

**APPLICATION REFERENCE: PL/2022/00553/TPO**

**Site Address:** Apartment 1 Blythwood 40 Blossomfield Road Solihull B91 1NF

<b>Proposal:</b>	T1 oak tree - Fell and replace. T2 horse chestnut tree - Fell and replace. T3 sweet chestnut tree - Fell and replace. T4, T5 and T6 beech trees - Fell and replace.
<b>Web link to Plans:</b>	Full details of the proposal and statutory consultee responses can be found by using the above planning application reference number at:  <a href="https://publicaccess.solihull.gov.uk/online-applications/">https://publicaccess.solihull.gov.uk/online-applications/</a>

<b>Reason for Referral to Planning Committee:</b>	The application has received a substantial amount of local opposition (7No objections from 6No addresses).
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<b>Recommendation:</b>	<b>SPLIT DECISION – Partially approve and partially refuse</b>
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**BACKGROUND**

This application was deferred ahead of the 10 August Planning Committee meeting to enable a further site visit and detailed assessment of the health of the trees to be undertaken by the Council’s Forestry Officers. The site visit took place on 5 September 2022, and the contents of this report and the final recommendation take full account of the additional findings of the visit.

**EXECUTIVE SUMMARY**

The application seeks permission to fell six trees protected by a Tree Preservation Order located in prominent positions within the grounds of 40 Blossomfield Road.

This TPO Application (PL/2022/00553/TPO) has been submitted following the refusal of a previous TPO Application (TPO PL/2021/02962/TPO) on the site. That application refused permission for works to all 6 trees and was due to the timing of the submission (winter) and the need for canopy growth to be evident on the trees in order to fully assess their conditions. Simply put, at the time, given that the trees are deciduous, there was no evidence to suggest that any of the trees were in decline.

This is now not the case, and it is for this reason, given that the current application has been submitted in the summer months where the extent of canopy growth can

be appreciated and assessed, that this recommendation does not mirror the decision previously made.

The trees as referred to within this report as follows correspond to the following trees shown in the tree schedule of TPO/01143

- T1 Oak = T6 Quercus robur
- T2 Horse Chestnut = T5 Aesculus hippocastanum
- T3 Sweet Chestnut = T4 Castanea Sativa
- T4 Beech = T3 Fagus sylvatica
- T5 Beech = T2 Fagus sylvatica
- T6 Beech = T1 Fagus sylvatica

This report will demonstrate that the felling of five of these trees is considered acceptable, subject to conditions. However, refusal is recommended for the felling of T3 (sweet chestnut). It is recognised that this tree is showing signs of stress, but it remains suitable for retention subject to appropriate arboricultural management works.

## **MAIN ISSUES**

The main issues in this application are:

- Impact of the proposal upon the amenities of the area together with the justification for the proposed works; and
- Impact on biodiversity

## **CONSULTATION RESPONSES**

**Non Statutory Consultees** The following Non-Statutory Consultee responses have been received:

SMBC Forestry – Objection to felling of T3

## **PUBLICITY**

The application was advertised in accordance with the provisions set down in the Town and Country Planning (General Development Procedure) Order 2015.

7 objections from 6 No. addresses were received. All correspondence has been reviewed and the main issues raised are summarised below (Planning Committee Members have access to all third party correspondence received):

### Impact on appearance and visual amenity

- The trees are a visually attractive feature

- Proposal will substantially change the streetscene/loss would be detrimental to street appearance
- Losing too many trees that enhance our environment
- Provide visual screening from traffic on Blossomfield Road
- Remedial works would suffice

#### Impact on the health and longevity of the trees

- Trees were protected under TPO/01143 as a result of the new apartment block as they were important to the area
- Trees have been damaged, allegedly as a result of negligence by the contractor
- March tree report provided by agent suggests T2-T6 are in 'moderate' condition so should not be felled
- Alleged that insufficient evidence provided to justify felling
- Contractor report provided from August 2021 suggesting that only remedial works would be required to benefit the health of the trees

#### Impact on biodiversity

- Trees are vital for health and to combat climate change
- Trees help shield from traffic pollution

#### Other Issues

- The mature trees were there prior to the apartment block, residents would have been aware so no reason to remove them
- Loss of privacy/overlooking issues

### **RELEVANT PLANNING HISTORY**

- **PL/2021/02962/TPO** - Reduce crown overall by 2m on 1 No oak tree (T19). Reduce crown overall by 2m on 1 No. sweet chestnut tree (T12). Reduce crown overall by 2m on 1 No Horse Chestnut (T14). Reduce crown overall by 2m & crown lift over highway by 6m on 1 No. beech tree (T9). Reduce crown overall by 2m & crown lift over highway by 6m on 1 No. beech tree (T8). Reduce crown overall by 2m & crown lift over highway by 6m on 1 No. beech tree (T5). All as per Tree report. – REFUSED 18/02/2022
- **PL/2017/03282/PPFL** - Demolition of existing 4 bedroom detached house. Erection of 5 No. new apartments. APPROVED 18/05/2018

### **PLANNING ASSESSMENT**

Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that: -

'Where in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise'.

