

Item 3.4

Tree Preservation Order No.7, 2023 (Tandridge 15A Buxton Lane, Caterham, CR3 5HG

Planning Committee Thursday 7th March 2023

Report of: Chief Planning Officer

Purpose: For decision

Publication status: Open

Wards affected: Portley

Executive summary:

This report is to advise the Committee on the confirmation or otherwise of Tree Preservation Order No.7, 2023 (Tandridge).

- Under Section 198 of the Town and Country Planning Act 1990 the Council, acting as the Local Planning Authority, has the power to protect trees and woodlands by means of a Tree Preservation Order (TPO) if it appears to be expedient in the interests of amenity.
 - The report sets out the background for why the TPO was made, discusses the subsequent information that has been considered, and makes a recommendation for whether the TPO should be confirmed (made permanent) on the balance of the available information.
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This report supports the Council's priority of:

Becoming a greener, more sustainable District

Contact officer Alastair Durkin Principal Tree Officer
adurkin@tandridge.gov.uk

Recommendation to Committee:

That, in accordance with its delegated powers, the Committee determines that Tree Preservation Order No.7, 2023 is confirmed as made.

Reason for recommendation:

The Council has the power to protect trees and woodlands by means of a Tree Preservation Order (TPO) in instances where trees are under threat of removal or harmful works, and on a precautionary basis, provided it is in the 'interests of amenity'. The exercise of this power supports the Council's priority of 'Becoming a greener, more sustainable District'.

The decision is being determined at this committee due to there being an unresolved objection to the making of the TPO.

Introduction and background

1.0 Legislative context

- 1.1 The Council has the power to protect trees and woodlands by means of a Tree Preservation Order (TPO) in instances where trees are under threat of removal or harmful works, and on a precautionary basis, if necessary, provided it is 'in the interests of amenity'. These powers are contained within section 198, Part VIII [Special Controls] of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 and the related Regulations (The Act).
- 1.2 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. However, the Government considers that TPOs should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. The Council should therefore be able to show that a reasonable degree of public benefit exists, or would accrue, before TPOs are made or confirmed.
- 1.3 The trees or woodlands selected for protection, or at least part of them, should normally be visible from a public place, such as a road or footpath, although the inclusion of other trees may be justified, for instance, where back garden trees can be viewed from their properties by a significant number of members of the public.
- 1.4 The benefit may be now or in the future; trees may be worthy of preservation 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 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, nature conservation or response to climate change may also be considered, but in the absence of the preceding elements of amenity contribution, these factors alone are not sufficient to warrant a TPO.
- 1.5 A TPO is provisional until it is confirmed, in writing, within a six-month period by the Council. This means that the TPO takes immediate effect and ensures the trees cannot be lawfully removed during the statutory 28-day consultation period that follows the

servicing of a TPO and before confirmation. The TPO then continues in force on a provisional basis until either the TPO is confirmed (made permanent), or the six-month period expires.

- 1.6 Once a provisional TPO has been made, the confirmation of the TPO is delegated to an authorised Officer of the Council, provided there are no unresolved objections received within the 28-day time limit. Where unresolved objections remain, the decision whether or not to confirm, or modify the TPO, is made by the Council's Planning Committee.

2.0 Background

- 2.1 The Council received a public request for a TPO to be made on this single oak tree. The request was made on the basis that the tree was of high amenity value and that 15A Buxton Lane was in the process of being sold, thereby creating a potential risk that the new owners would not wish to retain the tree. There was also a concern that following the removal of a dead TPO oak tree which was growing nearby in Macaulay Road the importance of the preservation of the tree at 15A was amplified.
- 2.2 The Council receives requests for TPOs to be made on land which is either up for sale or being sold on a regular basis. The sale of land is not normally considered to be a sufficient reason on its own for a TPO to be made, as many properties are sold within the District each year, and these sales very rarely result in wholesale clearance of trees – the presence of mature trees generally being regarded as an asset to a property. Nevertheless, mature trees are sometimes highlighted to homebuyers as a potential future risk by insurers looking to minimise their own liabilities, and this can result in unnecessary tree removals without a full investigation of any risk being undertaken. Furthermore, in the case of a tree of exceptionally high amenity value, it can sometimes be expedient to protect it on a purely precautionary basis, as the importance of the tree is so high that even a low risk of its removal can be considered as an unacceptable risk.
- 2.3 Following receipt of the request for a TPO to be made, and subsequent further correspondence, a site visit by your Principal Tree Officer was made to assess the oak tree for the purposes of a TPO (Appendix A).
- 2.4 The oak tree is very visually prominent when travelling in both directions along Buxton Lane and from Matlock Road, approaching the Buxton Lane junction. As such the tree affords significant levels of visual amenity to the local area (Figure 1), as well as providing potentially important wildlife habitat. The importance of the tree is amplified by the relative paucity of other mature trees on the Buxton Lane frontage. The tree will be seen and appreciated by a great many people daily and is a very attractive feature of the road.
- 2.5 In light of the amenity assessment undertaken, it was considered that the oak tree was of suitable importance for a TPO to be made, and that its amenity value was so high that it was expedient to protect it on a precautionary basis, considering the property was being sold, or had recently been sold.

