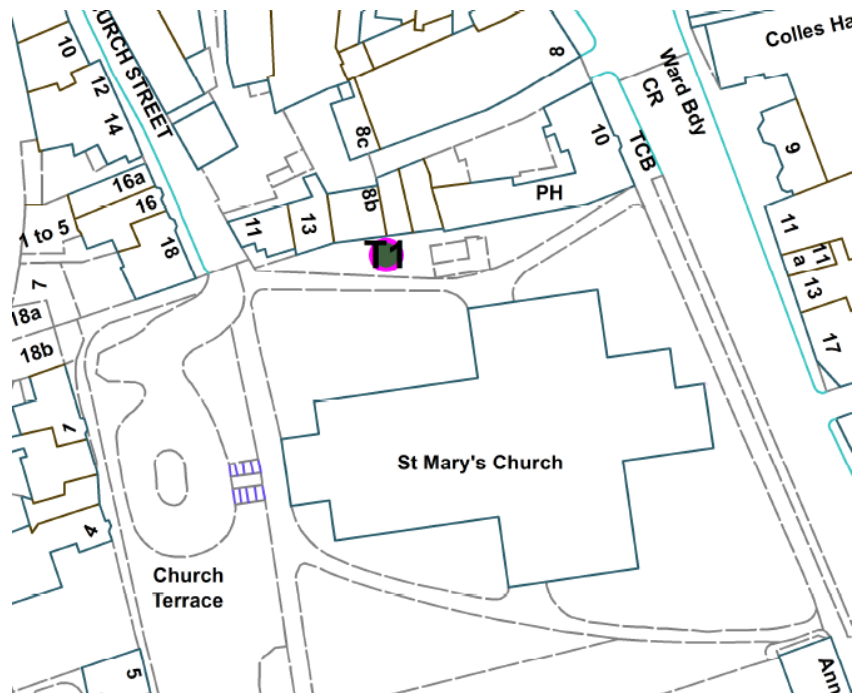


PLANNING COMMITTEE

16th AUGUST.2018

TREE PRESERVATION ORDER REF: 151/900/41
ST MARYS CHURCH, CHURCH STREET, MELTON MOWBRAY, LE13 0PN

REPORT OF THE ASSISTANT DIRECTOR FOR STRATEGIC PLANNING AND REGULATORY SERVICES



1. PURPOSE

- 1.1 The purpose of this report is to inform the Committee of one letter of objection to the Provisional Tree Preservation Order received from Mike McClure, Fabric Secretary, St Mary's Church, Melton Mowbray and to invite the Committee to determine whether or not to confirm the Provisional Tree Preservation Order.

2. RECOMMENDATION

- 2.1 It is recommended that the Committee confirms of the Provisional Tree Preservation Order (TPO) Ref: 151/900/41, St Marys Church, Church Street, Melton Mowbray, with modification to provide reasons in accordance with para. 3.8 below.

3. DETAIL

- 3.1 Notification was submitted by Mr McClure to the local planning authority on 20.04.2018 for the removal of one Yew tree, to make way for a new building to be erected which will be used for music, educational, heritage, archive storage and other uses by the church. A planning application for this new building will be submitted to Melton Borough Council and Leicester Diocesan Advisory Committee once initial investigations have been carried out and designs established.
- 3.2 The notification to remove the tree comprised of a Site Visit Report dated 05 June 2017 from the Leicester Diocesan Advisory Committee (DAC) which considered several options for proposals to accommodate the Choir within a detached building within the churchyard and adjacent to the Samworth Centre. Accommodation is required for the choirs rehearsal and robing purposes and also its archive (currently stored in rented accommodation for which the availability is about to end as the owner wishes to sell the building).

The DAC report states that:

Option H is the preferred option of the PCC. It is currently occupied by the redundant Boiler House and associated chimney. It is an area of the churchyard that is in need of being 'sorted out'. The PCC's proposal would be to construct a single-storey detached building here to have the same sized footprint as the existing Clergy Vestry if not a little bit bigger. The Site Visit noted that the construction of any detached building within the churchyard, regardless of its proposed location would require a pastoral scheme to remove the legal effects of consecration from the proposed location and additional legal hurdles to comply with the Burial Act.

