

SUBJECT:	Objection to the South Bucks District Council Tree Preservation Order No. 010, 2019 at Tamarisk, 21 Anslow Gardens, Iver Heath, SL0 0BW
REPORT OF:	Head of Planning and Economic Development
REPORT AUTHOR	Richard Garnett, Arboriculturalist

1. Purpose of Report

- 1.1 This report presents objections raised to the above Tree Preservation Order.
- 1.2 The Committee is requested to determine whether to confirm the Order as made or not to confirm the Order or to modify the Order.

2. Links to Council Policy Objectives

- 2.1 The placing of Preservation Orders on trees makes an important contribution to the Council's aim of "a sustainable and clean environment" and its objective of "ensuring all planning decisions; applications, consultation responses, enforcement, tree protection orders, are of high quality and contribute towards the Council's aims".

3. Background

- 3.1 The South Bucks District Council Tree Preservation Order No. 10, 2019 was made in respect of two oak trees situated within the above property. A copy of the TPO with plan is appended at 'Appendix 1'.
- 3.2 The Order was made following a written request from a member of the public on the 19 August 2019 outlining that 'the oak tree was going to be cut down and both oak trees in the garden are thriving, big and beautiful, and should be placed under protection'. On the 21 August 2019 Mr Garnett assessed the expediency and amenity value of the trees and recommended a new Order. A copy of this assessment is appended in 'Appendix 2'.
- 3.3 The Order was made on 23 August 2019 and remains in force for a period of 6 months (i.e. until 23 February 2020). If the Order is confirmed (with or without modifications) the protection becomes permanent; if the Order is not confirmed it ceases to have effect.

4. Statements by the Objectors

- 4.1 Written objection to this Order was received by Planning Support on 5 September 2019 from the landowners of this property with an acknowledgement letter sent by the Planning Support Team. A copy of this objection is appended at 'Appendix 3'.

5. Discussion

- 5.1 The Objections to this Order are listed below with officer response to the points raised:

- 5.1.1 "I live at the property mentioned and although the actual tree (named tree 1) is not located on our land a great deal of the tree actually overhangs into our garden. There is another tree (named tree 2) which is situated in my garden and this is the one I want to remove. However, tree 1 really needs to be cut back".

Response: The tree positions can be verified during planning committee site visit which would likely require a modification to the TPO plan and Order. In regards to the cutting back of overhanging branches a written application would be required.

- 5.1.2 *"With these trees on either side of my garden, and growing into each other, the complete area of my garden is shaded from the sun. As the trees cover my garden from sunlight the grass is always moist and causes mushrooms to grow which is not what I want".*

Response: Agree that the rear garden will be cast in shade during the majority of the day. However, the loss of light due to shading from trees is not, in English Law, an actionable nuisance so there is no inherent right to light. Mushrooms are naturally occurring and can appear on any lawn given certain weather or ground conditions. They are part and parcel of the growing environment and are generally a sign of a healthy lawn with good organic matter and carbon rich soil.

- 5.1.3 *"I want to remove the tree from my garden and plant other, smaller trees, in its place. Which will also give me some privacy from neighbours whose houses overlook my garden and also living room. I would also like to plant flowers and grow vegetables which I have tried and failed before, due to the garden getting no sunlight".*

Response: The removal of the oak would be a significant loss of amenity within the public realm as both trees are visually important landscape trees within the estate as outlined in the visual assessment in 'Appendix 2'. There are no specific, prescribed criteria for calculating a tree's visual amenity with a view to considering its justification in a new Order; instead Local Planning Authorities are advised to establish a consistent approach to such considerations.

The planting of smaller trees would likely create similar shade issues as they grow and mature in future years. Shade tolerant grasses, bulbs, flowers and shrubs should be able to be established but plant selection needs to be carefully chosen for site conditions. Gardens shaded by trees or buildings are common and can present some creative opportunities with well-chosen shade tolerant plants.

