



WESTSIDE FORESTRY LTD

Providing a complete range of professional tree care services

Appendix B

Claire Felton
Head of Legal, Equalities & Democratic Services
Bromsgrove District & Redditch Borough Council
Parkside
Market Street
Bromsgrove
B61 8DA.

Monday 3rd April, 2017

Dear Claire,

RE: OBJECTION TO BROMSGROVE COUNCIL TREE PRESERVATION ORDER (NO.4)
2017 TREE/S ON LAND AT 5-9 STATION ROAD, HAGLEY

We act on behalf and have been instructed by [REDACTED] the owner of no. 9 Station Road, Hagley, in relation to submitting a formal objection to the recently served Tree Preservation Order (TPO) at her property.

Background

Following on site discussions with the owner of no. 9, Westside Forestry were instructed to undertake various trees works in January 2017. We understand from the owner that Andrew Bucklitch, your Tree & Landscape Officer, had previously attended the site and discussed the trees with the owner.

Consequently, we submitted a Conservation Area (CA) Notification (Section 211 Notice) on 23rd January 2017, via the Planning Portal (Ref: PP – 05774474). We received a formal acknowledgement of the notification from Bromsgrove Council on the 2nd February 2017.

Following the cessation of the 6-week period, we contacted Andrew Bucklitch via email on the 17th March requesting confirmation we could undertake the works, and again on the 20th March 2017. We received a reply on 21st March 2017 which included a formal TPO Consent Notice (dated 21.3.2017) detailing various works (attached). Importantly the approval had altered the work which was originally notified in terms of an Apple tree which was intended to be felled but the approval altered to 'Retain, Reduce and reshape by up to 20%' and instead of felling 9no Hazel it had been altered to 'Coppice at 100mm to regenerate'. At no point did we as Agent or the Applicant receive any formal request to alter our Section 211 Notice. It is understood that Andrew had discussions with [REDACTED] during his site visit and indicated that he would allow pruning of the Apple but not for it to be felled.

Given that the Hazel stems are less than 75mm measured at 1.5m in height the Conservation Area does not afford them protection and the Council cannot prevent their felling in any event.

The Council has a Statutory period of 6 weeks to either allow the works or prevent them by the serving of a TPO:

"A section 211 notice is not, and should not be treated as, an application for consent under an Order. So the authority cannot:

- refuse consent; or
- grant consent subject to conditions.

Paragraph: 118 Reference ID: 36-118-20140306"



Given that we had received a formal TPO consent not a Conservation Area consent, we sought to clarify if the trees were either protected by a TPO or a CA and confirmed the owner's intention to have the Apple tree felled, via an email to Andrew on the 21st March 2017.

Andrew replied on the 23rd March 2017 indicating that the trees were subject to both TPO and CA protection which had been severed as an Area designated TPO on no. 5-9 Hagley Road on 22nd March 2017.

Following receipt of the TPO I contacted Andrew via telephone (23rd March 2017) to clarify and he indicated that the TPO had been served to both prevent the felling of the Apple tree and to improve the protection of the trees in respect of development to the rear of no.7.

In its self, the Consent Notice is confusing with a variety of mixed reference numbers and no plan to which they refer and is subject to conditions which are not allowed under the CA legislation (attached).

It should be noted that the rear garden of no. 9 contains at least 15 other trees which are proposed to be retained and therefore screen the majority of the property when viewed from the rear.

Discussion

All trees within the garden of no. 9 which have a stem diameter of greater than 75mm are afforded statutory protection by virtue of their location within the CA, providing them with exactly the same level of protection as trees subject to TPO in terms of breaches. It would therefore only be expedient to serve a TPO to prevent the removal of a tree following a Section 211 Notice. As all other works appear to have been approved under the Section 211 Notice it is understood that the Council is only concerned with protecting the Apple tree.

The Apple tree (see photos below) which was subject to the Section 211 notice and is intended to fall is approx. 6m in height, has a branch spread of approx. 4m and bifurcates at 0.5m with stem diameters of 310mm and 230mm and is situated approx. 4.3m from the rear southern corner of the dwelling. Its condition is considered fair, despite the presence of a decaying branch wound at approx. 1m. It is situated approx. 30m from the front public footpath with Station Road and at least 50m from the car park of the Community centre to the South. It is therefore considered to have very limited public visual amenity, as it cannot easily be seen from any public vantage point (see photos). It is not considered to have any significant species, ecological or historical attributes. Its removal would have no significant impact on the Conservation Area. Whilst it may be considered an attractive Apple tree when viewed from within the garden it is not considered to provide public amenity benefit nor does it make a significant contribution to the Conservation Area.

The Council's 'Hagley Conservation Area Appraisal (June 2014)' details trees which are subject to TPO and those which it considers make a positive contribution to the Conservation Area, however the Apple tree in question is not identified and as such the Council acknowledges it makes no significant contribution.

Following receipt of the Section 211 Notice the Council has up to six weeks to consider making a TPO to prevent works applied for being undertaken (i.e. prior to 16th March 2017). The Council visited the site twice and discussed the trees with the owner but did not serve a TPO nor did they seek to formally amend the Section 211 notice but provided a Consent notice which is not in accordance with the relevant legislation.

The trees have been made subject to an 'Area' designation which should normally be used in an emergency situation. The Council visited the site at least twice previously and had six weeks to serve a suitable TPO identifying the individuals or groups of trees but failed to do so. I am not aware that any objective amenity assessment has been undertaken prior to the serving of the TPO.



It is not clear if the Consent notice issued by the Council is valid to allow the works which were subject to Section 211 Notice, as a TPO has been served as an 'Area' designation protecting all trees subsequent to the issuing of the Consent notice?

