



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**NORTH WESTERN AREA PLANNING COMMITTEE
2 FEBRUARY 2022**

Application Number	TPO 5/21
Location	Primrose, Howe Green Road, Purleigh, CM3 6PX
Proposal	Confirmation of TPO 5/21
Owner's	John Holliday and Lucy Holliday – Primrose, Howe Green Road, Purleigh, CM3 6PX David Fleming and Jane Fleming – Great Whitmans Farm, Hackmans Lane, Purleigh, CM3 6RW.
Confirmation by	13.04.2022
Case Officer	Sophie Mardon
Parish	PURLEIGH PARISH COUNCIL
Reason for Referral to the Committee / Council	Decision on confirmation of a Tree Preservation Order as per the Council's scheme of delegation

1. **RECOMMENDATION**

CONFIRM Tree Preservation Order (TPO) 5/21 without any modifications

2. **SITE MAP**

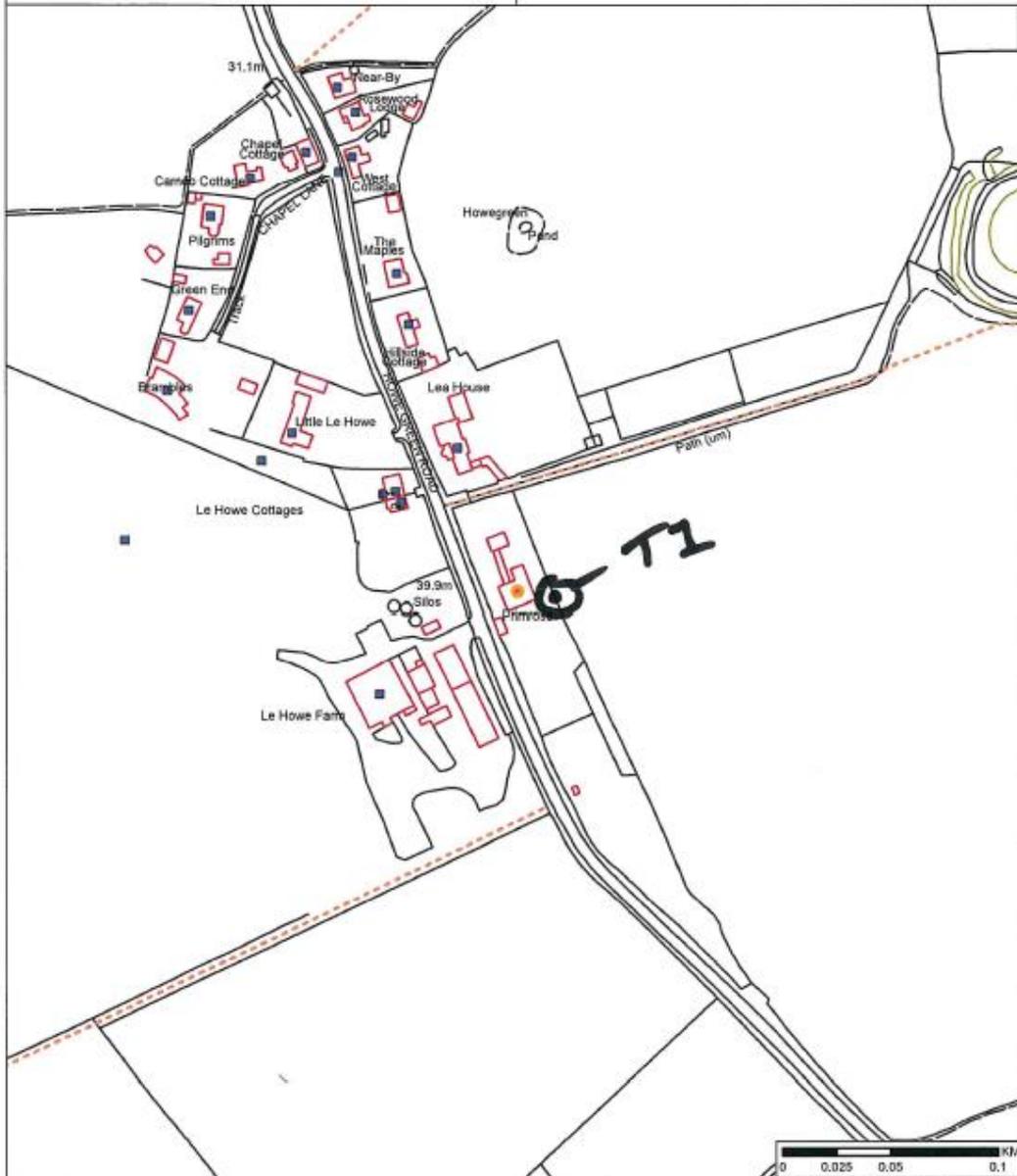
Please see below.

