

Development Control Committee 7 August 2019

Planning Application DC/19/0759/TPO – 3 Forest Way, Mildenhall

Date Registered:	08.04.2019	Expiry Date:	03.06.2019
Case Officer:	Mr Nicholas Yager	Recommendation:	Split Decision
Parish:	Mildenhall	Ward:	Mildenhall Kingsway and Market
Proposal:	TPO/2007/02 - TPO/1996/06 - Tree Preservation Orders - (i) T1 - 1no. Oak - Fell (ii) T8 - 1no Scots Pine - Fell		
Site:	3 Forest Way, Mildenhall		
Applicant:	Mr John Carey		

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

Recommendation:

The formal decision as to whether the application will be determined at Development Control Committee or by delegated authority will be made by the Assistant Director (Planning and Regulatory Services). However, it is recommended that the Delegation Panel advise the Assistant Director (Planning and Regulatory Services) of their opinion as to whether this application should be referred to the Development Control Committee for determination or whether it should otherwise be determined using delegated powers.

CONTACT CASE OFFICER:

Nicolas Yager

Email: Nicholas.Yager@westsuffolk.gov.uk

Telephone: 01284 757629

Background:

This application is referred to the Development Control Committee following consideration by the Delegation Panel.

The Officer's recommendation is to grant consent for the felling of the T1 – 1no. Oak and to refuse consent for the felling of the T8 – 1no. Scots Pine.

Negotiation sought to secure changes to the proposal, so that limb reduction works took place instead to the Scots Pine. However, the applicant did not agree to the suggested proposal change from Officers therefore making the recommendation a 'split decision'.

It was referred to the Delegation Panel as the Town Council and Ward Member (Mildenhall Kingsway & Market) both object to the felling of the trees, therefore, contrasting with the Officer's recommendation to fell T1 – 1no. Oak Tree.

A site visit is proposed for Monday 5 August 2019.

Proposal:

1. TPO consent is sought to fell 1no. Oak and to fell the T8 – 1no. Scots Pine.
2. However, the officer's recommendation is for a split decision to fell the T1 – 1no. Oak and to refuse the felling of the T8 – 1no. Scots Pine, for reasons that are set out and discussed below. The recommendation includes conditions to secure the replacement planting of the Oak with a Lime tree.

Application Supporting Material:

- Application Form
- Tree Location Plan
- T1 Tree Location Plan
- T8 Tree Location Plan
- Tree Inspection Report
- Photographs
- Arboricultural officer annotated photographs 001

Site Details:

3. The application site comprises of a detached bungalow located along 3 Forest Way, Mildenhall. The Scots Pine is located to the west side of the dwelling which is therefore visible from Thetford Road and Forest Way. The Oak tree is located in the north east corner of the site and again can be seen from both Thetford Road and Forest Way. The property is adjacent to the tree preservation orders 02(2007) and 06(1996).

Planning History:

Reference	Proposal	Status	Decision Date
DC/19/0759/TPO	TPO/2007/02 TPO/1996/06 Preservation Orders - (i) T1	- Pending Tree Decision	

	- 1no. Oak - Fell (ii) T8 - 1no Scots Pine - Fell		
F/2008/0561/TPO	Reduce oak tree by two thirds	Refuse	18.09.2008
F/2009/0332/TPO	Crown reduction of 3m to 1 Oak tree (as amended 28/10/2009).	Approve with Conditions	02.11.2009
F/2007/0787/FUL	Part demolish end of existing bungalow, erection of side and front extensions (to North, South and East elevations)	Approve with Conditions	16.11.2007
F/2010/0088/TPO	Fell 1 x Silver Birch (as amended by email received 02/03/2010)	Approve with Conditions	01.04.2010
F/2003/0353/TPO	Lift the canopy of 1 Oak tree and 1 Pine tree - TPO 6/96	Application Approved	30.06.2003

Consultations:

4. The arboricultural officer recommended the felling of the Oak tree and the refusal of the felling of the Scots Pine (for reasons set out below).

