

23/00119/TORDER

Objector Mr and Mrs Johnson, 18 Victoria Street

Location 2 School Bungalow, Glebe Lane, Radcliffe On Trent, NG12 2FR

Objection To the Radcliffe on Trent No.3 Tree Preservation Order 2023

Ward Radcliffe on Trent

THE SITE AND SURROUNDINGS

1. The Tree Preservation Order (TPO) protects 2 Oaks and 2 Horse Chestnuts at 2 School Bungalow, a former caretaker's property previously associated with the South Nottinghamshire Academy. The bungalow was recently sold at auction with no access right from the Academy site. The trees are located on the northern boundary of the bungalow and are located to the south of Lincoln Grove and 18 Victoria Street.
2. Whilst the road at Lincoln Grove currently abuts the boundary of the bungalow where the trees are located there is no vehicular or pedestrian access at present. The 4 protected trees are large and act as a pleasant backdrop to the end of the road when viewed from Lincoln Grove.

DETAILS OF THE TREE PRESERVATION ORDER

3. The TPO was made when the Council became aware that the land ownership would change and that new owners would likely want to create a vehicular access to the bungalow from Lincoln Grove.
4. The TPO was made on the 26th July 2023. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 the Order takes effect provisionally and needs to be confirmed within 6 months of the date it was made. The Council has a duty to consider all objections and representations that have been made before deciding whether or not to confirm the Order.

SITE HISTORY

5. The bungalow was previously accessible through the Academy grounds, but it was auctioned without access rights, as a result the Council has received informal enquiries about creating a vehicular access from the end of Lincoln Grove. As there is a change in level between the road and the grounds of the bungalow, constructing a vehicular access will not be straightforward and there will be a risk of root damage.
6. The Council has advised that access to the bungalow from Lincoln Grove will require planning permission.

REPRESENTATIONS

Local Residents and the General Public

7. The owners of 18 Victoria Street have objected for the following reasons:
 - They have lived directly behind the 2 protected Horse Chestnut trees for 12 years and during this time they have never been pruned or cut back, as a result they now encroach considerably on their land.
 - They shed leaves and conkers over the garden which are a danger to them and their pet dog.
 - The overhanging branches are considered to be both a nuisance and a health and safety issue as some look extremely fragile and with extreme weather they could easily come loose and break off.
 - They have invested in the property but feel they can't enjoy the garden in the summer months due to lack of sunlight, the amount of bird waste and fear of the trees failing.
 - In the past the property owners have engaged with the school over the issue but have been "fobbed off" and no work has taken place. The school have suggested the property owner can cut back overhanging branches, but they consider the school to be responsible for the maintenance and health and safety of the trees.
 - Elderly neighbours on both sides face the same issues and are concerned about slipping on leaves in wet weather.
 - They believe the TPO will make it harder to coordinate and get tree work actioned.
 - At the time of objecting other trees on the bungalow were being tended to, but the protected trees were not.

APPRAISAL

8. The Council generally cannot make the owner of a protected tree carry out work and despite the TPO being made the tree owner remains liable for its maintenance. The only exception to this is where trees are 'likely to cause damage' and under separate legislation the Council can serve notice on a tree owner where there is a foreseeable risk of failure, but at present the trees do not have any obvious defects which would warrant the Council taking action. As a landowner the owners of the bungalow will have a general duty of care when it comes to maintaining the tree.
9. A TPO does not prevent work to a tree, but an application needs to be made beforehand. Anyone can apply to work on a protected tree. If a neighbour applies, they will need to seek the Council's permission and then depending on the scale of works proposed, they can use their common law right to remove overhanging branches without the tree owner's permission, but any work, or access, beyond the property boundary would need the tree owner's permission in addition to the Council's.
10. The objection raises a number of issues regarding the impact the trees have on the use of the house and garden. The Council needs to consider these alongside the contribution the trees make to the setting of Lincoln Grove. Concerns over loss of light, leaf litter, bird droppings and the risk of failure are commonplace and whilst the Council needs to be mindful of the concerns of the neighbour, these issues on their own don't prevent the TPO being

confirmed as many are natural occurrences and in legal terms are not a nuisance, but a mere inconvenience and one to be expected when living next to trees. Some of the issues raised can be controlled through pruning.

11. When considering applications to prune trees, Government advice is that the greater the public amenity value of the tree and the greater the scale of work the more justification is required. Each application is judged on its own merits so it is not possible at this time to give a clear indication of what work would be allowed, but some form of pruning would seem appropriate if the overall appearance of the tree was not harmed, as would the pruning back of overhanging branches which are considered to be a legal nuisance.
12. Neighbour's may not wish to prune back overhanging branches under their common law right as they need to fund the work, but it is often a quick way to achieve their aims of seeing trees pruned back and work to the boundary line does not require the tree owner's permission.
13. The future of the bungalow is not certain. At the very least it is likely the Council will receive an application to create a new vehicular access from Lincoln Grove and the TPO will ensure the trees are retained prior to this and provide greater enforcement options if works take place. A new vehicular access is likely to require some changes to ground levels and roots could be affected. The TPO will also allow the Council to condition replacements should trees need to be removed in the long term.
14. As the trees are located at the end of Lincoln Grove, they are a prominent feature that enhances the setting of the characterful Georgian properties. Given the recent sale of the bungalow and the fact that the future of the site is uncertain it is considered that confirming the TPO is prudent and will protect the trees in the medium to long term. Concerns over the proximity of the trees to adjacent properties could be considered through applications to prune them. This will require applications to be made to the Council, but this is not considered to be unreasonable.

RECOMMENDATION

It is RECOMMENDED that the Radcliffe on Trent No.3 Tree Preservation Order 2023 be confirmed without modification.