

Application Number: PS/540/15/427

Description Confirmation of Tree Preservation Order PS/540/15/427

At Land to the rear of 11 Bow Brickhill Road, Woburn Sands

For Milton Keynes Council

Provisional Order in effect until: 08.03.2021

Ward: Danesborough & Walton Ward

Parish: Woburn Sands Town Council

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1.0 RECOMMENDATION

1.1 It is recommended that the Tree Preservation Order (TPO) is confirmed.

2.0 INTRODUCTION

Reason for referral to committee

2.1 The matter has been referred to Committee because objections were received during the consultation period associated with the provisional TPO.

The Site

2.2 The TPO relates to two Oak trees located on land to the rear of 11 Bow Brickhill Road in Woburn Sands. The trees are positioned close to the western boundary of this land which is used as an extended garden for No.11 and are adjacent to the eastern elevation of the dwelling at 15E Bow Brickhill Road. To the north of the trees is the rear garden of 11 Pine Grove and to the south is the rear garden of 13 Bow Brickhill Road.

2.3 Tree T1 is located on the towards the western centre of the land, adjacent to number 15E, while T2 is located further north, bordering and overhanging the garden of 11 Pine Grove.

The Proposal

- 2.4 It is proposed that the provisional TPO protecting both trees is confirmed, so to make the Order permanent. The TPO was served as a result of conversations between the Council's Arboricultural Officer and residents about potential felling of the trees due to a subsidence claim relating to 15E Bow Brickhill Road.

Scope of debate/decision

- 2.5 Members can debate whether or not to confirm the TPO as permanent, or modify the Order by removing one of the trees, taking account of the health of the trees, their amenity value and objections raised.

3.0 RELEVANT LEGISLATION AND GUIDANCE

- 3.1 Town and Country Planning (Tree Preservation) (England) Regulations 2012

- 3.2 National Planning Practice Guidance

Tree Preservation Orders and Trees in Conservation Areas
Paragraph 001 (Reference ID: 36-001-20140306) – Paragraph 173 (Reference ID: 36-171-20140306)

- 3.3 Human Rights Act 1998

There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the proposal under the aforementioned legislation and relevant policy guidance.

- 3.4 Equality Act 2010

Due regard, where relevant, has been had to the Milton Keynes Council's equality duty as contained within the Equality Act 2010.

4.0 RELEVANT PLANNING HISTORY

- 4.1 Application Site

None applicable

5.0 CONSULTATIONS AND REPRESENTATIONS

- 5.1 MKC Arboricultural Officer

The officer calculated the monetary value of each tree and demonstrated that service of the provisional TPO was defensible. Comments were made on damage to No.15E, possible causal links, investigative methods and remediation discussed in the technical subsidence reports supplied by Crawford & Company and MWA

Arboriculture. Answers were also given to various statements in an objection to confirmation of the TPO made by MWA Arboriculture. The officer's agreements, disagreements and acknowledgements of the various statements are discussed in the main part of this report. The most important points raised were that an Oak tree is probably contributing to subsidence, that T2 is closer to 15E than T1 and that T2 is too close to 15E for pruning (alone) to be a viable long-term solution for abating its influence. However, it was not agreed that T2 needed to be removed to restore stability to 15E as alternative mitigation is possible.

5.2 Interested Party Representations

Objections to the making of a TPO can be made on any grounds (PPG paragraph 36-036). Two separate objections were received from 15E Bow Brickhill Road and another from MWA Arboriculture Ltd.

Concerns raised:

- Possible subsidence due to the Oak tree roots
- Potential future damage of the Oak trees to the roof of house
- Unsuitability of root barriers
- Unsuitability of pruning

These matters are addressed in the report.

6.0 **MAIN ISSUES**

Whether or not the TPO should be confirmed as permanent

7.0 **CONSIDERATIONS**

7.1 Section 198 of the Town and Country Planning Act 1990 provides that a TPO can be made where it appears that the preservation of particular trees or woodlands is desirable in the interests of amenity and it is expedient to preserve the trees or woodland by making a TPO.

