

Tree Officer
Cotswold District Council
Council Offices,
Trinity Road
Cirencester
GL7 1PX

26 July 2022

Our Reference: 15598 / 68259

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Stephen Cullis, Managing Director

Ken Sheppard, Senior Arboricultural Consultant
MICFor FArborA Dip Arb (RFS) Tech Cert (Arbor A) CUEW

Dear Sir/ Madam

**RE: Objection to Cotswold District Council Tree Preservation Order TPO
No. 22/00005/IND Waterfront Tea Room, Victoria Street, Bourton on the Water
Gloucestershire, 2022**

I have been instructed Mrs H Kemp landlord of the Waterfront Tea Room, Victoria Street, Bourton on the Water to provide an objection to the above Tree Preservation Order in accordance with regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

It is recognised that the objection has been provided after the deadline of 19th July stated in the notification letter dated 21st June 2022, but it has been agreed with the Tree Officer Justin Hobbs that the objection will be considered prior to the determination of the confirmation of the Order.

The objection is in relation to the serving of a tree preservation order on the early mature American Walnut located on the eastern boundary of the property.

I attended site on 21st July 2022, met with tenant of the restaurant and tea rooms and carried out a unaccompanied site inspection. At the time, the tenant indicated that the floor of the tearoom required repair as it is being pushed up however, she confirmed that no investigations into the cause of the damage had been undertaken to confirm if tree roots are responsible.

Setting

The Tea Room is adjacent to, and has a shared boundary and front garden/ serving area with, the Rose Tree Restaurant, a Grade II listed building (List No. 1088714). The continuous boundary consists of a low stone wall surmounted by iron hoop top railings with a pedestrian access to the north and matching pedestrian gate to the southeast (photograph 1)

The area to the front of the tea room and restaurant is paved with pennant stones and has a raised seating area and low retaining wall around the base of the tree. The paving and boundary feature is in keeping with the Conservation Area and setting of the listed building.

The 1.8-metre-wide, tarmac public footpath is located directly adjacent to the front boundary beyond which is a narrow 1.3-metre-wide grass verge and stone retained river bank of the River Windrush. The high use footpath is mainly level with service scars to the southeast of the tree and evidence of recent historic patching along the footpath edge (photograph 2).

The Walnut (Blue outline photograph 3), although one of the larger trees in this area, is only one of a number of trees along the river corridor which includes a council-owned, developing semi mature Lime (Red outline photograph 3) around 3 metres to the southeast (photograph 3).

The Tree

The tree is an early mature Black Walnut (*Juglans nigra*). It is around 18 metres in height with an average crown radius of 9 metres. It is somewhat restricted on the southeast side by the neighbouring Lime but otherwise broad and spreading and overhanging the roof of the adjacent tearoom. The crown contains minor deadwood which is normal for a developing tree.

The trunk is upright, dividing into main scaffold limbs at around three and a half metres. There is a girdling root at the base on the east side.

The tree is of good structural and physiological condition with considerable potential for future growth. Mitchell's *Trees of Britain and Northern Europe* suggests that the tree is capable of doubling in size and this species can attain a height of 30-36 metres under UK conditions.

Current Damage

The tree has displaced the stone boundary wall by around 150mm into the public footpath and is starting to displace the railings which have already been broken and are now held together with a temporary repair (photograph 4).

Around a one-third of the width of the, mainly flat, footpath surface has been displaced upwards by as much as 200-300mm, immediately adjacent to the tree, tapering down towards the centre of the footpath. In addition, there are radiating cracks extending across the remainder of the path surface. This damage is on-going and has been repaired in the recent past, but the path continues to be displaced (photographs 5 and 6).

The internal raised seating area's retaining wall has been pushed substantially upward and out to the south. Paving within the seating area is being displaced, creating a trip hazard and limiting the use of the area (photograph 7).

The gate pillar for the pedestrian access gate to the south of the tree has been displaced and no longer closes (photograph 8). Paving across the pedestrian access for the raised seating area has been displaced and can no longer be used safely due to the trip hazard caused. Increasing levels either of the footpath or paving to limit damage would be difficult to achieve and likely to create further trip hazards or limit access from the public footpath.

Reasons for Objection

The tree, due to its position directly adjacent to the boundary, is causing direct damage to the stone boundary wall, railings and internal paving, and cracking and displacement of the public footpath external to the site.

Due to the tree's size, vitality and potential for future growth, it is possible that the tree could be implicated in the internal damage to the tearoom floor once investigations and repair works are carried out.

The tree has considerable potential for future growth and therefore any repairs can only be temporary, with further and ongoing damage occurring as the tree continues too rapidly mature. If solutions to retain the tree were to be considered for paving, boundary and retaining walls they will need to be engineered designed to prevent future displacement and require specialist building services beyond that associated with normal building maintenance. This could result in claims for compensation to Cotswold District Council if consent for removal is refused and additional expense is incurred for works.