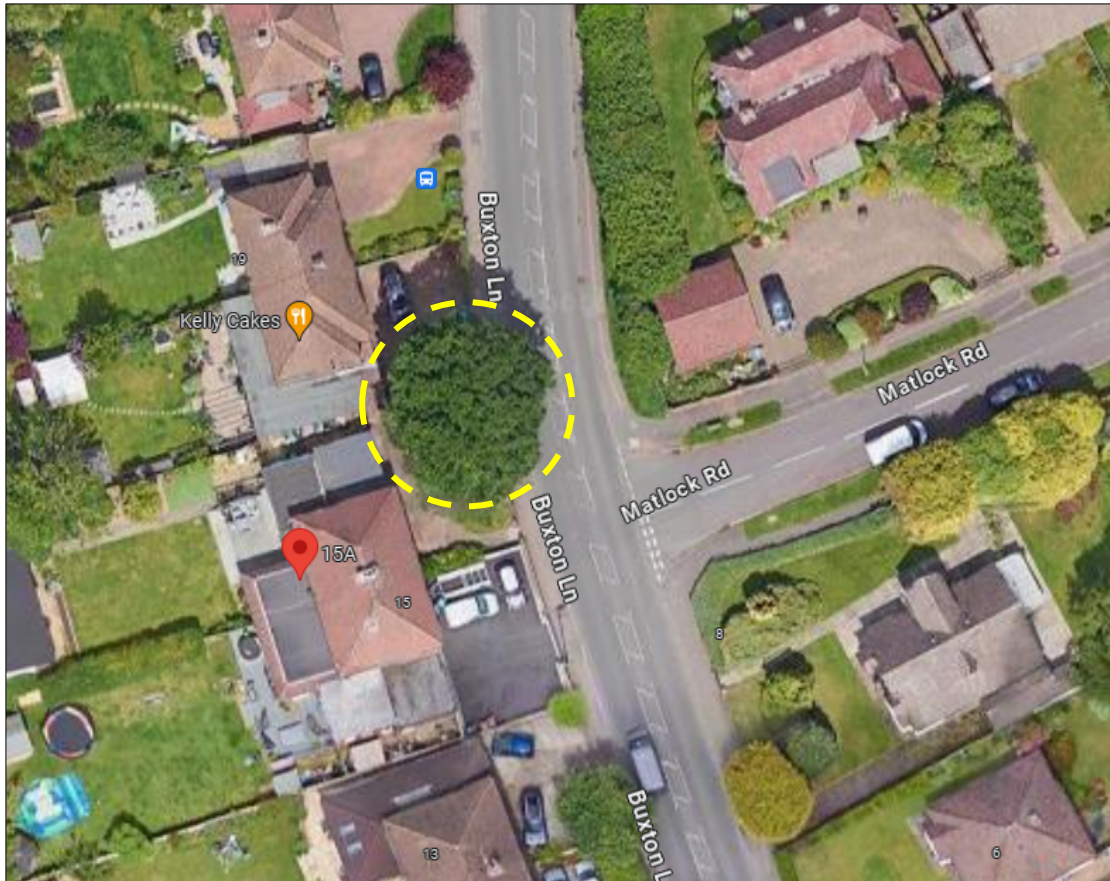


Figure 1 – Aerial view of T1 oak (ringed yellow) in relation to Buxton Lane and Matlock Road

3.0 Objections and response

3.1 Following the making of the TPO a letter of objection was received from the new owner of the property. The objections are summarised below:

- a) When I moved into the property there was no Tree Preservation Order in place. I was and am still happy to own a property with a large tree.
- b) The tree overhangs a busy road and pavement. It is important that I have control over managing the tree and branches to ensure it does not become a hazard to the public. I have no intention of removing the tree. However, I must ensure that I have the autonomy to be able to maintain the tree and branches in a timely manner when needed to prolong the life of the tree and minimise risk to the public.
- c) The tree is near a bus stop. Pedestrians regularly stand near the tree. Double decker buses may reach overhanging branches, compromising the integrity of the tree and causing a further risk to the public.

