
Meeting: Development Management Committee

Date: 17 February 2010

Subject: Confirmation of Tree Preservation Order No. 13/2009
(Land at the rear of 22 Heath Park Drive, Leighton Buzzard)

Report of: Andy Jones - Tree and Landscape Officer

Summary: To request that the Committee consider the unresolved objection made from Mr & Mrs Grasby of 25 Heath Park Drive following the making of Tree Preservation Order No. 13/2009 and to confirm the Order without modification.

Contact Officer: Andy Jones X 75161

Public/Exempt: Public

Wards Affected: Plantation, Leighton Buzzard

Function of:

CORPORATE IMPLICATIONS

None

RECOMMENDATIONS:

That the Committee confirms the Tree Preservation Order, which was provisionally made for 6 months, and is due to expire on the 19th April 2010.
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Background

1. The Tree Preservation Order (TPO) was instigated after the Council was contacted by the owner of 22 Heath Park Drive who wished to prune back the crowns of two large Oak trees at the rear of the property, back to the garden boundary line, and to reduce their height. The Council became concerned at this proposal since the appearance of Oaks can be adversely affected by pruning works and it was found that the trees were not protected by any Tree Preservation Order. A site visit was then arranged to investigate the matter.

A subsequent site visit was made on the 14th October 2009 when it was noted that the trees appeared to be within an area of enclosed footpath leading to Dovery Down School. It was also observed that several Birch trees in the same area of footpath had been topped with disfiguring results. The two Oak trees were found to be excellent mature specimens of fine shape and form, whose natural shape and appearance would be adversely affected by the proposed pruning works. This was especially significant with the trees being so close to the complainant's garden boundary. In this situation, the amount of branches

that could be removed (as part of exercising the common law right to prune overhangs) was considerable. It was observed that the overhanging branches were not causing any “actionable nuisance” as defined by case law and there was no justification for severe pruning works.

It was also recognised that the area was strongly wooded in character and the trees made a significant contribution to the amenity and character of the area, being visible from public areas, and that a Tree Preservation Order was justified.

2. A TPO was then made on the two Oak trees for the reasons that:-

- The trees are located within a designated Area of Special Character, typified by residential areas enhanced by mature wooded gardens, and thereby make an important contribution to this Area of Special Character.
- The trees have strong individual merit, being excellent examples of the species and having fine shape and stature.
- The Oak trees are visible from the surrounding highway, footpaths and public open space areas and make a positive contribution to the visual amenity and character of the area.
- The Oak trees contribute to the surrounding wooded character typical of the area and are an important constituent of the wooded character in its wider setting.

3. Following the serving of the TPO, an objection was received from Mr and Mrs E Grasby of 25 Heath Park Drive on the 7th November 2009. Their grounds for objections were based on the following:-

- The Order was made without a site visit involving the householders of 22 and 25 Heath Park Drive and without examining the impact that the trees have on the houses and gardens of the two properties.
- Oak tree T2 overhangs the garden by considerable amounts and due to its height and breadth makes the property dark and restricts the varieties of planting possible in the garden.
- The Order appears to have been made without thought being given to any tree management of the two trees in question. The trees appear to have been allowed to grow completely out of control for years without any maintenance and husbandry.
- It would appear to be an irresponsible and cavalier act on behalf of the Council to place a TPO on these two trees without first carrying out severe pruning to restrict the height and breadth. If either tree should fall then considerable damage would be caused.
- The TPO has been made in an underhand manner in response to an honourable representation made by a neighbour.

- The trees should be managed responsibly and the TPO prohibits any sort of work being done on them and the Council should prune the trees as a compromise.

The Tree & Landscape Officer's reply to these points in respect of the objection were:-

- Consultation site visits are not made prior to a TPO being served. This has proved counter productive in the past where damaging work has subsequently been carried out due to the forewarning that a TPO is about to be served.
 - Tree Preservation Orders apply to trees irrespective of the garden boundaries they may cross and are not just applicable to the property where the tree may be growing. A tree is protected in recognition of its contribution and stature to the overall local landscape. In respect of this, it is inevitable that a mature Oak will block light to adjacent gardens, and this is insufficient reason to severely prune a protected tree. Examples of justifiable reasons would include any direct conflict with the fabric of adjacent buildings, or if a tree has significant structural defects.
 - The purpose of this TPO was to prevent drastic and disfiguring pruning works being carried out by residents to their boundary line. This action is often unjustified and is harmful to trees. Severe pruning has regrettably already occurred to a number of Silver Birch trees within the curtilage of the school pathway, close to the boundaries of adjacent properties. This has been done to the detriment of their health and appearance, and will instigate other long-term problems for these trees.
 - It is regrettable that the Council is considered to have acted in an underhand manner in the serving of this TPO. By their very nature, the making of TPO's can never be undertaken with mutual acceptance by all parties. It was the Council's concerns in respect of the extent of works being proposed, and the history of previous pruning works, which prompted the making of this TPO.
 - It should be recognised that Dovers Down Lower School still retain independent responsibility for the maintenance of these trees and not Tree Officers of Central Bedfordshire Council. The making of this TPO does not prevent work from being carried out on a protective tree, provided it is done with the consent of the Local Planning Authority (Central Bedfordshire Council). If any resident wished to carry out work on any of these protected trees that overhang the garden, they may do so as part of the normal application process, where the reasons are evaluated and appropriate work is granted consent where considered justified, and where it would not harm the trees.
5. The Oak trees were assessed under TEMPO ("Tree Evaluation Method for Preservation Orders"), which is a nationally recognised system, produced by an independent arboricultural consultant, where scores are allocated towards meeting certain criteria needed required to justify a TPO. The scoring produced by the valuation method indicates that any score between 11 to 14 points

merits a “*defensible TPO*” and that any score over 15 points “*Definitely merits a TPO*”. Following a survey on the 14th October 2009, it was found that each of the Oak trees had a score allocation of 20 Points, based on the fact that they were:-

- In good condition
- Had a retention span of between 40 to 100 years
- They are large or medium trees clearly visible to the public
- The trees are principal components of an arboricultural feature (Area of Special Character - typified by mature wooded gardens)
- There is a perceived threat to one or more of the trees

6. Following the response from the Tree & Landscape Officer, there was no further correspondence received from the objectors, and the objection therefore remains unresolved.

Appendices: Copy of Tree Preservation Order No. 13/2009