

# **Development Control Committee**

**5 January 2017**

## **TREE PRESERVATION ORDER 2016 (No.11) LAND AT STOCKACRE HOUSE, THETFORD ROAD, IXWORTH**

### **Synopsis:**

A Tree Preservation Order (TPO) was made in respect of a Beech tree, located in the rear garden of Stockacre House, Ixworth, on 9 September 2016. The TPO was served to protect the Beech tree in response to notification that the tree was to be felled. The tree is an important landscape feature which contributes to the character of the locality. Three letters of objection have been considered and a subsequent application for crown reduction to control the size of the tree has been approved. Nevertheless the TPO is considered to be necessary to ensure the tree is retained.

### **Commentary:**

1. The Borough Council's Constitution allows for the making of provisional Tree Preservation Orders by Officers, subject to the report of any representations relating to such action to the Development Control Committee.
2. Application DC/16/2361/TCA was submitted to St Edmundsbury Borough Council to fell a Beech tree located in the rear garden of Stockacre house. The Tree Officer visited the site and recommended that the tree be reduced rather than felled. At that time the applicant seemed amenable to this proposal.
3. The applicant then submitted information indicating that the Beech tree was infected by Ganoderma Fungus and no objection was raised to the felling of the tree and the applicant informed of this.

4. At a subsequent visit to the property to look at proposals to reduce other trees the Officer observed that the Ganoderma fungus is not growing on the Beech tree but is growing from a Cherry tree stump located immediately adjacent to the Beech.
5. A tree preservation order was subsequently made to prevent the felling of the beech tree which looks to be in good health and has a good form
6. The reason for the Tree Preservation Order is that:

*The Beech tree in the rear garden appears healthy. It contributes to the character of the conservation area and is of visual amenity within the locality.*

7. The Beech tree is located in the rear garden of the property, in the back right hand corner. It can be seen from the road at Commister Lane and it provides public visual amenity and makes a contribution to the character of the locality.
8. Representations have been made in relation to the Tree Preservation Order by three people. One being the owner/occupier of the land the Beech tree is situated in and the other two people are neighbours. All three representations object to the tree preservation order. The main concerns raised in the objections are as follows:
  - The beech tree is infected by Ganoderma which was confirmed by two different tree surgeons
  - The reasons for the landowner wanting to remove the beech tree remain the same; it overhangs a neighbour's garage roof, another neighbour's house and its shade dominates and blights much of the garden
  - There is concern that the Ganoderma will cause the tree to become dangerous with the risk that it will fail causing injury or damage to property
  - The presence of the tree makes the neighbour's garage, located below the canopy of the tree, damp through lack of direct sunlight
  - Roosting birds in the tree defecate on cars parked on the neighbour's drive
  - The tree also shades the neighbour's garden
  - The tree is not of amenity value as it is hidden from view and surrounded by properties

9. Officers have considered the objections to the order carefully along with the information which is available including that which was submitted with the first application. A site visit was undertaken to discuss the tree preservation order with the landowner and a neighbour.

10. The tree can be seen from Commister Lane, from Abbey Close and can be glimpsed above the houses in Thetford Road. A TEMPO amenity assessment has been undertaken that confirms that the tree is of visual amenity value and suitable for protection.

11. Inspection of the tree confirmed that the Ganoderma is hosting on the adjacent cherry tree stump. The Beech tree does not currently show any sign of infection or poor health nor are there any fungal fruits on the Beech tree.

12. The Beech tree appears to be in good health. Whilst the risk of failure associated with any tree can never be completely ruled out, Officers are of the opinion that in this case the risks do not justify removal of the tree.

13. Officers remain of the opinion that the issues, cited by the applicant and the neighbours, associated with the size of the tree could be minimised to an acceptable level through a sympathetic reduction and crown raising rather than removal. This would control the size of the tree and its overhang and would also reduce the weight from any extended branches. This pruning would additionally reduce any risks associated with the tree.

14. Discussions on site with the property owner have established the scope of any reduction and this has also been discussed with the adjacent neighbour who objected because of concern about the effect of the tree on his garage and drive. Raising the crown of the tree would reduce the effects of the tree, and reduction of the size of the tree and overhang would also address the issues relating to roosting birds.

15. A TPO application DC/16/2441/TPO to reduce the overall crown by up to 3 metres and to lift the crown no more than 3.5metres from ground level was submitted on 21 October 2016. Officers have not objected to this application.

*Finance/Budget/Resource Implications:*

16. Works to or removal of a tree or trees covered by a TPO will require the formal consent of the local planning authority before any work can be carried out. Currently all such applications are submitted to the local planning authority and do not attract a fee. The Council's Planning Services and Arboricultural Officers will deal with subsequent applications arising as a result of the TPO without any additional fee income. There may also be appeals should TPO consent be refused.

17. Should an application for works to a preserved tree (or for its removal) be refused, the local planning authority may in certain circumstances, be liable to pay compensation to the affected property owner, should the trees cause damage to a property. Such claims are, however, rare and, in this instance, considered unlikely given that the condition and location of the trees can be considered fully when deciding where to locate new dwellings and other facilities associated with any development.

### **Environmental Impact and Sustainability**

18. Removal of any trees, which are considered to be worthy of protection in the public interest, would detract from the visual amenity of the local environment and in this case would effect the amenity of the future development.

### **Policy Compliance/Power**

19. The local planning authority has powers under the Town & Country Planning Act 1990 and the Town & Country Planning (Trees) Regulations to make a TPO if it appears expedient in the interests of amenity to do so.

20. The making of a TPO in this instance is in line with the powers and policies of the Council.

### **Performance Management Implications**

21. The applications determined under the TPO provisions and any subsequent appeals are not currently the subject of any national or local performance indicators.

### **Legal Implications**

22. This provisional TPO is served on the owner and occupier of the land affected by the TPO, and also on owners and occupiers of adjoining land, who had a period within which to make objections or representations to the Order. The statutory consultation period expired on 4 July 2016.

### **Human Rights Act and Diversity Implications**

23. These matters have been assessed in relation to and are considered to comply with the requirements of the Human Rights Act 1998. In relation to Article 6, interested parties have been advised of the making of this provisional Tree Preservation Order and their views have been considered within this report. Any interference with Rights under Article 8 and Article 1 of the First Protocol are necessary in the public interest.

## **Crosscutting Implications**

24 None

## **Risk Assessment**

25. As set out above, the Council may, in certain circumstances, be required to pay compensation to owners of properties damaged by preserved trees, if the Council has refused consent to carry out works to the affected tree and such works may have prevented the damage. These claims, however, are rare.

## **Council Priorities**

26. The Council is keen to safeguard the built and natural environment.

## **Recommendation:**

27. It is **recommended** that the Tree Preservation Order **be confirmed without modification.**

## Documents Attached:

TPO including plan and schedule

## CONTACT OFFICER

Jaki Fisher

[Jaki.fisher@westsuffolk.gov.uk](mailto:Jaki.fisher@westsuffolk.gov.uk)

01284 757346