

06/22

Bisley and West End

LOCATION: Trees within and adjacent to 1 - 4 Brompton Gardens and Lucas Drive, West End, Woking.
PROPOSAL: To protect seven oak trees (T1 – T7) by the serving of a Tree Preservation Order
TYPE: Tree Preservation Order
APPLICANT: N/A
OFFICER: Alastair Barnes

This matter has been reported because under the Scheme of Delegation when objections are received to the serving of a Tree Preservation Order this must be reported to the Planning Application Committee.

RECOMMENDATION: Confirm the Order with no modifications

1. INTRODUCTION

- 1.1 A Tree Preservation Order (TPO) has been served to protect the prominent trees within and adjacent to Brompton Gardens Ref: '06/22 *'Trees within and adjacent to 1-4 Brompton Gardens and Lucas Drive, West End, Woking.'* A copy of the order is appended to this report [See Appendix 1].
- 1.2 The TPO was served upon the owner and occupier of the land affected by the Tree Preservation Order together with the owners and occupiers of any land adjoining on which the tree is situated. In accordance with the Town and Country Planning (Trees) Regulations.
- 1.3 As per the TPO regulations, parties were given 28 days to object, making written representations regarding the Tree Preservation Order.
- 1.4 Three objections to the order were received within the 28 days of serving. Follow up correspondence with 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.

2. BACKGROUND

- 2.1 This TPO relates to trees as per the specification below [Appendices 1 & 2]:
 - Tree Preservation Order 06/22 was served on the 1st August 2022 to protect seven trees within the immediate vicinity of Brompton Gardens.
 - T1 – T3 Oak. Growing within Brompton Gardens
 - T4 Oak. (within the rear garden of 14 Benner Lane.)
 - T5 and T6 (Oak) growing within the rear garden of 20 Benner lane.
 - T7 (Oak) within the curtilage of Lucas Drive (adjacent to Number 4 Brompton Gardens).
- 2.2 The TPO was made in response to planning application 22/0435 [See Appendix 3]. The mature tree within Lucas Drive (T7) was directly impacted by the proposed development within the minimum RPA of the tree. This can put undue pressure on trees to adversely prune or cut them back to improve the relationship between large dominant trees and the residents, the proposal effectively moves the dwelling a lot closer to mature trees.

- 2.3 The minimum RPA as defined by the British Standard 5837:2012 Trees in relation to design, demolition and construction – as:

Root Protection Area (RPA)

‘A layout design tool indicating the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree’s viability, and where the protection of the roots and soil structure is treated as a priority’.

The default position of the British standard (5837) is that all development remains outside of the RPA.

- 2.4 The proposed extension to 4 Brompton Gardens, as proposed, risked the health of the immediate health of the tree and did not guarantee its long term viability.
- 2.5 The remaining trees were protected to ensure the long term protection of important trees within the locality of the area that also provide considerable amenity value and that have been directly impacted by previous development activity.

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 trees subject of this TPO are highly visible from Benner Lane, Lucas Drive as well as Brompton gardens. Residents of Beldam Bridge gardens directly benefit in terms of amenity from the presence of the trees within Brompton gardens *[See Appendix 2]*
- 4.2 The trees and the TPO provide 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 Oak trees are in total keeping with the surrounding area and provide amenity to not only the immediate residents but residents from further afield where they are prominent features on the sky line. These trees are also important in the wider context providing seasonal interest, biodiversity benefits and help to break up the built form. These trees are considered important within the context of the development as it sought to retain them through construction.

