

# **PROVISIONAL TREE PRESERVATION ORDER - TPO/18/11**

**Dove Cottage, Colchester Road, Wix.**

**12.11.18**

## **1.0 PURPOSE OF THE REPORT**

To determine whether the provisional Tree Preservation Order (TPO), made in respect of 3 Oak trees at the above address should be confirmed, confirmed in a modified form or allowed to lapse.

## **2.0 BACKGROUND**

As the result of an internal consultation a site visit was carried out in order to assess the impact of *Planning Application 18/00857/OUT Land adjacent Dove Cottage, Colchester Road, Wix* on trees and other vegetation on the land.

## **3.0 SITE ASSESSMENT AND AMENITY VALUE**

The primary purpose of the site visit made on 12 July 2018 was to consider the impact of implementation of the development proposal set out in planning application 18/00857/OUT on trees and other vegetation on the land, to carry out an assessment of the amenity value of any trees that may be at risk of removal and to consider the impact of the development on the local landscape character.

As the development proposal is in outline form it is not possible to assess the actual impact of the proposal on the trees on the land. Nevertheless there are three Oaks of such size and quality that their removal 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 planning application threatened the removal and/or viability of the above trees a new TPO was made to give them formal legal protection.

On 20 July 2018 Tendring District Council made a new TPO that became effective on 25 July 2018 and afforded protection to 3 Oak trees.

On 26 July 2018 the Council issued a decision to refuse to grant planning permission for the development proposal. One of the grounds for refusal was that the supporting information submitted with the planning application did not demonstrate that the development proposal could be implemented without causing harm to the protected trees.

## **4.0 REPRESENTATIONS/OBJECTIONS**

Following notification of the making of the TPO a letter of objection was received from the agent representing the owner of Dove Cottage, Colchester Road, Wix.

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. Their comments are:

*On behalf of my clients, I must object to the order. You will be aware that my clients have been using the vehicular access on to Colchester Road for a period in excess of 20 years. Indeed, the Council's enforcement officer records the access in 2000. Throughout the period since, no attempt has been made by the Council to prohibit the use of this access.*

*The service of the notice will in due course prevent my clients lawful use of the access through their inability to remove the tree noted as T1. The purpose of a TPO should not inhibit the lawful rights of a landowner. By imposing the Order, it appears that the Council are attempting to remove such rights by inhibiting the proper use of the land. Should the Order not confirm T1, the objection will be removed.*

**To address the objections from the agent of the owner of Dove Cottage, Colchester Road, Wix:-**

It should be made clear that the purpose of the TPO is to protect the trees with high amenity value. It may be a consequence of the TPO that the protected trees may constrain the future use of such land but this is not the reason for making the TPO.

In this instance it is estimated that the T1 - Oak is in the region of 50 years old and that the use of the vehicular access for the previous 20 years has not been impeded by the position or size of the tree. It is not clear why the retention of the tree would restrict future use of the vehicular.

If the concerns of the agent acting on behalf of the owner of the land relate to the impact that low branches of the tree may have on taller vehicles gaining access to the land then an application could be made to trim lower branches of the tree. An application along these lines would be likely to be considered favourably as it would enable the tree to be retained and allow the continued use of the established access to the highway. NB for the purpose of this report the status of the vehicular access in planning terms is neither accepted nor challenged.

## **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.

The issue relating to vehicular access can be addressed by a future application under the 2012 Tree Regulations to carry out pruning works or as part of any planning permission that may be granted for the development of the land

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

## **6.0 RECOMMENDATIONS**

That Tree Preservation Order 18/11 is confirmed without modification.