

## REPORT OF HEAD OF PLANNING AND ENFORCEMENT

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

### **TREE PRESERVATION ORDER NO. 697 (TPO 697): MONTEREY CYPRESS AT 52 THE DRIVE, ICKENHAM**

**REASON FOR URGENCY:** Although this report has not been made available five working days prior to this meeting, the Chairman has agreed to consider the report because an urgent decision is required. This is due to the fact that under the new (2012) Regulations, the confirmation of this Tree Preservation Order (TPO) must be considered before the 1<sup>st</sup> October 2012, and supplementary information concerning the objections that were raised was received on 10<sup>th</sup> September 2012.

#### **1.0 Summary**

To consider whether or not to confirm Tree Preservation Order No. 697 (TPO 697) with or without modification.

#### **2.0 Recommendation**

That TPO 697 be confirmed without modification.

#### **3.0 Information**

3.1 The making of TPO 697 (2012) was authorised under delegated powers in 2012 after conditional planning permission (Ref: - 32787/APP/2011/2831) was granted for the development of the site. The TPO was made in the interests of amenity on a mature Monterey Cypress (T1) at 52 The Drive, Ickenham.

3.2 Objections to TPO 697, which are summarised below, were received from the tree owner and neighbouring properties (No's 50, 52 & 54 The Drive): -

1. The TPO was issued without consultation;
2. The tree poses a potential danger to the road and the property;
3. The tree is wrong for its location;
4. The tree is leaning towards No. 50 and is becoming massive;
5. There is a history of branches falling from the tree;
6. The tree blocks sunlight to No. 54, and its height also affects their amenity, landscaping and planting;
7. The tree was topped many years ago and branches have now spread out horizontally;
8. Half of the tree's branches cover the entrance to the driveway of No. 54, such that cars cannot be parked beneath that part of the driveway due to falling debris;
9. The falling of dropping branches prevents the continuous natural drainage of rainwater in gutters near the tree;
10. The tree is causing considerable damage by its roots to No. 54 and subsequently the neighbour has re-laid the drive three times.

3.3 Following a site meeting between the Council's Trees & Landscape Officers and two of the objectors on 20<sup>th</sup> August 2012, a second letter was received from the tree owner. The letter is supported by a letter from an arboricultural consultant, who was commissioned by the tree owner:

3.4 Tree owner's second letter (summarised):-

- The tree is causing an actionable nuisance, and a physical danger to the access and ingress into and out of the neighbouring property (No. 54);
- The relaying of the driveway and removal of roots has not brought an end to the problem;
- The areas of raised paving are well over the recognised civil safety levels where hazard and danger are presumed to impose liability on Councils;
- It is not possible to dispute with the neighbour that a nuisance is being caused, and concerned that the tree cannot be removed due to the TPO and, that should the TPO (tree) be left in place and an accident occurs, would be exposed to a level of civil liability beyond their control.

3.5 Arboricultural consultant's letter (summarised):-

Statements:

- The tree is about 70-80 years old and planted when house was built;
- The tree can expect to increase in size by about another 20%;
- There is no evidence of any defects within the lower trunk or major roots;
- There are ascending branches stems at various locations which are fairly typical of the species, and whilst these may pose a risk of failure, there is no evidence of such to date;
- The foliage was of a good size, density and colour throughout the whole crown of the tree;
- There is a remarkable absence of an endemic canker that affects the vast majority of these trees in this country;
- The failure of small branches is likely to occur at any time when wind strengths are high;
- The tree's roots have caused a significant disruption to neighbour's paved drive;
- Major, substantial roots discovered beneath surface of driveway.

Opinions:

- The disruption being caused is a nuisance and it should be considered that the tree is exempt from the TPO regulations;
- It would be inappropriate for the LPA to confirm the Order.

#### **4.0 Observations on the objections to TPO 697**

4.1 The Monterey Cypress is a fine, large, tree, with a useful life expectancy of at least 20 - 40 years. It is situated in the front garden of 52 The Drive, close to the front boundary with No. 54. The Monterey Cypress is a prominent landscape feature, which contributes to the amenity and arboreal character of the area in which it is situated. The tree has a high amenity value.

4.2 For ease of reference, the observations below are numbered (in brackets) to refer to the summarised objections listed in section 3.2.

4.2(1) The new (2012) TPO regulations state that there is no need to consult before TPO's are served on interested parties. Any objections or representations are considered after the TPO has been served by the Local Planning Authority (LPA).

4.2(2) With regard to the contention that the tree poses a potential danger to the road and property, no evidence has been provided and the arboricultural consultant does not indicate that the tree is a hazard.

4.2(3) With regard to the tree's location, it is fairly well positioned in relation to the two houses at 52 and 54 The Drive, but is close to their driveways. The tree is close to maturity, but it will grow larger over the next 20-40 years. If necessary, there is scope for minor pruning to provide clearance between the tree and the houses / driveways. Furthermore, if necessary, there would probably be scope to limit the size of the tree in the future.