The National Planning Policy Framework at paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

On the 13<sup>th</sup> May 2021 the Local Plan Review was submitted (via the Planning Inspectorate) to the Secretary of State for independent examination.

This marks the next stage in the preparation and adoption of the plan. The advice in the NPPF at paragraph 48 states “Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.

Greater weight, but not full weight, can therefore be given to the submitted plan, but this may still be dependent on the circumstances of each case and the potential relevance of individual policies. In many cases there are policies in the new plan which are similar to policies in the adopted plan which seek the same objectives, although they may be expressed slightly differently.

It is considered that relevant policies pertinent to this application have limited weight in the planning balance, and as a result do not alter the recommendation of approval reached in this report.

This report also considers the proposal against the Development Plan (Solihull Local Plan), the relevant policies of the National Planning Policy Framework (“NPPF”) 2021, the National Planning Practice Guidance

## **MAIN ISSUES:**

### Impact of the proposal upon the amenities of the area together with the justification for the proposed works

In considering an application such as this, the local planning authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it.

The trees in question are all mature deciduous trees that are easily and readily visible from public viewpoints outside of the site. As such they have relatively high

amenity value and contribute positively to the rich arboreal character of the area. As such, the loss of the trees will result in a harmful impact upon the character and appearance of the area.

With the above in mind it must then be understood why the trees are proposed to be felled. Having regard to the submitted details and the assessment of the SMBC Forestry Officer, the following comments from the Forestry Officer is of note:

**T1 Oak** – Severe canopy dieback throughout the entire canopy with extensive reactive leaf growth showing. The tree shows stress/terminal shock assumed to be highly likely due to the change in rooting environment as a result of the construction of the parking area. The tree currently drops small diameter branches but as the dieback continues the volume and size of the dead branch diameter will increase, presenting a risk to personal and property safety.

**T2 Horse Chestnut** – Thinning of the upper canopy and tip dieback throughout the canopy with leaves small and yellow showing chlorosis (breakdown of photosynthetic equipment) revealing the tree is showing stress/terminal shock and is in decline. This is assumed to be highly likely due to the change in rooting environment as a result of the construction of the parking area. The tree shows symptoms of terminal decline and as canopy dieback produces more deadwood there a risk to the personal safety of individuals and to property.

**T3 Sweet Chestnut** – Canopy dieback (approximately 10% of the main canopy) with a proliferation of bud break on the root plate, main stem and throughout the canopy, symptomatic to a change in environmental conditions, and in decline assumed to be highly likely due to the change in the rooting environment as a result of the structure of the car park. There is a current safety concern, but rather than felling the tree, this could be mitigated for by a planned maintenance scheme to remove deadwood, lift the canopy over the highway 5.5m and employ minimal crown works to help balance the crown.

**T4 Beech** – The canopy shows minor symptoms of stress confined to a limited area within the upper canopy, but the extensive leaf area within the canopy reveals that the stress due to the change in rooting environment has been less severe for this tree producing limited safety concerns. That said, the safety concerns are accepted and are very real.

**T5 Beech** – The canopy shows limited dieback in the upper canopy with tip dieback (<5%) in the lower canopy, and several non-structural dead limbs that is highly likely to a change in environmental conditions such as seasonal lack of rain.

**T6 Beech** – The upper canopy shows extensive canopy dieback (about 40%) that is assumed to be highly likely due to the change in rooting environment as a result of the construction of the parking area. This has increased over several seasons leaving the deadwood brittle and liable to fall. The dieback is increasing and is of safety concern as the tree has been severely damaged.

The above analysis identifies that of the 6 trees proposed to be felled for safety concerns, the felling of five of them (T1, T2, T4, T5 and T6) is justifiable and would

constitute the proper arboricultural management of the site. Indeed, their felling on safety grounds is of paramount importance and the identified safety concerns override the amenity value of the trees, which will in itself diminish over time as the trees continue to decline and fail if nothing is done.

The works to fell and remove T1, T2, T4, T5 and T6 and provide replacement trees will therefore protect the diverse landscape features of the borough and as such the proposed felling of these 5 No. trees is considered acceptable

However, the felling of T3 is not justified, and its felling would not override its amenity value. Instead, given that its identified stress and resultant safety impacts is lower, it is considered that its felling is unnecessary and it could and should be retained, subject to some remedial canopy work and an appropriate management strategy.

