

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Report to Planning Applications Committee

1 April 2021

TITLE:	TPO/2021/0008 - Application to fell a protected tree – 121/123 Tunstall Road, Knypersley
PORTFOLIO:	Planning, Development and Property
OFFICER:	Steve Massey, Arboricultural Officer
WARD:	Biddulph East

Appendices Attached –

Appendix A: Location Plan for 121/123 Tunstall Road.

Appendix B: Approved site layout plan with Application Tree T5 highlighted.

Appendix C: Report to Planning Applications Committee 25th June 2020 for previous application ref TPO/2020/0011

1. Recommendation

- 1.1 That consent to fell a Pine tree at 121/123 Tunstall Road, Knypersley, protected as T5 under Tree Preservation Order (TPO) No. BU.1, be REFUSED for the reasons discussed in this report.

Reason for recommendation: The proposed felling of T5 would result in the total loss of amenity value currently provided by this large mature tree, which is a notable feature contributing to the character of the site and the wider local area, and the reasons for the application are not considered to justify such work. Felling would therefore be in conflict with the Council's adopted Tree Strategy.

2. Executive Summary

- 2.1 This application seeks consent to fell a large, mature Pine tree situated near the centre of the combined grounds of 121 and 123 Tunstall Road. The application tree is individually protected as T5 under TPO No. BU.1. The site location is shown on the plan at Appendix A to this report, and the application tree is shown denoted T5 on the development site layout plan at Appendix B.
- 2.2 The application has been submitted by FFC Landscape Architects on behalf of J Littleton & Co. Ltd who are currently developing the site to

provide 6 new dwellings and retain the existing bungalow 121 Tunstall Road, approved under planning permission reference SMD/2017/0510.

2.3 This application is a repeat submission of a recent similar application reference TPO/2020/0011, also seeking consent to fell the same Pine tree T5. Planning Applications Committee resolved at its meeting on 25th June 2020 to refuse the previous application, following officer recommendation of refusal. No appeal was made against that decision. A copy of the committee report for the previous application is attached at Appendix C.

2.4 In outline, the stated reasons for the previously refused application were:

- The tree is over-mature, leans notably and would cause substantial damage if it were to fall.
- The tree is out of scale with the development, and shows signs of dead wood and branch loss.
- The roots will extend far beyond the calculated Root Protection Area (RPA) and will be damaged during construction.
- Retention of the tree would cause concern and fear to prospective purchasers, potentially leading to a future application to fell, and loss of plot sales.
- Construction of the plot would be constrained by retention of the tree, and potential sunroom extension restricted.
- Four new trees are proposed in mitigation if the Pine is felled.

These reasons are discussed in detail in the report at Appendix C, and were not considered to justify the loss of amenity value which would arise from the removal of the Pine T5 when the previous application was determined.

2.5 Whilst the previous reasons are effectively re-stated in the supporting tree report by the applicant's agent, there are now also new reasons – mainly to do with some branch loss experienced by this tree in the intervening 8 month period since the last application was refused, and the agent's tree report has had minor updating revision on resubmission to reflect this. A number of broken limbs still in the crown are noted by the applicant and considered likely to fall. A brief e-mail by the applicant's construction site health and safety consultants is also submitted, which advises consideration of removal of the tree. The application also suggests that the TPO should be reviewed as it is now 52 years old. The applicant highlights the need to have regard to the liability of and risk to site operatives, future owners and the public.

2.6 It is considered that there have been no material changes to the specific reasons put forward in support of the original application, and officers' comments in respect of these specific reasons remain as set out in the previous report. The additional reasons supporting the resubmitted application which now stands to be determined are addressed in more detail at Section 4 of this current report, but are not considered sufficient to allow the felling of a significant protected tree.

2.7 The Pine T5 is readily visible from the public highway, even more prominently so following removal of previously existing non-protected

trees and/or those in poor condition, in association with the approved development under construction. The site and surrounding area is characterised by the presence of large mature trees; the application Pine T5 not only contributes to this character but also stands out as a notable specimen in its own right. It is considered to have significant public amenity value.

- 2.8 In conclusion, whilst there is inevitably a degree of risk associated with the presence of any tree, and notwithstanding the recent shedding of branches from the Pine T5 – which could happen to any tree but do not necessarily constitute a justification to fell – the previous reasons and the additional new reasons for the resubmitted application are not considered to justify the loss of amenity value which would arise from the removal of the Pine T5. Felling is therefore considered to be in conflict with the Council's adopted Tree Strategy which contains policies seeking to resist tree felling proposals which are not acceptably justified, and refusal of consent to fell is recommended.

3. Implications

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| 3.1 | <u>Community Safety - (Crime and Disorder Act 1998)</u> | Nil. |
| 3.2 | <u>Employees</u> | Nil. |
| 3.3 | <u>Equalities</u> | This report has been prepared in accordance with the Council's Equal Opportunities policy. |
| 3.4 | <u>Financial</u> | Anyone suffering loss or damage arising as a consequence of the Council's decision to refuse consent, or to impose conditions when granting consent, may seek compensation from the Council; any claim must be submitted within 12 months of the application or any subsequent appeal being determined. |
| 3.5 | <u>Legal</u> | Nil. |
| 3.6 | <u>Sustainability</u> | Refusal of consent to fell the Pine T5 would ensure the retention of a tree having significant public amenity value, and contributing to the landscape character of the area, in accordance with the Council's environmental protection objectives. |

Ben Haywood
Head of Development Services

Background Papers

TPO No. BU.1
Application
TPO/2021/0008

Location

Moorlands House
Stockwell Street
Leek

Contact Details

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Decision:**Reason:****Interests Declared:****4. Background and Detail Discussion**

- 4.1 The applicant's additional reasons for the resubmitted application are considered in more detail here as appropriate, with *officers' comments denoted by italics*.
- 4.2 In spite of the previous refusal of consent to fell the Pine T5, limbs have continued to fall, leading to site safety concerns.

