

Planning Committee

Tree Preservation Order 03/2011 - Sycamore tree at 31 West Street, Banbury

16 June 2011

Report of Strategic Director Planning, Housing & Economy

PURPOSE OF REPORT

To seek the confirmation Tree Preservation Order no 03-11 with one objection relating to a Sycamore tree at the site of 31 West Street, Banbury, OX16 3HA (copy plan attached as Annex 1)

This report is public

Recommendations

- (1) It is recommended that Tree Preservation Order 03-11 at the site of 31 West Street, Banbury be confirmed without modification in the interest of public amenity.

Summary

Introduction

- 1.1 The District Council made an emergency TPO 21st February 2011 following a site visit to assess a section 211 (Town and Country Planning Act 1990) notification to undertake tree works to the tree which lies within the Banbury conservation area.
- 1.2 The tree is a Sycamore tree in the early stages of maturity (a tree which has reached the typical shape and habit of the species and is within the first/second third of its expected life).
- 1.3 Guidance in determining the suitability of a tree for a TPO is provided by the TEMPO method (Tree Evaluation Method for Preservation Orders). This has been undertaken and the results included in this document as appendix 2.
- 1.4 The tree is in a prominent position situated to the rear of the rear garden of 31 West Street clearly visible from Brunswick Place providing a significant contribution to the local amenity. Large trees have recently been removed from the verge to the rear of 11 – 43 West Street as part of the Brunswick Place development leaving the trees in the rear gardens softening the rear aspect West Street as well as wildlife and environmental benefits to the local area. One letter objecting to the

TPO has been received from:

- i. Mr Ansar Aslam, 31 West Street, Banbury, OX16 3HA.

The objections and due consideration are as follows:

- a. Concerns that the tree is displacing the garden wall with the potential for further damage and the risk of wall collapsing.

CDC It is noted that due to the proximity of the tree to the adjacent wall that a risk of damage to the wall is present as the tree increases in size. This is generally considered minor damage and engineering solutions can generally be found e.g. bridging roots to allow for an increase in girth without displacing the stones or bricks in the wall.

- b. Concerns about overhanging branches falling and hitting the appellants' children.

CDC It is normal for trees to contain an amount of dead wood. This is exempt from the application process and can be removed in a controlled manner without affecting the overall visual amenity of the tree.

- c. The tree has low hanging branches causing direct damage to the garden shed and children's play equipment in addition to roosting birds causing further mess.

The appellant also wishes to construct a garage with rear access which is hindered by low hanging branches.

CDC The presence of a TPO does not prevent management, including works carried out to prevent damage. Necessary works can still be carried out and simply requires an application to the local planning authority. If the works are reasonable and necessary consent will be granted. If there are concerns about the safety of the tree then the TPO makes allowance for this under exemptions to the TPO (section 5)

When building close to trees engineering solutions are available to allow for construction whilst keeping any damage to the tree to a minimum. These are normally addressed following a planning application.

The human rights of the objectors and others affected by the decision, i.e. Article 1 of the first protocol – right to peaceful enjoyment of possessions and Article 8 protection of the right to respect ones private and family life, home and correspondence, were taken into consideration by the amenity value checklist (TEMPO assessment) completed when the Tree Preservation Order was made. To confirm the Order does not place a disproportionate burden on the owner, who retains the right to make applications for works to the tree.

Conclusion

- 1.5 All the issues raised by the objector can be addressed through the normal application process. Therefore it is recommended that the Committee confirm Tree Preservation Order 03-11 without modification.

Background Information

- 2.1 Statutory powers are provided through :
- ii. Section 198 Town and Country Planning Act 1990.
 - iii. Town and Country Planning (Trees) Regulations 1999
- 2.2 The Scheme of Reference and Delegation authorises the Head of Development Control and Major Developments to make Tree Preservation Orders under the provisions of Section 201 of the Town and Country Planning Act 1990, subject to there being reason to believe that the tree in question is under imminent threat and that its retention is expedient in the interests of amenity. The power to confirm Tree Preservation Orders remains with the Planning Committee.
- 2.3 The above mentioned Tree Preservation Order was authorised by the Strategic Director Planning, Housing and Economy and made on 9 April 2009. The statutory objection period has now expired and one objection was received to the Order.

Key Issues for Consideration/Reasons for Decision and Options

None

Implications

- Financial:** The cost of processing the Order can be contained within existing estimates.
Comments checked by Joanne Kaye, Service Accountant PH & E 01295 221552
- Legal:** The Committee should confirm the Order if it is expedient in the interests of amenity to preserve the tree. The property owner has not produced an expert's report to support his objections.
Comments checked by Ross Chambers, Solicitor, 01295 221690
- Risk Management:** The existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such a tree is structurally sound and poses no

danger to passers by and/or adjacent property. The TPO legislation does contain provisions relating to payment of compensation by the Local Planning Authority in certain circumstances, but these relate to refusal of applications to carry out works under the Order and no compensation is payable for loss or damage occurring before an application is made.

Comments checked by Claire Taylor, Community & Corporate Planning Manager 01295 221566

Wards Affected

Banbury Grimsbury & Castle

Document Information

Appendix No	Title
Appendix 1	Plan
Appendix 2	Photographs
Appendix 3	TEMPO assessment guidance notes
Appendix 4	Objection Letter
Background Papers	
TPO file reference 03-11	
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