

Confirmation of Tree Preservation Order

LAND ADJACENT TO THE HUXLEY BUILDING, KEELE UNIVERSITY. TREE PRESERVATION ORDER NO.169 (2015)

Town & Country Planning Act 1990

Town & Country Planning (Tree Protection) (England) Regulations 2012

The Order protects a tree situated on land adjacent to the Huxley Laboratory, within the campus of Keele University. The Order was made to safeguard the longer term visual amenity that the tree provides after a planning application received by the Council included for the removal of the tree but failed to demonstrate that this was necessary to facilitate the development.

The Order was made using delegated powers on 21 May 2015. Approval is sought for the Order to be confirmed as made.

The 6 month period for this Order expires on 21st November 2015

RECOMMENDATION

That Tree Preservation Order No 169 (2015), land adjacent to the Huxley Building, Keele University, be confirmed as made and that the owners of the site be informed accordingly.

Reasons for Recommendation

Your officers are of the opinion that the longer-term visual amenity of the tree is best secured by the making of a Tree Preservation Order. Your officers are of the opinion that the tree is generally healthy at present and is of sufficient amenity value to merit the making of a Tree Preservation Order. It is considered to be an appropriate species for the locality and provide public amenity value due to its form and visibility from public locations. The making of the Order will not prevent the owner from carrying out good management of the tree nor in progressing plans to develop the site, and it will give the Council the opportunity to control the works and prevent unnecessary cutting down, lopping, topping, uprooting, wilful damage or wilful destruction. The owner will be able to apply for permission to carry out maintenance work to the tree which is necessary to safely manage it.

Representations

One representation has been received from the agent to Keele University requesting that the Order is not confirmed, as follows:

1. Introduction

1.1. This objection relates to the tree identified as T1 on the plan attached to the Tree Preservation Order (No. 169) issued on 21 May 2015. This TPO has been promoted on the basis that the loss of the tree would have a detrimental effect on the visual amenity of the site at which it is located and the locality more generally.

1.2. The Order alleges that the removal of this tree will result from development proposals for an extension of the Huxley Building, within the curtilage of which the tree is located.

2. Background

2.1 The planning application for the extension proposals was submitted in March 2015 and the Council's Landscape Section submitted comments on 29 April. The comments expressed concern about the loss of trees but did not raise an objection.

2.2 The comments included a request for further information regarding the justification for the loss of the subject tree. This request was not drawn to the attention of the applicant until after the Committee report on the application had been prepared but comprehensive information was immediately provided to both the Planning Officer and the Council's Arboriculturist. The information, which was provided on 19 May, confirmed that the presence of services and drainage infrastructure beneath, and in the immediate vicinity of the subject tree raised serious concerns regarding whether the tree could be retained. It was also explained that the tree would be extremely close to the extended building with all that this implied for the health of the tree and comfort of the building occupants.

2.3 There was no response from relevant officers of the Council to this information and it is not known whether the submitted material was properly considered before the TPO was issued on 21 May.

2.4 Before the arrival of the TPO, the officer report on the extension application became available from which it was clear that a condition would be attached to any permission which would require tree protection measures during construction, 'inclusive of provision to retain tree T3' (the subject tree).

3. The Objection

i) Need for the TPO

3.1 Against the background outlined above, the TPO is unnecessary and serves only to duplicate a planning condition. In this regard, the situation is analogous to the requirement to enter into a S106 Agreement when a planning condition could be used to secure the same outcome. There is an established planning principle (para 12 of Circular 11/95) that a Legal Agreement should not be entered into where a planning condition can be used for the same purpose. In this case, a TPO is being used to secure an outcome which can be controlled by a condition attached to a planning permission. It is therefore not expedient to make the Order.

3.2 Condition 3 of permission reference 15/00235/FUL sets out requirements for protection measures which are geared towards ensuring the retention of the subject tree. The approved development cannot be implemented without compliance with the condition. In the event that the measures required by the condition indicate that the tree cannot be reasonably retained, and the Local Planning Authority will have full access to all investigations relating to the tree, it would be necessary to seek approval for the removal or variation of the condition. As such, and by way of the requirements of Condition 3, the Council retains full control over the future of the subject tree. The TPO will not provide any greater degree of control.

3.3 In the event that there proves to be compelling evidence that the tree cannot reasonably be retained and to require its retention would jeopardise the successful implementation of the approved extension to the Huxley Building (valued at over £7m), the Local Planning Authority will need to consider the same issues and make the judgements as to whether the tree or the development should receive priority in responding to an application to remove/vary Condition 3 or approve works to a protected tree.

ii) Amenity

3.4 It is accepted that the tree, together with others in the locality, makes a positive contribution to visual amenity. The character of the locality will change significantly following construction of the extension and the amenity value of the tree will be, as it will then exist in isolation, significantly reduced as compared to its existing amenity contribution. Moreover, and because of the tree's proximity to the approved extension, it is wholly unrealistic to expect that no pruning will be required. As such, the appearance of the tree will be transformed and its visual qualities reduced.

3.5 The requirement to apply under the Order to implement ongoing crown management to maintain adequate standoff from the approved extension will also place an unnecessary administrative burden on the University.

