to carry out an assessment of the amenity value of the trees included in the Section 211 Notice.

The proposal to reduce and re-shape the two Prunus was considered acceptable and part of ongoing maintenance operations. The Oak is a large and visually prominent tree, in good health with high amenity value. The removal of the tree would have a significant adverse impact on the local environment and its enjoyment by the public.

It is important to retain trees that make a positive contribution to the character or the appearance of the area.

As the Section 211 Notice gave notice of the landowner's intention to fell the Oak a new TPO was made to give it formal legal protection.

On 27 June 2018 Tendring District Council made a new TPO that became effective on 2 July 2018 and afforded protection to 1 Oak tree.

Conservation Area consent was given for the works to the Prunus.

4.0 REPRESENTATIONS/OBJECTIONS

Following notification of the making of the TPO a letter of objection was received from the owner of Benetlea, Moors Close. Gt Bentley.

The issues raised in the letter of objection must be fully considered before a decision is made whether to confirm the TPO or to allow it to lapse.

An overview of the objection from the owner of Benetlea, Moors Close, Great Bentley is set out below and a copy of the letter of objection is attached as Appendix CPD1. (Photographs sent in with the letter are on the file).

The tree is causing damage to the garage, outbuilding, drive and patio. The damage has resulted in two house sales 'falling through'.

There is a potential damage to the house and the lack of a previous TPO has been raised as an issue.

The letter objection questions the visual amenity value of the tree and draws attention to inaccuracies in the TPO map and position of the tree.

To address the objections from the owner of Benetlea, Moors Close. Gt Bentley:-

The damage described by the property owner is self-evident; however the Section 211 Notice was not supported by any technical documentation to demonstrate that the tree was implicated as a cause of the damage.

It should be noted that the applicant is not required to submit such information with a Section 211 Notice however in its absence it is not possible for the Council to make an assessment of whether or not the damage described can be attributed to the subject tree.

Taking in account the fact that the Council has only 6 weeks to respond to Section 211 Notices there is unlikely to be sufficient time to obtain additional information from the applicant and to subsequently facilitate an analysis and assessment of any such information.

In situations such as this; when a tree is considered to have high visual amenity value and is at risk of being felled then a TPO is made to give formal legal protection. Nevertheless if the persons affected by the tree have evidence that the tree is implicated in the damage to the garage and outbuildings as well as other hard surfaced areas then an application can be made under the TPO supported by such evidence.

Any such application would be considered on its merits. If the Council were to refuse to grant consent for the felling of the tree and the applicant disagreed with the decision then an appeal can be made to the Planning Inspectorate.

In terms of the amenity value of the tree it is claimed that only the upper part of the tree are visible from The Green. It is accepted that the whole tree cannot be seen from a public place however its position and size means that parts of the tree can be seen above the rooftops of houses in Moors Close and through the gaps between the houses. It is considered that the tree has a positive softening effect on the character and appearance of the conservation area and therefore merits protection by means of a TPO. (Photographs of tree - appendices: CPD2, CPD3 and CPD4)

With regards to the accuracy of the baseline map and the position of the tree the information provided by the applicant is accepted as an accurate reflection of the position of the tree and its relationship with the affected structure. However for the purposes of the TPO the tree is plotted with sufficient accuracy for it to be clear which tree is covered by the TPO. It is noted and accepted that the tree is, at its closest, 1m from the outbuilding wall.

The comment regarding the earlier 'lack of a TPO' is noted however its position within the Great Bentley Conservation Area meant that no work to it could be carried out without the service of a Section 211 Notice – that has triggered the process described in this report.

5.0 CONCLUSIONS

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.

Following consideration of the representations made by the owner of the land adjacent to that on which the tree is situated; it is felt there is no substantive reason why the TPO should not be confirmed.

6.0 RECOMMENDATIONS

That Tree Preservation Order 18/09 is confirmed.