

Planning Committee

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| Date | 25 May 2023 |
| Case Officer | Gaynor Baldwin |
| Application No. | TPO 419 |
| Site Location | Ingleside, Dog Lane, Witcombe |
| Proposal | To confirm TPO 419 |
| Ward | Badgeworth |
| Parish | Badgeworth |
| Appendices | Tree Preservation Order 419 Tree Evaluation Method for Preservation Orders (TEMPO) Objection from owner of Ingleside Photographs |
| Reason for Referral to Committee | Objection received |
| Recommendation | It is recommended that TPO 419 is confirmed without modification |

1. The Proposal

This report summarises the reasons and circumstances for making Tree Preservation Order (TPO) No. 419, provides details of the objection and the case for the order to be confirmed.

2. Site Description

- 2.1** The Wellingtonia tree is positioned next to the entrance driveway of Ingleside and adjacent to Dog Lane. The tree is estimated to be over 100 years old, has amenity value and is a prominent feature along the lane. The residential property Ingleside has recently been sold therefore the Tree Preservation Order ensures that this important tree will be retained under the new ownership.
- 2.2** This area of land is located within the Green Belt and an Area of Outstanding Natural Beauty (AONB). However only trees that have a Tree Preservation Order or are located within a Conservation area are protected by Legislation. Without a Tree Preservation Order the trees could be at risk of being cut back or felled without consent from the Local Planning Authorities.

3. Relevant Planning History

| Application Number | Proposal | Decision | Decision Date |
|--------------------|---|--|---------------|
| 21/00711/PIP | Permission in Principle for one dwelling. | Withdrawn | |
| 23/00405/FUL | Demolition of existing kitchen, dining room, bathroom, snug and 2 No. outbuildings. Extension to form kitchen dining room and garage. Upgrading of existing external walls to increase insulation values and elevation treatment to contemporary look and feel to dwelling. | At time of writing report application pending validation | |

4. Consultation Responses

Parish Council - no comments received

5. Third Party Comments/Observations

5.1 One objection received

6. Relevant Planning Policies and Considerations

6.1 Statutory Duty

The law on Tree Preservation Orders is in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.

The following planning guidance and policies are relevant to the consideration of this application:

6.2 National guidance

Local planning authorities can make a Tree Preservation Order if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. By not taking the recommended action the Council risks the permanent loss of various significant trees and their wildlife habitat, therefore failing to deliver its commitment to the preservation of their trees and biodiversity.

7. Background

- 7.1** A Tree Preservation Order was made to protect and safeguard the mature Wellingtonia tree after a local resident made the Local Authority aware that the property had recently been sold.
- 7.2** The Council considers it expedient to make a TPO as the Council believed there was a risk that the tree may be felled as the intentions from the new owner of Ingleside were unknown. If the tree was removed there would be a significant adverse impact on the amenity of the area.
- 7.3** TPO Guidance states: 'Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership. Intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.'
- 7.4** The tree appears to be in good health visually with normal vitality and vigour for its age. The tree shows no signs of any significant defects that would create cause for concern. The tree has amenity value due to its positioning next to Dog Lane and is a prominent tree in the landscape.
- 7.5** The landowner and highways were notified of the making of the TPO and given the standard twenty-eight days to make any representations.
- 7.6** One objection was received and is summarised below together with the Tree Officer's response.

A summary of the objection is listed below:

| Objection | Summary of Objection | Councils Response |
|------------------|---|---|
| 1. | The tree is potentially dangerous on the grounds of height, low hanging branches and shallow roots. | A TPO application will have to be submitted to ensure that any works required follows good arboricultural practice and that the important tree remain balanced and healthy. Evidence will be required by an appropriate qualified person demonstrating that the tree is dangerous. |
| 2 | The tree is sited in a precarious position and leaning into the lane (right on a sharp bend on the lane). | If tree work is required in the interests of highway safety then it is exempt from obtaining consent from the Local Planning Authority. Whether or not the tree is protected by a TPO, the responsibility of the maintenance of the tree(s) remains with the tree owner. Highways was consulted as part of the TPO process and no concerns has been raised by them. |

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| 3 | The tree dispersing pines onto the lane causing slippery road conditions | <p>The legislation does not recognise these issues to be considered when assessing a tree for a TPO. Its public visual amenity value and impact on the wider setting within the AONB, Green Belt and contribution to the area are assessed.</p> <p>The Council is of the opinion that the fallen debris does not constitute an actionable nuisance.</p> |
| 4 | The tree is potentially causing unnecessary movement to the foundations of the house | <p>A nuisance is actionable where there is caused or there is an immediate risk of causing damage. This refers to the tree potentially causing unnecessary movement to the foundations of the house. The guidance states that the applicant should support claims that the foundations have been affected by providing technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.</p> |
| 5 | The objector also questions the grounds why the tree was not considered for a TPO in March 2022 when an enquiry was received at the Authority from the previous owner asking if there was a TPO or any restrictions at his property. | <p>There was no cause for concern as it was a general enquiry that the Local Planning department receives on a regular basis plus this information is publicly available online. The owner at the time also stated that he had no intention of removing any trees and he had lived there for over 45 years.</p> |
| 6 | The objector states that neighbours want the tree removed. | <p>The Local Authority has not received any complaints regarding the tree or any objection to the Tree Preservation Order from 3rd parties.</p> |

8. Conclusion

- 8.1** This order seeks to protect a Wellingtonia tree that is estimated to be over 100 years old and as it is an evergreen tree it offers visual public amenity all year within the landscape.
- 8.2** The applicant has submitted a planning application that does show that the tree will be retained. However, having a Tree Preservation Order will ensure that the tree will be a material consideration throughout the Planning process and have continued protection thereafter.

9. Recommendation

- 9.1** It is recommended that TPO 419 is confirmed without modification