

## REPORT OF THE DEVELOPMENT MANAGEMENT TEAM LEADER ON OTHER PLANNING MATTERS

### Tree Preservation Order 146 with objection received

**Type:** Tree Preservation Order

**Reference:** TPO 146 Land Adjacent to Bevelin House, Sandyhill, Saundersfoot

**TPO implemented:** 31<sup>st</sup> July 2019

#### **Description:**

- T1 – Oak
- T2 – Oak
- To protect two no. oak trees (T1 & T2) at land adjacent to Bevelin House, Saundersfoot as it is considered that the trees make a significant contribution to the character of the area

#### **Tree Preservation Order History:**

- Correspondence received by this authority on 13<sup>th</sup> May 2019 by member of public relating to concerns over possible removal of the trees in question – Perceived threat to the trees
- A site visit was carried out by this officer and the trees were evaluated as ‘*Definitely merits TPO*’ under the TEMPO method (*Tree Evaluation Method for Preservation Orders*)

#### **Consultee response:**

- Saundersfoot Community Council - Consulted
- Pembrokeshire County Council – No Objection

#### **Public response:**

- Objections received by 3 interested parties

#### **Key points of Objections to TPO**

1. TPO implementation
2. Ownership of trees and land on which they are located
3. Location of trees
4. Tree 1 condition
5. Interfering with Highway
6. Interfering with telecommunications equipment
7. Trees are interfering with street light
8. Damaging driveway
9. Trees obstruct views / windows
10. Overhanging property

#### **Comments on objections raised:**

##### In respect of issue 1

- Local planning authorities have specific powers by making tree preservation orders to protect trees which make a significant impact on their local surroundings; this is particularly important where trees are in immediate danger.
- The TPO was requested by a member of the public due to concerns that the trees were to be removed. Although this was not substantiated in the correspondence; the trees were visited and assessed in terms of the TEMPO method (*Tree Evaluation Method for Preservation Orders*) to ascertain whether the trees were worthy of protection. As the

risk was not substantiated, the scoring for expediency was limited to the second lowest score of '*Perceived threat*'.

- The lowest score is '*Precautionary only*'; which is assigned to trees where the assessment is initiated by this authority without prior notification from a stakeholder.
- The trees were assessed and a provisional TPO was implemented as they are key trees within the immediate location.
- A land registry search was carried out; which showed that the trees in question appeared to be on unregistered land and as such this authority is unable to categorically identify the owner. (*Image 1*)
- The trees appeared to be located in proximity to three landowners who were the most likely to own the land on which the trees stand; and as such the three interested parties were notified of the TPO.
- Consultation responses from the interested parties suggested that they were not the owners of the land; and in order to ensure that any other interested parties were notified and offered a chance to comment, a notice was erected below the trees (*Image 2*) and the authority extended the consultation period was for an additional 4 weeks.
- Once the extended consultation period had lapsed a site visit with representatives from Pembrokeshire County Council was carried out to evaluate the trees based upon the observations raised as part of the consultation process.

#### In respect of issue 2

- The trees remain the responsibility of the owner regardless of a TPO being placed on the trees.
- In terms of ownership; this is a private matter, and this planning authority does not have powers to deal with this type of matter.
- If the owner of the trees is unknown and the trees become a concern in terms of health and safety; Section 23 and 24 of the **Local Government (Miscellaneous Provisions) Act 1976** allows Pembrokeshire County Council to deal with dangerous trees located on private land under exceptional circumstances.

#### In respect of issue 3

- The consultation process raised concerns on the location of the trees on a steep bank in proximity to a busy road junction.
- In regard to the steep bank; the trees are well-rooted and the trees appear to have adapted to growing on the bank.
- The site visit did not identify obvious sign of instability of the bank; or any sign of root movement in the form of cracks either diametrically, radially or circumferentially around the tree.
- If the location of the trees in regard to the adjacent road junction is a concern; this should be raised with the relevant authority; such as Pembrokeshire County Council (PCC), and if a report by an engineer/surveyor identifies an issue, this can be dealt with accordingly by PCC.
- This would not be an issue relating to the trees other than in terms of maintaining an adequate highway clearance – which is addressed in section 5 below.

#### In respect of issue 4

- The consultation process and site visits identified a section of dieback within the crown of Tree 1 (*Image 3*).
- The consultations also identified that a branch failed earlier in the year and there were 'drill holes' present on the trunk.

