

Reference: 15/00001/TPO

Proposal: Confirmation of Tree Preservation Order 15/00001/TPO

Site: 367 Eastfield Road, Eastfield, Peterborough, PE1 4RD

Site visit: 23.09.2015

Case officer: Mr Bryan Clary
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Recommendation: **CONFIRM** Tree Preservation Order 15/00001/TPO

1 Description of the site and surroundings and Summary of the proposal

Purpose of Report

A provisional Tree Preservation Order (TPO) 15/00001/TPO at 367 Eastfield Road has been served following concerns that the tree was about to be felled or pruned inappropriately. The provisional TPO has been the subject of public consultation and as an objection was received, the Committee are required to determine the application in accordance with para 2.5.1.2 (f) of the Council's Constitution.

The main considerations are:

- Are the trees worthy of inclusion into a TPO in terms of public visual amenity value?
- Are the proposals reasonable and justified having regard to the letters of objections raised?

The Director of Growth and Regeneration recommends that the TPO is CONFIRMED

Site and Surrounding

The Horse chestnut is located in the front garden of 367 Eastfield Road immediately adjacent to the boundary wooden fence. A paved public footpath is situated the other side of the wooden fence.

Description of the Tree

T1 Horse chestnut. Mature. Historically pollarded/topped at height with regrowth now exhibiting a full crown. There are a several non-significant partially occluded wounds on the main stem. In addition there is the evidence of minor bleeding canker on the main stem and primary limbs, this doesn't appear to be active or progressive and therefore isn't significant. The structure of the primary unions and limbs appears sound. The crown shape is well balanced with no requirement for major tree surgery in the foreseeable future.

2 Planning History

Relevant Planning History

12/01075/HHFUL - Proposed replacement of existing fence with front boundary brick wall with piers, metal railings and metal gate

The above application was withdrawn prior to determination. At that time the Planning Agent was informed that the Horse Chestnut Tree was considered worthy of a TPO and no arboricultural information was provided to illustrate how likely damage to the tree by construction would be minimised. Given that damage was likely the application was likely to have been recommended for refusal and it was subsequently withdrawn.

3 Planning Policy

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise:

- Town and Country Planning Act 1990, Section 198 states
198.— Power to make tree preservation orders
(1) If it appears to a local planning authority that **it is expedient in the interests of amenity** to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.
- The Town and Country Planning (Tree Preservation) (England) Regulations 2012

4 Consultations/Representations

Objection

An objection to the TPO was received 23 June 2015 from the resident of 367 Eastfield Road (Mr S R Ebrahim) – this letter can be found at **Appendix 1**. The eight main points of the letter are outlined below:

Disagreement of the Assessment Criteria

Background

Peterborough City Council (PCC) has adopted a process whereby a tree has to score over 50 in an assessment form for a tree to be considered worthy of a TPO. Elements of the tree's amenity, health, impact and special interest are scored between one and three. The Horse Chestnut Tree has scored 58 by the Tree Officer – see **Appendix 2**. (It is noted that a Local Authority does not have to apply any assessment criteria but are encouraged to for reasons of transparency).

Objection

Within the objection letter 12 of the 32 assessment scores are questioned with proposed new scores provided.

PCC Response

The proposed new scores have been studied and the reasoning provided noted. However, a conservative approach to the scoring was undertaken therefore deliberately scoring the Horse Chestnut Tree in the lower category where a score could be viewed as borderline. The assessment is a tool that helps in providing a degree of objectivity in an otherwise subjective task. It is acknowledged that some of the scoring is based on a professional opinion, which may not have been adequately explained, however, it is maintained that even if it is accepted that there is an element of subjectivity which may lead to an adjustment, the assessment would still score over 50 and the tree would be worthy of a TPO.

Objection 1: The change in stance from the Council – the sudden serving of the Order is not in accordance with the stance previously taken by the Council. There is no intention, nor been any discussion or action on my part that might lead the Council to suppose my intention has changed.