7.2 A TPO prohibits any of the following actions to happen to the protected trees without the Local Planning Authority's consent:

- Cutting down
- Topping
- Lopping
- Uprooting
- Wilful damage
- Wilful destruction

7.3 The TPO was made on 8th September 2020 and has a provisional effect until either one of the following events:

- The order is confirmed with or without modifications.

- The Council decides not to confirm the order.
- The expiry of six months beginning on the date the order is made.

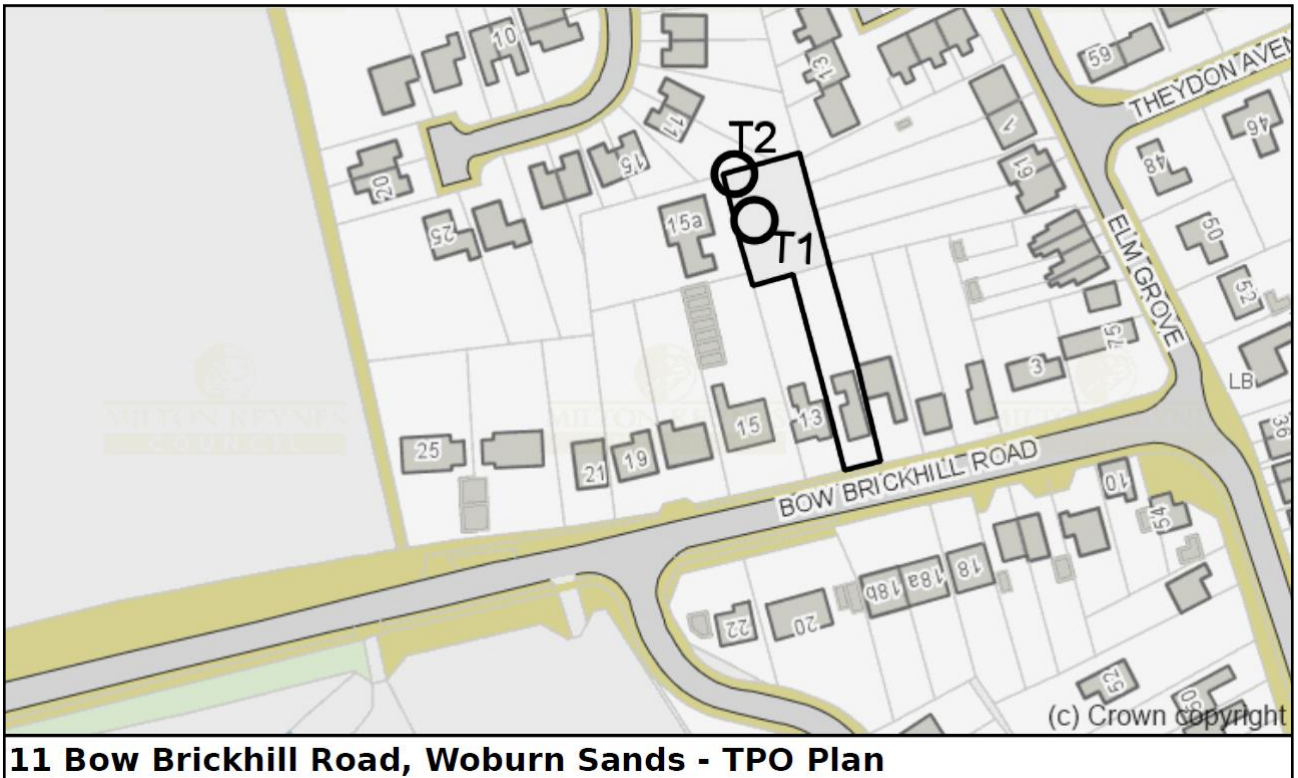
- 7.4 The TPO was served as a result of conversations between the MK Arboricultural Officer and residents regarding potential felling of the trees. The TPO was served to preserve the two Oak trees which make a positive contribution to the appearance of the local area and is desirable in the interests of amenity.
- 7.5 The trees are relatively young and healthy but have been implicated in a subsidence claim by the occupiers of No.15E.
- 7.6 The Town and Country Planning (Tree Preservation Orders) England Regulations 2012 require the Council to consider the representations that have been received before confirming the TPO.
- 7.7 It is a criminal offence is committed when anyone, in contravention of a TPO:
- Cuts down, uproots or wilfully destroys a tree.
 - Tops, lops or wilfully damages a tree in a way that is likely to destroy it.
 - Causes or permits such activities.
- 7.8 A report by Crawford & Company in 2019 identified cracking in the dwelling of No.15E identified as 'slight' category (>1<5mm). The report identified the cause as clay shrinkage subsidence. Following later borehole and trial pit work which identified Cypressaceae and Oak Roots close to 15E, an Addendum Arboricultural Report by MWA Arboriculture (acting on behalf of Crawford & Company) was written to provide an opinion on the likely causal factor in damage to the property, and to give recommendations on vegetation management that may be carried out to restore stability to the property.
- 7.9 The Council's Arboricultural Officer accepts that roots were observed to a depth of 3.2m below ground level and that the subsoil below the foundations of no.15E are susceptible to a change in volume under the influence of vegetation. Furthermore, the MKC Arboricultural Officer accepts the engineering opinion that damage to no.15E is due to clay shrinkage and that it is probably an Oak tree contributing towards the subsidence. It is also agreed that the closest of the two Oak trees to the damaged area of no.15E is T2 of the TPO.
- 7.10 However, the Council's Arboricultural Officer does not accept that T2 of the TPO can be conclusively proven as the origin of the Oak roots identified. Furthermore, it is not accepted that removing the closest Oak tree, T2, is the only solution to restore stability to no.15E. Underpinning and/or a root barrier or similar could be a possible solution and no evidence has been provided to suggest this would not be a viable option. Despite the owners of no.15E dismissing root barriers as not being a viable alternative to felling, this technique is commonly employed, and no technical evidence has been submitted to show that this and underpinning could not be undertaken at the site. It is therefore considered that an alternative solution to tree removal could be engineered and therefore confirming the TPO is expedient for preservation of T2.