- 4.3 Protection of these trees are 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. Moreover, Brompton Gardens falls in close proximity to the Settled and Wooded sandy farmland in the Surrey Landscape Character Area, defined as: 'The land cover consisting of a mixture of farmland, woodland and settlement.' The retention of important trees is in keeping with the character assessment.
- 4.4 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 three objections to the TPO from nos. 2, 3 and 4 Brompton Gardens. These objections are summarised below [*See Appendix 4 for full copies – Nb. All three objection letters stated identical reasons for objection*]:
- The TPO is considered unreasonable and persecutory.
 - The residents see it as unreasonable to place restrictions on the current residents.
 - The TPO is highly targeted to residents of Brompton gardens and not the wider countryside.
- 5.2 No representations were received from either the tree owners or adjacent neighbours at 20 Benner lane; 14 Benner Lane; Lucas Drive; or nos. 49 – 55 Beldam Bridge Gardens.

6. ARBORICULTURAL OFFICER'S RESPONSE TO OBJECTIONS

- 6.1 The TPO is not designed to prevent or hinder development, but developments should be sympathetic to the surrounding trees and not cause undue harm or threaten the long term viability of them. The proposal for the extension as laid out in the planning application would have been contrary to that aim. The loss of soft ground (rooting area) of the tree along with secondary impacts, such as the installation of patios or for the desire of more light into the garden and concerns over leaf drop, can put undue pressure on these trees leading to significant pruning to alleviate these problems, which often causes further harm and does not generally address the initial problem. The Oak, adjacent of the property, is a significant tree in size and age and its loss, either directly or indirectly, would harm the sylvan nature of the area. It is a prominent feature which is visible from the public realm and so the Council made the TPO to ensure this prominent tree and others around are protected in the interests of amenity.
- 6.2 The developers of the original property appear to have carried out the work to the surrounding trees and unfortunately the level of work that was carried out has left parts of the trees scarred with large pruning wounds, which the tree is unlikely to compartmentalise

(i.e. heal over or preclude decay organisms) in a short period of time. While these wounds are exposed, the tree is open to airborne pathogens which can shorten the expected life expectancy of these trees. It also means that due to these actions, the nearby homeowners will have increased maintenance costs to manage these forceable issues caused by the wounding. It is not the TPO which will cause these costs but previous management. Concerns over these issues can lead to forceable tree loss, often considered the cheaper long term option. The TPO was applied to these trees to ensure the long term retention and that any future pruning is sympathetic and respects the condition of the trees, but still taking into consideration the needs of the homeowner. The proposed extension risked the long term viability of the adjacent tree, which has already undergone significant development pressure and would have been contrary to best practice under the British Standard 5837 which aims to create a suitable relationship between development and working near trees.

- 6.3 It should be noted that the TPO does not infer any additional financial costs in terms of tree work or the application process, which remains a free procedure. All tree surgeons should work to the same rigorous standards and quality regardless of the presence of a TPO in relation to tree care. The resident is not bound to use a specialist or consultant for tree work. The only additional burden is the need to apply for the work beforehand and the time to administer the application for the Council. As most tree surgeons operate at least 6 weeks to 2 months beyond of an initial request/booking for tree work, the decision has usually been determined before the tree surgeon is scheduled to carry out the work and the majority of decisions are issued in advance.
- 6.4 As part of the objection it is stated that there are other trees at greater risk. Where the Council is made aware of these risks it will act to protect trees, and if residents become aware of such risk, they should inform the Local Council. Unfortunately, the Council is not able to protect any and all trees which provide amenity. However, the Council are obliged to protect ones where activities such as poor pruning or significant development, risks their long term viability and health. As already explained in section 4 above, because of the sylvan nature of Brompton gardens it is considered expedient to protect the surrounding trees as all the trees in the immediate vicinity provide amenity to residents in and around the development. This includes the trees along the entrance road where other trees have been poorly pruned and lead to their loss. The TPO protects not only the trees, but also the character of the area that resident live in and enjoy, in all likelihood for the same sylvan reasons.

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 06/22 is confirmed as originally imposed.

Background papers

Appendices:

Appendix 1: TPO order and TEMPO form.

Appendix 2: Site and tree pictures.

Appendix 3: 22/0435 Development application and appeal decision.

Appendix 4: Objection letters and responses.