

REPORT ON OBJECTION TO TPO 91/2019 – LAND AT MOUSELOW, WOODHEAD ROAD, TINTWISTLE SK13 1JX AND PROPOSAL TO CONFIRM

REPORT AUTHOR: FELICITY STOUT, TREE CONSERVATION OFFICER (TCO)

1. **Proposal**

2. To confirm TPO 91/2019 without modification.

3. **Site and Surroundings**

4. The site is situated on Woodhead Road (A628), Tintwistle and is surrounded by the boundaries of the Tintwistle Conservation Area to the north, east and west. To the north, the site is bounded by open grassland within the Tintwistle Conservation Area, to the east and west are residential properties and to the south the site is bounded by Woodhead Road.
5. The site contains a number of trees of different species (including sycamore, Turkey oak, red oak, sessile oak, cotoneaster, cherry, laburnum, Lawsons cypress, willow, maple, mallow). The trees are located around the perimeter of the site and within the site. TPO91/2019 protects the early mature Turkey oak, located in the centre of the site.
6. The site is located within the Dark Peak Western Fringe landscape character area, consisting of sloping and lower lying land adjacent to the Dark Peak, more settled in character than the Dark Peak landscapes. Trees are dense along watercourses and scattered along hedgerows and around settlements (Peak District National Park Landscape Strategy and Action Plan 2009-2019).

7. **RECOMMENDATION:**

8. **That TPO 91/2019 be confirmed without modification.**

9. **Key Issues**

10. An individual Tree Preservation Order (TPO 91/2019) covering the Turkey oak at the property named Mouselow was made on 25 November 2019. The effect is that the Order applies for six months or until confirmed or modified.
11. An objection was received by PDNPA on 19 December 2019. The person ("the Objector") expressed concern about the health and amenity value of the Turkey oak.
12. In response to the objection, it was decided that the TCO would revisit the tree in April 2020 in order to reassess the health of the tree's crown and respond to the objections raised by the Objector.
13. The TCO visited the site on 27 April 2020 in order to assess the health of the tree's crown and to ascertain whether the condition of the tree affected the tree's contribution to public amenity.
14. The TCO has assessed the health of the tree and the specific concerns raised by the Objector and considers the tree to be in good health and of high amenity value.
15. The TCO recommends that in response to this objection, TPO 90/2019 is confirmed without modification.

16. History

17. On 3 June 2019 a local resident of Tintwistle reported to the Peak District National Park (PDNPA) the felling of a large tree within the Tintwistle Conservation Area at the property named above (Mouselow). The TCO undertook a site visit on 6 June 2019 to investigate the report. On investigation, it was found that the felled tree (a large, mature sycamore) appeared to be situated just outside the boundary of the Tintwistle Conservation Area and therefore was afforded no protection.
18. A planning application (NP/HPK/0819/0937), proposing extensions to the semi-detached property, demolition of existing outbuildings and the erection of a replacement ancillary building for vehicular and garden storage at Mouselow, was submitted to the PDNPA and validated on 20 September 2019. The Site Plan (Proposed Site Plan dwg001 29-08-2019), submitted as part of the planning application, indicated the removal of 14 trees on site. Initially no tree survey was submitted with the planning application. The Planning Officer, Joe Freegard, requested a full tree survey, which was submitted on 4 November 2019.
19. The submitted Tree Survey indicated that the majority of trees to be removed were small. However, one large tree (T4 - Turkey oak) was proposed for removal and the rooting area of another significant tree (T3 – red oak) was to be affected by another planning application (NP/HPK/0919/0995) for further development at the same site (validated on 7 October 2019). This application was for the demolition of a garage and replacement with a detached ancillary building for use as a dependent relatives' accommodation/visiting guests' accommodation and home office.
20. An email of 15 October 2019 from the architect to the Planning Officer stated that 'these trees, with the exception of those towards the rear of the site near the proposed car port, are not protected and not within the conservation area and there would be nothing, ecological concerns aside, to prevent the felling of them without prior consent'. This raised concern with the Planning Officer, who contacted the TCO in order to consider whether a TPO might be expedient in this case to protect the significant trees on site.
21. The TCO made a site visit on 6 November 2011 and conducted a TEMPO assessment on the significant trees on site, particularly the Turkey oak (Forbes-Laird, 2009). The Turkey oak scored highly for amenity value and expediency, demonstrating that a TPO on this tree would be clearly defensible.
22. The interests of amenity justified the making of the Tree Preservation Order on the Turkey oak because the tree is in a fair condition and is prominently visible from the A628 (Woodhead Road). The tree appears to be of moderate arboricultural value and high amenity value, making a contribution to the character of the area. The tree is therefore considered to be of sufficient public amenity to merit protection by a tree preservation order. There was also an important expediency argument for placing a TPO on the tree, due to the history of the site, the possibility of more tree felling being undertaken and, at the time of making the TPO, an imminent threat to the tree from the planning application (NP/HPK/0819/0937) and from the comments of the architect stated above.
23. On 25 November 2019 an individual Tree Preservation Order (TPO 91/2019) covering the Turkey oak was made in its provisional form.
24. An objection to TPO91/2019 was submitted to the PDNPA on 19 December 2019.
25. In response, the TCO considered it appropriate to arrange for a further site visit to be undertaken in April 2020, when the tree would be coming into leaf, in order to fully assess