Option H also requires the removal of the Yew tree, however this is not mentioned in the DAC report.

- 3.3 Also submitted with the notification was a report from Historic England which explores and responds to the various options put forward by the DAC. No mention of the tree was made in the Historic England Report when referring to Option H.

With regard to Option H the Historic England Report states:

Option H on the north side of the churchyard is the PCC's preferred option and utilises the space previously disturbed and housing the boiler room. We have no objection to the removal of the boiler room and on plan the proposed space requirements for the choir vestry match that of the existing footprint. The boilerhouse has already resulted in, we assume, considerable disturbance to the graves in this area - in this context, we would be concerned to see proposals extending beyond the existing footprint. As agreed we have not commented specifically on the sketch designs. The challenge here is to design a new structure which is recessive in form and detail and does not negatively compete with the existing historic townscape structure and spatial arrangement between St Mary's and the adjacent properties. In our view, any new structure, though freestanding, would need to relate architecturally to the existing brick buildings. As the new build would come forward of the historic building line, in viewing the area from the street the opportunity here is to design a building which is harmonious with the brick terrace. This does not preclude a contemporary approach; however the juxtaposition of the new build would need to be sensitively designed.

We are concerned by the amount of accommodation required to ensure the new build does not exceed that of the current boiler house footprint nor excessive in height and overall mass. With this in mind, we discussed options to rehouse the parish archive elsewhere, and recommend that other spaces including the Samworth Centre are considered. We also discussed the feasibility of revisiting space within the Samworth centre for the choir, focusing on the first floor accommodation above the arched opening with a new means of access. We believe this is worth exploring further.

Historic England have not made any comment with regard to the tree.

3.4 Located on the footpath between Church Street and Burton Street, the tree is considered to contribute amenity to the character of the conservation area and to the setting of the Grade 1 listed Church. The provisional Tree Preservation Order (TPO) was made on 24.05.2018 to allow for the protection of the tree and for the proposal to remove the tree to be considered as part of the planning application for the proposed building. Notification of the TPO was given to Mr McClure, Ward Councillors Tom Greenow and Julia Hurrell and to Leicestershire County Council Forestry Officer.

3.5 A letter of objection to the Tree Preservation Order was received on 19.06.2018

“Following your e-mail of 24th May 2018 our Project Group have discussed the TPO with our Architect and wish to put forward an objection to this TPO on the following grounds:

(1) The notice appears to be defective under The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Section 5 (2) ‘a’ in that the reason for making the order has not been stated in the Formal Notice.

(2) The tree is rooted into spoil from when the old boilerhouse was constructed circa 1928 and so cannot be regarded as a historic feature of the churchyard.

(3) Historic photos of the churchyard prior to 1928 show it to have a much more open aspect.

(4) The tree is not significant in terms of the setting or significant views of the Conservation Area or Listed Buildings.

(5) The tree is close enough to existing buildings and services for roots to have impact.

(6) Tree sap and bird droppings have caused a number of people to fall on the North Path so Melton Borough Council have Health & Safety issues to manage by having to clean the path far more frequently than if the tree is removed.

(7) The Yew Tree restricts light to the adjacent Room 4 of the Samworth Centre

(8) By removing the tree the planned new building will prevent the area being used for anti – social purposes (i.e. drug dealing)

