

Recommendation Report for Works to Tree(s) on trees subject to a Tree Preservation Order (TPO)

REF NO: WA/25/26/T

LOCATION: Myrtle Cottage
The Street
Walberton
BN18 0PJ

PROPOSAL: Fell 1 No. Corsican Pine (Pinus Nigra) (T1).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above.
TREES	The tree is located at Myrtle Cottage, The Street, Walberton.
SITE CHARACTERISTICS	Dwelling.
CHARACTER OF LOCALITY	Residential.

No relevant planning history.

REPRESENTATIONS

Walberton Parish Council- No response.

1 letter of support from nearby occupiers

- Strong support for the application due to safety concerns.
- The pine tree poses a serious risk to their house and occupants if it or its branches fall, and recent cracking in a nearby repaired wall suggests significant movement.

1 letter of objection from nearby occupiers

- The tree is healthy and not at fault.
- The wall issues stem from poor repairs and can be resolved by rebuilding with appropriate materials and reinforcement without removing the tree.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

TREE OFFICER

T1 is a tall, large and prominent tree, highly visible from the main village through road and surrounding properties. It appears to be in a fair physiological state and stable, displaying moderate crown density and localised dieback. Remaining safe and useful life expectancy is less than 20 years.

The wall is a recognised heritage feature and has to function as both a garden retaining wall and

boundary feature.

The applicant has employed Sloane and Brown Ltd. as agent, who have submitted a tree report of their own. It focuses on the state of the affected wall and directly implicates the tree in the damage event, proposing tree removal as the only option. The heritage section (brick and flint) of the boundary wall is largely affected, with pronounced damage adjacent the tree. The application form describes the high garden level (<300mm from top of wall) to be a contributory factor in the damage event.

It seems the priority now is to remove the risk of harm to highway users from the collapse of the wall. This could be achieved without destabilising the tree. Reconstruction would need to occur shortly after, as a reduction in soil cohesion following erosion around the tree's stem base and root-plate could be problematic. The wall itself is unlikely to be providing much direct support (if any) to the tree.

The true boundary line from which the newly built section of wall will be erected, is likely to demand some excavation into the exposed ground, further reducing capacity for accommodation of root growth with any new structure and potentially incurring damage to structurally important roots. Such a situation would be intolerable in terms of risk management.

After much consideration, it is my settled view that an engineered solution permitting tree retention and satisfying the requirements of highway authority and heritage asset and conservation management is not available.

Conclusions:

T1 is a major contributory factor in damage to a heritage feature although not exclusively so.

The tree is a significant feature in the local landscape and appears to be in adequately sound and healthy condition. It is pre-dated by the affected boundary wall, a recognised heritage asset in the conservation area and which takes precedence in what is an unfortunate conflict of interest.

The tree must be removed to facilitate an effective and satisfactory reconstruction of the wall.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Tree Preservation Order.
Conservation Area.
Listed Building.

DEVELOPMENT PLAN POLICIES

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The above policies are general and, other than online Planning Policy Guidance under references ID 36-090-20140306, ID 36-091-20140306 and ID 36-093-20140306 are not specific to trees.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 198 of the Town and Country Planning Act 1990 states:

"If it appears to a Local Planning authority that it is expedient in the interest of amenity to make provision for the preservation of trees.... they may for that purpose make an order".

The works to the trees are to be judged having regard to amenity.

OTHER MATERIAL CONSIDERATIONS

There are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

Following the comments from the tree officer, it is recommended consent be approved, subject to the following condition and informatives.

Special attention has been given to the desirability of preserving or enhancing the character or appearance of the conservation area. This proposal would preserve the character and appearance of the conservation area.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 Once the tree has been felled then a replacement tree is to be planted nearby and to within ten metres, free from the interference of established and developing tree canopy so that it may

develop an upright and uniform crown towards maturity.

This is to be of Selected Standard Nursery Stock proportions (10-12cm girth & 2m to 3m overall height) supported on a 'short stake' system with appropriate securing ties and pads.

It is to be planted within 12 months of the removal of the Monterey pine tree.

The species shall be selected from the following:-

Hornbeam *Carpinus betulus*
Hop hornbeam *Ostrya carpinifolia*
Field maple *Acer campestre*
Wild Service *Sorbus torminalis*

The selected tree(s) must be viable for long-term retention in the landscape after a period of five years from the date of this decision notice. Any tree dead, dying or considered unviable for long-term retention by the council's tree officer, will need to be replaced to the satisfaction of the local planning authority within 12 months of that determination.

Reasons: To accord with current industry guidelines and sound arboricultural practice in general.

- 2 INFORMATIVE: As per section 17, paragraph 4 (a) and (b) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, this consent is only valid for 2 years and may only be carried out once.
- 3 INFORMATIVE: The applicant should note that under Part 1 of the Wildlife and Countryside Act 1981 (as amended), with only a few exceptions, it is an offence for any person to intentionally take, damage or destroy the nest of any wild birds while the nest is in use or being built. Birds nest between March and September and therefore removal of dense bushes, ivy or trees or parts of trees etc. during this period could lead to an offence under the act.
- 4 INFORMATIVE: This notice does not give authority to destroy or damage a bat roost or disturb a bat. Bat species are protected under Section 39 of the 1994 Conservation (Natural Habitats etc) Regulations (as amended), the 1981 Wildlife and Countryside Act (as amended) and the 2000 Countryside and Rights of Way Act. It is illegal to damage or destroy any bat roost, whether occupied or not, or disturb or harm a bat. If you are aware that bats roost in a tree(s) for which work is planned, you should take further advice from Natural England (via the Bat Conservation Trust on 0345 1300228) or an ecological consultant before you start. If bats are discovered during the work, you must stop immediately and contact Natural England before continuing.