



**Recommendation:- Confirm Tree Preservation Order**

The Copper Beech tree in question is of significant amenity value, currently structurally sound and under imminent threat, therefore it was appropriate to be made subject of a provisional TPO. As no overriding arboricultural reason has been given for the removal of the tree, the TPO should be confirmed.

**REPORT****1.0 THE PROPOSAL**

- 1.1 To make the decision whether or not to confirm, and therefore make permanent, the provisional Shropshire Council (Mill House Stanton upon Hine Heath) Tree Preservation Order 2015 (Ref SC/00228/15). The TPO relates to one tree – a mature Copper Beech standing in the grounds of Mill House.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The tree is located in the front / side garden of Mill House Stanton upon Hine Heath adjacent to the road leading to Moreton Corbett. The tree stands in a hedgerow on a raised bank beside an old driveway entrance fronting the lane opposite River cottage, some 0.5m from the road and 1m above it, and 0.7-1m above the said driveway, depending on the exact place of measurement. The tree stands to the South West of Mill house and due North of River cottage, though it is closer to River cottage.

**3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

- 3.1 The Officer recommendation is contrary to The Parish Council's the owners and a neighbour's objections to the Tree Preservation Order.

**4.0 Community Representations****4.1 Amenity**

- 1) The amenity of the tree is limited– it is only visible for a short period as you drive into the village and only visible from a few adjacent properties
- 2) The tree is growing out of context and causing a nuisance and outgrowing its position.
- 3) Beech don't respond to major crown reductions - significant pruning would result in the death of the tree
- 4) The crown of the tree is encroaching on an adjacent Dawn Redwood which is a rarer and more important specimen and the beech would need to be reduced by 5m to allow free growth of the Redwood – an excessive amount of pruning.
- 5) The tree has no educational value or benefit to local children

**Safety**

- 1) A tree surgeon's report prepared on behalf of the owners, states that the tree is fully mature and beginning to decline, citing tight joints which are potential weak junctions.
- 2) Future failure of the limbs must be considered possible, resulting in danger to the

highway and properties

3) If the tree grows to full potential it will double its current size

4) There are apparent contradictions in the Council's safety report which questions the degree of risk posed by the tight forks

5) Future growth will damage the road and increase the risk to road users

6) The road will need to be resurfaced in near future due to the effects of the roots

#### 4.3 Shading (Neighbour objection)

1) The tree canopy is close to the roof of River Cottage, causing risk of guttering blockages and lack of light requiring lights to be on at all times in the kitchen / diner.

#### 4.4 Other

1) The tree could be two trees together and thus the RPA should be 7m not 13.7m

2) The tree has limited longevity

3) Another smaller Beech tree in the owner's garden could be moved into a sensible position.

4) The neighbours are aggrieved that their concerns have not been considered with a report or specific site visit and are concerned that the TPO will make future management of the tree impossible.

#### 4.5 **Objection from the Parish Council**

"It is causing a detrimental effect on a rare tree (the Dawn Redwood), which we believe to be extremely rare in its native China and whilst there are specimens at Kew, it is certainly rare elsewhere in this country. (We do appreciate it is of course non-native & the Copper Beech is native.) We also felt that the tree's current size, proximity to the road & particularly proximity to River Cottage as well as Mill House would necessitate ongoing management & in all likelihood removal in the relatively near future. As it is not a rare tree or an unusual tree in the area the PC feel that this is reasonable & indeed inevitable."

### 5.0 **THE MAIN ISSUES**

- Whether the tree merits a TPO and it is expedient in the interests of amenity to make one.
- Whether the reasons cited within the objections are sufficient to preclude confirming the provisional TPO.

### 6.0 **OFFICER APPRAISAL** (response to objections)

#### 6.1 **Amenity**

6.1.1 The tree is clearly visible on a through road to the village from Morteon Corbett – a copy of the Council's TEMPO amenity assessment is attached (a scoring system to assess the suitability of a tree for protection under a TPO). By our assessment the tree scores 17 and as such "definitely merits a TPO".

6.1.2 The tree owner has submitted their own TEMPO assessment (also attached) which scores the tree as 7 i.e. "Does not merit a TPO". The difference in scores is chiefly related to the assessment of life span – rated by the Tree Officer as "20 – 40 years" and the owner as "less than 10". The latter category also includes "trees which are an existing or near future nuisance, clearly outgrowing their context or affecting better trees."

The rarity of the Dawn Redwood concerns the number of original trees in its natural

- range in China. It is not unusual to find it planted in parks and gardens in the UK and therefore this does not make the tree more important than the Beech.

