

Tree Preservation Order 7 of 2009

Etruria Court, Grenfell Road, Maidenhead, Berkshire SL6 1EJ

1. Background:

Tree Preservation Order (TPO) 7 of 2009 was created in April 2009 on land at Etruria Court, Grenfell Road, Maidenhead SL6 1EJ. The TPO was initiated in response to an enquiry from a tree surgeon, received on 31st March 2009, regarding two trees at the front of Etruria Court that he had been asked to fell. Following an assessment by one of the Council's Arboricultural Officers, it was considered that one of the trees, the Cedar (T1) as indicated on the TPO map, was of high amenity and its removal would be a severe loss to the street scene. It was therefore deemed appropriate to create a TPO to ensure the retention of the tree. The second Cedar outside Etruria Court was considered to be of poor form and condition and therefore not worthy of inclusion within the TPO.

The Order relates to one individual tree as per the specification below:

T1: Cedar (Cedrus sp). Located in front of 1 Etruria Court, Grenfell Road, Maidenhead.

2. Objections:

One letter of objection from Mr Colin McGowan of 2 Etruria Court was received in respect of this TPO and is summarised below:

- Objects to being treated like a potential criminal with reference to the extortion of information and the threat of Court and fine that were the Council's first approach on this subject.
- It is the Horse Chestnut trees that define the character of the area. However, the Cedar does offer some contrast to the surroundings and there has never been any intention to remove it.
- There is a strong need to cut back lower branches which are touching the house and resting on phone lines in the vicinity.
- Falling branches have become quite common, one recently damaging a neighbour's car. There are a lot of dead branches that are dangerous and need to be removed and it is this work that it is intended to carry out.
- Would have no objection to a TPO that focused only on the non-removal option but needs to be able to take appropriate action with respect to the tree without blocking, hindrance or unnecessary bureaucracy.

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 Cedar is an attractive tree of high public amenity and an important historical feature having been planted just after the Victorian era. It is one of several Cedars, which help to define the character of the area. The tree is clearly visible from Grenfell Road and Castle Hill Terrace and also provides a frame and softening to the built form of Etruria Court.

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. On 31st March 2009 the Council's Tree Section received an enquiry from a tree surgeon regarding two trees at the front of Etruria Court that he had been asked to remove. Following an inspection of the trees by one of the Council's Arboricultural Officers, it was considered that the Cedar at the front of number 1 Etruria Court, is an attractive tree which appears to be in good condition, is of high amenity value and its removal would be a severe loss to the street scene. Although a Horse Chestnut tree on the highway verge does partially hide the lower crown of the Cedar, this is a less attractive, smaller specimen that will not grow to the same majestic size. While accepting that some tree management will be appropriate for the Cedar due to its proximity to Etruria Court, it was deemed expedient to initiate a TPO to ensure the retention of the tree. Prior to the initiation of the TPO, a Planning Condition (Condition 9 of Consent 412654 dated 24th April 1981) existed, prohibiting the cutting down, topping or lopping of trees at Etruria Court, without the prior consent of the local planning authority. 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.

A TPO is not intended to make people feel like criminals and it is regretted if the serving of the Order had this affect on Mr McGowan. However, 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 sent to Mr McGowan at 2 Etruria Court and to his neighbours, 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 form 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 Local Planning Authority 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 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.

Mr McGowan maintains that it is the many Horse Chestnut trees that define the character of the area. While it is certainly the case that the Horse Chestnuts along this stretch of Grenfell Road provide an attractive 'leafy' residential setting, there are also several Cedars in the vicinity that, as Mr McGowan acknowledges, offer a contrast to the surroundings and contribute significantly to the amenity, aesthetic and landscape value of the local area.

The creation of the TPO on the Cedar at Etruria Court 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. It is acknowledged that the tree requires some pruning work to reduce branches back from the building and remove deadwood. In this respect the Council's Arboricultural officer recommends the removal of deadwood and tip reducing branches back from the house to give 1.5 metres clearance. 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. However, any works above the removal of deadwood that necessitates cutting into live wood would require an application to be made and written consent obtained from the Council.

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 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 7 of 2009 is confirmed without modification.