

PLANNING COMMITTEE

7TH NOVEMBER 2013

REPORT BY HEAD OF REGULATORY SERVICES

TPO 11/00001/TPO : WALTHAM ON THE WOLDS CHURCH OF ENGLAND SCHOOL

1. PURPOSE OF THE REPORT

- 1.1 To advise the Committee, of the notification provided by Waltham on the Wolds Primary School to fell a substantial tree in its grounds

2. RECOMMENDATION

- 2.1 The Committee notes the notification submitted and its acceptance.

3. BACKGROUND

- 3.1 **Members may recall earlier applications to fell the tree the subject of this report, and applications for other works to the tree. The 'planning history' of the tree is as follows;**

09/00779/TCA – Notification of works to crown lift the tree – approved 2.12.2009

11/00449/TCA – Notification of proposal to Fell tree – refused 14/7/2011

TREE PRESERVATION ORDER 11/00001/TPOMBC CONFIRMED – 28/11/2011

11/00951/TPO – application to reduce tree by 20% - approved 13/2/2012

13/00203/TPO – application to reduce tree by 1.5 to 2m – approved 20.5.2013

3.2 RECENT DEVELOPMENTS

- 3.2.1 **The Council received a 5 day Notice and accompanying report to remove the tree on 23rd October 2013.**

- 3.2.2 The legislation makes a provision that trees can be exempt from the controls normally imposed by Tree Preservation Orders when “*the cutting down, uprooting, topping or lopping of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm, or to such other extent as agreed in writing by the authority prior to the works being undertaken;*”

- 3.2.3 The notification of intention to fell was accompanied by a report into the condition of the tree. The report states that the extent and spread of Meripilus from previous inspections is rapid and progressive and there are now two more aggressive decay pathogens present on the tree. In view of the extent and distribution of the fruiting bodies, and the difficulties in monitoring the development of decay, it concludes that the ongoing stability of the tree is insufficiently certain to attempt to retain it.

- 3.2.4 Upon receiving the Notice advice was immediately sought from the Council's independent Forestry and Arboricultural Consultant who agreed with the report and its findings.

- 3.2.5 In the light of information provided, the Head of Regulatory Services accepted the removal of the tree on the basis that it is dangerous and there is an immediate risk to the safety of those attending the school and the school property and authority was formally

given on 28th October 2013 to remove the tree. It is worth highlighting that the criteria that the law establishes is “**immediate risk of serious harm**” and it is on this basis that approval was given, i.e . that whilst there is no proof when the tree (or branches etc) may fall, there is an immediate **risk** that they could. The representations received have stated that the works are unnecessary because they pose no “immediate threat to the safety of the children”. However, test in law is whether there is an immediate **risk** of serious harm, not an immediate proven threat.

- 3.2.6 Since this decision, the Council has received representations expressing the view that the condition of the tree does not pose an immediate danger and the Notice of intention to fell should not have been accepted. The basis for this is that the fungus present within the tree does not critically affect its stability and does not pose an immediate threat to the safety of children etc in the school and its grounds.
- 3.2.7 The school took the decision to close on Monday 28th October 2013 and in a letter to parents explained that this was because of the expectation of high winds on that day. It is understood that the school reopened the following day and that the school Governors have arrange for removal of the tree on or around 16th November.

3.3 LEGAL PROVISIONS

- 3.3.1 The legal provisions relating to Tree Preservation Orders take the form of prosecution. Undertaking unauthorised works to trees that are the subject of a Tree Preservation Order is an offence under s210 of the Town and Country Planning Act 1990 and, on conviction, a Court can impose a fine of up to £20,000.
- 3.3.2 In the circumstances of this case, no offence has been committed to date (no unauthorised works to the tree have taken place).