

LOCATION: Veteran Beech Tree within 54 Church Road, on northern boundary, Bagshot
PROPOSAL TYPE: To protect 1 x Beech Tree by means of Tree Preservation Order
APPLICANT Officer: SMW Trees – Steve Woods on behalf of Property Purchaser Alastair Barnes

This report has been presented to Planning Applications Committee due to the Tree Preservation Order which has been served, receiving letters of objection and therefore cannot be considered under the Council's Scheme of Delegation.

RECOMMENDATION: Confirm the Order with no modifications

1. INTRODUCTION

- 1.1 A Tree Preservation Order (TPO) has been served to protect the prominent Beech tree: **'Veteran Beech Tree within 54 Church Road, on northern boundary, Bagshot.'** A copy of the order is appended to this report [See Appendix 1].
- 1.2 In accordance with the Town and Country Planning act 1990 amended 2012 (Trees) Regulations, the TPO was served upon the owner and occupier of the land affected by the TPO together with the owners and occupiers of any land adjoining on which the tree is situated.
- 1.3 As per the TPO Regulations, all interested parties were given 28 days to object and to make written representations regarding the Tree Preservation Order.
- 1.4 One objection to the order was received within the 28 days of serving [See Appendix 6]. A formal response to objections made from the Arboricultural Officer to the objector did not provide a resolution to the objection and so the decision whether to confirm the order is therefore brought before the Planning Committee [See Appendix 2]. Details regarding the nature of the objection can be found within this report. It should be noted that the current resident of the property did not object to the serving of the TPO.

2. BACKGROUND

- 2.1 Tree Preservation Order 011/22 was served on the 11th November 2022 to protect one Veteran Beech Tree within the curtilage of 54 Church Road, Bagshot. The TPO was made in response to a Section 211 notification to the Local Authority under the Bagshot Conservation Area for the intention to fell to ground level the Beech [See Appendix 5]. Under the Town and Country Planning Act 1990, an applicant can serve notice (S211) to the Local Authority of their intention to carry out work to trees protected within a conservation area. The Local Authority can only respond in one of two ways, which is to have 'no objection' to the work or to object to it and in which case must serve a TPO to protect the tree(s). In this instance, the Council have objected and served a TPO.
- 2.2 The tree was protected to ensure the long term protection and retention of an important veteran tree within the locality of the area that also provide considerable amenity value and ecological links, its loss would have had a detrimental impact on the character of the area. The tree is synonymous with the dwelling, aptly named 'Beech House' which in all likely

hood postdates the tree that would have already been a significant size when the house was built.

3. POWER TO MAKE A TPO (RELEVANT LEGISLATION).

- 3.1 The law on Tree Preservation Orders is contained in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 3.2 Under the Town and Country Planning Act (1990) local authorities may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area. The Act does not define amenity, nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, a TPO should be used to protect selected trees and woodlands if their removal would have a significant impact upon the local environment and its enjoyment by the public. Local planning authorities should be able to show that a reasonable degree of public benefit would accrue before the TPO is made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath.
- 3.3 Trees may be worthy of preservation, amongst other reasons, for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore or future development; the value of the trees may be enhanced by their scarcity; and the value of a group of trees or woodland may be collective only. Other factors such as importance as a wildlife habitat may be taken into account which alone would not be sufficient to warrant a TPO.

4. EXPEDIENCY

- 4.1 In this instance the tree subject to the TPO is highly visible from Church Road [See Appendix 7]
- 4.2 The Beech provides a positive impact on the natural environment by ensuring retention of important landscape features for the wider environmental benefits, amenity of the area as well as maintaining the sylvan nature of the street scene. The Beech is in total keeping with the surrounding area and provides amenity to not only the immediate residents but residents from further afield where they are prominent features on the sky line. The tree plays an important role in the wider context providing seasonal interest, ecological biodiversity benefits and it helps to break up the built form. The tree is considered important within the context of the area as it provides a historical context to the village and nearby church.
- 4.3 Protection of this tree is consistent with Policy DM9 (iv) of the Core Strategy and Development Management Policies 2012 that seeks to ensure that trees and vegetation worthy of retention are afforded protection. Veteran trees are considered important within the NPPF and the UK government standing advice around veteran trees which states that: '*A veteran tree may not be very old, but it has significant decay features, such as branch death and hollowing. These features contribute to its exceptional biodiversity, cultural and heritage value.*' – *Ancient woodland, ancient and veteran trees are irreplaceable.*

- 4.4 The Ancient Tree Forum (ATF) provides guidance around tree age and sizes to indicate if a tree is Veteran or ancient. Due to the circumference of the Beech at 7.6m it is by this definition considered Ancient [See *Appendix 3*].
- 4.5 It should be noted that a TPO is not designed to hinder the appropriate management of a tree. Any application to undertake work will be judged against good arboricultural practice and the Council would not withhold consent for appropriate works sympathetic to the current condition of the tree.

5. REPRESENTATIONS AND OBJECTIONS

- 5.1 The Council received one objection to the TPO from the Arboricultural Contractor who initially submitted the S211 Notice. The objection is provided at Appendix 6 and is summarised below:
- The tree is decayed to an extent that it can no longer be safely retained.

