

DEVELOPMENT COMMITTEE

1st DECEMBER 2011

TREE PRESERVATION ORDER – REF: 151/922/5 OAKLEIGH, 5 BLACKSMITH END, STATHERN

REPORT OF THE HEAD OF REGULATORY SERVICES

1. PURPOSE

- 1.1 The purpose of this report is to inform the Committee of letters of representation received, and to invite the Committee to determine whether or not to confirm the Provisional Tree Preservation Order.

2. RECOMMENDATION

- 2.1 **That, in the interests of amenity, the Grounds of Oakleigh 5 Blacksmith End Stathern LE14 4EZ Tree Preservation Order 2011, should be confirmed as amended to correct perceived drafting errors.**

3. DETAIL

- 3.1 A notification (Ref: 11/00599/TCA) to undertake the felling of one Contorted Willow, one Oak, and a Mixed Species group of trees was submitted to the Council on 29th July 2011. The application stated that the trees were implicated as the cause of subsidence damage to the neighbouring property; 3 Blacksmiths End, due to clay shrinkage by the applicant - Infront Innovation – the insurance company for the owner of 3 Blacksmith End. At the time of the site visit on 19th August 2011 the Willow and Mixed Species group had already been removed, leaving only the removal of the Oak to consider. The Local Planning Authority Enforcement officer was notified of the removal of trees without consent. Following the usual consultation with the Council's arboricultural advisors a Provisional Tree Preservation Order (TPO) was placed on the Oak tree on 7th September 2011, to allow further information and evidence of the cause of the damage through a TPO application. In response to the notification of the TPO 2 letters of objection to the TPO were received.
- 3.2 It was considered that the Oak tree was important within the street scene and made a significant contribution to the visual amenity of the Conservation Area.
- 3.3 The Grounds of Oakleigh 5 Blacksmith End Stathern LE14 4EZ, Tree Preservation Order, 2011 (Ref: 151/922/5) was served on 7th September 2011 in the form of an order which specified the individual tree.
- 3.4 This Tree Preservation Order is currently a Provisional Order and this Council have a period of six months to confirm it unaltered, modify or revoke it. Therefore the Council has until 7th February 2012 to reach a decision.

4. OBJECTION TO THE ORDER

- 4.1 The Arboricultural Consultant for Infront Innovation; Marishal Thompson Group have registered their objection to the Provisional Tree Preservation Order, on grounds as detailed below:
 - The Council have not provided information detailing how they have assessed the amenity of the tree.

- The contribution provided by T3 is disproportionate to the S203 compensation amount potentially payable from public funds due to additional engineering repair works required with T1 remaining in place.
- Drafting errors in the TPO render it invalid.
- That the retention of additional T1 within influencing distance of the building means a future risk of damage exists.

In response to point 1: The amenity of the tree was assessed with the benefit of advice from the Council's Arboricultural advisor, (see 6.3 below).

In response to point 3: Any perceived drafting errors can be addressed if and when the TPO is confirmed. The provisional order clearly marks the position of the tree in question (albeit in red rather than black).

4.2 Mr Brown; the son of the owner of 3 Blacksmith End has registered an objection on the following grounds:

- Reference is made to the surveys and reports undertaken by the insurance company implicating the Oak tree along with other trees as the cause of the subsidence damage to his mother's property.
- Reference is also made to the LCC Arboricultural Officer having made only a visual inspection, and that this is not as conclusive as the insurance companies reports.
- The health of his mother is mentioned, and that he feels that the tree is being put before her health due to the stress caused by the damage to her home.
- The liability of the Council for the cost of rectifying damage.
- Mr Brown considers that the adjoining house (1 Blacksmith End) and also 5 Blacksmith End where the tree is located could also be subject to subsidence damage in the future if the tree is retained.
- Mr Brown is concerned that the matter is not being dealt with in a professional manner, and suggests lack of attention and knowledge.

5. SUPPORT FOR THE ORDER

5.1 There have been no representations in support of the order.

6. ASSESSMENT

6.1 Policies & Guidance:-

DETR Tree Preservation Order: A Guide to the Law and Good Practice

The Local Planning Authorities' main consideration should be whether the tree merits a TPO. The Authority should therefore assess the amenity value of the tree. Special attention must be paid to the desirability of preserving the character or appearance of the Conservation Area. Responses to any publicity should also be considered.

6.2 The amenity value of the tree is high as it is clearly visible from the Public Highway and contributes to the streetscene and character of the Conservation Area. Although the tree is relatively early in its life, it has the potential to become an even more significant example of the species in future. The Oak is a valued native species.

6.3 As part of the original consultation exercise, prior to determination of the 'TCA' application, an inspection of the tree by the Council's specialist arboricultural advisor was undertaken and the following comments were received:

- The tree is a young oak (25-35 years in age) with a co-dominant stem. The tree is located to the north of the property and is at least 6m from it. There is also a large pond to the north of the tree.

- No soil profiles or analysis were provided with the application.
- No evidence of the depth of building foundations were submitted with the application.
- The house is approximately 20 years old and it is likely that the tree was in place when the building was constructed. NHBC guide lines dictate the depth of foundation required for a building in close proximity to the tree, but without the soil type analysis this cannot be determined.
- It is a possibility that the conservatory which has been added to the property at some point after the house was originally built could be adding extra strain onto the building and foundations.
- The only supporting evidence submitted was a root identification analysis from the trial holes, a majority of the roots extracted and tested were either cherry or willow species, with one small oak root being identified. This would indicate that the oak was a more minor cause of any tree related subsidence.

7. CONCLUSION

- 7.1 The tree is a prominent specimen that contributes significantly to the street scene and the Conservation Area within which it is located. It is in good health and is likely to continue to make a contribution of this nature for a long period into the future.
- 7.2 In view of the advice given by the arboricultural advisor, the evidence submitted with the application to remove the tree was insufficient to demonstrate it is the causal factor for damage to the adjacent house. Confirming the TPO would not remove the opportunity for applications for its removal to be submitted and for supporting information to be produced to seek to demonstrate it is necessary.
- 7.3 Comments regarding compensation under s203 are premature at this stage. This section of law applies where an application to do works (including removal) is refused and damage occurs as a result.
- 7.4 It is therefore recommended that the Tree Preservation Order be confirmed with amendments to correct perceived drafting errors.



Contact Officer: Lynn Eastwood
 Date: 16th November 2011
 Background: Provisional TPO: Grounds of Oakleigh 5 Blacksmith End Stathern LE14 4EZ
 Letter of objection from Marishal Thompson
 Letter of objection from Mr Brown
 11/00599/TCA: Notification of proposed works to trees.