

PLANNING COMMITTEE

18 February 2010

REPORT OF HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS

PURPOSE OF REPORT

To seek the confirmation Tree Preservation Order no 11-09 with two objections relating to an Oak tree at Hornton Primary School, Hornton, Banbury (copy plan attached as Annex 1)

This report is public

Recommendations

It is recommended that Tree Preservation Order 11/09 (Hornton Primary School, Hornton) be confirmed without modification in the interest of public amenity.

Summary

Introduction

- 1.1 The District Council made an emergency TPO 27th November 2009 following a site visit to assess a section 211 (Town and Country Planning Act 1990) notification to fell the tree which lies within a conservation area
- 1.2 The tree is a young mature Oak tree in a prominent position, being visible from Church Street and the surrounding properties. It provides a significant amenity contribution as well as wildlife and environmental benefits to the local area. In addition it can be argued that the tree also provides educational opportunities.
- 1.3 Two letters objecting to the TPO has been received from:
 - i. Alan Carter, Clerk of and on behalf of Hornton Parish Council
 - ii. Mr Corke of The Cottage, Church Lane, Hornton, OX15 6BY who has included a petition of 14 signatures from 9 of the surrounding properties.

The objections are as follows:

- (a) A new school block is planned for the area and the parish

council considers the site of the tree the best position for the building

(b) The tree is in close proximity to power cables and requires regular pruning which will prevent the tree reaching its full potential and make it unbalanced

(c) The tree poses a health and safety risk due to its proximity to the power cables

(d) The tree poses a threat to the children playing beneath it e.g. in case of a sudden thunderstorm

(e) If the building is positioned to the front of the site, the removal of the tree will provide extra play space for the children which would be lost through construction

(f) The area below the tree is damp and muddy and full of leaves making the area slippery and restricting its use as a play area

(g) The tree will have limited amenity value following the construction of the new block as it will be partially obscured

1.4 Due consideration to the above objections has been given and are as follows:

a. No information on any development proposals were provided with the section 211 conservation area notification and the tree was assessed on its own merits in relation to increasing and improving the play space beneath the tree for the children at the school as was provided as the reason for removal.

b. The provider will periodically prune the branches growing toward the cables to maintain the gap between the tree and the cables. This will normally be the re growth from branches which have already been pruned since branches further up the tree are of sufficient distance not to require pruning. This will allow the remaining tree to continue to develop unhindered. Because these branches will be removed regularly on a relatively short cycle, the tree will not be put under excessive stress, either through a sudden shift in weight or the removal of large amounts of energy producing leaf matter.

c. The gap between the tree and the cables is maintained by the service provider to prevent contact and to reduce the risk of arcing from the cables.

d. The general management of the health and safety of the tree is undertaken by Oxfordshire County Council who has recently inspected the tree as part of their management of OCC tree stock and found it to be in reasonable condition. With regard to any danger posed by inclement weather, it is assumed that a competent, responsible adult will be supervising the children and remove the children from sudden hazards as they arise.

e. Permeable surfaces are available which will allow a hard surface to be installed with little effect on the trees as they allow for the permeability of water as well as gaseous exchange from and to the underlying soil.

f. As point 4 (e)

g. Government guidance on the amenity of the tree is provided in 'Tree Preservation Orders, a guide to the law and good practice' paragraph 3.2 – *"trees or at least part of them should therefore be normally visible from a public place, such as a road or footpath, although exceptionally the inclusion of other trees may be acceptable.* The tree is primarily visible from Church Road and surrounding properties. It is expected that the tree will be partially obscured if development takes place however a sufficient proportion of the tree will be visible to warrant a TPO.

- 1.5 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. All the issues raised by the objector can be addressed through the normal application process. Therefore it is recommended that the Local Area Committee confirm Tree Preservation Order 11-09 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
- 1.2 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.
- 1.3 The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 27th November 2009. The statutory objection period has now expired and two objections were received to the Order.
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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 Eric Meadows, Service Accountant PH & E 01295 221552

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 Rosemary Watts, Risk Management & Insurance Officer 01295 221566

Wards Affected

Banbury Hornton Ward

Document Information

Appendix No	Title
Appendix 1	Plan
Background Papers	
TPO file reference 11-09	
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