

Planning Committee

Tree Preservation Order (no. 10/2011) Apple tree at Plemont, School Lane, North Newington, Banbury

3 November 2011

Report of Director 3

PURPOSE OF REPORT

To seek the confirmation Tree Preservation Order no 10-11 with one objection relating to an Apple tree at Plemont, School Lane, North Newington, Banbury, Oxon, OX15 6AQ (copy plan attached as Annex 1)

This report is public

Recommendations

The Planning Committee is recommended to:

- (1) Confirm Tree Preservation Order 10-11 at the site of Holy Plemont, School Lane, North Newington be confirmed without modification in the interest of public amenity.

Summary

Introduction

- 1.1 The District Council made an emergency TPO on 13 July 2011 following an assessment of the tree prompted by a request by a local resident.
- 1.2 The tree to be protected is a mature Apple tree situated within the rear garden of Plemont in close proximity to the boundary fence separating Plemont and Appledale.

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.

The tree is visible from School Lane through a gap between the houses and from the rear of the houses abutting the site on Park Lane. One letter objecting to the TPO has been received from:

- i. Mr M E Howarth, Appledale, North Newington, Banbury,

Oxfordshire, OX15 6AQ.

The objections and due consideration are as follows:

- a. The tree was originally part of an orchard and was pruned accordingly. A preservation order will reduce the amount of pruning undertaken on the tree.

Because the tree used to be part of an orchard and pruned accordingly it is no longer in keeping with its historical purpose.

The tree has been pruned in the recent past which resulted in vigorous regrowth

CDC The assessment of the tree with regard to its suitability for protection is primarily taken on its own merits although historical significance is also considered. Because the tree was historically part of an Orchard provides further support for the installation of a Preservation Order to retain one of the last remainders of the areas previous use.

A Preservation Order does not preclude the possibility of subsequent works. An application for works can be submitted and will be considered on its own merits.

- b. The tree provides limited amenity to the local area

CDC Although the view of the tree is limited from the public highway it can be seen from neighbouring properties along School Lane as well as properties situated to the rear along Park Lane.

- e. The tree will continue to grow if unchecked and block out all the light

CDC A shade prediction plan has been provided as appendix 4 showing the direction and extent of shade cast by the tree between the hours of 07.00 and 16.00 on 17th July.

Although the objectors garden is partially shaded from 07.00 until 13.00 hrs this extent of the area shaded is limited and doesn't interfere with the overall enjoyment of the garden.

- f. There is a safety risk of apples falling from the tree as they are too high to collect

CDC The amount of fruit produced varies from year to year and last approximately 2 – 4 weeks. The objector is aware that apples will be falling from the tree during the end of the summer into early autumn and it is reasonable to assume that he will not spend extended periods beneath the tree.

- g. That the request for the protection of the trees relates to some ulterior motive.

CDC The assessment of the tree with regard to its suitability for protection is taken on its own merits with regard to its contribution to the local area and its historical and conservation

significance.

- h. If allowed to grow the tree will be more susceptible to damage by strong winds. The tree has been pruned in the recent past which resulted in vigorous regrowth

CDC Should any evidence be provided that the tree has become unsafe, either as part of an application or notification of the removal of a dangerous tree this will be investigated and taken into consideration when consent or refusal is given.

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 10-11 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 Head of Development Control and Major Developments and/or nominated officer 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 delegated officer and made on 29 September 2011. 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

Option One To confirm the Tree Preservation Order

Option Two 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

Sibford

Document Information

Appendix No	Title
Appendix 1	Plan
Appendix 2	TEMPO assessment
Appendix 3	TEMPO assessment guidance notes

Appendix 4	Shade Prediction
Background Papers	
TPO file reference 02-11	
Report Author	Mark Harrison, Arboricultural Officer - North
Contact Information	01295 221804 mark.harrison@Cherwell-dc.gov.uk