Representations:

5. Mildenhall Town Council: 06/08/2019

- *Parish Council Members objected to the planning application subject to an Arboriculturalist Report.*

6. Ward Member Cllr Ian Shipp: 28/06/2019

- *Objects to the planning application.*

7. A number of Neighbour comments have been received in response to the application;

The following comments were received in **support** of the proposal –

- *Petition was submitted on the 10/06/2019, from 13 Forest Way, 12 Forest Way, 10 Forest, Way, 9 Forest and 7 Forest Way **supporting** the proposal.*
- *Comments received from 4 Forest Way on the 10/05/2019, **supporting** the application. Due to the trees being located very close to the sewer pipes and the roots interfering with the free running of the system.*

The following comments were received in **objection** to the proposal -

- *Petition was submitted from 27 Thetford Road and a property along Forest View on the 03/07/2019 **objecting** to the proposal.*

- **Objection** received from 29 Thetford Road Mildenhall on the 22/05/2019 and the 21/05/2019.

29 Thetford Road 22/05/2019

8. We do not wish any neighbour to have drainage problems, but we have **objected** as felling the trees seems an extreme action to take to a relatively common problem, for which simpler and quicker solutions exist. A planning application was made to the mature oak tree (T1) around 10 years ago. A lengthy case concluded with a thorough examination conducted by Keith Rushford (an Arboricultural Inspector appointed by the Secretary of State). His detailed report* found nothing wrong with the tree or its roots and classified it as medium public amenity value. As a well established tree of over 100 years old I doubt anything has changed since then. Both trees appear healthy. The scots pine has ivy growing on it that could weaken the branches in time. One of the branches near the electricity cable may require routine pruning soon. Our stance remains the same as before. We like the trees, they create work clearing up leaves etc but overall the trees add value. When we moved here we were aware of the legal mechanism protecting them and the rationale behind this. We have had no drainage problems.

29 Thetford Road 21/05/2019

9. I do not consider this to be a complex case, rather a case made up of many things that were described in the report as "minor" or "not significant".

I found the report to contain a lot of conjecture and had expected it to be more matter of fact and objective. We made a few observations to arboricultural officer whilst doing the site visit which were not included in the report so I will mention them here.

- The oak tree, part based on our property, is of high amenity value to us and overhangs our garden more than any other.

- We do not remember seeing any maintenance on the scots pine and with substantial ivy growing on it, it is in need of attention. It would seem likely that the photographed fallen branches, supplied by the applicant, are as a result of this. Clearly a qualified tree surgeon is needed to remove these branches described in the report as "not considered unpredictable". On the day we were told that the scots pine would be good for at least 20-40 years but it was documented as "no more than 10-20 years".

- We have had strong winds and storms this winter, on each occasion there was lots of debris from the trees the next day but no branches fell that would have caused any harm, just twigs, cones leaves etc. I cannot ever remember any dangerous branches falling into our garden from which the tree overhangs.

- I've observed the trees for over 20 years and know them well, I have not noticed any changes in their health, in fact the oak tree looks in better shape that it did when a previous declined application was made to reduce by 2/3rds in 2008 (referred to in the report). The tree has recovered from the dieback and the associated deadwood has disappeared.

Policy:

10. Assessment of Tree Preservation Order (TPO) works are not made with reference to specific Development Management Policies. Rather, they are assessed on the basis of good arboricultural practise, balancing the need and justification for the works against any harm to amenity.

Officer Comment:

11. The issues to be considered in the determination of the application are:

- Reason for the Works
- Impact on the Amenities of the Local Area

12. Both of the trees in this application form part of an area TPO, and both help contribute to the rural and wooded character of the local area. The Scots Pine in particular is a tree of high amenity value, with the Oak, whilst being less prominent, still adding to the amenity of the wider area.

T1 Oak Tree

13. T1, *Quercus robur*. This semi mature Oak is located in the rear garden of the property. Due to its size and stature, it is visible from the surrounding public roads, predominantly from the public road of Forest Way itself, meaning the greatest amenity value will be from within this housing development. The tree is visible to the wider public accessible area, but to a lesser extent. Partial views can be seen from Thetford Road, but these views of the tree would be best described as adding to an already verdant character of the area, when viewed from outside the development of Forest Way. The tree has also had a crown reduction in the past, which has reduced the visible crown of the tree, from a wider area. As such, the tree would be described as having a moderate amenity value (neither excessively high, nor excessively low).

14. However, during the arboricultural officer's inspection of the tree there was found significant cambium necrosis of the main stem and in the buttress zone. No fungal fruiting bodies were noted associated with this, but this may be due to a fungal pathogen which would not be fruiting at this time of year.