PCC Response 1: The tree was brought to the Councils attention by Mr Ebrahim in a telephone conversation. Proposed tree work was mentioned albeit not in detail. The Horse Chestnut Tree was assessed and was found to be worthy of a TPO. It is noted:

- Previous correspondence dating back to a planning application in 2012 indicates the tree is worthy of a TPO – therefore the Council hasn't changed its stance.
- According to TPO serving guidance a tree does not have to be under imminent threat. A TPO can be served as a precautionary measure.

Objection 2: There have been three or four instances of the National Grid digging up the pavement adjacent to the tree trying to locate faults in the supply. It appears to me that the continued existence of the tree may be, wholly or partly, the cause of the problems.

PCC Response 2: We do not know the reasons behind the digging up of the pavement. However, utility companies (gas, water, electricity etc.) are exempt from undergoing the formal path of obtaining consent from their Local Planning Authority (LPA) to prune trees with a TPO.

- We have to assume that any future repair works will be undertaken as per industry best practice which minimises construction related damage to trees;

Objection 3: Worries that branches are a hazard to passing buses. The continual buffeting of the branches weakens them and makes it more likely that they will fall.

PCC Response 3: If Highway clearance is required (up to 5.2m over roads and 2.4m over footpaths) no formal application to undertake the tree works is required. This is known informally 'as the Highway exemption' as Highways have a duty to ensure the roads are clear from obstruction.

- As outlined above the Horse Chestnut Tree can be pruned to prevent collision with high sided vehicles with no formal consent.
- If the tree requires pruning further (for example around 0.5m) from the roadside to ensure a degree of clearance, this reasonable request would not be refused if applied for.
- There is no evidence (or none that I have heard) that continual buffeting weakens branches. It's acknowledged that twigs and leaves may be dislodged but it could be argued that the buffeting makes branches stronger as trees put on woody tissues where required to reduce the likelihood of failure.

Objection 4: The flags of the pavement outside the front boundary are increasingly uneven. This has apparently been caused by the roots of the tree. I consider that the degree to which the paving slabs are already raised constitutes a hazard to passers-by.

PCC Response 4: It is acknowledged that the structural roots close to the main stem of the Horse Chestnut Tree is causing minor damage to the footpath. Highways have been contacted who have confirmed that the issue is minor at the moment although this will be constantly under review (an inspection every three months). If the direct root growth becomes a significant problem Highways will contact the trees owner to discuss the options.

Objection 5: Points 2, 3 and 4 are potentially sources of legal liability to me as the house owner, and the imposition of the Order makes it impossible for me to alleviate my liability. You have mentioned my liability continues irrespective of whether or not a TPO is in existence. However, at the moment the stance you have taken does not give me any expectation of being able to minimise my liability in the future.

PCC Response 5: With regard to liability and the point 2, 3 and 4 above:

Point 2 – As far as I understand you have no liability by way of the tree with regard to any Statutory

Undertakers including the national Grid. In the unlikely event that the tree would cause a major problem to any Statutory Undertaker the tree works to rectify the situation are exempt from requiring a formal application. To clarify, Statutory Undertakers do not require permission to undertake tree works on a Tree with a TPO and will undertake the works as they wish.

Point 3 – If the exemptions in Point 3 are exercised and the recommended pruning undertaken then the level of risk and potential liability to Highway users is minimised to a low level. Only minimal pruning measures may then be required. It is noted that any reasonable pruning request is unlikely to be refused.

Point 4 – The Highway Authority is the responsible authority in respect of the footway and any issues arising from any incidents, and will contact the tree owner in the event that there appears to be a problem.

Objection 6: Future plans to reconstruct the front boundary wall include measures to retain the tree. The construction techniques will be low impact and will not affect the tree.

PCC Response 6: The low impact construction of a new boundary feature is welcomed. It is acknowledged that the reconstruction of the wall is the reason why the Horse Chestnut Tree first came known the Tree Officer. The application for reconstruction of a front boundary wall and the presence of a tree preservation order are not mutually exclusive.

Objection 7: Inconsistency from PCC given the previous Tree Officer appeared to be of the opinion that this was a ‘marginal’ case. It is only since my contact with you in April 2015 that the Order has been made. I also question whether the same criteria are applied on land within Council ownership.

