

Report Prepared by the Council's Tree Officer

Background

In July of 2018 the council were asked to visit Mallows house at the request of the home owner after some pruning had taken place on their trees without permission. In fear that the amenity value of their trees would be harmed and their property damaged, the owners requested for a TPO to be issued on trees at Mallows House.

During the site visit the Councils tree officer (Ben Wainhouse) confirmed that tree surgeons employed by the third party had exceeded beyond the common law rights and pruned back branches past the boundary line without permission from the tree owners. It also appeared that an Oak tree located in Mallows House had been removed without the owners permission.

Due to the visible threat to trees at Mallows House, the officer saw fit to serve a tree preservation order (TPO) to protect the remaining suitable trees on the site. The TPO was served on 18th July 2018 after an evaluation was carried out using TEMPO to determine the suitability of the potential TPO. The score and workings are shown in the appendix.

Objections

Objection from Myriam and Anthony Morris, No 9 Burn Close, Oxshott.

Their letter date 6 August 2018 raised a number of objection points which have been listed below with the Councils comments:

1. Reference to the growing size of the Oak tree in relation to the small size of their garden is blocking out light. Further reference was implying a TPO would limit maintenance works to the Oak and Conifer hedge.

Officer comments:

The tree preservation order does not include the conifer hedge mentioned which can be managed without any restrictions from the Council. A TPO does not prevent the reasonable management of trees or prevent the owner from maintaining their duty of care to prevent actionable nuisance.

2. The tree preservation order was only served in response to a request from the objector to have the conifers on the boundary reduced in height.

Officer comments:

The TPO was produced in response to tree surgery works commissioned by a third party which went beyond the common law rights of the third party. The TPO does not include the hedge which can still be managed without restrictions from the Council.

3. The objector said the trees protected by the preservation order were not done to the requirements on the Council's public website. The requirements are:

We have an obligation to consider making Tree Preservation Orders (TPOs) to protect trees where it is considered expedient and to review applications for tree works made under these Orders.

Trees must meet the following criteria before we can consider making a Tree Preservation Order:

1. *The tree must be of public amenity and not only of private benefit (it must be visible from a public space like a road or park).*
2. *The tree must not have been mutilated in the past in a way that has removed its arboricultural amenity value.*
3. *The tree does not pose an unacceptable or unmanageable risk.*
4. *The tree is capable of a reasonably long life.*
5. *The tree is not located so close to a building that it would be unreasonable to refuse its removal if requested.*
6. *The tree is under some form of threat, such as by proposed development, heavy pruning or removal.*

Officer comments:

1. The Chase is a private road but not gated to prevent access to those using the road either by foot or by vehicle.
2. The trees were of such a form and condition that they still contributed towards a good level of arboricultural amenity.
3. All trees pose a degree of risk but the officer at the time did not consider the trees included in the TPO to be of such a poor physiological or structural condition to exclude them.
4. Given the species, current condition, and age, the trees in the Council's opinion are still capable of a long life.
5. There is sufficient available space to sustain the trees into maturity and further without causing an actionable nuisance to buildings.
6. One tree had been completely removed and a second worked on in an unsympathetic manner without the permission of the tree owner.

The Council carried out a TEMPO evaluation to determine the suitability of a TPO and its defensibility if challenged. The trees scored 16 = Definitely merits TPO. A copy of the score sheet has been included in the appendix.

Objection from Greg and Deborah Broadbent, No 8 Burn Close, Oxshott.

Their letter date 20th July 2018 raised a number of objection points which have been listed below with the Councils comments:

1. The TPO was a vindictive response to the request to reduce the leylandii hedge on the boundary.

Officer Comments:

The TPO was produced in response to tree surgery works commissioned by a third party which went beyond the common law rights of the third party. The TPO does not include the hedge which can still be managed without restrictions from the Council.

2. There are few to no other TPOs in the local area of The Chase or Knotts Park Estate. This would indicate that TPOs are not required to maintain the 'amenity value' of the area.

Officers Comments:

The Council have not issued any TPO's in the Knots park estate area because the Council have not been made aware of any trees that are under threat. As the trees in question are under direct threat from pruning, a TPO is justified.

3. Making TPOs on the trees absolves the owners from the need to carry out any maintenance work to them, and further, prevents neighbours from carrying out basic work to branches from these trees that overhang their properties.

Officer Comments:

TPOs do not absolve owners or neighbours from carrying out maintenance. Tree owners must still maintain their duty of care under the Occupiers Liability Act. TPOs do not prevent the undertaking of reasonable remedial tree surgery works.

4. The Horse Chestnut has a leaf disease and will be blocked from view by the proposed extension, both will diminish its amenity.

Officer Comments:

Chestnut leaf blotch and leaf miner are present throughout the south east and do have an impact on the trees ability to photosynthesise. However mature chestnuts have coped with these pests and the tree still proves to be a valuable amenity asset in the characteristically treed landscape of Knotts Park Estate. Poor tree surgery work detracts from the trees natural form which

reduces the amenity it provides as part of the character and landscape of the area.

5. The objection letter makes references to the risk from overhanging branches and falling branches with liability towards the Council for any future damages to property and the management and maintenance of the storm drain / burn.

Officer Comments

Tree owners still has overall responsibility and liability for trees in their ownership. Tree owners must still maintain their duty of care under the Occupier Liability Act. The potential for risk from falling branches is managed through regular tree inspections which covers the owners liability.

6. In respect of the Oak tree identified as T1 the TPO refers to these trees on Land at Mallows House. Evidence was requested that T1 is in the ownership of Mallows House because the it does not sit within the wooden fence to the property.

Officer Comments

All trees protected within EL:18/13 are within the boundaries of Mallows house and this is clearly indicated on the TPO Map. The Council have also carried out a land registry search to confirm this.

NOTE:

Conclusion

On balance the Council feels the TPO issued outweighs the objection put forward by the objectors. The Council have complied with government guidance and have issued the TPO in a consistent manner, whilst considering all aspects of the TPO legislation and the adopted TEMPO format for making the order.

The objection should be dismissed and the TPO should be confirmed without modification.