15. With approximately 1/3rd of the total circumference of the main stem being affected. The necrosis extends to approximately 500mm above ground level. It is possible this is the result of a fungal pathogen, and it is evident the tree has responded with woundwood development to the margins of the necrosis, with some levels of compartmentalisation. Overall, at this time, given the crown size of the tree, it is not considered that this causes an imminent risk of catastrophic failure at stem base. The exposed sapwood is still relatively intact, but soft decay in some areas has begun and is forming cavities deep within the buttresses. While the tree has actively responded to this, long term it is likely this area of dysfunction will continue to decay, and it would be very hard to determine the extent of decay and stability of the tree, without further Picus tomography investigation, carried out at a lower level, through the affected area.

16. It is likely that a crown reduction of up to 4 metres would be required to reduce the loading satisfactorily on the base of the main stem, which would ordinarily be considered as heavy, and in itself likely detrimental to the health and amenity of the tree. In some cases, such heavy reductions

are necessary when balanced against the risk of failure or removing the tree entirely. A finer point of consideration for this tree, and one which is important to consider, is that such a heavy reduction would necessarily reduce the tree's amenity value further, likely resulting in a tree with only a moderate to possibly even low amenity value. In this scenario it is considered that removing the tree and securing a replacement would be preferential to a detrimental reduction, in terms of securing long term amenity.

17. It should also be considered that the tree is a species that can attain great size, and its proximity to the two properties is such that it is a tree that will never be able to attain its full potential, as its proximity is such that it would require maintaining at a size and spread no greater than it currently is. As such, it will never have as high an amenity value as it otherwise could. It would be fair to say that while the immediate amenity value of the surrounding properties may be negatively impacted, given the tree's moderate amenity value, that this impact would be moderate at most. The area also has a very verdant character, and given the remaining tree cover, will still mostly retain this character.
18. The application has also been supported by a drain inspection report, which notes that roots been found in the applicant's drains. Also third party neighbouring comments have been received in relation to the drains. It is important to note that the drain inspection report does not make direct connections to T1 Oak, or draw any conclusions or recommendations. Roots from other trees, shrubs and vegetation all have the potential to enter a drain. Tree roots can extend twice the crown height of a tree. However, on balance, given the proximity of the tree, it would be reasonable to assume at least some of this root growth, if not all, does emanate from T1 Oak. However, it is also important to note that tree roots do not generally damage drains, rather, fine feeder roots will exploit an already failed drain, which would lead to roots being present within a drain. In most cases, repairing the drain would be the reasonable action. Comments from the neighbour that roots have also been found in their drains, for which the above comments also stand. Generally, the presence of roots in a drain, would not justify the removal of a tree with moderate to high amenity value. However, it would be fair to say that tree roots are likely to continue to encroach the drain, unless it is repaired. Removing the Oak tree would be likely to reduce the amount of roots re-growing into the damaged drain. There is mention of roots in the neighbours' flowerbed. This would be expected, and would not be considered a significant nuisance, unless the roots were causing damage to structures. The applicant also states that it is likely that roots are at the foundations of their house, and the neighbours. This is likely. However, tree roots are unlikely to cause direct structural damage to either properties, based on the likely foundation design and depth. In essence the pressure from incremental growth of roots would not be great enough to counter the weight loading of the house on the foundations, as such roots would deform around the foundation, rather than the other way around. Damage to foundations is typically associated with vegetation related subsidence, which given the light sandy soils, would not be likely, and can also be discounted. Overall, removal of the tree purely for the reasons of the above stated root issues, would not be justified, albeit the conclusions already reached above are clearly material.

19. With respect to the Oak's remaining life it is important to be clear about the difference between its potential remaining life, and its predicted safe, useful life expectancy. It is possible the tree could remain 80 years or more, if it was retrenched back to something like a pollard, over an extended period of time. In this way, it could be retained for some time, albeit with an even lower amenity value. When the actual condition of the tree is balanced with the nuisances, and the moderate amenity impact, then it is considered that it would be unreasonable in the circumstance for the Local Planning Authority to object to its removal.
20. Accordingly, noting this, and as a fine matter of balance, officers consider that the amenity value of this tree would be better preserved through the planting of a suitable longer term replacement, rather than allowing the tree to suffer the inevitable significant works that would be necessary to ensure its loading was appropriate, with the inevitable, and considerable, erosion of its amenity value as a consequence.
21. At this point, a note on replacement planting should be made. The applicant has stated they would be amenable to a replacement tree. In this case a replacement would need to be a species that will achieve a similar mature size, to replace the current amenity. It would not be recommended to replace with another tree of similar mature size, in the same location. However, an attractive semi mature Lime is located to the side of the property, adjacent to Thetford Road. This tree is part of a line of Lime trees that continue along Thetford Road on the opposite side of Forest Way. Replacing this oak tree with a Lime, planted to the west of the existing Lime, along Thetford Road, would likely secure a better and sustainable long term amenity, forming a valuable landscape feature in the form of a line of Limes.
22. It is for these reasons that officers consider that it is reasonable, on balance to consent to the felling of the Oak tree subject to the replacement planting of a Lime Tree.