It appears that the Council have viewed the trees to the rear of no. 7 and 9 on numerous occasions and did not consider a TPO appropriate despite granting planning permission for a dwelling to the rear of no. 7 (2010) and indeed refusing a more recent application (2017).

Conclusion

The Council have not acted in accordance with their duty in the handling of the recent Section 211 Notice, resulting in the inappropriate serving of a TPO.

The trees within garden of no, 5, 7 & 9 Station Road are already subject to statutory protection by virtue of their location within the Conservation Area.

The Apple tree which the Council have sought to retain by the serving of the TPO is not of sufficient amenity value to warrant a TPO nor does it make a significant contribution to the Conservation Area. Its removal would have no significant detriment to public amenity.

A formal application to fell the Apple tree was submitted on the 24th March 2017 under the recently served TPO, should the Council refuse this application then an appeal to the Secretary of State will be submitted.

The recently served TPO should not be confirmed.

I look forward to your reply clarifying the above points made.

I would be happy to discuss any of the above and elaborate further if required, however please do not hesitate to contact us should you have any queries.

Yours sincerely



Andrew Needham, BSc. Dip Biol, N. Dip. Arb.
Consultant Arboriculturist

WESTSIDE FORESTRY LTD

All works carried out to BS3998:2010





Apple tree viewed from rear garden towards back of no.9.



Apple tree viewed from rear of house down rear garden (note Apple tree within 4.3m of house and ends of branches almost touching house).





View from Hagley Community Centre Car Park to rear.



View from Station Road to front.





WESTSIDE FORESTRY LTD

Providing a complete range of professional tree care services

9 Station Road
Hagley
DY9 0NU

Species	Location	Proposed Work	Reason
Apple	- see plan below	- fell to just above ground level;	Redesign of garden to allow for new plantings and aid light and views to householder. To allow future potential development of property



The Stables, Harbours Hill, Belbroughton DY9 9XE
Tel: 0121 457 9457 Fax: 0121 5457 7070 E-mail: info@westsideforestry.co.uk
Company Reg No. 04661355 VAT Reg No. 811 7251 57



Bromsgrove District Council

www.bromsgrove.gov.uk

Town and Country Planning Act 1990
Town and Country Planning (Tree Preservation)
(England) Regulations 2012

TREE WORKS DECISION NOTICE

Application No: TPO17/012

Agent
Allan Kenward
Westside Forestry Ltd.
The Stables, Harbours Hill
Belbroughton
DY9 9XE

Applicant
[REDACTED]
9 Station Road
Hagley
Worcestershire
DY9 0NU

Particulars of Application

APPLICATION REFERENCE:	TPO17/012		
LOCATION:	9 Station Road	Hagley	Worcestershire
PROPOSAL:	G1 - Cypress, Staghorn & Wisteria, 3x Holly, Apple, 9x Hazel, 2x Birch, Cherry - Fell		
	T1 - Blue Spruce - Raise canopy to just above BT Cables		

CASE OFFICER: Andrew Bucklitch 01527 548348 a.bucklitch@bromsgrove.gov.uk

Particulars of Decision

DECISION DATE: 21st March 2017

Bromsgrove District Council, as the Local Planning Authority, grants permission for the following works:

T1	Cypress	Located on frontage of property - of limited amenity value - Fell
T2	Blue Spruce	Raise canopy to give 1m clearance from phone lines
G1	Staghorn & Wisteria	Located at side of property - of limited amenity value & affecting garage roof - Fell
G2	3x Holly, Laurel	Located at side of property - of limited amenity value & heavily shading property - Fell
T5	Apple	Retain, Reduce & reshape by upto 20%
G3	2x Birch, 1x Cherry	Cambial dieback to trunk & poor form - Fell
G4	9x Hazel	Coppice at 100mm to regenerate

This decision has been reached for the following reasons: **In the interests of safety & amenity.**

This decision is subject to conditions which must be complied with and are set out below:

<u>Ref</u>	<u>Condition</u>	<u>Reason</u>
1	<i>The permission is valid for a period of 2 years from the decision date. Any works for which permission has been granted may only be done once within that period.</i>	<i>To define the consent and allow for satisfactory monitoring of the work.</i>
2	<i>The Local Planning Authority shall be given at least 14 days notice of the applicant's intention to commence the approved works and the identity of the contractor</i>	<i>To ensure that the works are carried out to an acceptable standard and can be monitored.</i>
3	<i>All works shall be carried out in accordance with British Standard BS 3998:2010.</i>	<i>To regulate the standard of the authorised work.</i>

If you would like any further information about our decision, please contact the Case Officer named above.



Ruth Bamford
Head of Planning and Regeneration

Notes

- Please note that this consent only applies in regard to any Planning constraints upon the tree(s) or the land in which they are growing. Permission from a landowner to enter their property and carry out any proposed works must still be obtained. Consent in respect of other constraints such as restrictive covenants within the title deeds of the property may also be required.
- The applicant is advised to be aware of their obligations under the Habitats Regulations 2010 and the Wildlife & Countryside Act 1981 (as amended by the Countryside & Rights of Way Act 2000) to avoid disturbance of nesting wild birds and protected species such as bats, badgers and dormice when carrying out these works.

Your Right of Appeal

If you disagree with our decision, under certain grounds you may appeal to the Secretary of State provided you do so within 28 days from the date you receive this decision. Forms and further information may be obtained from The Environment Appeals Team, Trees and Hedges, Room 3/25 Hawk Wing , Temple Quay House , 2 The Square, Temple Quay, Bristol, BS1 6PN

Compensation

If you suffer any loss or damage as a result of any refusal of consent, or approval subject to conditions, you may, in those situations as detailed in Part 6 of the Regulations, be entitled to recover compensation from the Council. Any claim must be made within 12 months of the date of this decision and should be made in writing to the Head of Planning Services.