

**36 Sutherland Chase, Ascot, Berkshire SL5 8TF**

1. Background:

Tree Preservation Order (TPO) 39 of 2008 was created in August 2008 on land at 36 Sutherland Chase, Ascot. Prior to the initiation of the TPO a Planning Condition (Condition 4 of Consent 406562) existed, prohibiting the cutting down, topping or lopping of trees at the property, without the prior consent of the local planning authority. The TPO was initiated following a request from Mr Roger Crunden, the owner of 36 Sutherland Chase, for permission to fell an Oak tree in his rear garden. The proposed works were considered to be inappropriate and it was therefore expedient to serve a TPO to protect the tree.

The Order relates to an Oak tree as per the specification below:

T1 Oak (Quercus sp). Located in the south east corner of the rear garden.

2. Objections:

Two letters of objection were received in respect of the Order, from Mr Roger Crunden, the owner of 36 Sutherland Chase and from Mr G N Leedham, the owner of the neighbouring property, 34 Sutherland Chase. Their objections are summarised below:

- The Borough granted consent for the Oak tree to be lopped by 30% in 1986. The tree is now larger than it was originally and other trees in the vicinity have grown such that sunshine is excluded from the rear garden of 36 Sutherland Chase for most of the day. It is impossible to grow fruit and vegetables as a result.
- The Oak tree is a possible danger to life and property. It overhangs the neighbouring property 34 Sutherland Chase by 20ft, covering a greenhouse which is regularly used by all members of the family. The tree drops large acorns and insecure branches onto the greenhouse, which has led to the glazing being replaced on numerous occasions. Fortunately no one has yet been injured. The impact of the Order will be to prevent the occupier of No 34 from retaining his boundary, reclaiming the area of his property that is overhung by the tree and from cutting back branches to prevent the risk of his family being hit by tree debris or flying glass from the greenhouse when it is bombarded by acorns.
- The backs of the gardens, being on an exposed hill, are subject to strong westerly gusts of wind that will also exacerbate the risk of falling debris from the tree. Apparently up to 50,000 acorns could be produced by this tree in a year.
- If the Council still believes that a TPO is appropriate, Mr Crunden would like permission to reduce the size of the tree by 30% as it was in 1986. The loss or reduction of the tree would hardly be noticed in the street scene there being a number of other trees immediately behind the tree in question.
- A request was made on 21<sup>st</sup> July 2008 to Planning Support Services for permission to have the tree removed. A tree officer called to inspect the tree a week later, shortly after 8am without an appointment. Subsequently the TPO document was delivered and a site notice posted without any further reference to Mr Crunden. There was no indication as to how long the site notice should remain, the correspondence threatens a £5000 fine if anything is done to the tree and demands completion of a form within 14 days with a fine of £5000 for failure to comply. In response to a reasonable request the Council have responded with aggression and threats of fines and legal action.

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

Under the Town and Country Planning Act (1990) local authorities may make a 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. Trees may be worthy of preservation, amongst other reasons, for their intrinsic beauty or for their contribution to the landscape. In this case the Oak tree that has been protected can be viewed from public vantage points in Sutherland Chase and from the public footpath at the rear. The tree contributes to the amenity, aesthetic and landscape value of the local area.

The local planning authority may create a TPO when it is believed there is a risk of a tree being cut down or pruned in ways that would have a significant impact on the amenity of the area. Prior to the initiation of the TPO a Planning Condition (Condition 4 of Consent 406562 dated 5<sup>th</sup> January 1978) existed, prohibiting the cutting down, topping or lopping of trees on the property, without the prior consent of the local planning authority. In July 2008 Mr Crunden, the owner of 36 Sutherland Chase applied to the Council for permission to fell the Oak tree in the south east corner of his rear garden. Following an assessment by one of the Council's Arboricultural Officers it was considered that the tree is in good condition and its loss would be detrimental to the amenity of both 36 Sutherland Chase and the surrounding area. It is a prominent tree in the landscape, enhancing the character of the area and its setting and is worthy of retention. The proposed removal of the tree was therefore considered to be inappropriate. Government guidance recommends that planning conditions should not be used to protect trees long term; the correct mechanism for doing so is with the use of TPO's. Breaching a planning condition does not carry the same penalties as for a breach of a TPO and is therefore much less of a deterrent to carrying out inappropriate works. It was therefore expedient to initiate a TPO to protect the Oak tree.

With respect to the objections to the TPO on the grounds of the shading that the tree causes, the Oak (T1) is situated on the south east side of 36 Sutherland Chase and therefore only reduces the available direct sunlight in certain parts of the property for a proportion of the day. Shading will also only tend to occur during 6 months of the year when the tree is in full leaf. For the remaining 6 months when light levels are naturally lower, the shading caused by the trunk and branches will be much less, if not negligible. Some shading in the summer months can be beneficial when the temperatures and ultra violet radiation are high. The pruning of trees for available sunlight does not provide sufficient justification to warrant detrimental works being carried out to the tree. During the site visit it was noted that the house is situated lower than the rear garden and the ground behind it. The woodland tree species growing from Glade Lodge to the south of the property will restrict the path of direct sunlight falling on the property regardless of the Oak tree. It is considered that the additional shade caused by the oak tree is slight given the other trees on the bank behind the property.

Some grass species may struggle to grow directly underneath the crown spreads of some trees, but there are grasses on the market that do tolerate low light conditions and so may be better suited to the areas of concern. It is acknowledged that the growing of fruit and vegetables may be more difficult but again there may be varieties of these, which are better suited to lower light conditions.