- 5.1.4 *"I have noticed other people in Anslow Gardens removing trees from their gardens without any problems. It is only my property that has trees totally overshadowing my garden from sunlight so I find it difficult to understand why removal of the tree in my garden seems to be causing such an issue".*

Response: The remnants of old hedgerow trees growing along the rear boundaries of the odd number properties situated in Anslow Gardens border onto Trewarden Avenue properties and helps to emphasize the historical landscape character of these resident estates. Trees within neighbouring gardens are not subject to a Tree Preservation Order status which has resulted in tree removal as outlined by the objector as well as being unsympathetically pruned which has resulted in the loss of visual greenery/amenity of the local area. A request was made for the Council to consider a new Tree Preservation Order which will hopefully promote good arboricultural practice and not reduce the visual amenities any further. A number of oak trees situated to the rear gardens of no.84-108 Trewarden Avenue were made subject to a Tree Preservation Order status in 2003.

- 5.1.5 *"I have 4 children aged from 3 years old and whilst playing in the garden they have to be very careful not to get hit from falling particles from the tree, including dead branches. In fact a*

while ago a branch fell from the tree and caught one of my sons on his head. Luckily his injury not too serious. However, they also have to contend with falling acorns. A while ago my husband was lying down in our swimming pool, an acorn actually fell from the tree, hitting him in the face which is dangerous. Had this been one of my children, this could have been more dangerous. As these trees are so big and tall it is impossible for us to manage”.

Response: A Tree Preservation Order does not prevent the management of trees but promotes good husbandry as part of the written application process. The removal of dead branches does not require written permission from the council. Leaf loss and other debris shed by a tree are not considered to be actionable nuisance but a natural process of the tree. The ‘legal duty of care’ in regards to trees is the responsibility of the landowner and current best practice recommends trees should be visually assessed every two years to reduce foreseeable risks to people and property.

- 5.1.6 *“For several years now we have problems with our drains as the drain is located in my garden. I have had numerous people out over the years, as we, and our next door neighbours have suffered from cracked pipes caused by the tree, which has led to blockages. This is still an ongoing issue”.*

Response: Tree roots can cause problems by blocking drains. They do not usually cause the initial damage to the drain and will only enter drains which are already damaged and leaking. Therefore, if drains are watertight, roots should not normally affect them. If your drains are blocked by roots you will need a drainage company to assist. It is possible that the drains will require lining or replacing. Removing the tree seldom resolves the problem as the drain remains damaged and can leak (possibly causing foundation damage) or may be infiltrated by the roots of other plants unless the drain is repaired.

- 5.1.7 *“Even if I were just to have tree 2 trimmed it would grow back, so would have the same problem. When my husband and I purchased the property at 21 Anslow Gardens checks were done to ensure there were no orders like this one, and found nothing in place. Had there been we would not have bought the property”.*

Response: Agree that certain types of pruning operations can create further issues in regards to the management of these two trees as well as increased cost to the landowner. The council always advises residents to seek 2-3 arboricultural advice from competent and qualified tree contractors so that they can make an informed decision on appropriate tree work.

Fully understand that you would not have bought the property if trees were already legally protected but the council has a statutory duty under the Town and Country Planning Act 1990 Section 198 to consider the preservation of trees in the interests of amenity.

6. Resource and Wider Policy Implications

- 6.1 There are no resource implications arising from the decision whether or not to confirm or modify the Order.
- 6.2 The referral of this matter to Planning Committee is in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. Those persons who made representations in objection to the TPO, will be sent a copy of this report and can make further written representations to the Committee. Objectors have requested a site visit and this will be carried out on the 13 November 2019 and they will be invited to attend the Committee meeting if they want to make any further verbal representations. The Planning Committee must give full consideration to any such representations.

- 6.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and the protection of property - also needs to be considered. These are qualified rights and can only be interfered with in accordance with the law and if necessary to control the use of property in accordance with the law and if necessary to control the use of property in accordance with the general interest. The recommendation to continue the protection of the subject trees by confirming the TPO with modifications is considered to be in the general interest of the community and is considered to be both proportionate and justified.

7. Recommendation

- 7.1 It is recommended that the Order be confirmed as made with any modification required following Planning Committee site visit.

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Background Papers:	Appendix 1: Tree Preservation Order No. 10, 2019 Appendix 2: Tree Preservation Order Assessment Appendix 3: Objection

1st November 2019

Head of Planning and Economic Development