Tree Preservation Order

Details

Primrose, Howe Green Road, Purleigh
TPO 5/21

T1 - OAK



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Maldon District Council 100018588 2014



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Scale: 1:2,500

Organisation: Maldon District Council

Department: Department

Comments: T1

Date: 13/10/2021

MSA Number: 100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 In March 2021, the Council received an enquiry from a local resident who had been approached by a tree consultant who cited an Oak tree on the local resident's land as causing structural damage to their client's property at the dwelling known as Primrose, Howe Green Road, Purleigh and that the tree be felled. It was further enquired if the tree was subject to a Tree Preservation Order (TPO) and concerns were raised regarding its protection as the tree is situated within an ancient hedgerow, within 500m of a Scheduled Monument and close to the Purleigh conservation area. Due to its prominent location and the size of the tree, it was considered by the Council that the removal of this tree would materially impact on the amenity of the area. Therefore, a Tree Evaluation Method for Preservation Orders (TEMPO) assessment, which is a nationally accepted system of scoring the amenity value of a tree, was carried out. The TEMPO assessment scored the tree 15 out of 25 and concluded that the Oak tree was worthy of a TPO.
- 3.1.2 An initial TPO 1/21 was served on 16 April 2021 and was subsequently confirmed on 29 September 2021. However, due to an administrative error a letter of objection from the owner of Primrose, Hill House, was not received by the officer. In this instance, as due process was not followed TPO 1/21 was withdrawn and TPO 5/21, the subject of this application, was served on 13 October 2021 to allow for the relevant objections to be considered by the Local Planning Authority (LPA). To date, letters of objection from one member of the public have been received relating to the serving of TPO 5/21 located at Primrose, Howe Green Road, Purleigh.
- 3.1.3 The objection remains unresolved; therefore, the question of whether or not to confirm the TPO has been brought before members to determine.

3.2 The site

- 3.2.1 The Oak tree is located along the eastern rear boundary of the dwelling known as Primrose, Howe Green Road. Whilst it is considered to be in the rear/ side garden setting, due to its age, size, location and lack of many other substantial trees in the immediate area (along this eastern side boundary), it is considered that the tree has a significant role within the wider street scene and is highly visible when travelling in a northerly direction along Howe Green Road.

4. MAIN RELEVANT POLICIES

Members' attention is drawn to the list of background papers attached to the agenda.

4.1 Corporate Plan 2019-2023:

1. Strategic Themes: The Environment - protected and improved environment for residents and visitors. Partnership working to protect our countryside and coastline.

4.2 Relevant Planning Guidance / Documents:

- Planning Practice Guidance (PPG)

4.3 Government Guidelines:

- 4.3.1 Government guidelines advise that: the LPA is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.
- 4.3.2 If Members decide to Confirm TPO 5/21, the owners have the right to make an application to the High Court to challenge the validity of the TPO. There are specific grounds on which this application must be made:
1. that the TPO is not within the powers of the Act, or
 2. that the requirements of the Act or Regulations have not been complied with in relation to the TPO.
- 4.3.3 There are costs involved in this procedure which can be awarded. An application must be made within six weeks of the date the TPO was confirmed.

5. MAIN CONSIDERATIONS

- 5.1 The T1 Oak tree is located along the eastern side/ rear boundary of Primrose, Howe Green Road, Purleigh. Due to its size and location, it is highly visible within its setting and along the wider streetscene and is considered to hold significant amenity value, adding to the character and appearance of the surrounding area.
- 5.2 Planning Practice Guidance states (Paragraph 10 reference ID: 36-010-21040306) *'It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases, the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.'* An enquiry regarding the felling of the Oak tree has been brought to the Council's attention. The tree is not located within a Conservation Area and therefore did not have any form of statutory protection prior to the serving of the TPO. Therefore, the tree could have been removed without the permission of Maldon District Council (MDC), which would damage the amenity value that the tree currently offers within the surrounding landscape.
- 5.3 In the interest of protecting this prominent landscape feature and the amenity value of this tree within the locality, the Oak tree was assessed using the TEMPO which is designed as a guide to decision making and stands as a record that a systematic assessment has been undertaken. The TEMPO considers all of the relevant factors in the TPO decision making chain including amenity assessment, expediency assessment and decision guide. Within the assessment the Oak tree scored satisfactory for the suitability of a TPO for its amenity value due to its prominent size and location which is clearly visible within the public realm. The expediency assessment reflected the foreseeable threat of the tree as mentioned in section 5.2. The Oak tree scored an overall total 15 out of 25 which means that the decision to serve a TPO is defensible.
- 5.4 It is worth noting that the guidance provided to sit alongside the TEMPO assessment acknowledged that the reason for serving the TPO can be quite minor (precautionary only). However, as the enquiry was to fell the Oak, it is considered by the Council

that this goes beyond a precautionary threat as the threat to the tree was foreseeable.