T8 Scots Pine

23. T8 *Pinus sylvestris*. This mature Scots Pine is located to the side of the property, and fronting Thetford Road. Its size and stature is such that it is prominent to the wider area. It is located to the side of the property, and fronting Thetford Road. It would be fair to describe its amenity as being notably higher than T1 Oak. For a Scots Pine, it is a rather fine mature specimen, and has reached a mature age that many Scots Pine do not attain. This adds additional amenity value, when considering its uniqueness, and that it represents a particularly fine example of the species. In addition it has strong connections with the landscape, in terms of being synonymous with the Brecks. These factors combined would further increase its amenity value. As such, it would be described as having a high to very high amenity value. However, the Scots Pine in this application does have a significant risk of limb failure within the crown. Therefore, it is considered that pruning would reduce weight and loading within some specific parts on the tree. These suggested works were discussed with the applicant who did not want to negotiate and revise the proposal, and instead wanted a decision to be made on their proposal to fell the Scots Pine.

24. Due to the high amenity value of the tree, further reductions, or removal of the tree, would need to be supported by additional information on the condition of the tree. The Arboricultural Officer commented also stating that a full inspection of the tree cannot be made with the ivy in place and would strongly recommend the applicant to remove the ivy and have a detailed tree inspection to be carried out, particularly an aerial inspection.
25. Noting this, and noting, as set out, the high amenity value, it is not considered that justification has been made for the removal of the Scots Pine at this stage and refusal of consent to fell such is recommended.

Other Matters

26. Town Council, ward member and a number of neighbour comments have been received objecting to the removal of the Oak tree. These are noted. However, in this instance it is noted also that up to 1/3rd of the main stem of the tree is infected with cambium necrosis. The arboricultural officer recommended that a crown reduction of up to 4 metres would be required to reduce the loading satisfactorily on the base of the main stem, which would ordinarily be considered as heavy and would likely be detrimental to the health and the amenity of the tree. It is therefore considered, as set out above, and on balance, that removing the tree and conditioning the replacement planting of a Lime tree would be preferred to the inevitable detrimental reduction which would otherwise be required, and would in time secure the long term amenity of the area.
27. Neighbouring comments relating to the support of the felling of the Scots Pine are also noted. In this instance it is considered that the Scots Pine has a high amenity value that provides strong character to the area. It is noted that the Scots Pine has a number of over-extended limbs significantly increasing the risk of limb failure. However, the applicant has declined to agree any changes to the proposal to incorporate such limb reduction, and has confirmed their request to fell the tree. However, and regardless, with some pruning it is considered that the tree can overcome any concerns relating to limb failure, leaving the tree as a viable specimen for a number of years, potentially in excess of 20. Therefore, for further works relating to the removal of the Scots Pine to be considered and consented this would require more information to be submitted and such would have to outweigh against loss of the high amenity value that the tree currently holds, and it is for this reason that felling of the Scots Pine is recommended for refusal.

Conclusion:

28. In conclusion, the proposal to remove the Oak tree is considered to be acceptable. However, the removal of the Scots Pine is considered to be unacceptable in this instance.

Recommendation:

29. It is recommended that the Tree Preservation Order Consent for the **T1 Oak Tree** be **GRANTED** subject to the following conditions;
1. Works to take place within two years

2. Works to take place in accordance with standard arboricultural practice.
3. Replacement Planting of a Lime Tree

And

30. It is recommended that the Tree Preservation Order Consent of the **T8 Scots Pine** be **REFUSED** for the following reason:

1. The Scots Pine has a significantly high amenity value that contributes considerably to the wooded character of the local and wider area. Due to this high amenity value removal of the tree would need to be supported by additional information on the condition of the tree. No further evidence has been supplied and therefore, in the circumstance, it is not considered that a complete felling of the tree would be justified and would certainly not outweigh the adverse visual impacts that would arise and the removal of this tree would not therefore be justified.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/19/0759/TPO](https://www.dorsetcouncil.gov.uk/DC/19/0759/TPO)