

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**Report to Planning Applications Committee**

**15<sup>th</sup> December 2022**

<b>TITLE:</b>	<b>To consider confirmation of Tree Preservation Order No. SM.325 – 17 Hugo Street, Leek</b>
<b>PORTFOLIO:</b>	<b>Leader</b>
<b>OFFICER:</b>	<b>Steve Massey, Arboricultural Officer</b>
<b>WARD:</b>	<b>Leek South</b>

**Appendices Attached –**

**Appendix A:** Copy of current provisional TPO No. SM.325.

**1. Recommendation**

- 1.1 That notwithstanding the objections received, Tree Preservation Order (TPO) No. SM.325 be confirmed without modification.

**Reason for recommendation:** In order to maintain legal protection over a significant tree which would otherwise be removed.

**2. Executive Summary**

- 2.1 Under the Council's Constitution, there are officer delegated powers to confirm a provisional TPO in respect of which no objections have been received. However, where objections are received, the Planning Applications Committee must consider and decide whether to confirm the Order, and in doing so must take into account such objections and representations as have been received.
- 2.2 TPO No. SM.325 was made as a provisional Order on 22<sup>nd</sup> September 2022, protecting one individual Oak tree situated in the rear garden of 17 Hugo Street, as denoted on the TPO plan and listed in the TPO schedule. A copy of the provisional TPO is attached at Appendix A to this report.
- 2.3 Objection to the TPO was submitted by the owners of the tree, and also by adjacent neighbours at 15 Hugo Street. In outline, the grounds of objection centre on:
- 2.3.1 the timing of the TPO being considered unfair;
- 2.3.2 work legitimately carried out to the tree prior to the TPO being made having left the tree unbalanced and of reduced amenity;

2.3.3 resultant concerns over safety and stability;

2.3.4 the tree being considered unsuitable for a town garden, having overbearing impacts on the garden of the host property and some neighbouring properties;

2.3.5 local amenity being maintained by the retention of a mature Birch tree within the same garden, along with new fruit trees proposed as replacements for the Oak.

These issues are considered in detail at Section 4 of this report.

2.4 In addition, representation was received from the adjacent neighbour at 19 Hugo Street, advising of no objection to the removal of the Oak and also raising concern over the stability of the tree in its current state. This representation states support for the tree's owners in their attempts to legitimately remove the Oak, and therefore in practice may be construed as objection to the TPO even if not stating as much.

2.5 A representation was also received from the adjacent neighbour at 14 Dampier Street, effectively being a request that the now-unbalanced form of the Oak and the associated implications for its stability and amenity be taken into account in deciding whether to confirm the TPO.

2.6 Officers acknowledge that the timing of the TPO being made was unfortunate and regrettable but was nevertheless legitimate. This allowed a "window" within which dismantling work was commenced, again legitimately, and this would have been avoided if the matter had been dealt with more promptly.

2.7 Notwithstanding this, it is considered that the Oak is not inherently unstable, and the visual imbalance could be reduced by some careful further pruning (subject to application and grant of consent) which could still retain a decent tree with on-going amenity and contribution to the locality. Other matters raised in objection would not normally be sufficient justification to remove protection from a notable tree.

2.8 On balance, therefore, it is now recommended that notwithstanding the objections received and issues raised, TPO No. SM.325 be confirmed without modification, in support of the Council's adopted Tree Strategy.

### **3 Background**

3.1 17 Hugo Street is situated within the Leek Conservation Area. In such designated areas, written notice must normally be submitted to the local planning authority (LPA) of intent to carry out pruning or felling of non-TPO trees. The proposed work cannot be carried out within 6 weeks of notification unless within this time the LPA has issued written consent. If no response has been received from the LPA by the end of the 6 week period, the notified work may then anyway be carried out unless at any time a TPO has been made.

- 3.2 The LPA cannot refuse a Conservation Area tree work notification, so if proposals are not considered acceptable, making a TPO to impose a higher level of protection is the “fall-back” means of preventing the work proceeding. A TPO may be made at any time the LPA considers it expedient, and in the context of a Conservation Area tree work notification having been received this does not have to be before the 6 week period has expired, but clearly making a TPO after 6 weeks runs the risk of the notified work being legitimately carried out in the meantime before an Order is put into effect.
- 3.3 This was precisely the situation at 17 Hugo Street. The owner submitted a notification of intent to fell the Oak (stamped received on 5<sup>th</sup> August 2022); unfortunately this was not responded to and 6 weeks elapsed. A week later, on 22<sup>nd</sup> September, an enquiry was received from a tree surgeon checking that the notification had originally been received and that the tree could now legitimately be removed as he had been engaged to carry out the work the following day. It was confirmed this was correct, as was factually the case at the time of that enquiry.
- 3.4 The tree surgeon was also advised that an informal enquiry about removing the Oak had been made by the owners in 2019, at which time they were advised that the tree was considered to be of sufficient quality and to have sufficient amenity contribution to this part of the Conservation Area to suggest its removal would be considered unacceptable. However, it was of necessity made clear to the tree surgeon that as things stood the Council had no power to prevent the work proceeding as planned, but that if the LPA were to be in a position to intervene, a TPO would have to be made with the utmost urgency and this was by no means a certainty given the lateness in the day and the procedures and authorisations involved.
- 3.5 Knowing that work was imminent, a TPO proposal was drafted and authorisation obtained, but the legal document was not able to be signed and officially sealed until the following morning, by which time dismantling work had commenced on site. As soon as the TPO was in place and effective, the contractor and tree owner were contacted and requested to stop work, and they immediately cooperated. The arboricultural officer visited the site to issue the TPO and explain its implications, and there was some initial discussion about options and next steps, although the tree owner was understandably rather taken aback by the turn of events. A further site meeting was subsequently arranged at which the issues and procedures were discussed in more detail.
- 3.6 Given that the owner was previously advised that it was considered the tree should be retained, the fact that a TPO has now been made should not, in itself, have come as a complete surprise in response to the recent notification of intent to fell. However, the fact that this was not done within 6 weeks of receipt of notification is unfortunate and regrettable, and evidently gives the owners a sense of grievance.