- 5.5 It should be noted that the TPO would not prevent works to the tree from being carried out, however it would control any such works to ensure that they were suitable, justified and did not harm the health of the tree or the amenity value the Oak tree offers to the surrounding area. Furthermore, TPOs can serve as a useful control by securing and protecting replacement planting. It is relevant to note that whilst no suitable arboricultural justification to remove the tree has been provided to the LPA, this is not to say that in the near future this would not be able to be provided and without the TPO, the LPA would be unable to secure the replacement of such an important landscape feature.

6. ANY RELEVANT SITE HISTORY

15/01264/HOUSE - Demolish existing garage. Fill in swimming pool. Construct new single storey link between house and boathouse. Modernise existing bungalow and convert loft. Proposed 5 bed, 1 bathroom, 2 en-suites and 1 WC. Render existing and replace windows – Approved – 20th January 2016

17/01489/HOUSE - Retrospective application for boundary wall – Refused – 09th March 2018

20/00250/HOUSE - Detached garage with games room and storage within roof space – Approved – 12th June 2020

20/00674/HOUSE - Detached garage with games room and storage within roof space. – Approved – 28th August 2020

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Interested Parties

- 7.1.1 letters from **one** owner were received **objecting** to the serving of the TPO 5/21 and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
There is an ongoing insurance claim for subsidence which is being caused by one of the Oak trees on our boundary. Surveys have been undertaken by the insurance company and the Oak tree's roots are going under the foundations of our house and have already caused significant damage to our property.	Comments noted, no Arboricultural justification or evidence has been submitted to the LPA to date to implicate the tree.
We would rather the tree was not removed however, we do require our property to be repaired and no further damage to be incurred.	Comments noted, It has not been demonstrated that no other repair solutions are available which could mitigate the alleged impact of the tree.
If a root barrier is introduced as a work around, regular maintenance to the tree will be required to keep it to a size that prevents further damage to our property. A TPO would add to further complications with this matter.	Comments noted, however notwithstanding the comments, as stated above, no repair solutions have been demonstrated which could mitigate the alleged impacts from the tree.
It seems unclear as to who the owner of	This is a civil matter

Objection Comment	Officer Response
the Oak tree is.	
The TPO does not clearly state which of the three oaks on the boundary of our property is being protected. From the map enclosed we would argue that no oak trees fall within the circle drawn.	Comment noted, the Council considers that the TPO map provided with the order is clear and concise.
Whilst we appreciate all the trees on the boundary are Oak trees, they do not constitute a tree with significant amenity value. They are not on a public footpath and we do not understand why the Council would only put a TPO on one and not all of the Oak trees on our boundary.	Comments noted. The amenity value of the tree has been addressed in section 5 of the report. As discussed previously, there was a foreseeable threat to this particular Oak tree which is assessed under the expediency section of the TEMPO assessment. The other Oak trees do add amenity to the area and could be worthy of protection however, to date, no threat to the remaining Oaks have been reported. The Council would only serve a TPO where it is reasonable and expedient to do so.
We feel the tree has been singled out for no obvious reason.	The report scored the Oak tree 15/25 which is 'TPO defensible' and was specifically identified.
The TEMPO report says that the tree does not 'definitely merit a TPO'	The report scored the Oak tree 15/25 which is 'TPO defensible'
The tree is not clearly visible to the public if the public stay on designated footpaths	Comments noted. The amenity value of the tree has been addressed in section 5 of the report.
It is our understanding that the Council have to be able to demonstrate why the tree has significant amenity value	Comments noted. The Council has undertaken a TEMPO assessment (Tree Evaluation Method for Preservation Orders), which is a nationally accepted system of scoring the amenity value of a tree and has been made available to the customer.

8. CONCLUSION

- 8.1 The Oak tree, the subject of the TPO makes a significant contribution to the character and appearance of the surrounding area due to its size and prominent position. Given that the tree has a TEMPO score of 15, it is considered that the TPO should be confirmed to prevent the loss of this tree without securing appropriate replanting or to prevent inappropriate works being carried out which could harm the amenity value and overall health of the tree.