- In relation to the dieback impacting on the amenity value of the tree; the dieback is isolated to approximately 25% of the crown on the southern side; with the northern side of the crown (visible by the public) in healthy condition with good foliage cover (*Image 4*)
- The tree was examined and holes were found on the southern side of the trunk (*Image 5*); however the cause of the holes is unknown, and whether they have contributed to the decline of the tree would need further detailed investigation.
- If the owner of the trees has a detailed survey carried out on the tree and a Health and Safety concern is identified; actions can be recommended by the tree consultant, with the TPO taken under account at that time.
- Oak trees are resilient to dieback and the remedial works can be carried out to manage the crown to account for the dieback without the need to remove the tree in its entirety.
- **Technical Advice Note (TAN) 10: Tree Preservation Orders (1997)** states that a TPO does not prevent anyone from cutting down or carrying out work on trees which are dead, dying or dangerous. This exemption is considered to allow the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree.
- As such the owner of the tree can carry out necessary works to remove deadwood from within the crown without the need to apply for permission.
- If the owner of the trees is unknown and the trees become a concern in terms of health and safety; Section 23 and 24 of the **Local Government (Miscellaneous Provisions) Act 1976** allows Pembrokeshire County Council to deal with dangerous trees located on private land under exceptional circumstances.
- It would not be reasonable to remove the tree if such damage is far off, remote and not immediate.

#### In respect of issue 5

- In deciding whether trees have become dangerous the Courts adopt the sensible approach of a prudent citizen; there must be a present danger which need not be limited to disease or damage to the trees themselves.
- As such; if the trees interferes with the safe use of the highway; the relevant authority can be contacted such as Pembrokeshire County Council, and if a report by a tree professional or engineer/surveyor identifies the tree as an issue, this can be dealt with accordingly.
- **Technical Advice Note (TAN) 10: Tree Preservation Orders (1997)** states that a TPO does not prevent a person from carrying out works on trees in compliance with any obligations imposed by an Act of Parliament.
- As such if any proposed work is deemed necessary for the carrying out of necessary Health and safety works in compliance with **Section 154 of the Highways Act**; the Pembrokeshire Coast National Park Authority would have no objection to good arboricultural management of the above trees being carried out.
- During a site visit; the clearance from carriageway to the lowest foliage bearing branches was measured by Pembrokeshire County Council and recorded as 351cm. (*Image 6*)
- In order to achieve the recommended 5.2m (520cm) clearance above the carriageway; this distance was also measured, and only minor pruning of branches would be sufficient to facilitate a safe clearance above the carriageway. (*Image 7*)
- A concern was raised that the leaves make road surface extremely slippery for pedestrians and drivers; however leaves are rarely a nuisance in the legal sense and the owner of a tree has no control on where leaves fall, it is a seasonal occurrence to be accepted where trees are present.
- As such leaves falling on the road would be deemed as an inconvenience but would not normally be deemed as a nuisance; as it is unlikely that damage would be caused.
- If the issue is in regard to pedestrian usage; there is a footpath on the opposite side of the road that can be used, rather than walking along the carriageway.

#### In respect of Issue 6

- If the trees interfere with telecommunications equipment; the relevant authority can be contacted, and if a report by a tree professional or engineer/surveyor identifies the tree as an issue, this can be dealt with accordingly.
- **Technical Advice Note (TAN) 10: Tree Preservation Orders (1997)** states that a TPO does not prevent a person from carrying out works on trees in compliance with any obligations imposed by an Act of Parliament.
- As such if any proposed work is deemed necessary for the carrying out of necessary Health and safety works in compliance with the **Telecommunications Act 1984**; the Pembrokeshire Coast National Park Authority would have no objection to good arboricultural management of the above trees being carried out.

