

Council email to Forum responding to letter of 4 February detailing the result of their investigations

Sent: 12 February 2021 11:45

Subject: Recent tree works on land at 'Lansdowne', Warwick Road, Knowle.

I refer to your letter of 4th February 2021 and related email correspondence with Gary Palmer regarding the above matter, and I am pleased to be able to inform you that the matter has now been fully investigated.

An email enquiry and 5-day notice under the relevant legislation was first submitted to the Council by a tree surgeon acting on behalf of the land owner as long ago as December 2019. Some dead trees had been identified which, it was agreed, could lawfully be felled without delay under the relevant legislation, but other proposed works were less clear-cut. Following some exchange of emails, an application for works to TPO trees was eventually submitted to the Council in January 2020. The application was never validated because it included trees which were not subject to the TPO and a request to resubmit with those trees excluded was never actioned by the applicant. As a result, it was eventually returned.

On 24th November 2020 two new 5-day notices were received by email. The first was a retrospective notification that a dangerous tree had just been removed as a matter of urgency – the root plate had lifted and the tree was leaning towards Warwick Road. A photograph was provided to confirm this. The second related to the proposed removal of several trees which had been identified as dead or dangerous – just 3 of which were protected, being located within Group G2 of the TPO – all identified as dead and adjoining Warwick Road.

The emails were solely expressed as notifications and did not specifically request a response. Either way, in the absence of any negative response from the local planning authority, as in this case, such works can lawfully proceed after 5 days. There is no statutory time limit on how quickly such works should then be completed and in this case, whilst no response had been specifically requested, it seems the tree surgeon and/or his client had been waiting for one, before eventually deciding to proceed with the specified works without further delay.

Before doing so however, they did contact the relevant Tree Officer of the Council, to notify him of their intentions, and agreed to take a photographic record of the trees to be removed, for the record. The works then duly proceeded.

To clarify, there is no formal or statutory process relating to the checking and verification of works proposed under the 5-day notice procedure. It is, by design and necessity, a speedy and flexible tool to enable essential works to be carried out without undue delay, and each must be considered on its own individual merits. In some cases, it is considered to be necessary to query the proposal and/or seek further evidence, and this is sometimes done to check the veracity of a notification – most often when it comes from a private householder, but in this case the notification came from a tree surgeon, who had personally certified the 3 TPO trees in question to be both dead and dangerous, and in such circumstances I'm sure you will appreciate that the Council has a 'duty of care' obligation to err on the side of caution where safety may be at risk, especially when the trees in question adjoin a busy public highway. In this case therefore, the notice was accepted. I am also mindful in this case that a detailed arboricultural survey by a qualified arboriculturalist had previously been produced which had identified a number of trees on the land as being in a condition which would necessitate their removal, including 3 on the Warwick Road frontage.

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It is important to be mindful that a group of trees covered by a TPO is protected for its collective group value, and it is not unusual for such a group to contain one or more trees which, if assessed individually, would not merit such protection on their own, due to their condition and/or other physical criteria. It seems probable that this was such a case and that the trees in question had actually been dead for a long time. This is supported by Google Streetview images on which at least 2 of the trees can be seen to have no foliage or crown at all.

Turning to the recent works, a site inspection has now been conducted by both the investigating officer and tree officer, and the tree surgeon also attended and made himself available to answer questions and clarify the facts of the matter. This found that a total of 5 trees had been removed - two non-TPO Ash trees near to trees T20 and T21 towards the southern edge of the site, one tree next to G5 (towards the northern edge of the site) which had uprooted and was leaning (this was the one removed in November 2020), and 3 trees (one Horse Chestnut and two Pines) along the Warwick Road frontage which came within Group G2 of the TPO. Photographic evidence has also been provided by the tree surgeon, as promised. All of the available evidence leads to the conclusion that the trees which were removed were indeed those to which the 5-day notice applied, and there is no firm evidence to suggest that their condition was anything other than as described. In these circumstances it would appear that the proper procedure was followed, and there is no evidence of any alleged offence. The relevant Tree Officer has reviewed the matter and assessed the physical evidence on site and concurs with these findings, advising that the photographs show that the Horse Chestnut and one of the Pines were either dead standing or near dead, and the remains of the third tree still on site at the time of the visit consisted of extensive deadwood, strongly indicating that the same applied to that one also. Whilst none of the 3 cut stumps had wood decay evident on the cut surfaces, the relevant statutory exemption is not limited to the removal of trees with a basal fungal infection, and any dead standing or seriously moribund tree would potentially fit the remit. Having regard to all of the above, it is clear that any potential prosecution case would not meet the evidential test and the case must therefore now be closed.

Turning to the 3 requests at the end of your letter, I would respond as follows :

- With regard to your request for a new TPO on the whole of the Arden Triangle site I would note that circumstances haven't materially changed (in relation to other parcels of land) since a similar request was made. You may recall when the order was originally made it was noted: "The Council's approach to exercising its TPO powers is to consider the expediency of making orders in respect of trees that are of amenity value. The approach to expediency is to consider what level of threat trees may be under and to exercise powers to make an order where there is a real (rather than theoretical) threat to trees. In this instance it was considered expedient to make an order on the parts of the sites included due to the threat level that was evident. The orders were not made on the other parcels of land (which are under different ownership/control) as the same level of threat was not evident. If however circumstances in this respect were to change, then the Council would review the situation in light of such changes."*

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- *Whilst your interest and offer of assistance is appreciated, there would be no statutory basis for any such arrangement and I think it would be fraught with potential practical difficulties. The responsibility for dealing with 5-day notices rests squarely with the local planning authority who must do so objectively and with the professional input solely of relevant officers where necessary. The 5-day response time is very challenging and leaves no realistic opportunity for any third-party involvement, even if such were to be considered practicable and appropriate, which I doubt it would be, having regard to all material considerations and the relevant administrative processes involved.*
- *The only definitive, legal record of which trees are covered by a TPO is the Order itself (specifically the integral map and schedule) all of which are already publicly available to view via the Public Access tool in the planning pages of the Council's web site. The Council does have a digital map layer showing the locations of TPOs, but this is solely for its own internal use as an information tool to assist officers in dealing with enquiries and carrying out research – it could not be guaranteed to be sufficiently complete or precise to release publicly, and I suspect there could be potential legal implications in doing so. Similar requests by some parish councils have been respectfully declined in the past for the same reasons. We do however recognise that it would be of benefit to review all the planning related information held on GIS to see how this could be made more publicly available, and it is hoped that such a review will be undertaken when other priorities permit.*

Your interest in this topic is appreciated and I hope that the above helps to clarify the matter and satisfactorily addresses your concerns.