- 7.11 If an application is made for consent to carry out works to the tree after the TPO has been made permanent, then this would be considered by the Council and a decision made in light of any supporting evidence. If there is no justifiable evidence, there would be no requirement to give consent for the works. If evidence is found to be justified in such an application, for example, if underpinning costs outweighed the calculated monetary value of the tree, the tree could be removed, and it could be conditioned that a replacement is planted. This could be a different species which would strike a balance between safeguarding no.15E and contributing to the character of the area. Without the TPO, or with it modified to omit T2 as part of the confirmation, it would not be possible to require this mitigation. Officers therefore recommend that the TPO be confirmed without modification.
- 7.12 The owners of no.15E assert that T1 is also implicated in the subsidence at the property. The technical subsidence reports do not indicate this with any degree of certainty, and the Council's Arboricultural Officer does not raise concerns in relation to appropriate pruning works (if applied for) as the tree is further away from no.15E. Again, officers recommend that the TPO is confirmed without modification due to the amenity benefit T1 provides and because it is expedient to preserve the tree in this way. Should further information connecting this tree with subsidence be discovered in the future, this could be supplied in support of an application for TPO consent for works to the tree.
- 7.13 In summary, officers consider that the order meets the test of Section 198 of the Town and Country Planning Act 1990 as preservation of both Oak trees is desirable in the interests of amenity and it is also expedient to preserve the trees by making the TPO.

8.0 CONCLUSIONS

- 8.1 In conclusion, officers consider that the TPO should be confirmed without modification.

TPO plan showing the protected trees



11 Bow Brickhill Road, Woburn Sands - TPO Plan

A1.0 FULL CONSULTATIONS AND REPRESENTATIONS

A1.1 MKC Arboricultural Officer

There is a slight discrepancy between the numbering system used by Milton Keynes Council and that of MWA, insofar as the tree referred to as T1 by the council within the TPO document is referred to as T2 by MWA. Likewise the tree labelled as T2 by the council within the TPO document is referred to as T1 by MWA. The objector also refers to the neighbouring property as number 15E when in fact it is 15A.

[Planning officer comment: the house is No.15E, confusion is a result of a base mapping error; references to 15A below should read as 15E]

To avoid confusion, all references to the numbered trees in my comments will be the same as the ones used in the TPO document.

