2022/0601

Mrs K Fisher

Remove Oak tree T1 within TPO 19/1973 and Willow tree T2 within TPO 1/2004.

152 Intake Lane, Pogmoor, Barnsley, S75 2HU and 25 Oakfield Walk, Barnsley, S75 1LW

Site Description

The trees in question are a Willow Tree and an Oak Tree, located within the curtilage of 25 Oakfield Walk and 152 Intake Lane respectively. The Willow tree is located within the curtilage of 25 Oakfield Walk and adjacent to the southern boundary with 23 Oakfield Walk. The Oak tree is located within the curtilage of 152 Intake Lane and adjacent to the western boundary with 23 Oakfield Walk.





Proposed Development

The applicant seeks permission to remove 1no Willow tree from 25 Oakfield Walk within TPO 1/2004 and 1no Oak tree from 152 Intake Lane within TPO 19/1973 due to soil shrinkage related subsidence to 23 Oakfield Walk.

Policy Context

The statute law on TPO's is in The Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Primarily the aim of making a TPO is to protect the amenity value of the tree or trees. Local Planning Authorities (LPAs) 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 woodlands 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. Normally trees should be visible from a public place e.g., road or footpath for a TPO to be made but the courts have decided that trees should be protected for "pleasure, protection and shade they provide." Taking this into account trees should be considered for other aspects of amenity that they provide other than visual amenity.

Government advice and guidance available on the administration of TPOs, is: - 'Tree Preservation Orders: A Guide to the law and Good Practice' 2000.

The guidance states that ‘LPAs must include in their plans land use and development policies designed to secure the conservation of natural beauty and amenity of the land. Plans should not, however, include policies which are unrelated to the development or use of land. They should not therefore include the LPA's policies for deciding applications for consent under a TPO; but they should include policies on measures that the LPA will take, when dealing with applications to develop land, to protect trees and other natural features and provide for new tree planting and landscaping.’

In deciding an application, LPAs are not required to have regard to the development plan. Section 54A of the Act, therefore, does not apply to the LPA's decision, which means that there is no general duty on the LPA to make their decision in accordance with the development plan.

Consultations

Forestry officer – no objections subject to conditions.

Representations

Neighbour notification letters have been sent to surrounding residents; one letter of objection has been received, the owner of 25 Oakfield Walk has objected to the removal of the Willow tree within their property.

Assessment

Principle of development

In line with good practice, primarily the aim of making a TPO is to protect the amenity value of the tree or trees. In considering TPO applications the LPA is advised:

(1) to assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and

(2) in the light of their assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

The trees are large, prominent specimens which are highly visible to both residents and commuters through the local area. Unfortunately, the trees have been implicated in soil shrinkage related subsidence as the main contributing factor to the damage to 23 Oakfield Walk. The documents provided show that thorough investigations have been undertaken to ascertain the cause of the damage and all the experts who have contributed to the investigation have concluded that the trees are the primary cause of damage and that they should be removed so an effective repair can be made.

Regrettably, there are no grounds on which to object to the proposal and as such consent must be given to the removal of the trees from a planning perspective. However, the trees are not owned by the property where damage has occurred and as such it must be made clear that the approval of this application is in no way a suggestion that the tree owners must consent to their removal. This is a decision for them as a tree owner; the authority has based its decision on the evidence provided and removed the legislative barriers to the owners should they wish to consent to the works. It should also be noted that if the tree owners do not consent to the removal of the trees, then despite the approval for the removal, the trees remain protected unless they are physically felled within the two-year time period.

As with any removed tree, replacement planting will be required, it is acknowledged that the trees are to be removed due to structural implications, however an engineered solution/root barrier should be installed at the time of replacement planting in order to prevent a re-occurrence of the

damage. The applicant has not put forward a suggestion as to suitable species for replacement planting, therefore the authority has defaulted to like for like replacement planting, which along with the engineered solution will be conditioned.

Recommendations

Approve with Conditions