

24/00050/TPO

Applicant Dr Robert Moul

Location 53 Leivers Close East Leake Nottinghamshire LE12 6PQ

Proposal Tree: (Corsican Pine) - Fell

Ward Leake

Details of the application can be found [here](#)

THE SITE AND SURROUNDINGS

1. The property is a detached dwelling at the western end of Leivers Close. The application relates to a mature Pine tree located in the rear garden of the property. The location was previously part of the landscaped ground of a manor house.
2. The tree is large and its canopy is visible from along the western section of Leivers Close above the roof of the dwelling.
3. The tree is protected via the "Rushcliffe Borough Council East Leake No.1 Tree Preservation Order 2012".

DETAILS OF THE PROPOSAL

4. The application proposes the felling of the protected Corsican Pine tree.
5. A previous application for the felling of the tree, 23/00877/TPO, was refused consent in June 2023 for the following reason

"The tree is considered to have high public amenity value and makes a positive contribution to the character and appearance of the surrounding area. The tree is in apparent good health, and it has not been demonstrated that felling is necessary, none of the supporting information identified as required in section 8 of the application form [...]"

SITE HISTORY

6. 00/01205/TPO - Reduce height of Scots pine, walnut and sycamore – refused consent.
7. 12/00492/TPO - Crown reduction to Scots pine tree – granted consent.
8. 23/00877/TPO - Corsican Pine – Fell – refused consent.

REPRESENTATIONS

Ward Councillor(s)

9. One Ward Councillor (Cllr Billin) has indicated he objects to the proposal commenting:

“The tree was already mature when the house was built and purchased. Living With trees rather than simply removing them, surely must be best. I would hope that a full arboricultural survey may result in a suitable way forward.”

Town/Parish Council

10. East Leake Parish Council has made comments suggesting it would defer to the views of the Borough Senior Landscape and Design Officer (Sic *The Tree Officer*).

Statutory and Other Consultees

11. The Borough Senior Landscape and Design Officer has provided comments on the application, to which he objects. His comments are extensive and full details are available on the public file. The comments are summarised below:
- a) Comments relating to proximity of the tree to dwellings, or it being too large for its location are subjective comments and there are no standards when it comes to assessing whether trees are considered to be too large or too close to a house.
 - b) Trees grow all the time within falling distance of a property, road, or other risk target, this on its own does not make them a danger. For a danger to exist there has to be some form of foreseeable risk of failure. This application along with the previously refused application does not present evidence that the tree has any defects that would indicate it is likely to fail in some way. There is nothing to suggest that the tree would be vulnerable to failure in a storm.
 - c) There is a tapering crack in the retaining wall which separates the raised lawn where the tree is located from the lower patio which is at the same level as the house. We know that roots must have grown under this wall as there are roots pushing up slabs in the patio beyond. It isn't proven that the roots are the source of the crack and no investigation has taken place to see if there is significant root growth behind the wall or under its foundation.
 - d) The roots of the tree are clearly pushing up the slabs nearby. Having met the owners I believe we have different views on what work is required to remedy this. I would suggest ad-hoc clean severing of roots and then removal to allow the slabs to be relayed, whereas I understand the owners wish to lift the patio, removal all roots and re-lay to prevent the risk of movement in the future. The 2 main roots I have seen are approximately 4cm wide and these are above the width where BS5837 recommends that severing them should be guided by arboricultural advice. Given their distance from the tree and the overall root zone which contains a large area of lawn where there is little competition from other trees, I believe the roots could be severed without any ill effect on the tree and this would enable repairs to take place.
 - e) There has been no evidence submitted to suggest that there are any defects to drains or subsidence damage to the house. Plans have been

presented on site which indicate that drains run under the property from its rear and that these would be near to areas where roots are evident, but a sealed drain should not attract roots and there is no evidence of damage.

- f) Whilst objecting to the proposal the officer does state “*If permission were to be granted we would need to condition a replacement tree*”.

