

# TREE PRESERVATION ORDER 2065/2017 – 26 BOUND LANE, HAYLING ISLAND, PO11 9HU

Report by the Head of Neighbourhood Support

Portfolio: Councillor David Guest

Key Decision: No

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## 1.0 PURPOSE OF REPORT

*(The debate and voting on this application will be in accordance with the procedure and guidance set out in the guidance notes attached at Appendix C)*

- 1.1 To consider representations received in response to the making of a provisional Tree Preservation Order (TPO) in respect of 1No. Pedunculate Oak (*Quercus robur*) at 26 Bound Lane, Hayling Island, PO11 9HU.

## 2.0 RECOMMENDATION

- 2.1 That Tree Preservation Order 2065/2017 should be confirmed without modification.

## 3.0 SUMMARY

- 3.1 The tree subject of this TPO is a Pedunculate Oak offering a high degree of public amenity to the local area and contributing positively to the street scene. There is no evidence of actionable nuisance and the tree meets with the Tree Preservation Method for Preservation Orders (TEMPO) guidelines for the TPO to be defensible.
- 3.2 The Oak is a semi-mature specimen that bifurcates into two stems at 1.2m above ground level with an open crown form that has adapted to the prevailing wind pattern. The canopy contains deadwood commensurate with the age and species, however there are a number of these dead branches that pose a threat to the area below and should be removed under the Dead and Dangerous exemption to the planning process.
- 3.3 The Oak tree is situated on land that the owner at 26 Bound Lane is currently seeking Adverse Possession on.
- 3.4 The Tree Preservation Order was provisionally made to protect the amenity value offered by the tree following the recent felling of two mature Oak trees on site. Havant Borough Council was contacted by members of the public and Ward Councillors who stated that they were concerned that the tree was now under threat.

- 3.4 In light of the potential risk to this tree following the felling of other trees in this location, it is important to ensure that the Oak receives adequate protection against such action or inappropriate management as outlined within the Appellant's Tree Surgeon's quote / work schedule. A TPO will ensure that this protection can be managed appropriately.
- 3.5 The Appellant has provided email content from his Arboricultural Consultant who has offered professional advice on the management of the Oak and the verge. This information appears to provide sound management guidance in line with BS 399 (2010) Tree Work - Recommendations and BS 5837 (2012) Trees in relation to design, demolition and construction – Recommendations.
- 3.6 The Appellant has also provided a quote / work schedule from his Tree Surgeon and it is noted that these works do not concur with the Arboricultural Consultant's recommendations. However it is noted that the work schedule was provided prior to the Consultant's involvement and formed part of a management programme for all three Oak trees that were previously on site. The work outlined for the TPO Oak tree is considered excessive and not appropriate in this instance as over-pruning of the canopy will lead to a reduction of the public amenity value offered by the tree. It does however correctly identify the need to remove the deadwood within the canopy.

#### 4.0 FURTHER INFORMATION

- 4.1 On the 31st of January 2017 an objection to the TPO was received from Mr Tony Johns, the owner at 26 Bound Lane, Hayling Island, PO11 9HU. There are a number of areas raised by the appellant; those matters which are relevant to the consideration of whether the tree warrants protection in the public interest are set out below.
- 4.2 *Whilst understanding the need to protect such a beautiful tree on Bound Lane, I feel compelled to write to you and inform you of the real and potential consequences and repercussions of this precipitous and hastily instigated action taken by Havant B.C.*

**Response:** The TPO was given due consideration in accordance with TEMPO guidelines in order to protect the tree from potential threat to the public amenity value it offers to the street scene.

- 4.3 *I need to advise you therefore, directly because of the TPO applied, the tree will continue to remain in its current unsafe state and further, I am informed that this could be additionally amplified should severe winter result in an ice build up on any of its dead limbs.*

**Response:** Trees are living organisms and no guarantees of their stability can be given in any instance. Areas of concern have been raised by the Appellant and advice has been given by the Council and an independent Arboricultural Consultant on how the tree may be managed by the Dead or Dangerous exemption set out in the Town and Country Planning (Trees) Regulations 2012 and by an application for works to a tree subject of a TPO.

- 4.4 *I need to advise you therefore, directly because of the TPO, the excluded verge clearance area 'with its residue' poses an ongoing imminent danger to passing children and animals because under its terms it is not permitted to be cleared by machine.*

**Response:** The issue of clearing litter is not a material consideration with regards to the making of a TPO. While the Appellant's chosen contractor may not wish to conduct litter clearance operations without the use of heavy machinery within the RPA, there are specialist contractors whose services could be employed.

- 4.5 *By placing a TPO on the tree, I strongly believe the consequences of it are counter productive to the well being and safety of adults, children, animals, passing vehicles, property and the tree itself.*

**Response:** Any areas of concern may be managed either under application or by the Dead or Dangerous exemption set out in Town and Country Planning (Trees) Regulations 2012.

