

# Planning Committee

## Tree Preservation Order (no. 02/2011) Yew Tree at Holy Trinity Church, Shenington

3 November 2011

### Report of Director 3

#### PURPOSE OF REPORT

To seek the confirmation Tree Preservation Order no 02-11 with one objection relating to a Yew tree at Holy Trinity Church, Shenington (copy plan attached at appendix 1)

This report is public

#### Recommendations

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The Planning Committee is recommended to:

- (1) Confirm Tree Preservation Order (02/2011) at the site of Holy Trinity Church, Shenington without modification in the interest of public amenity.

#### Summary

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##### Introduction

- i. The District Council made an emergency Tree Preservation Order on 9 February 2011 following a site visit to assess a section 211 (Town and Country Planning Act 1990) notification to undertake tree works to trees (no.11/0004/TCA) within the Alkerton and Shenington conservation area. Two other trees within this notification have not been protected as they provided only limited local amenity,
- ii. The tree to be protected is a mature Yew tree situated in the Trinity Church grounds in close proximity to the boundary wall between the church and The Old School

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.

It is in a prominent position situated to the front of The Old School on a raised area within the adjacent churchyard clearly visible from the street through Shenington. It provides a significant contribution to the local amenity and adds to the character of the churchyard.

One letter objecting to the TPO has been received from:

- i. Mr Keith Hainsworth, Mill House, Street Through Shenington, Shenington Oxfordshire, OX16 3HA.

The objections and due consideration are as follows:

- a. The tree already has protection being situated within a conservation area and is not a “threatened” tree apart from requiring the occasional pruning as do other trees within the churchyard.

CDC The council requires notification prior to works on trees within conservation areas. Where the works are considered inappropriate with regard to tree health, will have a negative impact on the local landscape and are worthy of protection, the only way the works can be stopped is to install a Preservation Order.

The section 211 notification (notification of works) was considered sufficient threat to protect the tree to maintain its contribution on the local landscape and the character of the churchyard.

- b. Other trees within the village are considered better in the opinion of the objector and these are not protected so why is it necessary to protect this individual?

CDC As a.

- e. Feels that the installation of a TPO will burden the Parish Council unnecessary administration.

CDC The Parish Council do not administer Preservation Orders and therefore will not be burdened by additional works. They are invited to comment on applications to carry out works to protected trees in the same way as section 211 notifications. There is no cost to applicant or the Parish Council to apply to carry out works to protected trees.

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. The issues raised by the objector have been addressed and it is recommended that the Committee confirm Tree Preservation Order 02-11 without modification.

## **Background Information**

1. Statutory powers are provided through :
  - i. Section 198 Town and Country Planning Act 1990.
  - ii. Town and Country Planning (Trees) Regulations 1999
2. The Scheme of Reference and Delegation authorises the Strategic Director Planning, Housing and Economy and 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.
3. The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments 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**

The following options have been identified. The approach in the recommendations is believed to be the best way forward

<b>Option One</b>	To confirm the Tree Preservation Order
<b>Option Two</b>	Not to confirm the Tree Preservation Order

## **Implications**

**Financial:** The cost of processing the Order can be contained within existing estimates.

Comments checked by Karen Muir, Corporate Systems Accountant, Karen.muir@cherwell-dc.gov.uk 01295 221559

**Legal:** The Council has the power under s198 Town and Country Planning Act 1990 to make a tree preservation order if it appears expedient in the interests of amenity. The committee must consider any objections and representations duly made.

Comments checked by Ross Chambers, Solicitor,  
ross.chambers@cherwell-dc.gov.uk 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, Corporate Performance Manager,  
claire.taylor@cherwellandsouthnorthants-dc.gov.uk  
0300 0030113

**Wards Affected**

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Wroxton

**Document Information**

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<b>Appendix No</b>	<b>Title</b>
Appendix 1	Plan
Appendix 2	TEMPO assessment
Appendix 3	TEMPO assessment guidance notes
<b>Background Papers</b>	
TPO file reference 02-11	
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