- The Redwood has been partially growth suppressed on one side by the Beech which would become more apparent and unsightly should the Beech be removed and the nascent (dormant) foliage not regenerate. The rapidly increasing height of the Redwood will eventually outgrow the lower canopy spread of the Beech (see photo below) and the trees could continue to grow congruently together.

- Whilst the Beech tree is still actively growing, it is of mature age so future growth is likely to be relatively modest. It does not have the apically dominant form to make the 35m as feared by the owner. The adjacent Redwood, which is closer to the property, is only semi mature and could surpass this projected height and become much more imposing than the Beech. As Redwoods can achieve 40m in height the likelihood will be that this tree will be removed in the future, if height is an issue for the owners.

### **Safety**

- Shropshire Council had the tree inspected by one of its Arboricultural Officers Mr Blessington. He is a professional tree inspector whose primary role is to undertake tree safety survey's of Shropshire's highways and Council owned trees. He concluded that the tree has no heightened risk of failure, with no history of fracture or major limb loss. The crown structure, spreading with tight forks is quite common with the species and gives no cause for imminent concern. With regards to the longevity of the tree it is clear the tree is in good health and no evidence has been observed or submitted to demonstrate any decline and as such we anticipate a considerable life expectancy of 20 – 40 years as a conservative estimate. The tree if it lived to its average natural lifespan, could well survive for another 80 -100 years. (full report attached).

- The form of the tree could possibly be two early fused, stems however they have grown as one tree and therefore the calculated root protection area (RPA) is an appropriate measurement in accordance with BS 5837 2012.

- The tree has always grown adjacent to the road and its roots will have adapted for this and there is no evidence of damage to the highway or current issues of road resurfacing. In any event street trees are accommodated in such works to avoid damage to the trees or the surfacing.

### **Shading**

- With regard to the neighbouring property the Beech tree is both north of, and on the gable side of the property, affecting 2 small downstairs windows (see photo 3) so the tree will not unduly shade the house or garden. No evidence of any damage to the property has been submitted and therefore the tree cannot be considered a nuisance in the legal sense. An application to prune back any encroaching branches can be readily made if required – the TPO does not prevent acceptable work.

### **Other considerations**

- Whilst not rare or unusual its size and age is significant as demonstrated in the aerial shot attached (photo 1) which shows the crown spread of the tree. It is considered a significant gateway tree to the village of significant amenity value.

## **7.0 CONCLUSION**

The tree is clearly visible on a through road to the village from Morteon Corbett. The owners claim that the tree has limited amenity value and is out of context is refuted by the Council. The Council's – TEMPO (Tree Evaluation Method for Preservation Orders) amenity assessment shows the tree clearly merits protection.

The tree is of high amenity, structurally sound and under imminent threat of removal. No valid arboricultural reason has been given for the removal of the tree, therefore it was appropriate to be made subject to a provisional TPO which should now be confirmed.

## **8.0 Risk Assessment and Opportunities Appraisal**

### **8.1 Risk Management**

The principal risk associated with this recommendation is as follows: the decision to confirm the TPO may be challenged by an 'aggrieved person' by application to the High Court, if they believe that i) the Order is not within the powers of the Town & Country Planning Act 1990, or that ii) the requirements of the 1990 Act or the Town & Country Planning (Tree Preservation) (England) Regulations 2012 have not been met. The 'aggrieved person' must apply to the High Court within six weeks from the date of confirmation of the TPO. To be 'aggrieved' applicants should be able to show that they have a sufficiently direct interest in the matter. Failure by the authority to comply with the requirements of the Act or Regulations may not be sufficient for the Court to quash the TPO; the Court should also be satisfied that the interests of the applicant have been 'substantially prejudiced' as a result.

### **8.2 Human Rights**

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

### **8.3 Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

## **9.0 Financial Implications**

There are likely financial implications of the decision and/or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. The financial implications of any decision are not a material planning consideration and should not be "weighed" in planning committee members' mind when reaching a decision.

## **10. BACKGROUND**

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Tree Evaluation Method for Preservation Order (TEMPO) - Councils  
Tree Evaluation Method for Preservation Order (TEMPO) - Owners  
Tree survey – Ken Benbow Tree Surgeon  
Tree Safety Survey (John Blessington, Arboricultural Officer, Shropshire Council)  
Letters of objection

Cabinet Member (Portfolio Holder)  
Cllr Mal Price

Local Member  
Cllr Karen Calder

Appendices – Photos 1-3  
APPENDIX 1 - Photos



Crown of Beech in top left corner.





**Copper Beech to left Dawn Redwood to the right**



**Gable of River Cottage and proximity of tree**