3.2 Following receipt of the objections, the Council's Principal Tree Officer wrote to the owner to address the concerns and resolve the objection. However, the owner confirmed that they wished their objection to stand.

3.3 Your officer's response to the objections are as follows:

- a) It can be accepted on face value that the owner currently wishes to retain the tree, but it is the very high amenity value of the tree that in your officer's opinion justifies the making of the TPO on a purely precautionary basis, particularly as property ownership and other circumstances are subject to change. On this matter the Government Planning Practice Guidance (PPG) states:

"It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees..."

... Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution."

- b) The tree owner is right to highlight their responsibilities in terms of doing everything that is reasonable to ensure that the tree does not become a danger to the public, or an obstruction to the road. A TPO does not, however, prevent or hinder an owner from exercising their ability to satisfy their duty of care. For example, if a branch of the tree or even the tree itself suddenly became so dangerous that the owner could not wait for an application for works under the TPO to be processed, then there is a mechanism within the legislation for works to be undertaken immediately to the extent that such works are urgently necessary to remove an immediate risk of serious harm – giving notice to the Council after the work has been undertaken if strictly necessary. Further advice regarding this process would be available upon request from officers, or advice is available within the online PPG. Most reputable tree surgeons are also well versed in this exception process.
- c) For normal tree management works – for example to maintain clearance from the pavement or highway, the Council would require an application, unless the Highway Authority had ordered the works by statutory notice to the tree owner - in which case no application would be required. In such a case five working days written notice of the intended works would need to be given to the Council.

If an application is required to maintain highway clearance, then a very useful part of the legislation is the ability to make an application for repeated operations. For example, a tree owner can make one application to undertake repeated pruning works over a given period of time (e.g.10 years) in order to maintain 6m clearance over the highway as required by the Highway Authority. Provided the works are reasonably justified and will not harm amenity to a significant degree then consent would normally be granted.

4.0 Discussion

- 4.1 As detailed above the TPO does not prevent reasonable management works, provided consent is obtained from the Council prior to the works being undertaken. The TPO gives the Council a degree of control as to how the tree is managed in the future, to ensure that the significant amenity it affords to the public is preserved.
- 4.2 It is considered that, on balance, the minor inconvenience caused to the owners of the tree to make an application when they wish to undertake works is justified by the benefit to the local and wider community by ensuring that the tree is protected on an ongoing basis. It is also the case that as land ownership changes over time, the presence of the TPO will go some way to ensuring that the tree is protected long into the future. This is particularly important considering the prominence of the tree and its importance to the local landscape.

5.0 Conclusion

- 5.1 Due to its exceptional contribution to the local landscape when viewed from Buxton Lane and Matlock Road, the oak tree selected for protection is of suitable amenity value to preserve in the public interest, and it is expedient to do so on a precautionary basis only. It is therefore recommended that the TPO is confirmed as made.

Other options considered:

- 6.0 As advised above, correspondence was entered into with the owners to attempt to resolve concerns raised. However, as the TPO affects only a single tree there is no modification that could be made to the TPO to lessen any concerns. There are only two options available - to confirm the TPO or decide not to confirm the TPO.

Key implications:

Comments of the Head of Legal Services

No comments

Equality Duty

The Council has a responsibility to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not. The Case Officer has reviewed the proposed development and documentation and considers that the proposal is not likely to have any direct equality impacts.

Climate change

Growing trees absorb CO₂ from the air. Other greenhouse gases (GHG) such as methane and nitrous oxide are also exchanged between trees and the atmosphere, so trees are a key component of the planet's GHG balance. Therefore, the functioning and management of trees and woodlands on a worldwide basis are critical to efforts to reduce climate change ('climate change mitigation') and reduce the net GHG emissions into the atmosphere ('emissions abatement').

On a local level, trees also intercept rainwater and increase soil permeability – thereby slowing the flow of water into the drains and reducing the potential for surface water flooding.

Appendices

Appendix 'A' – Tree Preservation Order No. 7, 2023 (Tandridge)

Background papers

Objection letter, your officer's response and redacted email exchange available to view upon request.