Local Residents and the General Public

12. Four representations have been received from local residents, three in support of the application and one objecting. Of the three in support all state that they have been invited by the applicant to visit the garden of the application site and view the tree and its environs. The full details of these public comments are available on the public file.
13. Issues raised in support were:
- a) Damage caused to surrounding paving and surfacing
 - b) Tree poses a danger to surrounding properties
 - c) Damage to a nearby retaining wall is evident - attributed to the tree and having worsened in past 6 months
 - d) Drainage systems are located nearby to the tree and could be vulnerable to damage
 - e) Tree is over-sized for its location amongst dwelling
 - f) Concern about fire risk if struck by lightning.
14. Comments made objecting to the felling were:
- a) The tree forms part of the landscaping associated with the former Poplars Mansion (later East Leake Hall Estate)
 - b) The tree is in apparent good health
 - c) The tree makes a positive contribution to local amenity and the settings of some large nearby properties.

PLANNING POLICY

15. The Development Plan for Rushcliffe consists of The Rushcliffe Local Plan Part 1: Core Strategy (LPP1) and the Local Plan Part 2: Land and Planning Policies (LPP2). Other material considerations include the 2021 National Planning Policy Framework (NPPF), and the National Planning Practice Guidance (the Guidance).
16. The full text of the Council’s policies are available on the Council’s website at: [Rushcliffe - Planning Policy](#).

Relevant National Planning Policies and Guidance

17. There are no sections of the NPPF which specifically refer to protected trees, however paragraph 131 briefly mentions:
18. “*Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users.*”

Full details of the NPPF can be found [here](#).

19. Central Government has published separate guidance to local authorities on tree protection [here](#) the key points of which can be summarised as:
- assess the amenity value of the tree and the likely impact of the proposal on the amenity of the area;
 - consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
 - consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
 - consider whether any requirements apply in regard to protected species;
 - consider other material considerations, including development plan policies where relevant; and to ensure that appropriate expertise informs its decision.

Full details of this legislation can be found [here](#)

20. Legislation sets out circumstances where applicants may seek compensation for “loss or damage” which arises as a result of a local authority refusing consent for works to trees where the damage occurs and claim is made within 12 months of a decision being issue under section 203 of the Town and Country Planning Act 1990:

A tree preservation order may make provision for the payment by the local planning authority, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of loss or damage caused or incurred in consequence—

- (a) of the refusal of any consent required under the order, or
(b) of the grant of any such consent subject to conditions.*

Relevant Local Planning Policies and Guidance

21. The relevant policy within the Local Development Framework is Policy 37 (Trees and Woodlands) of Local Plan Part 2 (LPP2).
22. Within Policy 37, section 1 is the most relevant as sections 2 and 3 refer to situations of granting planning permission and woodland planting for biodiversity gain which are not relevant in this instance:
23. *“1) Adverse impacts on mature tree(s) must be avoided, mitigated or, if removal of the tree(s) is justified, it should be replaced. Any replacement must follow the principle of the ‘right tree in the right place’.”*
24. Radcliffe on Trent has an adopted neighbourhood plan. The plan has no policies specifically relating to protected trees, and mentions trees only in relation to proposals for housing development and as part of Biodiversity Networks linked to development neither of which are relevant in this instance.
25. The full text of the policies in the LPP1 and LPP2, together with the supporting text, and Neighbourhood Plans can be found in the Local Plan documents on the Council’s website at:

