

Tree Preservation Order 13 of 2009

Apple Tree Cottage, Old Mill Lane, Bray, Maidenhead, Berkshire SL6 2BG

1. Background:

Tree Preservation Order (TPO) 13 of 2009 was created in July 2009 on land at Apple Tree Cottage, Old Mill Lane, Bray, which is situated in the Bray Conservation Area. This TPO was made in response to an earlier notification received on 8th June 2009 (ref: 09/01120) to fell a Sycamore tree located in the front garden of the property. The application was refused on the grounds that the removal of the tree would not be in the interest of amenity and good arboricultural practice and TPO 13 of 2009 was initiated to protect the tree.

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

T1: Sycamore (*Acer pseudoplatanus*). Located in the south east corner of the front garden of Apple Tree Cottage, Old Mill Lane, Bray.

2. Objections:

Two letters of objection were received in respect of this TPO, from Mr and Mrs Hulls, the owners of Apple Tree Cottage and from Mrs J Westerman of Wytch House, Old Mill Lane, an adjoining property. Their objections are summarised below:

- There is clear damage to the boundary wall and concrete hardstanding at Apple Tree Cottage as a result of the tree and also damage to a small paved area in the driveway to Wytch House.
- The tree is located directly on the edge of the highway; the roots can be seen entering the highway and are less than 24" from the main BT access man holes and must be causing damage below ground to surrounding areas. There is also concern that exposed roots represent a serious trip hazard to the general public who walk over the area due to the narrow road at this point.
- There is a major problem with impaired sight lines on entering Old Mill Lane from Apple Tree Cottage, Wytch House and Bray Bungalow. The tree trunk also creates a blind spot to vehicles from Wytch House and Bray Bungalow waiting to enter the highway, for the traffic driving down the road towards Monkey Island. There have been several near misses.
- If the Council maintains that the tree has to stay, written confirmation is required that the Council take full responsibility for any damage to property or personnel caused by the tree or cover for any accidents on the highway due to the presence of the tree.
- The Sycamore tree has grown significantly and is in urgent need of attention, and is not as healthy as suggested. It now reaches across the highway, interferes with telephone lines and often branches and debris fall in the wind.

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 Sycamore occupies a position of high public amenity, being entirely visible from the public highway, and contributes significantly to the character and appearance of the Bray Village Conservation Area. It is considered that the removal of the tree would have a significant impact on the local environment and its enjoyment by the public.

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. As stated above, this TPO was created in direct response to the Council receiving a notification from Mr and Mrs Hulls, owners of Apple Tree Cottage, that they wished to fell the Sycamore. Following an inspection by one of the Council's Arboricultural Officers it was considered that the tree is of good shape and form, and appears in a sound and healthy condition with no outward signs of any significant defects or decay. This being the case and because of its amenity value the Council objected to the proposed felling of the Sycamore and it was deemed expedient to initiate a TPO to protect the tree.

With respect to the damage to the wall and concrete hard standing, no evidence has been put forward, and therefore it is not proven, that the tree has or is causing the damage. However, should evidence be put forward to substantiate this claim in the future then the Council will be willing to review the matter. In particular, any damage to the paving slabs and walls will be exacerbated by the nature of the surface. Indeed some structures may be affected over time by weathering and deterioration on account of age. In certain situations hard inflexible materials such as concrete paving in close proximity to tree stems will lift and distort as a direct or indirect result of natural tree root action. Such problems can be overcome by the use of lightweight, flexible materials such as pebbles or gravel, which can also improve the drainage to an area and reduce 'run-off'. The use of lintels within walls to bridge roots and allow for future increment growth may also overcome such problems.

In order to address the concerns raised regarding damage to the highway and impairment of sightlines, one of the Council's Highway Officers inspected the site in July 2009. He confirmed that there is no sign of damage to the highway surface across the site entrance or on the carriageway although he found that sightlines to the left (south east) of the exit from Apple Tree Cottage and to the right (north west) of the exit from Wytch House are obscured to some extent by the stem of the Sycamore tree. However, by reducing the shrubs along the boundary a clearer view of Old Mill Lane should be obtained for both properties when exiting their drives. It should be noted that in many cases where there is no footway, the sight lines at accesses tend to be quite constrained, and care would still have to be taken when pulling out on to the road, especially if as in this case the property is immediately adjacent to the highway.

British Telecom has not raised any concerns with regard to their inspection chamber which is situated in the road close to the Sycamore's location. Since conditions under the road are not conducive to an abundance of root growth, it is not likely that much root proliferation will be occurring there and no problems are anticipated.

With respect to the health of the Sycamore tree, the Council's Tree Officer has inspected the tree, which appears to be in a sound condition with no obvious signs of any significant disease or decay. Trees are natural growing organisms and the die back of branches in the lower regions of the crown that are no longer efficient at photosynthesis, as well as the shedding of leaves, twigs and flowers, fruit and pollen, is part of the normal biological cycle of the tree and not sufficient justification for felling. However, as the condition of a tree can change over time it is prudent to have it inspected on a regular basis and the Council's Tree Team offers free on-site arboricultural advice for owners of protected trees and is willing to discuss any works with interested parties.

Safety is of paramount importance and should works be necessary because either part or all of the tree has died, is dying or has become dangerous, then there are exemptions in the legislation which allows certain works to be carried out without the need for an application to be made to the local planning authority. For example this exemption allows the removal of deadwood from a tree or the removal of dangerous branches from an otherwise sound tree. Anyone proposing to carry out works under this exemption is advised to give the local planning authority five days' notice. Work outside these criteria can be considered by the local planning authority. 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. An application to prune the Sycamore at Apple Tree Cottage to give sufficient

height clearance to pedestrians and the adjacent road as well as to buildings in close proximity or to overhead wires would normally be granted.

With respect to the long term management of the Sycamore; as with any tree, ultimately the responsibility for maintenance rests with the tree owner, who has a duty of care to ensure that their tree or trees are not in such a condition as to pose an unacceptable risk to other persons or their property. As such any tree whether subject to a TPO or not, should be inspected periodically by a qualified Arboriculturalist for health and safety. The creation of the TPO should not hinder appropriate maintenance but is intended to encourage and coordinate the management of the tree in accordance with good arboricultural practice. The Council is not liable for matters relating to the normal management of a protected tree, but as stated above to assist the owners of protected trees the Tree Team is able to provide free advice.

The Council would not be liable for any loss or damage caused or incurred in consequence of serving a TPO. However, TPOs do make provision for the payment by the Council of compensation for loss or damage as a result of either their refusal of any consent for works under the TPO, or their grant of a consent subject to conditions.

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 13 of 2008 is confirmed without modification.