T1: Oak located at 9m from the neighbouring property (number 15A), with a height of 13m. By following the Helliwell tree evaluation system it has been calculated that a monetary value of £7654 can be placed on this tree. The tree also attracts a score of 15 under the TEMPO system, indicating that the serving of a TPO is defensible.

T2: Oak located at 7.1m from the neighbouring property (15A), with a height of 11m. . By following the Helliwell tree evaluation system it has been calculated that a monetary value of £3289 can be placed on this tree. The tree also attracts a score of 17 under the TEMPO system, indicating that the serving of a TPO is defensible.

Tree T2 is under a direct threat of removal as it has been implicated in a subsidence claim from the neighbouring property, number 15A. The damage is categorised as slight (category 2 under the BRE Digest 251 system of calibration). A trial hole and bore hole were sunk into the ground adjacent to the cracks within the wall of number 15a, and tree roots were recovered from 3.2m below ground level from the trial pit. Some of the roots have been anatomically identified as emanating from an Oak tree.

It has been assumed by MWA that the roots have emanated from T2 due to the proximity of the tree itself. However they have not proven beyond reasonable doubt that the roots may have emanated from T1 instead, and as such it is unclear, (beyond assumption), which tree the roots have actually emanated from.

I am however inclined to agree that the roots are more than likely to have grown from T2, but this is as yet an unproven fact.

We have not been made aware of a financial reserve figure that has been estimated for the total repair of the subsidence damage, and as such we cannot make a comparison between the amenity value of the tree T2 versus the structural repairs costs.

If the repairs are to be higher than the amenity value of the tree (currently £3280), then it would be difficult for MKC to justify arguing for the retention of the tree.

It is therefore my recommendation that the TPO is confirmed on both trees. This will not preclude the claimant submitting a s198 App1 to remove the tree T2, at which point MKC can approve its removal and condition a new replacement tree.

My comments to the points submitted by MWA are in red text below [Planning Officer: reproduced in **bold italics**].

The tree (T2 of the order, T1 of MWA Arboricultural Report) is directly implicated in root induced clay shrinkage subsidence damage to 15E Bow Brickhill Road, MK17 8QD.

1. There is a highly plastic clay subsoil below the foundations susceptible to volumetric change under the influence of vegetation. **Agreed**
2. Oak roots were observed to a depth of 3.2m below ground level. **We accept this to be the case**
3. The origin of the oak roots is concluded to be the subject oak tree T2 of the order. **This is not proven 100% and is unlikely to be possible to do so, as such the roots may have emanated from T1 and not T2**
4. The subject oak tree is only 7.1m from 15E Bow Brickhill and within the normally accepted influencing distance of this property. **MKC accept that T2 is 7.1m from the damaged section of number 15A**
5. Engineering opinion is that there is damage to 15E Bow Brickhill is due to clay shrinkage subsidence. **MKC accept this finding**
6. Tree works to implicated vegetation within 15E Bow Brickhill were completed in January 2020 and the damage is still progressing. **We are unable to comment on this point as we have no information**
7. On the basis of the evidence available, it is our opinion that there is damage consistent with the influence of the oak tree on the soils below foundation level. **We accept that it is probably an Oak tree contributing towards the subsidence.**
8. The tree is too close to the affected building for pruning to offer a viable long-term solution in abating its influence. **Agreed**
9. If the tree is retained, even with pruning, further damage is inevitable at some point in the future. **Probably/likely**
10. If stability is to be restored to 15E Bow Brickhill, the oak tree will need to be removed. **Not necessarily correct as alternative engineering solutions could be used such as underpinning or polymer injection into the soil.**
11. The alternative to tree removal is underpinning the costs of which will be recovered from the council if consent to remove the tree is refused. **We accept that**

this would be a possibility, however we are likely to agree to the removal of T2 upon submission of a TPO application.

A1.2 Third Party/Neighbour Comments

Two separate objections were received from 15E Bow Brickhill Road and another from MWA Arboriculture Ltd. The following concerns were raised:

- possible subsidence due to Oak tree roots
- potential future damage of Oak trees to roof of house
- unsuitability of root barriers
- unsuitability of pruning