

10 Queen Annes Road, Windsor, Berkshire SL4 2BJ

1. Background:

Tree Preservation Order (TPO) 34 of 2008 was created in June 2008 at 10 Queen Annes Road, Windsor, in response to the Council having received a Certificate of Lawfulness application for the erection of a 2m high brick wall on the side and rear boundaries of the adjoining property, 11 Queen Annes Road, Windsor (Application 08/00902) and also in respect of the concerns raised by Mr Hatton, the occupier of 10 Queen Annes Road regarding the potential damage that may be caused by these proposals to a Horse Chestnut tree and a hedge on his property.

The Order relates to a Horse Chestnut tree as per the specification below:

- T1 1 x Horse Chestnut (*Aesculus hippocastanum*). Located adjacent to the eastern boundary of 10 Queen Annes Road, Windsor.

2. Objections:

Letters of objection dated 3rd July 2008 and 25th July 2008 were received in respect of the Order from Miss Shopna Roy of Thakrar and Co on behalf of their clients, Mr and Mrs Thakrar, the leaseholders of 11 Queen Annes Road; the property is owned by the Crown Estate. Mr and Mrs Thakrar's objections are summarised below:

- Why has this TPO been served on Mr and Mrs Thakrar?
- How may the TPO affect Mr and Mrs Thakrar's property?
- Why is only one tree subject of the TPO when there are many trees at 10 Queen Annes Road and the TPO (TPO 24 of 2008) made on Mr and Mrs Thakrar's property was in relation to a vast amount of trees?
- The Council has acted in a biased manner in this matter.
- It is absurd to suggest that additional objections or representations be received by 4th July 2008. More time is required to provide a robust response.

The Crown Estate has raised no objections to the creation of the TPO.

Three letters of support were received from local residents in respect of the TPO. Mr Hatton, the occupier of 10 Queen Annes Road writing in respect of the TPOs at no 10 and no 11 Queen Annes Road 'wholeheartedly supports this action as it will preserve the trees and also maintain the nature of this road' and 'would not support any appeal against these orders and hope they will be ratified'. Mr Duncan Bell of 13 Queen Annes Road also writes in support 'to maintain the appearance of the road which has been in this condition for many years'. He feels that the orders should be made permanent and the trees left in their present state other than being maintained properly by qualified persons. Dr David Murray Bruce of Jubilee Cottage, Queen Annes Road writes on behalf of himself and his wife, concerned about the appeal against the Orders, which they think 'need to be preserved to maintain the good appearance of Queen Annes Road'.

3. Responses to the objection and justification for the Order:

Under the Town and Country Planning Act (1990) local planning authorities may make a Tree Preservation Order (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. In this case, the mature Horse Chestnut located on the eastern boundary of 10 Queen Annes Road, Windsor is publicly visible and contributes significantly to the aesthetic, amenity and landscape value of the local area. While it is acknowledged that the tree is not visible in its entirety, it is considered that this Horse Chestnut is an important skyline feature and as such is worthy of protection by a TPO.

Trees may be worthy of preservation, amongst other reasons, for their intrinsic beauty or for their contribution to the landscape. Therefore, the legislation makes no distinction between species or size. The local planning authority may make a TPO when it is believed there is a risk of a tree being adversely affected in ways that would have a significant impact on the amenity of the area. This TPO was created in direct response to the recent application received by the Council for a Certificate of Lawfulness at 11 Queen Annes Road, in relation to boundary enclosures at the property. In addition, Mr Hatton the occupier of 10 Queen Annes Road, the neighbouring property, had concerns regarding potential damage that could be caused to a Horse Chestnut tree in his front garden and a mature hedge along his eastern boundary with number 11. Following a site visit by the Council's Arboricultural Officer, it was considered that any new boundary treatment would have an adverse impact on the Horse Chestnut that could ultimately lead to its loss. Since it was considered that this tree within the boundary of No 10 Queen Annes Road was directly under threat, TPO 34 of 2008 was initiated to secure the trees long-term protection. A TPO may only be used to protect trees and cannot be applied to bushes or shrubs and therefore the hedge could not be included for protection within the TPO.

On making a TPO, the Local Planning Authority is required, under regulation 3 of the 1999 Regulations, to serve notice not only on the owner and occupier of the land affected by the TPO but also on the owners and occupiers of any adjoining land. This is so that adjoining landowners are made aware of the existence of the TPO and have the opportunity to make objections or representations about it. The notification is a strict requirement; the documents must be copied to adjoining land in all cases. In this instance, in order to comply with the regulations, Mr and Mrs Thakrar as occupiers of the adjoining property 11 Queen Annes Road as well as the owner/occupiers of 9 Queen Annes Road and of Castlemead Cottages were served with copies of the TPO documents.

An adjoining property may be affected by a TPO since any protected tree or trees, if located adjacent to the boundary may have overhanging branches into neighbouring gardens. Whereas under Common Law a resident would normally have the right to cut back overhanging branches to his boundary line, in the case of protected trees consent for any works would have to be obtained from the local planning authority. Substantial fines can be levied in respect of unauthorised works to protected trees and therefore it is in the interest of occupiers of properties and in this case of Mr and Mrs Thakrar to know about TPOs in a neighbouring property. Anyone can apply to undertake works to a protected tree, however any consent granted does not imply consent would be forthcoming from the owner of the tree. Nonetheless, a neighbour may prune overhanging branches back to the boundary line, but no further, provided the necessary consent has been obtained from the local planning authority. There is no fee levied to submit an application for works to protected trees or a limit on applications made. The local planning authority would not unreasonably withhold consent for tree works which accord with good arboricultural practice, but should consent be refused any applicant has the right of appeal against the decision.

In response to Mr and Mrs Thakrar's question as to why only the Horse Chestnut at 10 Queen Annes Road has been protected, whereas many trees have been protected by an order at their own property. While there may be several mature trees at a property which satisfy the criteria for inclusion within a TPO, in addition it must be expedient to make a TPO, which usually means that the tree must be under some sort of threat. As already stated, in the opinion of the Council's Arboricultural Officer the Horse Chestnut tree at 10 Queen Annes Road is worthy of protection and since it was considered to be under threat it was expedient to create TPO 34 of 2008. Similarly, the three groups of trees, which have been recommended for inclusion in TPO 24 of 2008 at 11 Queen Annes Road, were all deemed worthy of protection and the TPO was initiated because it was considered they too were under threat from development proposals. At no point have Mr and Mrs Thakrar been treated with any bias. While there may be other significant trees at 10 Queen Annes Road, the Horse Chestnut was the only tree considered under threat and therefore the only tree included in TPO 34 of 2008.

When the first letter of objection to TPO 34 of 2008 was received from Miss Roy of Thakrar and Co on 3rd July 2008, a response was sent from the Council's Arboricultural Officer on 21st July. This was intended to address the concerns raised by Mr and Mrs Thakrar and ended by requesting that any further objections or representations they might have should be received by the Council by 4th July 2008. Unfortunately, this was a typing error and should have read 4th August 2008, however the Council had no objection to extending the time for further representations until 15th August 2008 as requested by Miss Roy.

4. Sustainable Development Implications:

In terms of the sustainable development policy the recommendation contained in the report will have the following significant beneficial sustainable development implications: A positive impact on the natural environment by retaining the tree stock.

RECOMMENDATION that Tree Preservation Order 34 of 2008 is confirmed without amendment.