Works to the footpath will remain the Local Authorities responsibility but is likely to be difficult to resolve without impacting on the general flat level nature of the river riverside path even then ongoing growth is likely to result in repeated repair costs and periods of increased risk of litigation as a result of increasingly deforming surface.

The landlord and the tenants of the restaurant and tearoom have a general duty of care and duties under the Health and Safety at Work Act 1974 to ensure their property is reasonably safe and does not pose an unacceptable hazard to staff, visitors, patrons or neighbours (users of the public footpath). Currently it is impossible to adequately repair the displaced structures and surfaces with the tree remaining.

The Council has already recognised that the public footpath is a trip hazard, installing temporary pedestrian barriers around the worst of the displacement. This is only partially successful, as several people complained to me during my site survey that they had stumbled over the localised uneven surface. In addition, the barrier substantially narrows the effective footpath width and would be unreasonable to retain in the long term.

The tenants are concerned that claims could arise from personal injury due to tripping accidents on their property or as a result of trespass of roots onto the local authority land resulting in unnecessary increased future insurance costs.

In order to minimize the risks mentioned above, the closing off of seating areas to the front of the tearoom and restaurant has already been implemented and will need to be extended in the future. This would result in fewer tables being available and a reduction in revenue. Closing off internal areas would in no way reduce displacement of the adjacent footpath which will continue to be an increasing hazard.

Conclusion

Although the tree has significant amenity value, its size, restricted growing environment and potential for future growth will continue to cause ongoing damage and create unacceptable liability for the owner and/or occupiers of the Tea Room and restaurant.

The boundary, footpath and paving cannot be permanently repaired, and any works undertaken with the tree retained will be only temporary, resulting in ongoing and unreasonable costs.

The short-term loss of visual amenity would be regrettable; however, this is somewhat mitigated by the presence of the adjacent semi-mature Lime which is currently suppressed by the Walnut but could be allowed to reach its full potential by the removal of the Walnut.

For the above reasons, I am of the opinion that the tree is causing and will continue to cause unacceptable damage to the building fabric and public footpath and the council should not confirm the Order in this instance.

Please confirm receipt of the objection and that the comments will be considered prior to any confirmation decision. If you have any queries, please do not hesitate to contact me on 07817 262569.

Yours sincerely

Signed:

A black rectangular box redacting the signature of Ken Sheppard.

Ken Sheppard, MICFor, FArborA, Dip Arb (RFS), Tech Cert (ArborA), CUEW.

Senior Arboricultural Consultant

Encs: 15998_68259 Appendix 1. Site Photographs.

15598 / 68259 Appendix 1. Site Photographs Waterfront Tea Room, Victoria Street, Bourton on the Water, Gloucestershire.

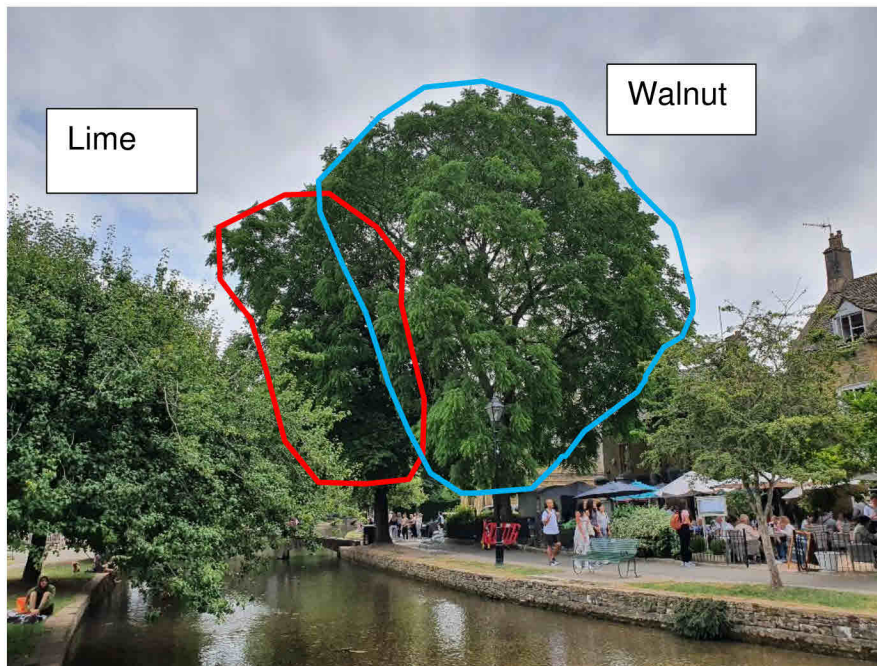
Photograph 1. Front Boundary



Photograph 2. Footpath (with service scar) and verge



Photograph 3 Walnut and Lime



Photograph 4. Boundary displaced into footpath



Photograph 5 and 6. Vertical displacement of footpath and developing radial cracks



Photograph 7. Displacement of internal retaining wall and paving.



Photograph 8. Displaced pedestrian gate access