4.2(4) The tree has grown with a slight lean towards the east and the nearest house. However, this point has not been raised as a cause for concern by the arboricultural consultant.

4.2(5) With regard to the points concerning falling branches, although the tree owner provides anecdotal evidence that the tree has recently shed large branches, the arboricultural consultant states that "*there are ascending branches stems at various locations which are fairly typical of the species, and whilst these may pose a risk of failure, there is no evidence of such to date*". The tree owner should continue to have the tree inspected on a regular basis in order to satisfy their duty of care.

4.2(6) With regard to the issue of the tree's height, its shade effect, and its effect on the neighbour's amenity and landscaping, the tree only casts shade on the front of No. 54 The Drive during the afternoon / evening, and the extensive front garden of this property is almost entirely block paved and used as a driveway, with very little landscaping. The tree does not cast shade on the rear garden (the main amenity space) of 54 The Drive.

4.2(7) The tree does not appear to have been topped before and has a typical shape and form. In any event, the arboricultural consultant has not raised this point part of the objection nor as a cause for concern.

4.2(8) Given the evergreen nature of this tree, it is normal for a small amount of needles and fine twigs to fall from the tree throughout the year. At the time of inspection, the amount of debris appeared to be insignificant and could easily be swept away. In any event, there is adequate space in the neighbour's extensive front garden to park cars away from the tree.

4.2(9) With regard to the issue of gutters being blocked by small branches (assumed to mean needles and fine twigs), it is possible to install filters above drains and guttering to avoid blockages forming in the first place, and this should all be considered to be part of the on-going maintenance of the property.

4.2(10a) The arboricultural consultant states that the offending tree roots are major and substantial. However, at the time of the site visit, only one surface root was identified, which did not appear to be any larger than 30mm in diameter.

4.2(10b) Parts of the driveway of No. 54 have been re-laid at least once in the past and could be repaired again.

4.2(10c) The objection relating to the tree's roots causing an alleged nuisance to the neighbour's (No. 54) block paved driveway is addressed in detail separately below (at section 5.0).

## **5.0 Observations on issue of roots causing a nuisance**

5.1 The owner of the tree has stated that the roots of the tree are causing damage to the neighbouring driveway of No. 54 The Drive, and therefore the tree is causing a nuisance and is exempt from the TPO regulations, and it would be inappropriate for the Council to confirm the Order.

5.2 At least one, possibly more, of the tree's roots are damaging / lifting the brick pavements in the neighbouring driveway. However, in this case, it may well be possible, and is appropriate, to take steps other than felling the tree to remedy the problem and abate this nuisance.

5.3 Such steps could include the removal of the offending tree roots to a depth of up to 200mm, prior to the installation of a suitable root barrier and the repair of the drive. Such work would probably remedy the problem and abate / prevent the nuisance.

5.4 These steps are in line with Regulation 14 (1, a, ii) of the TPO regulations and the outcome of the *Perrin vs. Northampton Borough Council* Case, which confirmed the established practice and understanding of LPA's that they should take into account possible alternative works (whether to a tree or otherwise) in coming to a decision, thereby ensuring that a tree will remain protected unless there is a real need to lift that protection.

5.5 If the Council fail to confirm the Order, the tree can be felled, whereas if the Council confirm the Order, only the minimum work necessary to abate a nuisance can be undertaken.

5.6 If, subsequently, evidence were to show that major works or the felling of the tree to be necessary, an application for consent could be submitted by the owner of tree and/or the neighbour at No. 54 to the Council. Furthermore, there is a right of appeal if the Council refuse such an application.

5.7 There were no other objections to or representations about TPO 697.

## **6.0 Conclusions**

6.1 After due consideration of all of the objections and representations, and given the high amenity value of the tree, it is recommended that TPO 697 be confirmed without modification.

## **7.0 Reference Documents**

7.1 The following background documents were used in the preparation of this report:

- Provisional Tree Preservation Order No. 697 (2012)
- Photographs of Monterey Cypress
- Letters of objection to TPO 697 and the letter of the arboricultural consultant (Ian Keen)
- Tree Preservation Orders – A guide to the Law and Good Practice.
- Report on Case Law cited in report - *Perrin vs. Northampton Borough Council Case*

**Contact Officer/s:** Trevor Heaps / John Lawson

**Tel. no.** 01895 250230

SIGNED

MEMBER OF THE COUNCIL

SIGNED

AUTHORISED OFFICER

Monterey Cypress at  
52 The Drive, Ickenham

Tree Preservation Order Number

**697**

**LONDON BOROUGH OF  
HILLINGDON**

**Planning,  
Environment, Education  
& Community Services**

Civic Centre, Uxbridge, Middx, UB8 1UW  
Telephone No. : 01895 250111

Scale: 1:500

Date: February  
2012



O. S. sheet: **0686 SW**