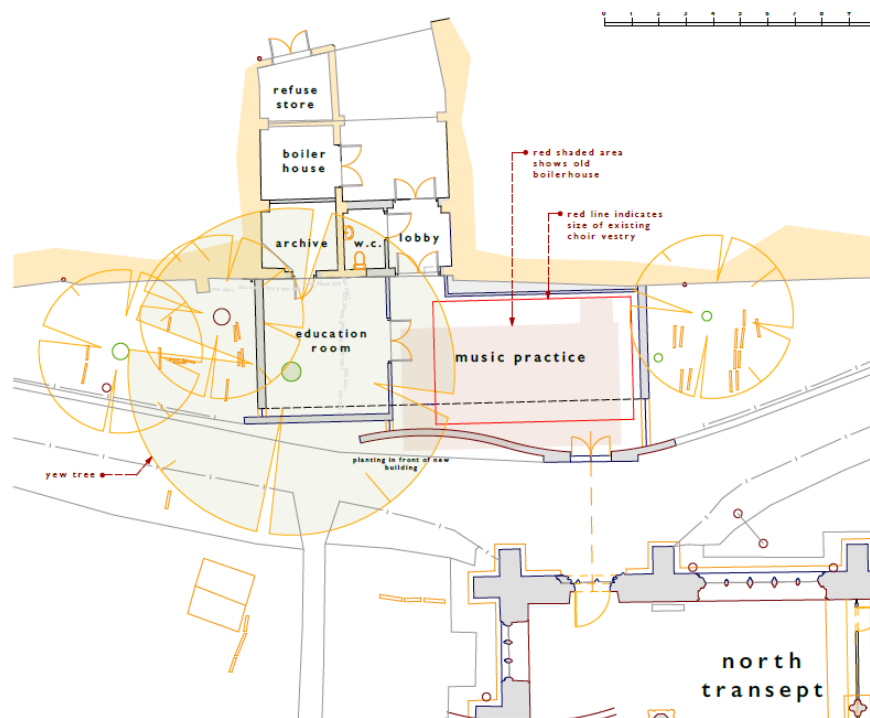
(9) The PCC is considering proposals to remove and redevelop the boilerhouse site and create a music, education and heritage centre to complement the recent development in the church; Historic England have agreed in principle that this location is suitable

(10) In association with (5) there is opportunity for more considered planting work to enhance the setting of the church and churchyard including resolving the old spoil heap and jumble of headstones by the entrance to the Samworth centre including a more dignified and sympathetic treatment of the relocated headstones.

In due course plans for the new building will be sent to Melton Borough Council once we have decided on the design but meantime we can confirm that Leicester Diocese have recommended that Trial Holes can be dug in this area.

A provisional design sketch is attached so you can see the area where the church would like to build.

In the meantime we would like you to remove the TPO and give permission for the felling of this tree made in our request under Application Ref PP-06911686v1.”



3.6 LCC Arboricultural Officer's Report *"I have conducted an appraisal of a yew at St Mary's Church, which was subject to a recent application for consent to remove it (18/00457/TCA).*

The tree is a middle aged specimen in good health and of reasonable form. I would conservatively estimate the tree to be in excess of 80 years old. As a species yew can thrive and survive for many hundreds of years, assuming that the tree stays in good health then its amenity contribution may be considered significant.

The tree stands within the local conservation area; consent from Melton Borough Council (MBC) to carry out work to trees in a conservation area is an obvious requirement. Consent was sought by St Mary's Church to remove the tree. Consultation with Leicestershire County Council on the application was not sought, however; it is reasonably assumed that the tree was considered worthy of retention by MBC and the application refused. Following due process under the Town & Country Planning Act MBC has placed a tree preservation order (TPO) on the yew; this is the appropriate and correct procedure when work to a tree in a conservation area is refused.

I have taken the liberty of applying a recognised method for assessing trees thought worthy of a preservation order – Tree Evaluation Method for Preservation Orders (TEMPO). A copy of the survey data sheet and decision guide has been included with this report. You will note that there are two scores and decisions at the end of the form. The first (15 points – TPO defensible) is in consideration of the tree's current protection status (i.e. the TPO). The second (19 points – definitely merits TPO) is on the assumption that it was as part of the original application (i.e. the TCA). In both instances the tree is deemed to be worthy of retention under a TPO.

I have studied the documents in support of the original application, as well as those in objection to the TPO.

