
2021/0873

Mr M Whicker

Remove Oak tree within TPO 40/2008

11 St Christopher's Close, Ardsley, Barnsley, S71 5DA

Site Description

The area is predominantly residential in nature with 11 St Christopher's Close being located at the head of a cul-de-sac, adjacent to the turning head.

The tree subject to this application is located at the convergence of the rear garden of 11 St Christopher's Close, with 9 St Christopher's Close, 16 St Andrews Way and, 46, 48 and 50 Roehampton Rise.

The Oak tree is a relatively large and mature specimens of a uniform shape and is situated within a prominent position within the street scene and can be viewed from the wider area.



Planning History

2016/0678 - Crown lift Oak tree (T1) to a height of 5m within TPO 40/2008 – Approved August 2016

2019/0051 - Remove Oak Tree – Application withdrawn following indication that the application would be refused due to lack of justification for the removal of the tree.

Proposed Development

The applicant seeks permission to remove Oak tree within TPO 40/2008, with the reasons for removal being cited as the large overhanging branches which could be damaged by wind or lightning and also acorns falling from the tree which the applicant feels make the tree dangerous particularly if one were to hit a child but also as he claims they have broken windows etc. previously.

Policy Context

The statue 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, LPA's are not required to have regard to the development plan. Section 54A of the Act, 88 therefore, does not apply to the LPA's decision, which means that there is no general duty on the LPA to indicate otherwise.

Consultations

Forestry officer – Recommends that this application be refused as the works are not considered acceptable or in line with best practice as per BS3998:2010.

Representations

Neighbour notification letters were sent to surrounding residents; two letters of support have been received from surrounding properties stating that the tree poses a threat, and that the loss of the tree would not be detrimental to the area given the proximity of it to the woodland area surrounding the crematorium.

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.

As noted, the tree is relatively large and a highly prominent specimen situated on the boundaries of several gardens but apparently belonging to 11 St Christopher's Close, Ardsley.

The applicant seeks permission to remove the tree, with the reasons for removal being cited as "the large overhanging branches could be damaged by wind or lightning and also acorns falling

from the tree” which the applicant feels make the tree dangerous particularly if one were to hit a child, but also as the applicant claims they have broken windows previously.

The tree is protected by a Tree Preservation Order and as such must be retained unless there is justification for its removal. In this instance no reason for removal beyond perceived threats have been put forward. The fact that branches are present, and something may happen to them cannot be considered a reason for removal as this is the same for every tree and allowing the removal of a protected tree due to a perceived risk such as this would mean that any protected tree could be removed for the same reason and there would be no recourse to defend it.

The issue of falling acorns is new to the Local Planning Authority, and the Tree Officer has never heard of anyone considering acorns as a health and safety risk in terms of their natural shedding from a tree.

As with the issue of overhanging branches, acorns and their natural shedding to the floor is associated with every single Oak tree in the country and again allowing a tree to be removed due to it shedding acorns would set a dangerous precedent for all protected Oak trees, resulting in any protected Oak tree being removed for the same reason.

No valid reasons for removal have been put forward, only the concerns of the tree owner with regards to natural arisings from the tree and the potential issues with overhanging branches. If the owner wishes to pursue the removal of the tree, suitable evidenced based justification will need to be put forward.

It is also worth noting that an application was submitted in 2019 for the removal of the tree by the same applicant, no justification or supporting documentation was submitted with this application and the applicant was notified that the application would be refused if suitable information was not submitted to support the application; the applicant withdrew the application prior to a decision being made.

The application also notes that the applicant will likely pursue pruning works of a crown lift to 5m and a crown reduction of 30% if the removal is refused. Firstly, it should be noted that if this work is pursued it would not be considered acceptable as it is ambiguous in terms of the nature of the reduction works and it is felt that the level of works proposed would ultimately exacerbate the issues with the trees in terms of a proliferation of new growth etc. It was noted by the tree officer that there is significant epicormic growth within the crown of the tree which if an application for pruning works is submitted would ease some of the issues if cleared; likewise, a crown lift to 5m would be sensible option, coupled with crown cleaning and thinning by 10-15%, however these works will require a separate application.

However, ultimately the removal of the tree is unacceptable, and no evidence has been submitted to justify the removal of the tree and as such there is no option but to refuse the application.

Conclusion

In the opinion of the Local Planning Authority, insufficient information has been submitted to justify the removal of the tree. As such the removal of the Oak Tree, which is subject to Tree Preservation Order 40/2008, is considered inappropriate and would result in harm to the visual amenity of the area.

Recommendation

Refuse

In the opinion of the Local Planning Authority, insufficient information has been submitted to justify the removal of the tree. As such the removal of the Oak Tree, which is subject to Tree

Preservation Order 40/2008, is considered inappropriate and would result in harm to the visual amenity of the area.