

Planning Committee

Report of the Head of Development Control and Major Developments

19 May 2011

Tree Preservation Order No 05/2011 4 Gulley Row, Merton, OX25 2UH

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 meeting is recommended:

- (1) That Tree Preservation Order (No. 05/2011) be confirmed without modification in the interest of public amenity.

Executive Summary

Introduction

- 1.1 I was contacted by a member of the public who was concerned that their neighbour was considering employing an arboriculturalist to either fell a large tree or substantially prune the same tree which was located in the front garden of the above property. The resulting site visit and evaluation of the tree undertaken by myself indicated it's suitability for a Tree Preservation Order.

Proposals

- 1.2 The tree is not located within a conservation area and is considered to be under a potential level of threat. It is considered to have a high level of amenity value with no current level of legal protection and it is therefore proposed that the tree become subject of a Tree Preservation Order without modification.

Conclusion

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.

- 1.3 The above mentioned Tree Preservation Order was authorised by the Head of Development Control and Major Developments and made on 28th February 2011. 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 walnut (*Juglans regia*) located within the boundary and front garden of No 4 Gulley Row, Merton (see plan attached as Annex 1).
- 2.2 The tree was assessed by myself on the 22/02/2011 and a TEMPO evaluation was undertaken (see Annex 2). The results of the evaluation provided a total score of 14 out of 20 indicating that a TPO on this tree would be considered defensible.
- 2.3 The Tree Preservation Order was made on the 28th February 2011 as a result of public and local authority concerns regarding the future management of a large, unprotected tree.
- 2.4 I then undertook a site visit with the homeowners, Mr & Mrs Cooper during which I explained the reasons behind the TPO, the reasons and implications of TPO legislation and the procedures required for providing objections to the provisional TPO and for applying for works in the future.
- 2.5 An objection to the TPO was submitted by Mr & Mrs Cooper and received on the 18th March 2011.
- 2.6 On the 18th of March an application for works on the walnut tree was also submitted by Mr & Mrs Cooper. The reasons stated were to prune or remove identified branches in order to provide adequate clearances from adjacent utility lines and buildings. Full consent was granted for this work by Cherwell

District Council.

2.7 The objection from Mr & Mrs Cooper states that:

- a) They have cared for and maintained the tree for the last 20 years.
- b) Despite obtaining a quotation to do so, they had no intention of removing the tree.
- c) They believe the tree to have limited amenity value as it can only be seen from a small number of houses and the main road through the village.
- d) The tree offers no screening value for the property.
- e) The tree is too large for its location and has outgrown its position. It blocks light and there is a risk of subsidence damage occurring if retained.
- f) It has significant impact on neighbours due to historical and current conflict with utility lines.

Key Issues for Consideration/Reasons for Decision and Options

- 3.1 The walnut tree identified as T1 is a large, mature specimen with no significant defects. The tree is displaying historical pruning wounds around the main trunk area, with these branches most likely removed in order to remove a nuisance issue.
- 3.2 The tree is located in the front garden of No 4 Gulley Row and is a prominent individual tree within the street scene. The crown of the tree is also visible outside the village from the approach road to the west.
- 3.3 I believe the tree to have a significant level of amenity value which provides a visual benefit for at least 20 No residential properties plus vehicular and pedestrian traffic passing by the property and vehicular traffic approaching the village from the west.
- 3.4 The tree provides a level of screening for the property and, due to its location on the north side of the property, it should have a minimal impact on restricting light levels into the property.
- 3.5 There is currently no evidence of structural damage on No 4 Gulley Row or adjacent properties. I have explained to Mr & Mrs Cooper that should this ever be the case, providing sufficient evidence is submitted which implicates the tree as the causal agent, then CDC will most likely grant consent to remove the tree.
- 3.6 During my site visits to the property I noticed that there were a number of secondary branches either in direct contact with the utility lines which

pass through the crown or in contact or close proximity to adjacent residential buildings. After discussing these issues with the owners. It was agreed that an application should be submitted containing specific and agreed proposals recommended in order to remove these nuisance issues. The application was received and full consent was granted.

3.7 I believe the tree to be a valuable feature in the local street scene and with no significant structural or physiological defects, should be retained and protected with a TPO. The nuisance issues which have arisen are as of a direct result of a lapse in management and such nuisances may be avoided in the future by simply bringing the tree back under good, regular arboricultural management. Although I believe the risks to be low, should there be a future risk of direct damage to the property then CDC will respond appropriately as and when required.

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

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| Option One | Confirm the TPO without modification, retain and manage the tree as appropriate. |
| Option Two | Do not confirm the TPO and leave the tree with no legal protection |

Consultations

[Consultee] None

Implications

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|-------------------------|--|
| 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 C. Taylor, Corporate Strategy and Performance Manager (01295 221563)

[Other Implications] N/A

Wards Affected

Merton

Document Information

Appendix No	Title
Appendix A	Site Map
Appendix B	Copy of letter of Objection
Appendix C	Tree Evaluation Method for Preservation Orders (TEMPO)
Background Papers	
[Click here and insert title of Background Papers]	
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