The applicant reports that whilst small branches, twigs and foliage have fallen from time to time, there were more substantial branches which fell around Christmas and New Year. The largest fallen section reported to and seen by the Council's arboricultural officer Pine is a twin-branched limb of approximately 4 – 5m in length and 125 – 150mm (5 – 6 inches) diameter at the broken end. Whilst not a massive limb in the wider context of large mature trees, it is nevertheless of substantial weight and had the potential to cause damage or potentially serious injury, as illustrated by the dented Heras fence panel. A smaller branch also found nearby was most likely knocked out of the tree when the larger section fell. Whilst not extreme, Storm Bella brought storm force winds just after Christmas which, inevitably, led to instances of damage to trees here and there. As part of the on-going development of the site, there has been authorised removal of some trees which may well have made the Pine T5 in the centre of the site more exposed to the winds, and it is considered that as a result these stronger winds during Storm Bella have "found out" the odd existing weaker branch. However, it is also worth noting that there have since been further strong winds in January and February but no further substantial damage to T5 has been reported.

As is always the case, any tree can be damaged by adverse weather conditions, but this does not necessarily lead to a requirement or justification to remove a tree which has suffered some branch loss in strong winds. The

underlying condition of the tree, its remaining amenity value, and the degree to which suitable remedial work may appropriately deal with the situation should be taken into account. In the case of the Pine T5, it has not suffered severe, significantly disfiguring or fundamentally terminal damage, and its overall condition appears to remain good.

- 4.3 The application notes a number of broken limbs still in the crown, and these are considered likely to fall.

There is a reasonably large branch in the south side of the upper crown, just below where the largest fallen branch originated, and this is recently partially broken at its base attachment to the stem and is still hanging in the crown. This is thought to have been broken by the higher branch falling on to it. Clearly this hanging branch could and should be removed in the interests of site safety, and there is provision within the TPO procedures for such remedial work to be carried out under exemption, without requiring an application and grant of consent. Any torn stubs from recent branch loss may also be tidied to a clean pruning cut if required. A smaller branch on the northern side has a historic partial split and is also hanging; this may similarly be removed. Removal of these few damaged branches would not have a significant detrimental effect on the overall form or amenity of the tree, and would be considered routine tree management which does not in itself justify felling.

- 4.4 The applicant's construction site health and safety consultant has viewed the tree and the recently fallen branches, noting that had anyone been in the immediate vicinity at the time there could have been a major accident with possibly fatal result. He suggests serious consideration should be given to having the tree removed.

The consultant's concern is understandable, and naturally he has suggested that in the light of recent branch shedding, felling should be considered in order to remove any further risk. However, his comments do not purport to be qualified arboricultural assessment or opinion, and if every tree which had ever shed a branch was automatically condemned and removed there would be a significant amount of unnecessary and premature tree loss. Tree risk management is not about removing any/all risk, but about assessing risk, taking into account potential targets, likelihood and consequences of damage, and making decisions on what action, if any, is proportionate and justified in response to the individual circumstances of each case. This recognises that although the risk of serious harm from falling trees and branches is statistically extremely small, some degree of risk is inevitable where trees are present.

- 4.5 The TPO was made 52 years ago, and as circumstances have changed – such as the size of the tree and its setting with regard to planning permission for the on-going development, the TPO should be reviewed.

TPO No. BU.1 is a single legal document which does not only protect this one Pine tree T5, but originally included in its schedule 40 individual trees, 5 groups of trees and 2 areas of trees in the wider surroundings of Knypersley and Brown Lees, many of which remain. Issues in relation to one particular tree do not necessitate a review of the whole Order; rather the particular circumstances of the tree in question are addressed through the submission, consideration and determination of a specific application, which is precisely the process

presently being followed. In effect, we are anyway deciding whether it is appropriate to maintain protection over, and hence require retention of, the Pine T5.

- 4.6 The applicant contends there is a need to consider liability of and risk to site operatives, future owners and the public.

Again, such consideration is in-built into the TPO application process. Ultimately a tree owner is responsible for their trees, and responsible tree management recognises the need to have regard to the safety of trees, through being aware of their condition and taking action where appropriate, but it should also recognise the fact there is always some degree of risk associated with the presence of trees. Accordingly, there is provision for the local planning authority to be liable for loss or damage which may arise as a consequence of a refusal of consent (or imposition of conditions when granting consent) as this may prevent a tree owner from otherwise managing or removing any perceived risk from their trees as they see fit. However, it is important to remember that the condition of trees, and the character of their environment, can change over time. Therefore tree management decisions are correctly based on tree condition and circumstances prevalent at the time of decision, having regard to outcomes reasonably foreseeable in the immediate future. It would be unreasonable for either a previous tree owner (such as a developer having subsequently sold new dwellings, as will be the case here) or the local planning authority to be held liable for a future event because of a decision taken a significant time beforehand. Appropriately, therefore, the local planning authority's liability extends only for 12 months from the date of its decision, or any subsequent appeal decision. Whoever is the owner of a tree from time to time can always seek further advice or submit further applications for consent in response to changing tree condition or circumstances, with future decisions being based on information to hand at that time.