For these reasons, the felling of T1, T2, T4, T5 and T6 is found to be in accordance with Policies P10 and P14 of the Local Plan and this carries neutral weight in the planning balance. The felling of T3 is conversely found to be contrary to the same policies.

#### Impact on biodiversity

The importance of the trees in the local area is noted, however due to the decline in the health of T1, T2, T4, T5 and T6 and the risk to safety, these trees are not suitable for retention. A condition will be included on the decision for replacement trees to be planted.

Although not an exhaustive list, the following are possible suggested alternative trees to be replanted, and reflect the changes in site circumstances, e.g. the reduced rooting environment and space for suitable species and cultivars to be established:

- Replacement for T1 Oak – Ulmas
- Replacement of T2 Horse Chestnut – Sheriden Spire or Liquid Amber
- Replacements for T4, T5 & T6 (beeches) – Liquid Amber or Mongolian Lime

For these reasons, with the exception of T3, the proposal is found to be in accordance with Policies P10 and P14 of the Local Plan and this carries neutral weight in the planning balance.

#### Other matters

It appears that the damage to the trees in question is a result of the construction works associated with the recently constructed apartments. In approving the development, its impact upon the trees was considered and was deemed acceptable. The approved drawings stipulate that the hard surfaces and parking areas close to the trees should be undertaken using no-dig construction techniques to allow for an acceptable impact upon the trees.

From inspecting the development on site it is clear that the parking area was not constructed using no dig development techniques. Instead, it is evident that substantial excavations took place that is highly likely to have caused the damage to the trees.

This notwithstanding, it is difficult to know exactly how the hard surfacing area was constructed, and the actual and full extent of the damage caused by it's construction.

Furthermore, taking action for the potentially unauthorised works is a separate matter and will be investigated and determined accordingly.

With the above in mind the application must therefore be assessed on face value and seek to ensure the most suitable treatment of the site going forwards, which as set out in this report, is to retain one of the trees and allow the other 5 to be felled and replaced.

## **PUBLIC SECTOR EQUALITY DUTY**

In making your decision, you must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions)

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered, and may be balance against other relevant factors.

## **HUMAN RIGHTS**

In determining this request for approval, Members should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

Members are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence. The recommendation for part approval and part refusal is considered a proportionate response to the submitted request based on the considerations set out in this report.

## **CONCLUSION**

T1 Oak, T2 Horse Chestnut, T4 Beech, T5 Beech and T6 Beech individually show symptoms of significant stress due to the construction phase of the driveway, but the canopy of T3 sweet chestnut shows lesser stress with more minor deadwood and is therefore suitable for retention.

The proposal is therefore recommended for a split decision, whereby the felling of T1, T2, T4, T5 and T6 is approved and the felling of T3 is refused.

## RECOMMENDATION

A split decision is recommended subject to the following précis of conditions a full list of standard conditions is available using the following link:

### Part A – Works to be refused (T3 sweet chestnut)

The sweet chestnut is in reasonable health with no significant arboricultural defects, and the tree makes a significant and positive contribution to the character, appearance and local distinctiveness of the area. The proposal to fell the tree, rather than to retain and properly manage it, is therefore considered to be unnecessary and would result in harm to the visual amenity and character and appearance of the local area. As such, the proposal would be contrary to the aims of Policies P10 and P14 of Solihull Local Plan (2013) which seek to protect the diverse landscape of the Borough and safeguard important trees.

### Part B – Works to be approved (T1, T2, T4, T5 and T6)

CT01 – Works to be completed within 2 years

CT02 – Work in accordance with BS3998

CT03 – Replacement trees within next planting season

Informative – NOTE: Any replacement tree must comply with current British Standards. Replacement trees should also be no less than 14-16cm in girth, heavy standards from a reputable UK based tree nursery in root ball or containerised trees

Recommended trees for replanting:

T1 Oak – Ulmas

T2 Horse Chestnut – Sheriden Spire or Liquid Amber

T4, T5 & T6 (beeches) – Liquid Amber or Mongolian Lime

Informative – NOTE: For the avoidance of doubt the trees referred to in this decision notice are identified in the application form received 16/03/2022 and tree location plan received 16/03/2022

Informative – NOTE: If it is essential to fell or lop any trees or part of the hedgerows, it should be ensured that this work does not disturb nesting birds, with work ideally being conducted outside the main breeding season (March-September). All nesting birds are protected from disturbance or injury under the 1981 Wildlife and Countryside Act. In addition, if mature trees are likely to be affected by the development, (e.g., by felling or lopping work), it is important to survey these trees for the presence of bats, prior to work commencing. Bats and their roost sites are protected under the 1981 Wildlife and Countryside Act and the Countryside and Rights of Way Act, and are also deemed a European Protected Species. Local Authorities are bound by the Conservation of Habitats and Species Regulations 2010 to have regard to the Habitats Directive when exercising their functions.