- When assessing a tree's worth for retention under a TPO the historic feature is one of many considerations. This is alongside its health, size and prominence, and if the tree's retention is expedient in terms of amenity. The yew is a healthy and vibrant specimen, near the centre of a busy market town, it is in keeping with the local area and the species is a feature of numerous churchyards.*
- Tree roots do not have compressive strength; it is not possible for them to enter or crush a service run which is entire and fit for purpose. However, tree roots are highly ephemeral and will proliferate where conditions are beneficial, e.g. a leaking or previously cracked grey water pipe. Likewise it is highly unlikely that a tree can push the foundations of a building out of the ground. It is possible that a tree may exacerbate soil desiccation and influence subsidence. A wide range of disciplines and investigations are required to establish subsidence (e.g. soil analysis, arboricultural investigations, structural engineer analysis, level monitoring, trial pits and bore holes...etc.).*
- Removing a tree because of shade cast, leaf litter, fruit fall and bird mess is considered unreasonable, irrespective of whether it is has protected status or not. Such nuisance issues are considered part of the natural process of trees. Indeed were they deemed a definable reason of justification for tree removal then it could lead to desertification of streets, paths, gardens and churches across the country. This would include other trees within St Mary's Church.*
- According to statistics compiled by the Health & Safety Executive around 6 people a year are killed by falling trees (1 in 10,000,000). Conversely it is thought that around 40,000 people die annually due to respiratory issues brought about from pollution (1 in 1,500). Trees play a key role in absorbing and processing both gaseous and particulate pollution. Removal of a healthy tree to prevent any possible accidents, no matter how infinitesimally small the risk may be, could be considered extreme and overly precautionous. This would be more acute in evidence of the benefits trees provide to society (e.g.. intercepting rain and managing surface run off; cleansing the environment; improving social, physical and mental health, improving property values and business; improving productivity, education and learning...etc.).*

Whilst the tree is covered by a TPO this does not mean that refusal of any work, pruning or felling, should be taken as absolute. A tree covered by a TPO is considered as part of proper planning process; as such any plans for renovation and development of the churchyard may require that the tree be removed. There may also be need to carry out remedial work or felling should the tree's health or structure decline to a point where it is a considered risk to person or property.

3.7 **Additional comments:**

Anti-Social Behaviour Officers comment:

We have no records about any anti-social behaviour incidents committed in that area.

Waste & Environmental Maintenance Manager comment:

Environmental Maintenance are aware of the application as the PCC did approach ourselves to see if we had any objections to the tree being removed.

We do currently have to clean the North Path a couple of times a week due to the sap falling onto the path, which of course does make the area dangerous, so the removal of the tree would certainly cut down this problem for us.

As you are probably aware over the years we have had a number of trees at St Marys Church fall and cause potential accidents to people, so the removal of this tree would remove any further potential accidents from people falling.

We don't have any objections to the tree being removed from this area. We feel there are a number of other trees within the churchyard that would keep the landscape appearance appealing to any visitors.

Building Control Officer comment:

The building isn't going to make any difference to the state the path may or may not get in to and the removal of the tree may not contribute much either as the path will still be on the north side of the Church.

I would think the Church authorities would need to include slippery surfaces in their risk assessment and mitigate any danger by regular maintenance.

- 3.8 The comments in respect of the objection received regarding the Tree Preservation Order have to a large extent been addressed within the report of the LCC Arboricultural Officer, and also within the comments provided by the Anti-Social Behaviour Officer, the Building Control Officer and the Waste & Environmental Maintenance Manager. It is considered appropriate that the removal of the tree is considered as part of a planning application for a proposed building, should that be forthcoming, therefore confirmation of the TPO would ensure protection of the tree until such time as an application is received. In response to the comment within the objection letter: *"The notice appears to be defective under The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Section 5 (2) 'a' in that the reason for making the order has not been stated in the Formal Notice."* Should the order be confirmed this would allow for a modification to the order whereby the reason is added as follows: *The tree is considered to contribute amenity to the character of the conservation area and to the setting of the Grade 1 listed church.*
- 3.9 This Tree Preservation Order is currently a Provisional Order and Melton Borough Council have a period of six months to confirm it unaltered, modify or revoke it. Therefore the Council has until 23.10.2018 to reach a decision.

4.0 POLICIES & GUIDANCE

Planning Practice Guidance: Tree Preservation Orders and trees in Conservation Areas.

- 4.1 Local Planning Authorities can make a Tree Preservation Order if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area.' A Provisional Order of this nature cannot be confirmed until objection(s) received have been considered.
- 4.2 'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.
- 4.3 Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

5. CONCLUSION

- 5.1 **It is recommended that the Provisional TPO is confirmed to allow for the removal of the tree to be considered as part of a planning application for the proposed building.**

Contact Officer: L Eastwood
Date: 2nd August 2018