

TREE PRESERVATION ORDER REPORT; SHDC (Parish of Totnes) (No. 916) TPO 2015

TPO REF: SHDC (Parish of Totnes) (No. 916) TPO 2015

LOCATION: Unregistered land on verge, St Katherine's Way, Totnes

PARISH: Totnes WARD: Totnes

DATE TPO MADE: 23 April 2015



PROPOSAL

A provisional Tree Preservation Order (TPO) has been made on a single Leyland Cypress (*Cupressus x leylandii*) (T1). This is an evergreen conifer and is situated on a narrow retained verge immediately adjacent to Victoria Court off ST Katherine's Way, Totnes.

Local Ward Members were consulted and requested the tree should be protected in response to local concerns that it was to be felled and that the decision over confirming or not confirming the Order should be referred to the Development Management Committee.

The Council assessed the tree and officers concluded that given its expected future growth and position that there is a high risk of foreseeable damage and nuisance resulting from root expansion and wind throw.

The Council has received one objection to the provisional TPO from Devon and Cornwall Housing concerned about safety and potential damage to the adjacent DCH owned property.

Totnes Town Council and the local tree warden support confirmation of the TPO.

The Council has powers and duties to protect trees of significant public amenity value. These powers in relation to Tree Preservation Orders are in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

RECOMMENDATION: Tree Preservation Order 916 is NOT CONFIRMED.

Notifications:

1. Adjacent land owner - One objection – the TPO should not be confirmed
2. Local resident – support for confirmation of the TPO
3. Totnes Town Council and tree warden - support confirmation of the TPO

BACKGROUND, SITE AND SURROUNDINGS

The Council received a request from a local resident to place a TPO on a Leyland Cypress on unregistered land next to St Katherine's Way because Devon and Cornwall Housing had notified residents within Victoria Court that the tree was to be felled. The tree is on a narrow retained verge immediately adjacent to Victoria Court and concern had been raised over its safety and potential damage to the DCH property should it be blown over.

Following the TPO request the Council undertook an assessment of the tree using the Council agreed pro-forma (Appendix 1). This was carried out by both an SHDC Specialist and an external Arboricultural consultant. The procedure provides a systematic approach to assessing public amenity value and suitability for inclusion in a TPO. The procedure includes:

- A series of steps to assess level of public amenity, suitability of condition, likelihood of tree causing damage and likelihood of threat to the tree. All steps must be addressed.
- A cumulative score that gives an indication of 'significance' of the tree(s) and thresholds of suitability for long term protection based on that significance.

The assessment received an initial score of 11 and 10 respectively which is on the threshold for consideration when deciding to serve a TPO (Score 11 to 14 – moderate amenity value – consider TPO; 15-18 – High amenity value – serve a TPO). This is fundamentally due to the assessment at Part 4 receiving a score of 1 because it is anticipated that there will be '*unmanageable structural damage or nuisance*'. A score of 1 in Part 4 means that no further assessment should be made because a TPO should not be served.

Part 4: *Location and future structural damage potential* – forms part of the assessment as it is important that the Council understands if there are any foreseeable problems that will result from the tree being retained into the future. Officers considered the position of the tree on the narrow verge, the relationship to the building close by (Victoria Court) and the effects of the root system on adjacent structures. The roots are within a narrow 2.2m wide verge with a low retaining wall to the north and a public highway with footpath to the south. Specific concern is raised over:

- the roots damaging the retaining wall (actual nuisance) which is foreseeable as the tree continues to grow;
- due to the height and wind-sail area of the evergreen canopy and the restricted root growth, that it is highly susceptible to wind throw (blowing over);
- the Council will be liable to Compensation if on a claim under the regulation, *a person establishes that loss or damage has been caused or incurred in consequence of — (a) the refusal of any consent required under these Regulations;*

The principle objective of serving a TPO is to protect a tree because of its significant public amenity and the contribution it makes to the local character of the area. Officers can, in addition to this, consider other contributing factors but importantly, these alone would not warrant making an Order. The request to protect the tree is related to its ability to intercept and filter air pollution.

