

COMMITTEE REPORT

BY THE DIRECTOR OF ENVIRONMENT & NEIGHBOURHOOD SERVICES
READING BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE: 6 February 2019
TITLE: OBJECTION TO A TREE PRESERVATION ORDER AT 16 ERLEIGH ROAD, READING

Ward: Redlands

RECOMMENDATION

That the Tree Preservation Order be confirmed

1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To report to Committee an objection to Tree Preservation Order No. 10/18 relating to 16 Erleigh Road, Reading (copy of TPO plan attached - Appendix 1).

2. BACKGROUND

- 2.1 A Section 211 Notice to fell the Ginkgo tree was received in August 2018 on the basis that the tree was damaging the adjacent boundary wall; a Notice to fell being required as the tree is located within the Redlands Conservation Area. In assessing the proposed felling, Officers determined that the healthy, mature Ginkgo was worthy of a Tree Preservation Order. The condition of the wall was such that a section would have to be rebuilt; the potential method of which could be devised to work around the tree roots. The service of a TPO is the only way in which a Local Planning Authority can stop the felling of a tree in a Conservation Area once a S211 Notice has been received. A TPO was therefore served on 10 September 2018 in order to protect the tree whilst discussion about the wall continued.

3. RESULT OF CONSULTATION

- 3.1 An objection to the TPO has been made by 18E Erleigh Road on behalf of residents at the adjacent Marlow Court, 18A-18E Erleigh Road, based on the following *[note that 8 residents confirmed if they wished to object when asked by No. 18E; 4 said 'yes', 3 said 'no' and 1 (No. 18E) said 'don't know', hence the objection was determined by the majority vote]*:
 - 1) The tree roots have caused a significant lean and loosening of bricks of the dividing boundary wall (owned by No. 16). There is concern that without significant intervention the roots may soon push over the wall completely (potentially injuring anyone who happens to be nearby at the time). This possibility has been confirmed by the consulting engineer employed by No. 16.
 - 2) The tree roots may damage a drain which is believed to run from numbers 14 & 16 passing under Marlow Court into Alexandra Road; a drawing of which has been seen [by objector]. Whilst No. 16 believes this drain to be redundant, with replacements having been laid without passing through Marlow Court, there is no documentary evidence of this.
 - 3) The tree is very tall with a slight lean to the south-west whereas it was previously (apparently) perpendicular. There is concern that if it falls, for example in a gale, then it could cause significant damage to some of the garages/vehicles or properties at Marlow Court.

- 4) It is believed that damage arising from the tree shall remain the responsibility of the owner of 16 Erleigh Road. However, if the tree or its roots cause damage to any part of 18 Erleigh Road then the existence of the TPO may cause subsequent bureaucracy and delay, resulting in further damage and/or costs. In that case, the Council should be willing to accept the costs arising there from.

3.2 In response to the objections from Marlow Court, 18 Erleigh Road, Officers have the following comments:

- 1) Officers were aware of the condition of the wall prior to the service of the Tree Preservation Order. Following service, a visit from a consulting engineer was organised by the tree owner as a joint visit with officers in order to discuss potential repair of the wall, whilst enabling retention of the tree - this was attended by the owner of 18E Erleigh Road. The consulting engineer confirmed during the visit that he did not think the wall was in imminent danger of failure. The wall issue is subject to ongoing discussions and officers await further contact from the tree owner once she has received the report from the engineer. The wall would have to be dealt with even if the tree was removed; the tree removal in itself potentially causing issues with the wall (as confirmed by the engineer).
- 2) It is accepted that roots do have the potential to affect drains both directly and indirectly. It appears from the objection that the concern in this respect relates to 'possible' damage. Whilst these concerns are appreciated, 'potential' damage would not be a reason to fell or omit a tree from a TPO. Should tree related drainage issues be confirmed in the future then officers would deal with the matter at that point.
- 3) The slight lean of the tree was noted during the two visits to the site. The reason for the lean is not clear, however a lean, in itself, is not necessarily a concern. Trees can lean for a number of 'natural' reasons that would not make failure likely. There is no evidence to show that the lean has increased over either a long, or short, period and no photos to compare with the current situation. It is a tree owner's responsibility to ensure that a tree does not pose an unacceptable risk to persons or property. To meet with this 'duty of care', trees should be inspected by a suitable professional on a regular basis (the frequency determined by any defects present and/or the risk the tree presents). Any such inspection would be expected to highlight concerns and recommend suitable action. Regular inspections would also enable comparison of condition over the years.
- 4) The responsibility for the tree and any damage it causes remains with the owner, regardless of its protection status. If any damage occurs to 18 Erleigh Road, it follows that all parties will want to establish the cause of that damage so that appropriate action is taken. If it is proven that the roots of the protected tree are the cause of the damage, officers would work quickly with the parties involved to resolve the issue. Officers do not foresee that the presence of the TPO would cause undue delay if evidence clearly points to roots of the Ginkgo as being responsible for the damage. The only situation in which a claim may be relevant against the Council would be if an application to fell was refused and subsequent damage occurred as a direct result of that refusal. Otherwise, costs incurred remain with the tree owner and/or their insurer.

4. CONCLUSION AND RECOMMENDATION

- 4.1 The issue relating to the boundary wall is subject to ongoing discussions with the tree owner which officers will still continue if the TPO is confirmed. Other concerns raised are not considered to be valid reasons for omitting the tree from a TPO. It is therefore recommended that the TPO be confirmed.

5. LEGAL IMPLICATIONS

- 5.1 Preparing, serving confirmation and contravention of TPO's are services dealt with by the Council's Legal Section.

6. FINANCIAL IMPLICATIONS

- 6.1.1 Administrative.

7. EQUAL OPPORTUNITIES IMPLICATIONS

- 7.1 In assessing objections to TPOs, officers will have regard to Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2 In terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the making of this TPO.

8. SUSTAINABILITY IMPLICATIONS

- 8.1 The aim of the TPOs is to secure trees of high amenity value for present and future generations to enjoy. Trees also have high environmental benefits through their absorption of polluted air and creation of wildlife habitats.

9. BACKGROUND DOCUMENTS

- 9.1 Planning Section's Tree Preservation Order Directory
- 9.2 Register of Tree Preservation Orders
- 9.3 Plan of TPO 10/18 relating to 16 Erleigh Road, Reading (Appendix 1)

Officer: Sarah Hanson

Appendix 1

