

Report to Area Plans Sub-Committee East



**Epping Forest
District Council**

Date of meeting: 28 November 2012

Subject: Confirmation of Tree Preservation Order TPO/EPF/04/12 - Tree on land to the Rear of 51 Hornbeam Road, Theydon Bois.

Responsible Officer: Christopher Neilan (01992 564117).

Democratic Services: Gary Woodhall (01992 564470).

Recommendation:

(1) That Tree Preservation Order EPF/04/12 be confirmed without modification.

Executive Summary:

TPO/EPF/04/12 was legally made to protect an important oak in response to a request from the parish council. Although the tree has been deliberately damaged in an attempt to prevent the order taking effect it should remain in place, allowing the LPA to influence decisions on the tree's future and, if it came to it, enforce replacement planting.

Report:

1. Tree Preservation Order EPF/04/12 was made on 7 June 2012 to protect an oak on land to the rear of 51 Hornbeam Road, Theydon Bois. It was made as an emergency order at the request of a representative of the Theydon Bois Parish Council and following a consultation with one of the ward members in addition to the relevant Portfolio Holder.

2. The circumstances were that on that morning a tree surgery firm was on site felling a number of trees along what appeared highway verge, as a result of alleged subsidence to the adjacent property. The oak was due to be felled as part of this work. Contact was made with the owners, Mr. and Mrs. Scutchings, and also agents for the insurers of the property, a company called Marishal Thompson. Having established that the oak at least was on land owned by Mr. & Mrs. Scutchings, Marishal Thompson were asked to abort the intended felling, to allow time for the officers to review the relevant technical information. This they refused to do.

3. After consultation with relevant members the order was then made with the minimum possible delay and served on the tree surgeons concerned and the owners early that afternoon. The tree was later "ring-barked" by the tree surgeons involved, on the instructions of Marishal Thompson. That is a ring of sapwood was removed around the main stem, in an attempt to frustrate the intended TPO.

4. Legal action is being considered in respect of this; the latest position will be reported orally to the committee.

Objection to the Tree Preservation Order

5. An objection to the order has been received from the owners of the tree. They object to the order on the following grounds:

(a) Mrs & Mrs Scutchings appreciate their surroundings but feel that the tree has grown to a size such that it is not suited for its location close to residential property. They point out in this respect that each case should be judged on its own merits;

- (b) at the time of the intended felling of the tree no tree preservation order was in place. Since prior searches were made they consider that had the tree been so important a TPO should have been put in place prior to the day in question;
- (c) there is no requirement for the parish council to be consulted regarding tree works;
- (d) the owners view the TPO as a form of "changing the goal posts". Searches show that the tree is on the objectors' property; they feel that the Tree Preservation Order was made at too late a stage;
- (e) the damage being caused to Mr & Mrs Scutchings' property is ongoing and the worry and upset that they are being caused is immeasurable. Their insurers established that the damage to their home has been caused by the Oak;
- (f) they and their insurers will hold Epping Forest District Council responsible for any further damage to their property if the tree is not allowed to be felled and for any injury or damage, to us or a third party, which may be caused by any part of the tree; and
- (g) they summarise by saying that they trust that the Council will rescind the order with immediate effect so that their insurers can progress the works to stabilise their property and make good the damage to it.

Comments of the Director of Planning and Economic Development

6. In this case the issues for the Committee are two fold;- those above and additionally those raised by the attempt to kill the tree by ring barking it. It is made clear to the Committee that there is no evidence that Mr & Mrs Scutchings had any involvement in the ring barking of the tree. It has been confirmed, as stated above, that this was ordered by Marishal Thompson.

7. In this instance it is considered logical to deal first with the damage to the tree, the prospects for recovery and so its current planning status.

8. As a result of the instructions of the insurer's agents the tree surgeons, rather than felling the tree as originally instructed, made saw cuts around its stem to remove approximately 85% of the sapwood and cambium. The intention was, apparently, to kill it by a complete ring-barking, but for reasons unknown this was incompletely done. The not quite complete ring-barking will have the effect of slowing the uptake of water to the crown, thus causing stress, and, more importantly in the long run, will restrict the ability of the crown to support future growth of the roots. In other words the root system of the tree will almost certainly die back considerably and so therefore also must the upper crown, although it may take several years for the full effect of this to be apparent. There is no visual effect to date, probably because of the weather this summer.

9. Officers have appointed an independent expert to advise on the likely prospects of the tree. His conclusion is that it cannot be said at present that the tree is destroyed and that there is a good chance it will survive, although probably having died back extensively. He also advises that there are actions that could be taken by the owners to improve the chances of recovery, should they wish to do so. However, given its location even in a reduced form the tree would have amenity value. Confirmation of the order would allow the council to influence its future and in the worst case to insist on replacement planting which took the context into account.

10. It is therefore concluded that, given the highly visible location of the tree, it would be reasonable to confirm the Tree Preservation Order (TPO) subject to consideration of the objection as above. For this decision it is not critical whether the cuts were made before or

after the TPO was served, although it is officers' belief that at the time the TPO became effective the majority of the trunk was not so cut.

11. Turning to the grounds of objections, the comments are as follows:

(a) The oak is highly visible on one of the main access roads into Theydon Bois. It is a well formed, attractive tree. There is no "in principle" reason why such a tree cannot be kept at 15 metres plus from a property, subject to occasional management. In the event that evidence were provided to the District Council showing that there was justification for pruning or even for its felling, this could be agreed under the order with appropriate replacement as necessary. At the very least this would reassure the community that important trees were not lost without adequate justification. It is agreed that every case should not be judged on its merits. It was because of the particular importance of the tree that the TPO was made.

(b) It is true that Epping Forest District Council received a search as to the TPO status of the property prior to the works being undertaken. Many such enquiries are received and all are answered promptly and truthfully. However, that does not stop a Tree Preservation Order being made at a later stage where the circumstances warrant. It should be noted that a request was made that the felling be delayed so that the papers could be looked at. This was refused. Proper processes were followed in the making of the TPO.

(c) The relevance of comment about the Parish Council is not entirely understood. The District Council however of course takes the Parish Council's view seriously. The Theydon Bois community tree strategy was the second community tree strategies to be completed and with the support of the population and relevant local organisations has enabled the District Council to have pioneered a community centred approach to tree protection and tree planting which was proved very successful in the village.

(d) Again the history of previous enquiries does not prevent the council taking a view with better knowledge of the circumstances.

(e) The difficulty of the position of Mr & Mrs Scutchings is fully appreciated. However, it is considered that the responsibility for the situation they find themselves in lies with the representatives of their insurers in that firstly they refused to allow more time to enable officers to be made aware of the background and secondly, realising that they did not have time to fell the tree completely before the order could be made they ordered the destruction of the tree through ring barking. It remains open to Mr and Mrs Scutchings or their insurers to make any necessary application under the TPO.

(f) The comments on liability have no legal weight; under the TPO legislation the Council would have responsibility for the consequences of its decisions made in respect of a formal application, but not otherwise.