Following the initial decision not to serve the TPO, additional requests to protect the tree were received from Totnes Town Council and the local tree warden. On this basis the local Ward Members were consulted and as a result Members requested the tree should be protected in

response to local concerns and in particular that the decision over confirming or not confirming the Order should be referred to the Development Management Committee.

The Council has received a TPO application to fell the tree; this will be determined subject to the outcome of this item.

The Council has received one objection to the provisional TPO.

THE SUPPORTERS REPRESENTATIONS:

The supporter's letter for serving and confirming the TPO can be summarised as follows: (A full version of the letter of support can be seen in Appendix 2. This is a direct response to the objector's letter (Appendix 3)). The Town Council and local tree warden also support confirming the TPO (Appendix 4).

The supporter's points are as follows (*in italic*) with the case officer's comments afterwards;

1. *Removal of the tree will result in an extra 1kg of particulate pollution remaining in the atmosphere*
2. *Adjacent trees are not evergreen, do nothing to clean air during winter and have little screening benefit and have lesser public amenity (sic)*
3. *Removal of CO₂ and particulates is of great benefit and Leyland cypress are one of the best species at doing this; more large trees are needed in Totnes*
4. *The wall is currently undamaged next to the tree*
5. *The tree roots are deep rooting making it stable*
6. *Supports wildlife*
7. *It is a beautiful tree*

The Council fully acknowledges the benefits trees bring to the environment in terms of pollution filtration. Tree roots require both oxygen and water so root in the upper layer of soils normally to a maximum depth no greater than 60cm to 1m.

THE OBJECTION REPRESENTATIONS:

Since the Order was made and served, one formal objection has been received as follows: (A full version of the corresponding letters of objection can be seen in Appendix 3.)

1. Representative of adjacent land owner

The full objection is contained within a letter of the 21st May 2015. It is summarised as follows:

The objector's points are as follows (*in italic*) with the case officer's comments afterwards;

1. *Although visibly prominent, removal of the T1 would not have a significant detrimental impact upon public amenity.*
2. *The retention of T1 over the short and medium term will suppress and disfigure the growth of two smaller trees (Horse Chestnut and Walnut) which will have significantly greater amenity value.*
3. *Climate change mitigation and the interception of pollution are not appropriate measures to determine the public amenity value of an isolated single tree.*
4. *The location is not appropriate for the long term retention of such a large species; risks to structures, shading, domination and whole tree failure will be ongoing concerns.*
5. *Other trees (Horse Chestnut and Walnut) provide greater potential for long term public amenity, without the associated damage or nuisance.*

6. *DCH are a reasonable, proactive landowner. The decision to remove the tree was a considered one that balanced issues of arboriculture and public amenity. The planned work is consistent with good arboricultural practice and confirmation of the order is therefore not expedient in the interests of public amenity.*

The Council have assessed the Leyland Cypress independently and note the objector's points. The key point of discussion is the foreseeable damage and nuisance from the Leyland Cypress identified in Point 4 and 5 above.

CONCLUSION

The issue for Members to consider is the merit of protecting the Leyland Cypress (T1) as scheduled in the provisional Tree Preservation Order 916.

The Leyland Cypress is located on St Katherine's Way adjacent to Victoria Court, Totnes. It is situated in a narrow retained verge with Victoria Court to the north and a public highway to the south.

The key support for confirming the Tree Preservation Order is based upon the important role the tree plays in filtering CO₂ and particulates from the adjacent highway. Whilst a factor for consideration this point would not warrant the serving of an Order.

The tree has been assessed by the Council and this concluded that there is a foreseeable risk of damage and nuisance to the adjacent property; this includes a retaining wall and flats owned and managed by Devon and Cornwall Housing. The tree itself has low visual amenity value and other immediate adjacent trees would maintain the overall treed nature of this verge. The damage and nuisance will result from continued root growth and leverage of the crown increasing the risk of failure and the tree being blown over. The Council may be liable to Compensation as a result of damage caused by the tree if in the future it refuses consent for the tree to be felled.

In consideration of all the factors set out above and Government guidance, the Council recommends that Tree Preservation Order 916 is NOT CONFIRMED.