- 4.6 *In addition, the placing of a TPO is preventative of the development of an attractive frontage to the property in keeping with most of the other properties in the lane.*

**Response:** The tree itself adds to the public amenity value of the street scene and any development should be considered in harmony with the health of this tree.

- 4.7 On the 31st of January 2017 a letter of support to the TPO was received from Mrs Victoria Seddington who is a local resident. Those matters which are relevant to the consideration of whether the tree warrants protection in the public interest are set out below.

- 4.8 *I live nearby and pass the tree many times in the course of my daily activities and would really regret its loss should it be damaged or removed as several other Oak trees on the same verge were recently.*

*It is part of our neighbourhood landscape and, being an Oak tree, very important for wildlife and as a visual amenity to residents.*

**Response:** Noted.

- 4.9 On the 1st of February 2017 a letter of support to the TPO was received from Mrs. Rosemary Webb, resident of 29 Bound Lane, Hayling Island. Those matters which are relevant to the consideration of whether the tree warrants protection in the public interest are set out below.

- 4.10 *This tree is part of the visual amenity of this lane and is admired and commented on by many people, both living in the lane and passing by.*

*These trees traditionally formed part of the drainage in the lane, in that the excessive roots take up rain water and help to prevent the flooding in this part of the road. This is still the case for this remaining tree. The tree provides shade and wind breaks in*

*this exposed part of the island and Oak trees such as this are part of the larger landscape.*

*As it is a mature tree, such specimens have become important habitats for wildlife. In particular, it holds colonies of the magnificent stag beetle – *Lucanus cervus* – which is a rare species for which Hayling is noted. These are known to be in this tree. Hedgehogs are known to use the leaf litter in hibernation.*

*The ground around the tree has an interesting understory of plants, including Large Cuckoo Pint - *Arum maculatum* - a species confined to the south of England and stinking Iris - *Iris foetidissima*, a feature of the ancient Hayling lanes and fast disappearing.*

**Response:** Noted

- 4.11 On the 1st of February 2017 a letter of support to the TPO was received from an anonymous resident of Bound Lane, Hayling Island. Those matters which are relevant to the consideration of whether the tree warrants protection in the public interest are set out below.
- 4.12 *The tree roots suck up rainwater forming part of the drainage for the lane. The tree also provides shade and important habitats for wildlife, some of which are protected species. There are also rare plants which form part of the character of the lane. The one remaining tree must be preserved at all costs.*

**Response:** Noted

- 4.13 On the 7th of February 2017 an objection to the TPO was received from Mr Keith Peake, resident of 31 Bound Lane, Hayling Island. Those matters which are relevant to the consideration of whether the tree warrants protection in the public interest are set out below.
- 4.15 *I believe Mr Johns did take appropriate actions to fell the trees close to the one in the TPO, to protect passers by and local traffic. The tree which is subject to the TPO is also dangerous as described fully in Mr Johns' letter to yourself.*

*If it is the intention of the council to preserve overhanging trees then it will require traffic height restrictions to be put in place to avoid future accidents. If the owner of a tree is prevented from felling it or cutting away overhang, I imagine any future accidents become the Council's responsibility?*

*Mr Johns has explained his plans to replant with mature Oak trees, further back from the lane to replace those felled. This appears to me to be a most agreeable solution, and that the TPO be lifted.*

**Response:** Whilst it may be possible to agree that one of the removed Oaks was suffering from extensive mechanical damage and an argument put forward for its removal is fair, there is no sound arboricultural reasoning provided to warrant the removal of the second Oak. However, neither tree was subject to a TPO, as such no criminal offence has been committed. The Oak tree subject to the TPO can be

managed either by application to the Council in terms of routine works, and by the Dead or Dangerous exemption of the Town & Country Planning Act (2012) to remove any foreseeable hazards. It is most welcome that there are plans to plant Oak trees in mitigation for those that have been lost.

## 5 IMPLICATIONS

### *Financial*

- 5.2.1 There would be costs involved if an appeal is made to the High Court under 288 of the Town and Country Planning Act 1990 (see legal implications)

### *Legal*

- 5.2 Under Section 288 of the Town and Country Planning Act 1990 any person aggrieved by the Order who wishes to question the validity of the Order on the grounds:

(a) that the Order is not within the powers of the Act

Or

(b) that any of the relevant requirements have not been complied with in relation to the Order

may apply to the High Court within six weeks from the date on which the Order was confirmed.

### *Strategy (Community and Corporate)*

- 5.3 The adopted Havant Borough Local Plan (Core Strategy) 2011 is of relevance – in particular policy DM8 (Conservation, Protection and Enhancement of Existing Natural Features)

### *Equalities/Customers*

- 5.4 None

### *Risk*

- 5.5 None

### *Communications/Public Relations*

- 5.6 None

## Appendices:

- (A) Site Plan
- (B) Tree Surgeon Report
- (C) Arboricultural Consultant's Report
- (D) Photographs

**Background papers:**

Reports received from the Appellant's Arboricultural Consultant and Tree Surgeon.

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