

## **Confirmation of Tree Preservation Order**

### **LAND AT 3 ST MARGARETS COURT, BETLEY**

#### **Tree Preservation Order No.193 (2018)**

Town & Country Planning Act 1990

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

**The Order** protects two trees, a scots pine and a beech tree, situated in the rear garden of 3 St Margaret's Court, Betley. The Order was made to safeguard the longer term visual amenity that the trees provide after a Section 211 Notice was submitted to the Council for tree removal and pruning.

The Order was made using delegated powers on 22<sup>nd</sup> March 2018. Approval is sought for the Order to be confirmed as made.

**The 6 month period for this Order expires on 22<sup>nd</sup> September 2018**

#### **RECOMMENDATION**

That Tree Preservation Order No 193 (2018), land at 3 St Margaret's Court, Betley, be confirmed as made and that the owners of the site be informed accordingly.

#### **Reasons for Recommendation**

The Order covers two trees within the rear garden of 3 St Margaret's Court

Your officers are of the opinion that the longer-term visual amenity of the trees is best secured by the making of a Tree Preservation Order. Your officers are of the opinion that the trees are generally healthy at present and are of sufficient amenity value to merit the making of a Tree Preservation Order. They are considered to be appropriate species for the locality and provide public amenity value due to their form and visibility from public locations. The making of the Order will not prevent the owner from carrying out good management of the trees 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 trees which is necessary to safely manage them.

#### **Representations**

Four representations have been received.

#### **Objection 1 from the property owners agent:**

I have been instructed to lodge an objection to the making of the above Tree Preservation Order (TPO) and reference T1, Scots Pine. It is understood that the council have assessed the trees using an un-recognised method of assessment and not the commonly known method of TEMPO (tree evaluation method for preservation orders).

The amenity assessment in TEMPO is broken down into four sections, each of which are related to suitability for making a TPO. These are:

- a) Condition
- b) Retention span
- c) Relative public visibility
- d) Other factors

The first three sections form an initial assessment, with trees that 'pass' this going on to the fourth section. Looking at the sections in more detail:

a) Condition

This is expressed by five terms, which are defined as follows:

**GOOD:** Trees that are generally free of defects, showing good health and likely to reach normal longevity and size for species, or they may already have done so.

**FAIR** Trees which have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential or, if they have already done so, their condition is likely to decline shortly, or may already have done so. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse.

**POOR** Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired, and are likely to deteriorate. Life expectancy is curtailed and retention is difficult.

**DYING** Trees showing very little signs of life or remaining vitality, or with severe, dangerous irremediable structural defects, including advanced decay and insecure roothold. Death or catastrophic structural failure likely in the immediate future, retention therefore impossible as something worthy of protection.

**DEAD** Tree with no indication of life.

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. Dead, dying or dangerous trees should not be placed under a TPO, hence the zero score for these categories, due to exemptions within the primary legislation.

I would suggest the Scots Pine is in fair condition and scores 3 points

b) Retention span

The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' potential retention span.

This factor has been divided into ranges, which are designed to reflect two considerations: It has long been established good practice that trees incapable of retention for more than ten years are not worthy of a TPO (hence the zero score for this category); this also ties in with the U category criteria set out in Table 1 of BS5837:2012

The further ahead one looks into the future, the more difficult it becomes to predict tree condition: hence the width of the bands increases over time. Scores are weighted towards

the two higher longevities (40-100 and 100+), which follow the two higher ranges given by the Arboricultural Association (AA). The AA publishes a guide to the life expectancy of common trees, which includes the following data:

300 years or more Yew

200-300 Common [pedunculate] oak, sweet chestnut, London plane, sycamore, limes

150-200 Cedar of Lebanon, Scots pine, hornbeam, beech, tulip tree, Norway maple

100-150 Common ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear

70-100 Rowan, whitebeam, apple, wild cherry, Catalpa, Robinia, tree of heaven

50-70 Most poplars, willows, cherries, alders and birches.

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive, though it should assist with determining the theoretical overall lifespan of most trees. However, TEMPO considers 'retention span', which is a more practical assessment based on the tree's current age, health and context as found on inspection. It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection.

A note on the pro forma identifies for inclusion in the less than ten years band trees which are assessed being an existing or near future nuisance, including those clearly outgrowing their context, or which are having an adverse effect on adjacent trees of better quality.