## 4. Detail

### *Current Unbalanced Form of the Tree*

- 4.1 The initial work carried out in anticipation of full dismantling of the whole tree has involved the removal, back to their base unions at the central stem, of approximately 6 branch systems up to c.125mm basal diameter on the north-east side of the tree. These were not major heavy limbs, and several larger limbs remain. However, this has resulted in a quadrant of the crown being removed of around one quarter of the full circumference although in all other respects the tree appears to be in good condition and was previously well balanced. It is considered that the work carried out has not substantially affected its structural balance to the extent that any significant failure or uprooting is considered likely, and removal of the tree on safety grounds alone, even in its present state, is therefore not considered justified.
- 4.2 There is no question that the recent branch removal has affected the previously well balanced appearance of this Oak, although from some aspects this not particularly discernible and the tree is still considered to be a notable feature of sufficient amenity value to merit on-going protection. If the TPO is confirmed and the tree retained, it is suggested that some further careful pruning, comprising a combination of crown lifting and minor height/spread reduction, could acceptably reduce the apparent fact of the removed quadrant and would be considered favourably subject to acceptable detail in a TPO tree work application. However, that is not before committee at present and therefore cannot be consented under this agenda item. In addition, such work cannot be required, so it would be a matter for the owners to consider and pursue if they wish, dependent on the outcome of this confirmation consideration.
- 4.3 Over time, the tree would also be anticipated to start to infill the canopy gap with new growth from retained branches and reaction growth from the pruning wounds at the stem.

### *Suitability for the Site and Effect on Surrounding Properties*

- 4.4 The Oak is situated towards the southern end of what is a generously long garden for a town terraced house and forms a central feature in the group of gardens surrounded by Hugo Street, Hartington Street, Spencer Avenue and Dampier Street. The nearest house is that at 14 Dampier Street, some 18m distant from the stem position, whilst corresponding separation from the rear elevation of the host property at 17 Hugo Street is over 30m. It is therefore considered that this tree does not unduly impinge on any of the surrounding houses.
- 4.5 Any large species tree will inevitably lead to shading over the surrounding area at certain times of day, which in this case will not only impact parts of the garden at 17 Hugo Street but also some neighbouring properties. In turn this can limit the range of understory and ground flora plants which can be successfully grown. However, this is simply a fact of life where such trees are present, and in general terms is outweighed by the benefits trees provide.

- 4.6 The Oak is considered to have sufficient space around it and separation from houses to avoid overly dominating the dwellings, the generously-sized surrounding gardens, and the outlook from them.
- 4.7 There are innumerable large trees of significant amenity value situated in urban gardens which are rightly protected, and their presence creates inevitable issues of shade, leaf-fall, limited outlook which may or may not be regarded by owners and neighbours as a problem, but are not considered sufficient justification to allow such trees to be removed.
- 4.8 The extent of these issues could be reduced or limited by the potential for further pruning set out at Section 4.2 above, and this work would also provide some level of control over the future size of the tree. As the owners point out, it is not yet fully mature although very unlikely to double its present size. Ironically, further growth would increase its prominence and hence its amenity value as a feature in its own right.

#### *Retained Birch and Proposed Replacement Trees*

- 4.9 Due to the specific position of the mature Birch also in the rear garden of 17 Hugo Street, some 10 - 11m closer to the rear of the house, it is in fact not readily and significantly visible from publicly accessible viewpoints whereas the Oak is seen from Hartington Street and, in particular, Dampier Street. Therefore, whilst the Birch makes a good contribution to its host garden and no doubt also some of the close neighbouring gardens, it does not itself have significant public amenity value.
- 4.10 The owners suggest replacing the Oak with 2 fruit trees. Whilst these may well be an attractive addition to the garden of 17 Hugo Street, they would be of distinctly different scale to an Oak and even at maturity they would not make a significant contribution to the wider character and amenity of the Conservation Area.
- 4.11 On a point of clarification, in the event that it is resolved not to confirm the TPO, this cannot be made conditional on planting replacement tree or trees, of any species.

## 5. Implications

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| 5.1 | <u>Community Safety - (Crime and Disorder Act 1998)</u> | Nil.   |
| 5.2 | <u>Employees</u>  | Nil.   |
| 5.3 | <u>Equalities</u>                                       | This report has been prepared in accordance with the Council's Equal Opportunities policy.   |
| 5.4 | <u>Financial</u>  | There is no financial liability on this Council arising from making and confirming, or not confirming, a TPO – with or without modification. However, following any subsequent application for |

consent, 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, subject to the provisions of the Town and Country Planning (Trees) (England) Regulations 2012. Any claim must be submitted within 12 months of such an application or subsequent appeal being determined.

5.5 Legal

Nil.

5.6 Sustainability

Confirmation of the TPO would appropriately maintain protection over a tree of significant local amenity value, in support of local and national environmental protection objectives and the Council's adopted Tree Strategy.

Ben Haywood  
**Head of Development Services**

**Background Papers**

CAT/2022/015  
Conservation Area tree  
work notification

TPO SM.325 file

**Location**

By request at:  
Staffordshire Moorlands District Council  
Moorlands House  
Leek

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