

APPEALS PANEL - 9 FEBRUARY 2023

TREE PRESERVATION ORDER TPO/0013/22

Site Land of 3 and 5 Stanley Road Lymington SO41 3SJ

Proposal To confirm Tree Preservation Order

Objector Owner: Mrs Wild

Agent Not applicable

1. SUMMARY OF MAIN ISSUES

The key issues are

1. The public amenity value of the tree and its value to the wider community.
2. The expediency to protect this tree

2. TREE PRESERVATION ORDER HISTORY

- The subject tree is situated in a residential garden of a domestic dwelling located on the north side of Stanley Road, Lymington. The Oak tree sits within the relatively large rear garden adjacent to the subject properties.
- The order was made in response to an enquiry from a member of the public, who notified the council that the properties were being advertised for sale as a potential development plot and was concerned that the Oak tree may be removed as a result.
- A TPO was made on 11th August 2022. **(Appendix 2.)**
- The owner of the site, Mrs Wild, put in writing her objections to the order.

3. The Tree

The Tree Preservation Order covers a single individual mature English oak. The tree is visible in part from the public highway, Stanley Road.

4. Objections to the Order

Mrs Wild put her objections in writing by letter of 1st September 2022 **(Appendix 3.)** and the main points are summarised below:

Expediency: With regard to the question of expediency being a reason to TPO the tree to prevent premature removal or extensive pruning.

There are no plans for removal of the tree, nor plans for any extensive pruning, and the tree has been in good management over the 54 years that the current owner has occupied the property. Although the property was tentatively marketed by a local

estate agent as a potential development plot, there is no immediate threat to the tree, based on a notification to fell. There is no foreseeable threat to the tree, based on an application for outline planning consent.

Amenity: In addressing the question of amenity of the tree as a reason for the TPO to avoid the loss of an amenity to the local environment. The first and most important factor when considering amenity as set out in government guidance is the “visibility”. The extent to which trees or woodlands can be seen by the public. The tree is almost entirely hidden from public view

-size and form: A fair assessment would be a Common Oak of small size and pollarded form.

-future potential as an amenity: Given that the tree’s almost entirely hidden location, and its small stature and requirement for regular trimming owing to its pollarded form, it is unlikely that its potential as an amenity will change in the future.

-rarity, cultural or historic value; The tree is thought to be a Common Oak, which is one of, if not the most common of trees found in the UK. So there is no rarity value. Culturally, the Common Oak is England’s national tree. Although its cultural representation doesn’t take on a pollarded form, the Common Oak can be said to hold a cultural value.

-contribution to, and relationship with, the landscape: As a low visibility, back garden tree, it provides an attractive garden reference point for the property owners but cannot be said to contribute much to the wider landscape.

The Tree Evaluation Method for Preservation Orders (TEMPO) is adopted by many local authorities in order to provide a fair and accountable assessment of trees. Different local authorities use slightly different versions of the TEMPO system. In researching this objection, a publicly available TEMPO procedure used by the NFDC could not be found

Procedural: Further objection is made on procedural grounds. Government guidance states that the LPA officer should visit the site of the tree or trees in question and consider whether or not a TPO is justified. In a telephone conversation with the son of the property owner, the NFDC Tree Officer stated that he visited the public pavement area outside the property, without entering the property. Given the tree’s near invisibility from that public area, it cannot be said that the Tree Officer “visited the site of the tree,” or was able to make a fair consideration of Amenity to determine “whether or not a TPO is justified.

5. COMMENTS ON THE GROUNDS FOR OBJECTION

- The plot was advertised for sale by a local estate agent as a potential development opportunity for 3 further dwellings within the site. It is not uncommon for sites with development potential which are sold for that purpose to incur the loss of trees which may be a constraint to the development.
- An initial site visit was made firstly to view the Oak tree from a public place to satisfy this aspect that it is visible from a public place prior to the order being made. The Oak tree can be seen from the public highway/footway so meets the requirement that it (or at least a part of it) is visible from a public place (**Appendix 6.**) It does not have a large crown due to previous pruning but is in good condition and could develop further crown dimensions adding to its visually amenity value. It has a considerable long term future retention potential if well cared for.

- An order is made on a provisional basis for six months which allows such time for a more detailed site visit and where necessary closer inspection of the trees to be undertaken to confirm the tree is in such condition that a TPO could be justified.
- A TEMPO assessment was undertaken on the tree to evaluate its suitability for protection, and it confirmed that a TPO was defensible (**Appendix 7.**). The TEMPO method is a three-part system consisting of an amenity assessment, expediency assessment and decision guide. The first part being the amenity assessment is broken down into four sections a) Condition b) Retention span c) Relative public visibility and d) Other factors. The TEMPO system adds weight to justifying protection on the grounds of a perceived threat to a tree due to development potential. In this case the presence of the tree on a potential infill plot justifies the expediency of a TPO
- Although these factors alone would not warrant making an Order, an additional benefit of retaining trees in towns is increasing biodiversity and associated ecosystem service provision. Government guidance sets out that where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. Oak, as a species, are particularly valuable in terms of hosting more associated species and being long lived have the potential to provide benefits beyond the normal species range.

6. POLICIES

Relevant Legislation

Town and Country Planning (Tree Preservation) (England) Regulations 2012

7. PLANNING HISTORY

None

8. PARISH / TOWN COUNCIL COMMENTS

Lymington Town Council

No comments submitted

9. COUNCILLOR COMMENTS

None

10. CONSULTEE COMMENTS

None

11. REPRESENTATIONS RECEIVED

Representation received from Mr Hayes (requester of TPO) summarised as follows (full details within (**Appendix 4**):

1. This Oak tree is a highly visible tree in the landscape when seen from Stanley Road or the surrounding properties in Brook Road and Waterford Lane.
2. In a time of "Climate Emergency" trees (particularly native species) are of great importance.

3. There is no doubt that this tree being a native Oak adds a great deal to the biodiversity of the area. Birds such as Great Tits, Blue Tits, Robins, Blackbirds, Song and Mistle Thrushes, Great Spotted Woodpeckers and Nuthatches nest in the surrounding area and use the insects that feed on this tree as a source of food. Pipestrelle bats are evident around the tree in the summer and are probably using it as a summer roost.
4. There are no other trees in the very immediate vicinity protected by TPOs and as such this tree is important in removing pollutant particulates.
5. As stated above there are no other trees protected by TPOs in the area bounded by Stanley Road, Waterford Lane, Brook Road and Westfield Road. As such this tree is important for its use to offset the adverse impacts that development and environmental change can have in the urban setting.

12. RECOMMENDATIONS

A local planning authority may only make a tree preservation order where it appears to the authority that it is expedient to protect a tree or woodland in the interests of amenity.

This Oak tree, in my opinion, provides a positive contribution to the amenity of the area and if the property was sold without the protection of this TPO there is a risk that the tree will be removed as it would be a constraint to development. Therefore, in the interest of public amenity it is expedient to confirm this Tree Preservation Order.

For further information contact:

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