the concerns raised by the Objector regarding the health and condition of the tree and the public amenity of the tree.

26. Consultations

27. TPO91/2019 was served on 28 November 2019 by leaving it at the usual or last known place of abode of the landowners, along with information on how to submit comments and objections to the PDNPA within a 28-day consultation period.

28. Representations and Objections

29. One objection was received by the TCO on 19 December 2019.

30. The Objector objected to TPO 91/2019 – Land at Mouselow, Woodhead Road, Tintwistle SK13 1JX on the grounds that:

- Views of the Turkey oak from Woodhead Road are significantly blocked by the presence of a red oak which is planned for retention (see Plate 1).
- Views of the Turkey oak from Old Road are hindered by the presence of other trees.
- It is not possible to retain both the Turkey oak (*Quercus cerris*) and the red oak (*Quercus rubra*) for the foreseeable future as the trees are so close as to be in competition with one another.
- The red oak is a more attractive, ornamental tree and has greater visual amenity than the Turkey oak as it is more prominent from Woodhead Road, which is the most significant public viewpoint.
- The condition of the Turkey oak is compromised by a wound (a large occluding split on the secondary stem), it has a rather thin crown for a tree of its age (there is much small deadwood) and has a bifurcated stem at approximately 1.5m.
- Turkey oak is renowned for becoming a very large tree in a relatively short period of time and this makes it less appropriate to be retained close to the house.
- The Turkey oak lacks ornament compared to the red oak and is also a host for the Knopper Gall Wasp (*Andricus quercuscalicis*) which devastates the acorn harvest of the native common oak (*Quercus robur*).

31. The Objector requested that the TPO is not confirmed in its current form.

32. In accordance with the 'Procedure in relation to objections received against the confirmation of a Tree Preservation Order' approved by Planning committee in April 2016, a draft of this confirmation report was sent to the Objector. This allows the objector to submit additional comments or views on the proposed Confirmation of the TPO.

33. The Objector did not provide additional comments on this confirmation report.

34. **Main Policies**

35. Relevant Local Plan policies:

36. Peak District National Park Landscape Strategy and Action Plan 2009-2019.

The landscape characteristics of the site align with the 'Valley Pastures with Industry' of the Dark Peak Western Fringe. The priority for this type of landscape area is to protect and maintain features associated with the historic industrial character and protect and maintain drystone walls, hedgerows and historical enclosure patterns.

37. **National Planning Policy Framework**

38. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. The Government's intention is that the document should be considered to be a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the East Midlands Regional Plan 2009, the Authority's Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF with regard to the issues that are raised.