3.6 Against this background, it is difficult to conclude that the decision to issue the TPO was made taking into account future amenity and management circumstances rather than existing conditions of amenity and appearance.

iii) Context

3.7 The justification for making the TPO lacks an appropriate context. First, it ignores the fact that there will be new tree planting at appropriate locations as required by Condition 4 of permission 15/00235/FUL. Second, it ignores the presence of some 20-plus trees located within 20 metres of the Huxley extension site. These trees contribute positively to the appearance and visual qualities of this part of the campus. This situation will not be changed by either the presence or absence of the subject tree.

3.8 Thirdly, and at a broader level, it is a matter of pride that the University campus is well populated with trees of all ages, and all specimens are well managed. TPOs are not required to protect trees which are 'at risk' because the University makes every effort to retain high quality trees and where loss is absolutely necessary, supported by robust evidence, replacement planting will always take place. The University is able to demonstrate through past action that it is a responsible landowner which actively promotes tree planting, retention and good management. Legislative controls are not necessary to manage its arboricultural activities.

4. Conclusions

4.1 It is not expedient to make the Order. The outcome which the TPO seeks is already secured by a planning condition. Planning conditions should take priority over other means of control, in this case the TPO, as advised by established planning imperatives.

4.2 It is also not expedient to make the Order on the basis that if it was to be confirmed, it would impose an unnecessary and unfair administrative burden on the University which has demonstrated a long history of responsible stewardship of trees across its estate.

4.3 Although the subject tree currently contributes positively towards the visual amenity of this part of the campus, the appearance of the site will dramatically change with the implementation of the Huxley extension. The subject tree will remain in isolation and in a reduced form and its contribution to visual amenity will no longer justify the making of the TPO which is focussed on current, rather than future, amenity considerations.

4.4 The TPO lacks an appropriate context. The appropriate context includes site specific and campus-wide considerations.

4.5 For the reasons set out, it is requested that the TPO (No 169) is not confirmed.

Your officers comments as follows:

Background – The Landscape Development Section has always indicated that it would object to the removal of the tree for reasons of avoidable footpath realignment or new underground services. The TPO was made due to concern that the tree could be at risk of being removed as an obstacle to development after requested information was submitted that was incomplete and inconclusive.

The Objection – A TPO is a more robust mechanism than a planning condition in conserving a tree as the tree can be removed independently of a planning condition if the planning permission is not progressed. The TPO on the oak tree would ensure its conservation irrespective of whether the building is constructed, whilst the planning permission would take precedence over the TPO if circumstances changed, and until all design issues have been finalised it would be prudent for the TPO to be maintained.

Amenity – It is not disputed that the oak tree makes an important contribution to visual amenity and the Landscape Development Section considers that this would be increased if all other trees on the plot are removed and the building extension constructed, and that it is possible for the tree to be satisfactorily incorporated into the development and maintained as a suitable specimen. It is precisely the proposal to develop the site that makes retention of the tree important.

Making a TPO application is a relatively simple task and it would require little in the way of additional administration by the university for any necessary tree work.

Context – The oak tree stands independently from the nearest group of trees and makes a visual contribution in its own right. The proposed replacements for the trees to be felled on the site are to be located elsewhere on the university campus and would not make a contribution to the development site or immediate locality. Both of these factors make the retention of the oak tree of greater importance.

It is not disputed that the trees on the campus are well managed by the university, however in the context of the development of the Huxley Building there is concern that pressures arising from construction of the building may make removal of the tree the convenient option. Also that resentment of the tree after the building has been built could also create pressure for the tree to be pruned or felled.

Issues

The tree is situated in the grounds of Keele University between the tuition buildings of the Huxley Laboratory and Lennard Jones Laboratory to the north of Keele Hall Road. It is a mature single stemmed oak tree, the finest specimen of a group currently growing within a small green space.

The oak tree is a prominent feature on Central Drive and can be seen from Keele Hall Road and the adjacent open spaces. It is significant to the vicinity and provides an important contribution to the area. Its loss would have a detrimental effect on the visual amenity of the site and the locality.

A planning application was received in March of this year (reference 15/00235/FUL) for the extension of the existing educational building which included for the removal of all of the eight mature trees on the site. Seven of these trees were shown to be removed to facilitate the building however it was unclear as to why it was proposed to remove the eighth, the oak tree, and the applicant failed to provide sufficient information with regard to this, giving rise to concern that the tree could be removed as an obstacle to development.

Your officers inspected the tree in May and carried out a TPO assessment, and found the tree worthy of an Order. It is considered to be in good health, visually important and an amenity to the locality, with the prospect of continuing to provide this for many years. The Order was made and served on 21 May 2015 in order to protect the long term well-being of the tree.

The planning application was permitted on 17th June with the condition that tree protection information should be submitted for the successful retention of the oak tree.

Consideration should be given as to whether the Order should be confirmed in the light of condition 3 of the planning permission requiring that the tree is protected during the construction phase of the proposed development, and whether this would make the TPO unnecessary. A Tree Protection Plan has not yet been submitted to satisfy the condition with respect to the tree. If the Order is to be confirmed, this must be done before the Provisional Order expires on 21st November which is before all issues relating to the build are likely to have been resolved.

The planning officer agrees that a TPO would carry more weight to the retention of the tree but adds that if there are genuine technical problems which are uncovered to prevent retention it would be difficult to oppose its removal even with a TPO.

Your officers are of the view that the TPO would be more robust in protecting the tree and that on balance it should be confirmed.

Date report prepared

12 October 2015