

Planning Committee

Tree Preservation Order (NO 04) 2010 Birch Tree at Stable cottage, Canal Road, Thrupp

20 May 2010

Report of the Head of Development Control and Major Developments

PURPOSE OF REPORT

The purpose of this report is to advise Members of objections received to the above-mentioned Tree Preservation Order and to seek a decision on whether or not to confirm the Order.

This report is public

Recommendations

The Planning Committee is recommended to:

- (1) Confirm Tree Preservation Order 04/2010 Stable Cottage, Thrupp without modification in the interests of public amenity.

Executive Summary

Introduction

- 1.1 Following receipt of a section 211 'notice of intent' to remove a birch tree located within the conservation area, a site visit indicated that the tree was suitable for a Tree Preservation Order and that the proposal to fell would be detrimental to the amenity of the area.

Proposals

- 1.2 The tree located within a conservation area, is considered to have a high level of amenity value and the reasons for its removal are not considered justifiable or necessary. It is therefore proposed that the tree become subject of a Tree Preservation Order without modification.

Conclusion

- 1.3 Members are asked to confirm the above Tree Preservation Order under the following powers:

Statutory powers are provided through :

Section 198 Town and Country Planning Act 1990.

Town and Country Planning (Trees) Regulations 1999

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.

The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 23rd March 2010. The statutory objection period has now expired and one objection was received to the Order.

Background Information

- 2.1 The Order relates to 1 No birch (*Betula* spp.) located within the boundary of Stable Cottage, Thrupp (see plan attached as Annex 1).
- 2.2 The Tree Preservation Order was made on the 25/03/2010 as a result of a site visit undertaken following submission by the owner, Mr Matthews, of a section 211 'Notice of Intent' to remove a tree located within a Conservation Area.
- 2.3 Although not a legal requirement, the notice submitted stated that the reasons for removal were due to excessive shading of two 'living' rooms, excessive seed and leaf fall causing a nuisance to a neighbour's swimming pool and the concerns of the owner regarding the potential structural risks the tree presented to the adjacent house located 1.0m away.
- 2.4 A letter of objection has been received from Mr Matthews regarding the making of this TPO. A copy of this letter forms Annex 2 to this report. The letter received is summarised below:

2.5 The objection received from Mr Matthews states that:

- a) the tree presents an increasing risk of indirect & direct damage to the adjacent structure and foundations.
- b) the tree casts excessive shading over the immediate garden area.
- c) the tree blocks light into two adjacent 'living' rooms
- d) the tree produces high volumes of leaf and seed fall causing a particular nuisance to the neighbouring swimming pool.
- e) its removal would not affect local amenity value as it is one of a group of three trees.

Key Issues for Consideration/Reasons for Decision and Options

Considerations

- 3.1 The birch, identified as T1 in the TPO, is the largest of a group of three trees located in the garden area of Stable Cottage. The tree is a large, maturing specimen of good form and no visible structural or physiological defects noted.
- 3.2 The majority of the crown is clearly visible as you approach the centre of the village, and is visible from a number of adjacent residential properties including the local Public House.
- 3.3 The tree (T1) is located approximately 1.0m from an adjacent structure. To date no written professional evidence has been submitted supporting any concerns of structural damage and no above ground, external signs of damage were noted by during my site visit.
- 3.4 Generally, tree roots are normally diverted when they come into contact with adequate foundations. Due to the garden area present, I would anticipate that the majority of tree roots would seek water and nutrients away from the structure
- 3.5 It should be noted that due to the proximity of the tree to the adjacent structure that a risk of damage will be present. Although in this situation I currently consider there to be a low risk of structural damage presented to the property. Concerns regarding structural damage may always be addressed upon the provision by the homeowner of a professional report provided by a structural engineer. Upon receipt of such a document, Cherwell District Council will act appropriately to all findings submitted within.

- 3.6 All trees are capable of casting varying levels of shade across residential properties and garden areas. Birch trees do not have dense canopies and are generally considered to cast a 'dappled' shade only.
- 3.7 The presence of adjacent trees and the age/design of the existing property should be taken into consideration. There may be other solutions to improving light levels into the garden area and house which warrant consideration prior to undertaking any unnecessary or unjustified tree works. For example, excessive shading may be partly addressed by removing other trees within the garden which do not have sufficient amenity value and are not subject to any Tree Preservation Orders.
- 3.8 Birch trees are not generally known for excessive leaf fall primarily due to the comparatively reduced volume and size of foliage compared to other species. The complaint of fallen catkins (fruit) and their influence on the neighbouring swimming pool although understandable, is only a nuisance of a maintenance nature and should be considered by occupiers when installing or buying a property such a feature with the 'nuisance' issues addressed during standard maintenance operations.
- 3.9 The nuisance issue of additional maintenance on the swimming pool is not considered a justifiable reason for removing a tree of high amenity value within a conservation area.
- 4.0 As previously stated the birch (T1) is part of a group of three and is the largest and most dominant of the group. The remaining two trees are not considered to provide sufficient amenity value and were therefore not considered suitable for a TPO.

Reasons for Decision

- 4.1 The removal of T1 however would have an impact on local visual amenity and the tree is considered to be most suitable for a TPO. The TEMPO assessment (Tree Evaluation Method for Preservation Orders) supports this conclusion.

Options

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

Option One	Refuse the TPO and allow the tree to be removed.
Option Two	Confirm the TPO without modification, retain the tree and manage as appropriate.

Consultations

[Consultee] Shipton on Cherwell & Thrupp Parish Council

Implications:

- Financial:** The cost of this Tree Preservation Order can be met from approved Estimates.
Comments checked by E.Meadows, (Service Accountant) 01295 221552
- Legal:** The Committee should confirm the Order if it is 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 N. Bell, Solicitor (01295 221687)
- Risk Management:** 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.

Comments checked by R. Watts, Risk Management & Insurance Officer (01295 221566)

Wards Affected:

Kirtlington

Document Information

Appendix No	Title
Appendix 1	Site Map
Appendix 2	Copy of objection letter
Appendix 3	Copy of TEMPO document
Background Papers	
N/A	
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