

CHERWELL DISTRICT COUNCIL

PLANNING COMMITTEE

11 DECEMBER 2008

REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

TREE PRESERVATION ORDER (NO 03) 2008  
'APPLEGATE', EAST END, HOOK NORTON, OXFORDSHIRE, OX15 5LH

**1 Introduction and Purpose of Report**

- 1.1 The purpose of this report is to advise Members of an objection received to the above-mentioned Tree Preservation Order (TPO) and to seek approval to confirm the Order.

**2 Wards Affected**

- 2.1 Hook Norton.

**3 Effect on Policy**

- 3.1 Nil.

**4 Contact Officer(s)**

- 4.1 Jon Brewin (extension 1708).

**5 Background**

- 5.1 The Order relates to a silver birch tree located at 'Applegate', East End, Hook Norton (see plan attached at **Annex 1**). It was made on 9<sup>th</sup> October 2008 following submission of a Conservation Area Notification (a Section 211 Notice), reference 08/01995/TCA, advising the Council of their intent to fell 1 No silver birch tree. In order to prevent the removal of the silver birch, the Council had to serve Tree Preservation Order (No. 03) 2008.

**6 Grounds of Objection and Support**

- 6.1 A letter of objection has been received regarding this TPO from Mr J.B. Hamilton the current owner and resident of 'Applegate'. A copy of the letter has been included at **Annex 2** of this report. The letter received has been summarised below:

- 6.1.1 Letter from Mr J.B. Hamilton
- Two trees, very close to the tree in question were felled last. The tree in question is now exposed to prevailing winds.
  - Silver birch have shallow roots, leaving it more vulnerable to falling over in the direction of a neighbours property.
  - The tree is in the second half of its lifespan and therefore now would be an appropriate time to undertake replacement planting.

- There are concerns regarding the presence of Honey fungus in close proximity to the tree in question. One maple tree located in close proximity to the birch has recently been felled due to Honey fungus.
- Honey fungus is believed to be present on the site which, used to be an orchard. The fungus may survive in the soil for decades. The birch tree appears to have a less healthy canopy this year than last year and we have concerns that the tree is infected and may become dangerous as a result.

## **7 Comments of the Head of Urban and Rural Services and Head of Development Control and Major Developments**

- 7.1 The primary purpose of a TPO is to protect trees whose removal would have a significant and detrimental impact on local amenity. This tree is considered to be an important feature in its immediate locality. The tree is visible to approximately 12 – 15 surrounding residential properties and from specific locations on East End / Station Road which runs through the village. The tree appears to be in good physiological and structural health with no evidence of infection by Honey fungus. A remaining stump, from a previously removed tree was noted close to the stem base of the birch. No evidence of Honey fungus was noted on this stump. The tree clearly has amenity value.
- 7.2 The Town and Country Planning Act (1990) does not define amenity. But, the TPO guidelines state that it is the Secretary of State's view that TPOs should be used to protect trees, if their removal would have a 'significant impact on the local environment and its enjoyment by the public'. In this case the tree is visible from a number of public and private places and its size age and maturity contribute significantly to the local environment including wildlife benefits.
- 7.3 If Honey fungus was in the future showing any evidence of infecting the tree and causes concerns regarding the trees physiological or structural condition then the advice of a qualified arborist should be sought.
- 7.4 The tree has been linked to a potential development application in which its removal may facilitate such a proposal. The removal of this tree would have a significant impact upon the local environment.
- 7.5 It is noted that this tree has an age classification of mature with a potential longevity of a further 20 – 40 years. However, it is not considered that the tree has yet reached the limit of its safe useful life expectancy. The Council's TPO evaluation form suggests a tree worthy of protection should have a minimum safe useful life expectancy of 10 years.
- 7.5.1 Although adjacent trees have been historically removed, there is no evidence to suggest that any damage has occurred to the tree as a result of any increased exposures. The tree will adapt to its environment and will develop reactionary growth in order to compensate for any significant or unusual stress loading. Should the tree have developed with a lean due to adjacent growth competition, then additional wood tissue will be laid down within the root system and throughout the stem and branch structure in order to compensate for any associated stresses. There is also no evidence to suggest that birch trees have a shallower rooting system compared to other species of trees.
- 7.6 As the tree is a mature specimen, then it would be good arboricultural practice to consider planting a replacement tree anyway regardless of the current issues. This would provide a level of continuity and uniformity within the local environment.

## **8 Risk Assessment, Financial Effects and Contribution to Efficiency Savings**

- 8.1 The following details have been approved by Rosemary Watts (Risk) (Extension 1566) and Eric Meadows (Financial) (Extension 1552).
- 8.2 Risk assessment - The position relating to risk assessment is that the existence of a Tree Preservation Order does not remove the landowner's duty of care to ensure that such trees are structurally sound and pose 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.
- 8.3 Financial effects - The cost of processing this Order can be contained within existing estimates.
- 8.4 Efficiency savings - none.

## **9 Recommendations**

- 9.1 It is **RECOMMENDED** that after consideration of the objection, the comments of the Head of Urban & Rural Services and Head of Development Control and Major Developments the Tree Preservation Order (No.03) 2008 be confirmed.

Background Papers:

- (a) correspondence on File TT.440