#### In respect of issue 7

- If the trees interfere with the street lighting installed in proximity to the tree; the relevant authority can be contacted such as Pembrokeshire County Council, and if a report by a tree professional or engineer/surveyor identifies the tree as an issue, this can be dealt with accordingly.
- During a site visit; the clearance from the street light to the closest foliage bearing branches was considered and only minor pruning of branches would be required to ensure that the streetlight was not obscured by the foliage of the adjacent trees (*Image 8*)

#### In respect of Issue 8

- This matter would not be a planning consideration; other than to consider mitigating works under a TPO application, should it be required.
- Cracks in the driveway were evident during the site visit (*Image 9*), however it was not possible to define the cause of the cracks.
- Where damage (legal nuisance) is considered an issue; it is advised that legal advice is obtained.
- A TPO does not prevent works being carried out in accordance with Health and Safety.
- If an issue has been adequately identified through assessment by a tree professional/structural engineer; then suitable measures can be taken.
- It would not be reasonable to remove the tree if such damage is far off, remote and not immediate.
- Whether the roots of a protected tree can be cut back in this way under the exemption has not been settled by the Courts.
- In the unreported case of *Sun Timber Co. Ltd. v Leeds City Council* (a case involving overhanging branches) it was decided that the exemption applies only where the nuisance is 'actionable', in other words where the roots are causing, or there is an immediate risk of their causing, actual foreseeable damage.
- If this interpretation of the exemption is correct this authority's consent would be required under the TPO before cutting back roots which are not causing damage.

#### In respect of issue (9)

- This issue is not the responsibility of the Planning authority it is an issue between neighbours.
- For information - The right to light at a specific window is an easement (limited right to make use of another's property), and must actually be created; its existence can not be assumed, and is outside of planning legislation.

### In respect of issue 10

- This Authority's consent is not required for cutting down or carrying out work on trees so far as may be necessary to prevent or abate a nuisance; however the term 'nuisance' is used in a legal sense, not its ordinary everyday sense.
- Under common law a landowner can cut the branches from a neighbour's trees if they overhang his or her property.
- The overhanging branches are regarded as a 'nuisance' and may be cut at the boundary between the two properties whether or not they are causing any damage, with these arisings remaining the property of the tree owner.
- Two properties must be involved, and so householders cannot claim that the trees in their own garden are the cause of a nuisance to themselves.
- Whether the branches or roots of a protected tree can be cut back in this way under the exemption has not been settled by the Courts.
- In the unreported case of *Sun Timber Co. Ltd. v Leeds City Council* it was decided that the exemption applies only where the nuisance is 'actionable', in other words where the overhanging branches are causing, or there is an immediate risk of their causing, actual foreseeable damage.
- If this interpretation of the exemption is correct this authority's consent would be required under the TPO before cutting back branches which are not causing damage.

### **Recommendation:**

Although the visual aesthetics of a tree is subjective, the objective guidelines for implementing a Tree Preservation Order are all sufficiently met by the trees in question; taking into account the following criteria:

#### ***T1 – Oak***

##### Visibility

- The tree is located adjacent to two parallel public roads and public footpath.
- It is visible in an approximate 180° visual arc from the public rights of way from the North.

##### Individual impact

- The tree is a medium sized specimen that is likely to continue to establish to provide amenity value for the foreseeable future based upon the Arboricultural Association which publishes a guide to the life expectancy of common trees, which includes a theoretical lifespan for Oak of 200-300 years.
- The tree is showing signs of dieback within the southern section of the crown; however Oak can be resilient and removal of the 'deadwood' and any necessary remedial pruning would still retain a significant feature, worthy of protection.

##### Wider impact

- Oak is native to Pembrokeshire and is noticeable as being located in a prominent location in regard to other trees and public areas.
- It is not considered to be impeding the potential of other trees as there are no other significant specimens in proximity in which it may be impeding.
- Approved good arboricultural pruning works carried out will ensure unimpeded access along the public road and adjacent structures can be achieved without compromising the form and amenity value.
- The tree also forms a cohesive canopy with T2 which adds to the amenity of the tree.

#### ***T2 – Oak***

##### Visibility

- The tree is located adjacent to parallel public roads and an adjacent public footpath.
- It is visible in an approximate 180° visual arc from the public rights of way from the North.

##### Individual impact

- The tree is a medium sized specimen that is likely to continue to establish to provide amenity value for the foreseeable future based upon the Arboricultural Association which publishes a guide to the life expectancy of common trees, which includes a theoretical lifespan for Oak of 200-300 years.

Wider impact

- Oak is native to Pembrokeshire and is noticeable as being located in a prominent location in regard to other trees and public areas.
- It is not considered to be impeding the potential of other trees as there are no other significant specimens in proximity in which it may be impeding.
- Approved good arboricultural pruning works carried out will ensure unimpeded access along the public road and adjacent structures can be achieved without compromising the form and amenity value.
- The tree also forms a cohesive canopy with T2 which adds to the amenity of the tree.