With respect to the potential danger that the Oak tree presents, at the time of the site visit the Oak was inspected from the ground and appears to be in good health and condition. In the opinion of the Arboricultural officer there were no signs of likely branch failure over the greenhouse at 34 Sutherland Chase. However, the removal of any deadwood may be carried out under an exemption in the legislation without the need for prior written consent from the Council. In the Secretary of State's view, this exemption allows the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree. Determining whether a tree is dead, dying or dangerous, for the purpose of a statutory exemption, is not always a straightforward matter. The Council's Tree Section can provide confirmation on site, should there be any uncertainty. Anyone proposing to cut down a tree under this exemption is advised to give the Council five days' notice before carrying out the work, except in an emergency. If work is carried out on a protected tree under this exemption, the burden of proof to show, on the balance of probabilities, that the tree was dead, dying or dangerous rests with the defendant.

The dropping of seed in the form of acorns from Oaks is part of the trees natural life cycle and is not justification for the removal of the tree. The acorn drop is usually for a limited part of the year and the drop tends to be sporadic over a few weeks. An acorn is small and relatively light so shouldn't create much force in its fall. However, it may be worth considering placing a small canvas tarpaulin or Perspex sheeting over the greenhouse roof for the short period when acorns fall. Alternatively the replacement of

the glass with toughened glass or an artificial horticultural plastic (Perspex or acrylic) might be a permanent solution.

As already stated, at the time of the site visit the Oak (T1) appeared to be in an outwardly sound condition with no obvious signs of defect or decay. The prevailing wind direction in this region is south westerly therefore the house does provide some protection to the tree from these winds. At times of extreme weather events it can be unsettling being in close proximity to trees. However, trees must sway in windy conditions as this is what stimulates them to produce new root material and stabilise themselves in the soil. It also increases the diameter of the stem, limbs and branches, which increases their resistance to normal weather conditions and increases the strength of the tree to be able to hold the weight of the upper parts. Tree sway is natural and helps the tree to continue to adapt to the forces and stresses exerted on it. The Oak at 36 Sutherland Chase appears to be in good condition and it is therefore not reasonably foreseeable that it will fail. However, it is recognised that there are no absolutes in nature and even a healthy and structurally sound tree may fail if winds are abnormally strong. As the condition of trees can change over time, if anyone has any concerns, the Council's Tree Section offers free arboricultural advice for protected trees and is willing to discuss any works with interested parties.

Crown reduction of the tree was not discussed with Mr Crunden at the time of the site visit however the Arboricultural Officer did mention minor pruning works and the removal of deadwood, both of which are acceptable forms of tree work. Regardless of previous management practices, a crown reduction would result in extensive leaf loss and multiple wounding which would impair the trees defences against disease and decay. It would also prejudice the trees ability to produce carbohydrates and sustain itself, which is much more critical when the tree is mature. Crown reduction would therefore not be acceptable. Given the current condition of the tree the Council would allow a 5% thin which would not spoil the shape of the crown and would give consent to provide reasonable branch clearance to allow the owner of 34 Sutherland Chase access to his boundary fence for maintenance.

An Arboricultural officer visited 36 Sutherland Chase on 25<sup>th</sup> July 2008 in response to Mr Crunden's letter of 21<sup>st</sup> July 2008. During normal core working hours of 8.45 am – 5.15 pm it is not normal practice to make appointments unless specifically requested. However, as the Officer's visit was before this time, advance notice should have been given to confirm this was acceptable. The Officer did apologise for the early start at the time of the visit and did ask if it was convenient and was not aware that there was any objection.

On making a TPO, the Local Planning Authority is required, under regulation 3 of the 1999 Regulations, to serve notice on the owner and occupier of the land affected by the TPO. The documentation which was hand delivered to 36 Sutherland Chase contained a covering letter, a regulation 3 notice, a requisition for information, the TPO and a pamphlet. The TPO is based on a model order, which is used by Local Authorities throughout the country. Likewise both the regulation 3 notice and requisition for information are standard legal documents. The requisition for information is included in the notification sent to those persons believed to be owners or occupiers of the land in order to find out the name and address of any other person having an interest, whether as freeholder, mortgagee, lessee or otherwise, or who receives rent, for the land or premises affected by the TPO. Failure on the part of the LPA to notify, or make every effort to notify, all interested parties may invalidate the TPO. The requisition for information is a legal document and failure to complete the form is an offence, which may attract a fine of up to £5000 should the Council in extreme circumstances wish to instigate proceedings for non-compliance.

The TPO is not meant to be aggressive or threatening but does clearly state that fines can be imposed by a Court if a tree is cut down, topped, lopped or wilfully damaged or wilfully destroyed without the prior consent of the Council (although some exemptions do apply). This is to ensure those who might consider trying to ignore the process cannot argue they did not understand the potential consequences of their actions if they do so.

It is the usual practice of this Council to display a site notice near to the entrance into the property to alert persons entering the site, such as a contractor who might already have been commissioned to carry out works to the tree, that a TPO has now been made. Whilst it is suggested that it should be kept on display for 28 days, the owner/occupier is at liberty to remove it at any time should they so wish.

It is standard practice not to advise tree owners in advance about the making of a TPO in case the

owner takes action to remove the trees before the TPO is served.

The creation of the TPO on the Oak tree at 36 Sutherland Chase should not hinder the appropriate maintenance of the tree but is intended to secure its long term future and encourage and coordinate its management in accordance with good arboricultural practice while preserving public amenity. The Council is not liable for matters relating to the normal management of a protected tree, but the Tree Section is able to offer free arboricultural advice to owners of protected trees. Anyone can apply to undertake works to a protected tree, 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.

#### 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 37 of 2008 is confirmed without amendment.**