APPRAISAL

26. The main consideration in relation to this application is whether there is sufficient justification for the proposed felling, taking into account the amenity value of the tree and the impact it is having on neighbouring property.
27. The Senior Landscape and Design Officer notes in his comments that in relation to several of the issues raised there is no evidence offered that the tree is the cause of the issues described.
28. The application form contains two questions relating to reasons for works to trees. The first is whether the justification for works relates to the health of the tree e.g. if it is diseased or there are fears that it might break or fall. This question has been answered 'No'.
29. The second question is whether it is alleged that the tree is damaging property, e.g. subsidence or damage to drives or drains the answer given is 'No', although 'Patio Damage' has been written in beside the check boxes.
30. The submission does not contain any specialist supporting information from an arboriculturist or surveyor. However, a supporting statement from the applicant is attached outlining the reasons for the application.
31. In the case of the crack to a retaining wall there has been no investigation or survey to confirm that the action of tree roots is the main contributing factor.
32. Some of the concerns appear to relate to perceived future risks. The height of the tree and its proximity to dwellings is taken to imply that the tree is dangerous. However, it is not uncommon for trees to be within falling distance of property or roads, and such a fact does not in and of itself equate to danger. For a tree to represent a danger there would need to be some reason to believe that the tree is likely to fall, not simply that if it did it is large enough to hit property. The application contains no information, and none is apparent from the Senior Landscape and Design Offices visit to site, suggesting that there are any particular defects with the tree which might give rise to a risk of failure.
33. The lifting of paving within the garden by roots is a consideration and is a consequence of root action, however the Senior Landscape and Design Officer is of the view that this issue could be addressed without needing to fell the tree, by lifting slabs, severing roots and relaying. There are some roots which are around 4cm wide, larger than is recommended to sever without arboricultural advice, however given the distance from the tree the officer is confident that this could be undertaken without adversely affecting the health of the tree.
34. The application is presented to committee as there is risk of compensation being payable. The circumstances where a Council is liable to pay compensation for loss or damage by refusing consent is subject to criteria and strict limitations. These are summarised below:
 - a) No claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made

- b) A claim for compensation must be for not less than £500 and be made to the authority either:
 - Within 12 months of the authority's decision, or within 12 months of an appeal decision.

- 35. Any claimant who can establish that they have suffered loss or damage as a result of an authority either refusing consent or imposing conditions in respect of protected trees is entitled to claim compensation. However, the authority's liability is limited. In such cases, compensation is not payable for any loss or damage which was:
 - a) reasonably foreseeable by that person; and
 - b) attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;
 - c) loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
 - d) loss of development value or other diminution in the value of land;
 - e) and/or costs incurred in making an appeal to the Secretary of State against the refusal of any consent or the grant of consent subject to conditions.

- 36. In light of the above, the Council cannot be liable for the damage which has occurred to date but could be liable if the damage was to get worse over the next 12 months and the additional damage requires work over £500 in value.

- 37. At present it is not considered that a clear case has been made that the damage to the wall is as a result of the tree, but it is clear the slabs are being affected by the roots. There is a degree of uncertainty about whether the above criteria for compensation would be met and if the damage was to extend or get worse what the costs would be.

- 38. The scale of damage in this instance is relatively small, in light of this the Council may decide that the amenity value of the tree is more important than the limited risk of compensation being payable. It should be pointed out that when the Council considers applications for subsidence damage from insurance companies the initial cost of repairs is outlined, along with the cost of more substantial repairs if the permission were to be refused, but in this case the costs of future repairs are not known.

- 39. It should be noted that no arboricultural statement has been submitted in support of the application and no tree surgeon has provided any supporting information.

- 40. In the absence of the specialist evidence from an appropriate expert it is possible that no further damage would be "reasonably foreseeable" to the council should it refuse consent as no technical or expert evidence or information has been submitted to suggest that such risks exist, or even that the current damage can be attributed to this tree. Accordingly, it is recommended that consent to fell the tree is refused.

RECOMMENDATION

It is RECOMMENDED that consent be refused for the following reasons;

- 1. No written arboricultural advice or diagnostic information from an appropriate expert has been provided to substantiate that the tree suffers from any defect, decay or damage which might reasonably give rise to a risk of failure and any damage to neighboring property which may arise to neighboring property. As such it has not been demonstrated that felling, and loss of the amenity value of the tree, is justified on safety grounds.**

The application would therefore be contrary to adopted policy within LPP2 - Policy 37 (Trees and Woodlands) which states that adverse impacts to mature trees should be avoided.

- 2. No written technical evidence from an appropriate expert has been provided to substantiate that the tree would cause damage to nearby surfacing, walls or buildings were it to be retained, or in the case of the patio paving that the issues related to tree roots could only be resolved by felling the tree. As such it has not been demonstrated that felling, and loss of the amenity value of the tree, is justified on the grounds of damage to nearby property or that such damage in the case of the patio could most reasonably be resolved by felling the tree.**

The application would therefore be contrary to adopted policy within LPP2 - Policy 37 (Trees and Woodlands) which states that adverse impacts to mature trees should be avoided.