

# **Tree Preservation Order 002 of 2016 Clewer Youth And Community Centre 39A Parsonage Lane, Windsor.**

## **T1 – Oak**

### **1: Background.**

The TPO has been made to safeguard the visually prominent Oak tree within the grounds of Clewer Youth and Community Centre, Parsonage Lane, Windsor. The Oak tree is considered a primary landscape feature and makes a significant contribution to the character and appearance of the area and is important within the local and wider landscape and softens the built environment. The Local authority deemed it expedient to serve a preservation order to ensure the retention of this prominent landscape feature and to protect it from further inappropriate pruning which could negatively affect the character of the area. The TPO is not designed to hinder the appropriate management of the trees and consent for works in line with good arboricultural practice would not be unreasonably withheld.

The tree team were made aware that the resident at The Old Stable yard adjacent to the Community centre had instructed a tree surgeon to carry out pruning work in accordance with their common law rights to the mature Oak tree growing within the Community centre. At that time the tree was not protected and over the weekend of the 17<sup>th</sup> & 18<sup>th</sup> of January the resident employed a tree surgeon to exercise those common law rights; the tree surgeon pruned a significant quantity of branch material from the stem growing over the rear garden of the Old Stable Yard. In this instance it was expedient to serve a TPO to ensure the long term protection of the tree, the TPO was served on Monday the 18<sup>th</sup>.

### **2: Objections.**

Under the Town and Country Planning Act, The Local Authorities 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 woodland 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. In the Secretary of State's view, a TPO should be used to protect selected trees and woodlands if their removal would have a significant impact upon the local environment and its enjoyment by the public.

- **Damage to property/harm.**

One letter of objection was received from Mrs Gill the resident at The Old Stableyard via her barrister, the objections are summarised below:

The barrister working on behalf of the resident and a local tree surgeon have both stated that the tree was damaging the property through direct contact with leaves and branches, they also claimed that that tiles had been damaged/dislodged and that overhanging branches had caused debris to fall on the property, further to this the gutters and drains had become blocked.

In the same letter the barrister also claimed that his client has the right to prune more material from tree irrespective of the TPO as its mere presence is enough to quantify being an actionable nuisance.

- **Nuisance.**

The overhanging branches at the Old Stable Yard amounts to a nuisance by ways of both pure encroachment and as an actionable nuisance.

- **Condition of the tree.**

Mrs Gill has concerns over the trees condition and employed a tree surgeon to carry out a full inspection who's made management recommendations based on his inspection.

### **Response to objections**

- **Damage to property/harm & Nuisance.**

Under S.14 (1)(a)(ii) of the Town and Country Planning (Tree Preservation)(England) Regulations 2012, the Council's consent is not required for carrying out the minimum of work to a tree protected by an Order that is necessary to prevent or abate a nuisance. Here 'nuisance' is used in its legal sense, not its general sense. The courts have held that this means the nuisance must be actionable in law – where it is causing, or there is an immediate risk of it causing, actual damage.

The pruning of material by up to a maximum length of 30cm would be considered reasonable to abate the nuisance, in this instance the resident has gone further than this. The mere presence of branches over an adjacent property would not be reason enough to prune the tree any further under the legislation and is not considered an exemption to the legislation. Trees do not respect boundaries and grow where they please, usually for reasons of light and water.

Due to the severity of pruning, the Local Authority deemed it expedient to serve a TPO to protect this significant landscape feature. The claim made by the barrister that the resident can carry out further pruning is erroneous as the legislation is clear about what is considered a nuisance (actionable) and about abating said nuisance, the pruning carried out has exceeded what would be considered necessary for reasons of abatement.

The falling of seasonal debris onto the building is not regarded as an actionable nuisance in law; although it is appreciated it can be an inconvenience, the clearance of debris from a private residence is considered part of general household maintenance. Guards/grilles can be placed over gutters to help reduce debris falling directly into them. Moss can grow on roofs regardless of the presence of trees and we are not aware of any scientific evidence that shows moss causes any detriment to tiled roofs.

Not all work requires the consent of the Council, e.g. the removal of dead branches can be carried out under an exemption to the legislation.

- **Condition of the tree.**

Anyone who owns a tree(s) has a legal duty of care to the public at large and his neighbours to act in a prudent and responsible fashion. In furtherance of this duty an owner of trees should carry out regular inspections, at least annually, in order to detect any significant change in health or the presence of any weakness or decay, which could lead to instability. If any significant defect is found then a prudent tree owner should take corrective action to ensure that the tree remains in a practicable condition and does not pose a danger to the either themselves or anyone else.

In this instance the report received by the council from the resident highlights the need to carry out some remedial work to alleviate particular defects within the tree, A basic inspection from ground level identified that the tree has been previously reduced and it is likely that some remedial work in line with good practice will be required in the future.

The condition of trees can change over time and it is recommended they are inspected by a competent person, such as an arboriculturist, on a regular basis. The Arboricultural Association <http://www.trees.org.uk> and Institute of Chartered Foresters <http://www.charteredforesters.org> have an on-line directory of arboricultural consultants.

A TPO is not designed to hinder the appropriate management of a tree. Any application to undertake work will be judged against good arboricultural practice and the Council would not withhold consent for appropriate works and it can be applied for through the standard form for tree work applications.

The Oak tree is a principal landscape feature and its loss through either removal or heavy pruning would have a significant effect on the character and amenity of the area.

**RECOMMENDATION: That the Tree Preservation Order 002/2016 is confirmed without modification.**