39. **Assessment**

40. The TCO has assessed the Turkey oak and red oak and has considered the reasons for objection made by the Objector.
41. Regarding the objection that 'views of the Turkey oak from Woodhead Road are significantly blocked by the presence of a red oak', the TCO considers that both trees together form a tree canopy of high amenity value and visual impact, where both can clearly be seen together and separately from Woodhead Road (see Plates)
42. Regarding the objection that 'views of the Turkey oak from Old Road are hindered by other trees', the TCO considers that the Turkey oak is prominent in the view from Old Road. The Turkey oak contributes significantly to the overall aboricultural amenity of the area and can be clearly seen from Old Road (see Plate 3).
43. Regarding the objection that 'it is not possible to retain both the Turkey oak (*Quercus cerris*) and the red oak (*Quercus rubra*) for the foreseeable future as the trees are so close as to be in competition with one another', it should be noted that red oak is a shade-tolerant species (Savill, P., *Silviculture of Trees*, 2013, p.187) and can tolerate being in close proximity to the Turkey oak. The red oak has grown up in the context of the Turkey oak, which is both faster growing and is sited approximately 0.5m above the red oak, as the site is situated on a slope. Throughout its lifetime, the red oak will have benefited from the shelter from wind and exposure provided by the Turkey oak. The Turkey oak can tolerate strong winds (Savill, P., *Silviculture of Trees*, 2013, p.171) and since the two trees have grown up together in companion, removing the larger Turkey oak will leave the red oak exposed to the prevailing winds, when it is used to the shelter provided by the Turkey oak. According to Lonsdale, red oak 'does not root deeply on poorly drained soils and thus often becomes unstable before reaching maturity' (Lonsdale, David, *Principles of Tree Hazard Assessment and Management*, 1999, p. 357).
44. Regarding the objection that 'the red oak is a more attractive, ornamental tree and has greater visual amenity than the Turkey oak', the TCO considers that both the red oak

- and the Turkey oak have high amenity value and that it is not necessary to choose one over the other. Rather both together contribute to the arboricultural amenity of the area and choosing one over the other may be detrimental to the structural integrity of the retained tree. It should be noted that the Turkey oak is the more dominant tree and the form of the red oak shows that its crown has been suppressed by the larger, faster-growing Turkey oak (see Plate 4).
45. Regarding the objection that 'the condition of the Turkey oak is compromised by a wound (a large occluding split on the secondary stem)', it should be noted that Turkey oak, like most oaks, has a durable heartwood, which reduces the risk of extensive decay after sustaining wounds or pruning works (Lonsdale, David, *Principles of Tree Hazard Assessment and Management*, 1999, p. 357). Although the Turkey oak does have a defect in the form of a wound on the secondary stem (see Plate 5), the risk of extensive decay is low and there are several management options that could address the negative impact of this wound (for instance, pruning or subordinating this secondary stem).
 46. Regarding the objection that 'it has a rather thin crown for a tree of its age (there is much small deadwood) and has a bifurcated stem at approximately 1.5m', the Objector's tree assessment was undertaken at the end of October 2019, which is not the optimum time of year to assess the extent or health of the crown. Following a site visit on 27 April 2020, the TCO assessed the health of the crown of the tree at bud-break/as it was coming into leaf and considers that it has a healthy, full crown, with buds throughout the crown in various stages of bud-break to leaf flush (see Plate 6). A thin crown, identified by the Objector when he undertook his assessment of the tree in October 2019, can be a reaction to short-term stress factors, such as drought, and a tree may recover from such short-term stresses.
 47. Regarding the objection that the stem bifurcates at approximately 1.5m, the same is also true of the red oak, the stem of which also bifurcates at approximately 1.5m. The Turkey oak has developed a reasonably sound, structurally sustainable 'u'-shaped union at the bifurcation whereas the Red oak has developed a tight, 'v'-shaped union with included bark, which is much more likely to cause stem failure at the union (Hirons, Andrew D. and Peter A. Thomas, *Applied Tree Biology*, 2018, pp. 115-19) (see Plates 7 & 8). It should be noted that there are management options for the Turkey oak to address any concerns about the stem union at 1.5m, rather than complete removal.
 48. Regarding the objection that 'Turkey oak is renowned for becoming a very large tree in a relatively short period of time and this makes it less appropriate to be retained close to the house', it should be noted that there are various management options for the Turkey oak that would address this concern without having to remove the whole tree (for instance pruning or subordinating the secondary stem, which is closest to the house).
 49. Regarding the objection that the 'Turkey Oak lacks ornament compared to the red oak and is also a host for the Knopper Gall Wasp (*Andricus quercuscalicis*) which devastates the acorn harvest of the native common oak (*Quercus robur*)', it should be noted that there are over 70 different types of gall wasp currently present in the UK with a variety of hosts, and that oak galls are widespread. The Knopper Gall wasp has a complex life cycle involving the development of an asexual generation on pedunculate oaks, alternating with a sexual generation, which develops in tiny galls on the male flowers of Turkey oak. Knopper galls can only occur on pedunculate oaks if they are located close by each other (Savill, P., *Silviculture of Trees*, 2013, p.172, 179). Within the context of commercial forestry, this may be a concern if pedunculate oak and Turkey oak are in the same locality, but it is not generally considered a concern for amenity trees, where the end product is not commercial output or the requirement for natural regeneration of the tree stock.
 50. The TCO recommends that TPO 91/2019 – Land at Mouselow, Woodhead Road, Tintwistle SK13 1JX be confirmed without modification in order to preserve the high amenity value of the trees on site, the local environment and its enjoyment by the public.