**Recommendation:**

- **That Tree Preservation Order 146 be confirmed**

**Images (Referred to in main body of text)**

Image 1 – Land registry data – Land along road is not registered.

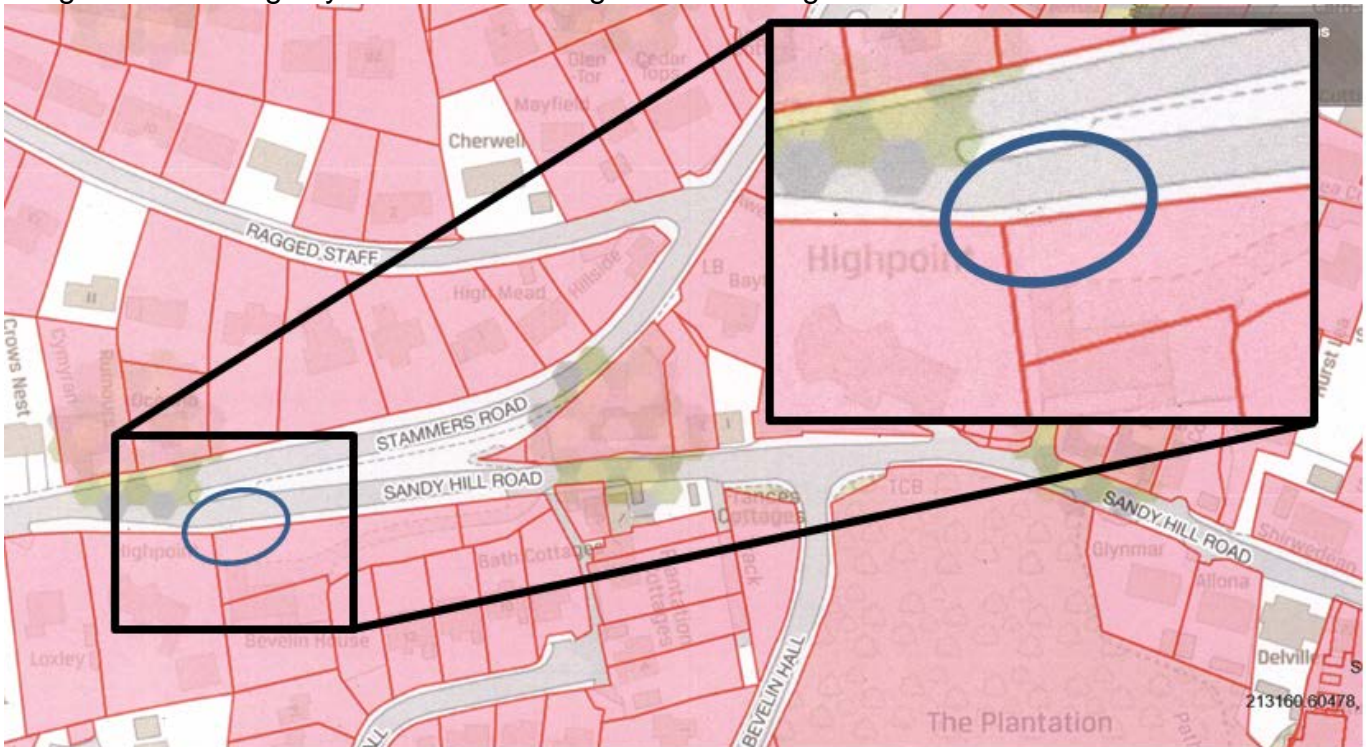


Image 2 – Notice for TPO 146 erected below trees for additional consultation period.



Image 3 – Dieback visible on Southern side of Tree 1 (approximately 25%)



Image 4 – Northern side of crown showing foliage cover



Image 5 – Holes present in trunk of T1





Image 6 – Highway clearance measurement



Image 7 – 5.2m Required clearance only small branches <25mm present below 5.2m



Image 8 – Foliage in proximity to Streetlight – Images taken from both sides of street light  
Telecommunications cables also visible



Image 9 - Crack visible in driveway – Tree is located to the right of the image.

