

Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	TREE/2017/0010	Grid Ref:	309817.8 298737.65
Community Council:	Tregynon	Valid Date:	Officer: 22/02/2017 Sara Robinson
Applicant:	Powys County Council		
Location:	5 Llys Derw, Tregynon, Newtown, Powys, SY16 3EY.		
Proposal:	Crown reduction and pruning of an oak tree subject to a TPO		
Application Type:	Works to trees subject to a TPO and/or Notification of proposed works to trees in conservation areas		

The reason for Committee determination

The application has been submitted by Powys County Council.

Site Location and Description

This application is for works to a single tree which is subject to a Tree Preservation Order (TPO) within the village of Tregynon within the curtilage of the dwelling known as '5 Llys Derw'. The tree is located to the north west of 5 Llys Derw. The property is accessed off the unclassified highway U6126 to the north and is adjacent to the B4389 to the west. To the south and east of the tree is the housing estate known as Llys Derw.

The proposed works is to carry out a crown reduction and pruning of an Oak tree. It is proposed to carry out targeted pruning over the roof area of 5 Llys Derw.

Consultee Response

Tregynon Community Council

No comments were received by Development Management at the time of writing this report.

PCC Ecologist

Thank for consulting me with regards to application TREE/2017/0010 which concerns an application for the Crown reduction and pruning of an oak tree subject to a TPO at 5 Llys Derw, Tregynon Newtown.

I have reviewed the submitted information and site visit photos, aerial photos of the site and surrounding area as well as local records of protected and priority species and designated sites within 500m of the proposed works. The data search identified 52 records of protected and priority species within 500m of the proposed development. No records were for the site itself.

No statutory or non-statutory designated sites are present within 500m of the proposed tree works.

Having reviewed the photos of the tree affected by the proposed works it is considered that there is low potential for the tree to be used by roosting bats – the semi-mature oak tree appear to be in good health and good condition and appears to lack potential roosting features suitable for use by roosting bats – however the presence of bats cannot be fully ruled out from photographs therefore I have provided an informative regarding the bats.

It is considered possible that the tree may be used by nesting birds during the breeding season – All nesting birds, their nests, eggs and young are protected under the Wildlife and Countryside Act 1981 (as amended) therefore works should be timed to avoid the nesting season which is generally considered to be March – August (inclusive).

Therefore should you be minded to approve the application I recommend inclusion of the following informatives:

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended)

It is an offence for any person to:

- Intentionally kill, injure or take any bats.
- Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.

Under the Habitats Regulations it is an offence to:

- Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended) that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0345 1300 228 or email enquiries@bats.org.uk

Birds - Wildlife and Countryside Act 1981 (as amended)

The site of the proposed tree works is considered to have potential to support nesting birds during the breeding season. All nesting birds, their nests, eggs and young are protected under the Wildlife and Countryside Act 1981 (as amended).

It is therefore an offence to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird

- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built, (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

Cllr J Shearer

I welcome work to be done on this tree.

Planning History

TREE/2010/0009 – Works to TPO trees – Approved – 05/05/2010

Principal Planning Constraints

Tree Preservation Order 108

Principal Planning Policies

National planning policy

Planning Policy Wales (2016)

Technical Advice Note (TAN) 5 – Nature Conservation and Planning (2005)

Technical Advice Note (TAN) 10 – Tree Preservation Orders (1997)

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

Local planning policies

Powys Unitary Development Plan 2010

GP1 – Development Control

ENV 2 – Safeguarding the Landscape

ENV 3 - Safeguarding Biodiversity & Natural Habitats

ENV 7 - Protected Species

ENV8- Tree Preservation Orders

RDG=Powys Residential Design Guide NAW=National Assembly for Wales TAN= Technical Advice Note
UDP=Powys Unitary Development Plan, MIPPS=Ministerial Interim Planning Policy Statement

Officer Appraisal

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Principle of Development

UDP policy ENV 8 sets out the general requirements applied to all proposals relating to works to trees within a Conservation Area and trees with Tree Preservation Orders (TPO's) placed upon them, such as this proposal. Trees, groups of trees and woodlands of amenity value that make a particular contribution to the landscape or that are noted for their beauty or local rarity will be protected. Proposals for development that unacceptably adversely affect trees that are the subject of a TPO or within a Conservation Area will be refused. Applications to fell or carry out works on trees which are the subject of a TPO or within a Conservation Area will be approved if the work is necessary for public safety or to secure the future of the trees themselves by appropriate management measures.

This notification contains the crown reduction and pruning of an oak tree subject to a TPO. The proposed works are to sympathetically reduce the crown of the tree and targeted pruning of the tree over the roof area of No.5 Llys Derw as some branches are touching the roof of the dwelling.

As the proposals are for health and safety purposes and maintenance of the tree subject to the TPO it is considered that the works are justified in this instance. It is therefore considered that the proposed works fundamentally comply with planning policy ENV 8 of the UDP.

Biodiversity

The PCC Ecologist was consulted on this application and reviewed the proposed works, and photos of the tree and its surroundings.

The PCC Ecologist has assessed the site and has stated that there is low potential of the tree to be used by roosting bats however the presence of bats cannot be fully ruled out from photographs therefore recommends that an informative is included regarding bats. The PCC Ecologist also assessed the tree for nesting birds and has stated that it is considered possible that the tree may be used by nesting birds during the breeding season and therefore has recommended a further informative to be included regarding nesting birds.

In light of the above and subject to the recommended informatives it is therefore considered that the development fundamentally complies with relevant planning policies.

RECOMMENDATION

It is recommended that the proposed works shall be allowed to go ahead subject to the following conditions as set out.

1. The works hereby approved shall be carried out within two years from the date of this decision.

Informative Notes

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended)

It is an offence for any person to:

- Intentionally kill, injure or take any bats.
- Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.

Under the Habitats Regulations it is an offence to:

- Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended) that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0345 1300 228 or email enquiries@bats.org.uk

Birds - Wildlife and Countryside Act 1981 (as amended)

The site of the proposed tree works is considered to have potential to support nesting birds during the breeding season. All nesting birds, their nests, eggs and young are protected under the Wildlife and Countryside Act 1981 (as amended).

It is therefore an offence to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.

The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built, (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

Applicant: Powys County Council

Location: 5 Llys Derw, Tregynon