The nuisance element is introduced to cover situations where, in this case, a Section 211 Notice has been received by the Local Planning Authority (LPA) for removal of a tree with the potential of causing nuisance. In relation to outgrowing its context, TEMPO is clear that trees which are a near future nuisance within the next 10 years should score 0.

I would suggest the Scots Pine is a near future nuisance and scores 0 points

#### c) Relative public visibility

The category each contains two considerations: size of tree and degree of visibility. Reference is made to 'young' trees: this is intended to refer to juvenile trees with a stem diameter less than 75mm at 1.5m above ground level. The reasoning behind this is twofold: this size threshold mirrors that given for trees in Conservation Areas, and trees up to (and indeed beyond) this size may readily be replaced by new planting.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion. Whilst the scores are obviously weighted towards greater visibility, I take the view that it is reasonable to give some credit to trees that are not fully visible and/or whose visibility is not expected to change. It is accepted that, in exceptional circumstances, such trees may justify TPO protection.

I would suggest the Scots Pine is a large trees with limited view and scores 3 points

Sub-total 1

At this point, there is a pause within the decision-making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c. There is a clear warning however not to proceed if:

- 'Any 0' equating to 'do not apply TPO'
- '1-6' equating to 'TPO indefensible'

Sub total 1 for the Scots Pine is 6 points and also includes a zero

It is my assessment that the TPO should not be confirmed

#### Objection 2 from the owners of 6 Brassington Street:

We believe this tree is native to the British Isles, but is not native to England nor this area of South Cheshire / North Staffordshire. As such, a single specimen does not provide an important part of the local flora or provide or support habitat for a wide diversity local fauna. It is believed the tree was planted post the housing development in the area and the tree is not of suitable size for the location in which it is planted. The roots will cause significant damage to drainage, services and foundation over time. The height and spread of the tree is of concern as this will gradually shadow out the native trees underplanted, such as holly, field maple and a variety of native fruit trees. The falling needles cause an imbalance in the soil pH in the vicinity of the tree and thus altering and restricting the variety of native plant that are able to thrive beneath the canopy. Finally the size of the tree and its evergreen nature reduces rainfall onto our land all year and the tree takes much of this up again restricting the variety and number of plants that will grow beneath the canopy. Most native trees to this area are of a broad leaf deciduous variety.

We believe the tree would be better removed and we would plant two locally native trees of a size more suited to a garden situation in its place in our garden, 6 Brassington Street. We propose to plant a Rowan and Hawthorn in its place or alternatives upon your recommendation.

We would argue that the impact on visual amenity for the removal of this tree is far outweighed with regard to the provision and support to the habitat of local flora and fauna that would be improved by the planting of two locally native trees.

#### Objection 3 from the owner of 2 St Margarets Court:

I would like to comment on the order in relation to the Beech tree only.

1. When the houses in St Margaret's Court were built in 1983 the developer planted Beech saplings along the rear boundary of the gardens to form a hedge. These plants still exist and in my garden and that of my neighbour in No. 1 they are maintained by trimming to a height of 2 metres. The Beech in the TPO is also one of these saplings and could be considered a result of neglect rather than a visually significant tree.

2. The Beech is described in the order as being "close to the boundary fencing", in fact it overhangs the boundary with my property and those in The Butts to a large extent. When in leaf the Beech casts a shadow over most of my garden (being to the Southwest of my garden).

3. The council has in the past granted permission to the owners of the Beech in No. 3 to thin and reduce it. This has been done solely to the side of the tree over the garden of No.3 resulting in the tree growing in a lop-sided, unbalanced manner.

4. Given the uneven, lop-sided state of the tree, now that it has been protected, will the Council allow future pruning/management of the tree, or will it be allowed to grow unchecked indefinitely?

5. Have the Council considered how large a Beech of this type can grow in the context of it's proximity to houses?

6. There is a Cherry tree growing very close to the Beech, also in the garden of No.3, could this be removed to benefit the Beech as part of a plan to give it a more even shape?

Objection 4 from the owner of Swallow House, The Butts:

With reference to your letter dated 23rd March 2018 regarding the Tree Preservation order 193(2018) Land at 3 St Margaret's Court.

I am the owner of Swallow House which is directly south of No 3 and I also have a financial interest in 1 Church Villas which is south east of No 3. My daughter also lives in this house. I wish to raise the following points:

1) The Beech tree is only partially visible from surrounding areas and is only totally visible from one spot on The Butts.