51. **Legal Considerations**

52. Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 allows for the confirmation of an Order with or without modifications.

53. **Conclusion**

54. **The TCO recommends that TPO 91/2019 be confirmed without modification and all people previously served with the Order to be notified of the order's confirmation, the date it was confirmed, time within which an application may be made to the High Court; and grounds on which an application to the High Court may be made.**

55. **Human Rights**

56. Whilst the making of a Tree Preservation Order interferes with an individual's human rights, such interference would be in accordance with the law and justified by being in the public interest and, on the basis of the restriction of these rights, would be proportionate to the wider benefits of approval. Such a decision would be within the margin of discretion afforded to the Local Planning Authority under the Town and Country Planning Act 1990.
57. Local Planning Authorities may make a TPO if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area' [See section 198(1) of the Act]. Guidance given to ensure good practice is followed by the Tree Conservation Officers in their application of the Act and makes particular reference to expedience, quoted below:
58. *It may be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases the LPA may believe that certain trees are at risk generally from development pressures. The LPA may have some other reason to believe that trees are at risk; changes in property ownership and intentions to fell trees are not always known in advance, and so the protection of selected trees by a precautionary TPO might sometimes be considered expedient.*

Tree Preservation Orders: A guide to the Law and Good Practice

59. One of the important functions of the TPO is the effective control on overall tree losses by securing and protecting replacement planting [Forbes-Laird J. 2009]. Under section 206(1) of the Act, the landowner is under a duty to replace a tree that is removed in contravention of the TPO. Outside woodlands the duty also applies if the tree is removed because it is dead, dying or has become dangerous. The duty on the landowner is:
- to plant another tree, of an appropriate size and species, at the same place, as soon as he or she reasonably can.

This duty transfers to the new owner if the land changes hands.

60. **List of Background Papers** (not previously published)

None.



Plate 1: Showing red oak and Turkey oak, taken from the private driveway of Mouselow, October 2019 (this photograph was supplied by the Objector on 19 December 2019).

Plate 2: Photograph taken from the public highway, Woodhead Road, 27 April 2020



The Turkey oak is the on the right, the red oak is the smaller, suppressed tree on the left.

Plate 3: Photograph taken from the public highway, Old Road, 27 April 2020

Turkey oak in foreground.



Red oak in background, behind Turkey oak.

Plate 4: Photograph of crowns of the red oak and the Turkey oak, 27 April 2020



Plate 5: Photograph of split in secondary stem of the Turkey oak, 27 April 2020



Plate 6: Photograph of full crown of buds in the Turkey oak, 27 April 2020



Plate 7: Photograph of tight union in the red oak, 27 April 2020



Plate 8: Photograph of the unions of the red oak and Turkey oak, 27 April 2020

