

DELEGATED REPORT

Application No: P/20/0312

Site Address: 17 Cwrt Bevan
Merthyr Tydfil
CF47 0AQ

Development: Fell tree (Oak)

Case Officer: Tom Bramley

Application Expiry Date: 9th February 2021

APPLICATION SITE

The tree the subject of this application is located in the rear garden of 17 Cwrt Bevan. The semi-detached property is located within a recently completed residential development on the former Mardy Hospital Site. The main road through the estate rises fairly steeply from the south west to the north east. The application site is located along the northern boundary of the estate which comprises detached, semi-detached and terraced housing. The rear garden of the property adjoins a green amenity/recreation area and there are a number of mature trees in this area (some of which are also protected).

PROPOSAL

The proposal is to fell an Oak tree covered by Tree Preservation Order (TPO) No 3 'Trees on land at Mardy Hospital, Mardy Close'. The tree is an Oak (*Quercus robur*) and part of a group TPO consisting of 5 single Trees, 11 group. The trees originally formed a part of the former hospital grounds on which the housing development was constructed.

The reason given for the felling of the tree is that it poses a danger to the health of a child living at the property who is severely autistic, non-verbal and puts objects in his mouth. It is pointed out that the garden of the property is the only safe outside space the child can enjoy. The applicant's son has experienced three choking incidents within the past two years from acorns that fall into the garden from the tree. The applicant feels the garden is not safe for the child while the tree remains standing. The applicant has carried out work on the tree in the past to remove limbs (see planning history below).

RELEVANT HISTORY

P/17/0103 – Removal of dead wood and damaged lower branches of Oak tree – Approved - 19.04.2017.

CONSULTATION

Council's Arboriculturalist: Recommends that the tree be retained as it is in good health and poses no significant issues or defects. The Arboriculturalist has suggested that *"due to the unusual and sensitive nature of the issues highlighted by the application to remove the amount of acorns and leaf litter in the property, I would advise the local authority to permit a 40% canopy reduction to the mentioned tree. This should balance the retention of the tree and address the individual needs of the residents of 17 Cwrt Bevan"*.

Council's Solicitor: *'Legally, common law nuisance can be best defined as a matter which is unreasonable and which causes a substantial interference on the use and enjoyment of a person's property. In order to qualify as a nuisance in the law it must be a serious matter. A one-off event is rarely sufficient to qualify as a nuisance. Further, the specific sensitivities of those suffering cannot be taken into account when determining whether or not a matter is a nuisance. The test for nuisance is whether a typical person would be expected to suffer some health effect from the nuisance.'*

In law there are also statutory nuisance. To be a statutory nuisance the nuisance must fall within one of the following categories:

- 1. any premises in such a state as to be prejudicial to health or a nuisance*
- 2. smoke emitted from premises so as to be prejudicial to health or a nuisance*
- 3. fumes or gases emitted from premises so as to be prejudicial to health or a nuisance*
- 4. any dust, steam, smell or other effluvia arising on an industrial, trade or business premises and being to be prejudicial to health or a nuisance*
- 5. any accumulation or deposit which is prejudicial to health or a nuisance*
- 6. any animal kept in such a place or matter as to be prejudicial to health or a nuisance*
- 7. any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance*
- 8. artificial light emitted from premises so as to be prejudicial to health or a nuisance*
- 9. noise emitted from premises so as to be prejudicial to health or a nuisance*
- 10. noise that is prejudicial to health or a nuisance and is emitted from a vehicle, machinery or equipment in a street*
- 11. any other matter declared by any enactment to be a statutory nuisance*

To be a statutory nuisance there has to be an effect on health and wellbeing. Again, the specific sensitivities of those suffering cannot be taken into account. The test is whether a typical

person would be expected to suffer some health effect from the nuisance.

Bearing in mind the test is the effect on a typical person it is highly unlikely that the excess shedding of acorns and the fact that the son is autistic would constitute a nuisance under the law'.

POLICY

Technical Advice Note 10 – Tree Preservation Orders 1997

CONSIDERATIONS

The main considerations in the determination of this application are:

- The effect of the felling of the tree on the character and appearance of the locality and the street scene; and
- Whether the reasons given for its removal are sufficient to justify that course of action.

A turning area forming part of the main road serving the estate adjoins the eastern boundary of Cwrt Bevan. This enables clear views of the Oak Tree for those travelling along the highway/footpaths in a southerly direction. The tree is very attractive, with a natural form, albeit with evidence of limb removal. Given the quality and size of the tree it makes a positive contribution to the character and appearance of the street scene. The tree is also visible from the rear of properties in the location and thus adds to the amenity of the built environment.

The tree is also highly visible from the green space (informal recreation area) and wider street scene to the rear of the property. In this viewpoint the prominence and quality of the tree is also fully appreciated. Its positive contribution to the area, both individually and when combined with the other mature trees, significantly enhances the character and appearance of the area. It is noted that the green space/informal recreation area is allocated for housing (SW3-19) in the Merthyr Tydfil County Borough Council Replacement Local Development Plan (2016 – 2031, however, any future development would need to consider the impact on this and other protected trees in the area. In layout terms, the setting of the trees and their visual appearance would form an important consideration of any future planning proposal. Indeed, the primary aim would be to ensure a landscaped space is created in order to showcase the quality of the tree(s) so that it can also enhance the street scene of any future residential development.

Based on the above, the tree enhances the visual amenity of the locality and its felling would cause harm to the character and appearance of the street scene and the wider area

As noted above, in an attempt to retain the tree and limit the impact of the falling acorns, the Council's Arboriculturalist has suggested a crown reduction. However, the applicant wishes the application to be determined as submitted.

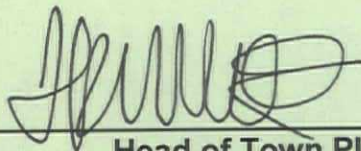
The concerns of the applicant are appreciated. However, the applicant's grounds for felling the tree are effectively that of 'nuisance'. The advice from the Council's Solicitor insofar as the definition of 'nuisance' is concerned confirms that 'nuisance' does not apply in this

case. The only other justification for felling would be that the tree is dead, dying or dangerous, which the Arboriculturalist has determined it is not the case.

RECOMMENDATION: PERMISSION REFUSED for the following reason:

1. The felling of the Oak Tree would cause significant harm to the character and appearance of the street scene and the wider area. There is no strong justification for its removal.

RECOMMENDATION ENDORSED



Head of Town Planning

DATE:

28/1/21