PCC Response 7: During the phone call April 2015 it was understood that the tree would be ‘cut down’. The Tree Officer responded to this suggestion by judging the impact of the tree’s pruning or removal. The tree was assessed and was revealed to be a prominent feature of the street scene and was worthy of a TPO. Subsequently, it was discovered that the phrase in the context of the telephone call meant only to prune the tree. However, once scrutinised and the tree has been judged to merit a TPO which is consistent with correspondence with the Planning Agent re: the reconstruction of the boundary in 2012.

With regard to the TPOs being served on Council trees it is highly unusual. An external company – Amey manages PCC’s trees and they follow (like the Tree Officer) the policies contained within Peterborough Tree and Woodland Strategy.

5 Assessment of the planning issues

Assessment of T1 Horse chestnut

Local Authorities within the best practice guidance ‘Tree Preservation Orders – A Guide to the Law and Good Practice’ are encouraged to develop systems to appropriately assess trees to ensure that the serving of TPOs is transparent and open to scrutiny. At PCC an assessment criteria has been developed which in its first section assesses the public amenity and the value a tree holds and later assesses the quality of the tree.

An evaluation of T1 Horse Chestnut Tree was made and the tree is assessed as having high amenity value. Its location on Eastfield Road is prominent and its contribution to the street scene is high. The loss of or hard pruning of the tree would have a negative impact on the street scene.

T1 Horse Chestnut Tree has been pruned previously but now has a full healthy crown with no significant defects. It is noted that it has the Leaf Miner which causes the early browning of leaves, however, this is a common problem on Horse chestnuts and does not detract from the overall quality of the tree. It is estimated that T1 Horse Chestnut Tree has a life expectancy of at least 20-40 years.

TPO serving procedure

The TPO was served in accordance with the procedures as stated in 'Tree Preservation Orders – A Guide to the Law and Good Practice'. It is acknowledged that the original serving of the documentation was delayed as in the first instance the resident would not accept the paperwork in person when verbally told of the TPO. In addition, the paperwork was returned when sent by registered post. However, after discussion the objection deadline was extended so that the resident had a full 28 days to object to the TPO as outlined in 'Tree Preservation Orders – A Guide to the Law and Good Practice'.

Mr S R Elbrahim's Objections

Mr Elbrahim's objections are concise and logical. However, the objections outlined above do not detract from the fact that T1 Horse Chestnut Tree is of high amenity value, is in good condition, has reasonable longevity and is worthy of a TPO.

It is reiterated that T1 Horse Chestnut Tree is adjacent to the footpath of Eastfield Road which shows minor damage. But it is confirmed from PCC Highways that the damage is minor and repairs are possible and are currently economically viable. The pavement is inspected on a 3 month cycle therefore any trip hazard can be avoided. If the tree causes damage to an extent where it is not economically viable to continue repairs, then the removal of the tree and the TPO may be discussed with the tree owner.

It has been outlined by the tree owner that T1 Horse Chestnut Tree is not under immediate threat from inappropriate management or felling. This is acknowledged but the TPO has been served as a precautionary measure which is permissible under the TPO guidance. It is noted that a new boundary construction next to the tree has been proposed in the past and that a new boundary construction is likely in the future. The TPO status will ensure that T1 Horse Chestnut Tree is a material constraint in the eventuality of construction close to the tree.

It has been outlined that contrary to Mr S R Elbrahim's opinion, the TPO will not prevent tree management to reduce his liabilities and fulfil his 'Duty of care' as a landowner.

Overall, the objections do not detract from the amenity or longevity that T1 Horse Chestnut Tree offers.

6 Conclusions

T1 Horse Chestnut Tree is a mature and attractive tree. It is in good health and conservatively has 20-40 years lifespan. The tree makes a positive contribution to the amenity value of the area.

Whilst being in close proximity to the footpath and road of Eastfield Road this is not considered to be a significant constraint and actually increases the prominence of the tree in the street scene.

7 Recommendation

The Director of Growth and Regeneration recommends that Tree Preservation Order 15/00001/TPO is confirmed.

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