6. ARBORICULTURAL OFFICER'S RESPONSE TO OBJECTIONS.

- 6.1 The Beech is a substantial tree in both size and age and is considered veteran and/or ancient due to both the size, the substantial age and the associated features of the tree. The Council are not contesting that the tree has structural deformities or decay, for a tree considered Veteran or Ancient then it is entirely expected that both of these features are present and forms part of what defines a veteran or ancient tree and it is almost a certainty that trees of significant age will have both decay and defects. What the Council is contesting is that the tree is no longer in a safe and practicable fashion. The view is that it still has a useful life expectancy. The Council would not wish to retain a tree that could no longer be considered safe, but adversely would not want to see trees of historical and ecological importance removed without significant justification. In this instance there is no evidence that the tree is no longer in a retainable condition.
- 6.2 As part of the S211 notification in 2021 [*Ref 21/0011 Appendix 4*] that was for a substantial reduction of the Beech, a report from Mr K Gifford highlighted that there was elements of decay within the stem and the proposed reduction was sufficient to alleviate for this. The Council did not object and a crown reduction was carried out. The tree has responded well to the reduction showing good signs of regrowth and vitality as referenced in the technical details from Writtle Consultancy [*See Appendix 6*]. The most recent S211 notice [*Ref TCA 22/0032 – Appendix 5*] did not include any specific diagnostic information, in order for the Council to adequately assess the overall condition of the tree, other than the previous diagnostic information previously submitted in the previous S211 Notice (21/0011)
- 6.3 Following the serving of the order a more complete and thorough diagnostic testing was conducted from Writtle Arboricultural Consultancy [*See Appendix 6*]. This inspected the major scaffold limbs and the main stem structure of the tree. This did highlight decay, expected for a tree of its size and age, however this does not mean that a tree should automatically be removed. Trees of all ages live for a significant period of time with decay, many in synergy, after all it is not in the interest of the fungi to kill its host as it will also mean the end of its food supply. Further to this, as veteran trees get older they invariably 'grow downwards' meaning that they develop less vertical canopy and a wider lower stem, decreasing the likelihood of failure, as long as the competing interests (of wood creation/energy absorption and decomposition) remain broadly balanced then the tree can remain in a healthy condition. Trees have the ability to compartmentalise areas of decay through structural and chemical barriers and defences. A smaller but wider tree provides

greater resistance than a taller thinner tree, the reduction carried out would help to create the smaller wider tree, replicating a natural process of survival.

- 6.4 From the report from Writtle, it shows that across the stems and trunk that the overall strength loss from the decay is low (less than 20%), because of the crown reduction resulting in a reduced height and width of the canopy the safety factor will have increased, especially as mature trees inherit much higher safety factors due to their natural allometric design. The report goes on to say in paragraph 6.2 that the '*current mechanical strength loss at the areas tested was not currently considered significant*'. The risk assessment provided as part of the report does suggest an elevated risk, this is in part because it is an urban setting and nearby residential dwelling and highway outside the site. However, the likelihood of failure has been quantified as moderate and only somewhat likely indicating that it does not pose a significantly elevated risk to residents or road users at this time. The premature loss of this tree would be therefore be harmful to the character and amenity of the area, resulting in the loss of a natural heritage asset and the many subsidiary benefits it brings.
- 6.5 The structure of the tree is such that more sympathetic pruning is possible over the long term which could bring down further the likelihood of failure and allow the management of the tree in the long term, as long as it is regularly monitored.
- 6.6 It should also be noted that prior to any pruning or assessment this tree survived unscathed two storms in the UK in 2022 including Storm Eunice which felled many other trees throughout the borough.
- 6.7 The level of evidence provided thus far does not provide absolute certainty that the tree is now in a condition that warrants its removal at this time.

7. LEGAL ADVICE AND IMPLICATIONS.

- 7.1 Under the Town and Country Planning (Trees) Regulations 1999, before the local planning authority can confirm a TPO it must first consider any objections or representations duly made in respect of that order. Having considered any objections or representations, the local planning authority may then confirm the order with or without modification or may determine not to confirm the order. In terms of modifications to the order, there is no defined statutory limit on this power, although the Courts have held that this power cannot be used to effectively create a different order from the one originally imposed.
- 7.2 As the order contained a direction under Section 201 of the Town and Country Planning Act 1990 it took effect immediately upon the making of the order. If the order is not confirmed within six months of the date upon which it was made the TPO lapses and the statutory protection would discontinue.
- 7.3 Once confirmed, the validity of a TPO may not be questioned in any legal proceedings whatsoever, except by way of an application to the High Court under Section 288 of the Town and Country Planning Act 1990 within six weeks from the date on which any order is confirmed.
- 7.4 The confirmation of the TPO has no additional financial implications for Surrey Heath, although there are resource implications in terms of officer workload for the processing of tree works applications in the future.

8. OPTIONS AND RECOMMENDATION

8.1 The options available to the Committee are:

- To confirm the Order as originally imposed;
- To confirm the Order subject to modifications; or,
- Not to confirm the making of the Order.

8.2 It is recommended that Tree Preservation Order 011/22 is **confirmed as originally imposed.**

Background papers

Appendices:

Appendix 1: TPO order.

Appendix 2: objection response T O

Appendix 3: ATF Tree size

Appendix 4: TCA 21-0011

Appendix 5: TCA 22/0032

Appendix 6: TPO objection and Tree Report

Appendix 7: Street view of Tree