2) The size of the Beech tree is causing us concern as we now appear to having more severe gales during Winter and the proximity of the tree to a 150 year old house is a safety hazard. Could you clarify for me that if the order is made permanent that the council are willing to pay for any damages to adjoining properties and possessions caused by the tree?

3) Your letter states that there has been poor pruning by neighbours! I was forced to take action and prune the tree as a branch cracked and fell during severe winds, only missing my daughter's car by a few feet, and with further bad weather forecast I was concerned about other branches falling including those nearly touching 1 Church Villas. Also in the past 2 years the owner of the tree employed a tree surgeon to prune on her side resulting in the tree becoming unbalanced.

4) We are, I believe, entitled to natural light and this tree blocks out a great deal of light from a number of neighbouring houses.

5) My family have lived on The Butts for over 100 years and as a result I know for a fact that the houses were built before the trees were planted.

In conclusion I do not believe a TPO on the Beech tree or even any tree in such close proximity to houses is appropriate. I believe the trees in No 3 St Margaret's Court should be removed for safety reasons. Those trees were planted by the previous owner of 3 St. Margaret's Court.

### Officers response to objections:

Your officers do not use the TEMPO method of tree assessment but have assessed the tree for, in addition to other factors, condition, retention span and public amenity. It is not considered that the pine tree is a "near future" nuisance and that, with the correct management, it can be retained in its location. It is considered that both trees are of sufficient amenity value to warrant a TPO.

The scots pine is native to England although it is the trees visual amenity that is the main consideration in relation to the making of a TPO. The pine tree will ultimately develop a high crown that is unlikely to cause significant shading issues. There is no reason to believe currently that problems with tree roots are likely to be a significant issue and if problems do arise these can be appropriately dealt with. A similar scots pine has recently been removed from the rear garden of 6 Brassington Street and other trees in the garden have been considerably reduced in size and this has increased the visual significance of the pine tree. There should be nothing to prevent suitable management of the tree where it is located.

Irrespective of its origin, is considered that the beech tree is of sufficient amenity value to warrant a TPO and that it can be suitably managed in its location. Pruning is possible from all sides to maintain a balanced crown and it would be appropriate to remove the adjacent cherry tree for the benefit of the beech. Appropriate pruning to BS3998:2010 would be possible to prevent intrusion to buildings, excessive shading and falling branches. Although only clearly visible from The Butts it is considered to be an important feature within Betley Conservation Area.

### Issues

The trees are situated within the rear garden of 3 St Margarets Court, Betley. They are two individual single stemmed deciduous trees, the first a scots pine located to the rear of the dwelling, close to the boundary with 6 Brassington Street, and the second a beech on the boundary with Swallow House on The Butts. They are both semi-mature. The pine is visible from St Margarets Court, The Butts and Brassington Street, and the beech is visible from The Butts.

A Section 211 Notice, 18/00073/TCA, for tree work within Betley Conservation Area was received by the Council on 28 January 2018. This was later revised to 17/00073/TWA when the Provisional Order was made. The notice was to fell the pine tree, along with pruning work to other trees, and it subsequently became apparent that poor pruning work had been carried out to the beech tree. On 27<sup>th</sup> February further information was requested in relation to felling the pine tree but only material relating to the trees age was provided on 9<sup>th</sup> March.

Your officers inspected all of the trees on the site, including other trees that were part of the Section 211 notice, and carried out a TPO assessment, and found the pine tree and the beech tree worthy of an Order. They are considered to be in reasonable health, visually significant and an amenity to the locality, with the prospect of continuing to provide this for many years. The Order was made and served on 22<sup>nd</sup> March 2018 in order to protect the long term well-being of the trees.

Permission was subsequently given to carry out much of the work original requested under the Section 211 notice. This included appropriate pruning of the beech tree but excluded felling the pine tree.

The trees are a significant feature to the locality, provide high public amenity and are an important visual contribution to Betley Conservation Area. Their loss would have a detrimental effect on the visual amenity, not only of the site but also to the locality. Recent loss and pruning of trees adjacent to the pine tree has increased its amenity value.

The making of the Order will not prevent the owner from carrying out good management of the trees and it will give the Council the opportunity to control the works and prevent unnecessary pruning. The owner will be able to apply for permission to carry out maintenance work to the trees which is necessary to safely manage them.

Date report prepared

21<sup>st</sup> August 2018