



DM.19 11/12
Development Management Committee
Date: 16 th November 2011

Subject: Objection to Tree Preservation Order Market Rasen No.1 2011

Report by:

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Contact Officer:

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Purpose / Summary:

This report relates to an objection received in relation to the making of a new Tree Preservation Order protecting one tree on a playing field.

RECOMMENDATION(S):

1) That Members, notwithstanding the objections made by the neighbour, approve the confirmation of the Tree Preservation Order Market Rasen No.1 2011.

IMPLICATIONS

Legal: None

Financial : None

Staffing : None

Equality and Diversity including Human Rights : The process for making and confirming Tree Preservation Orders is set out in primary legislation and government guidance. Therefore, if all decisions are made in accordance with those statutory requirements and guidance and are taken after having full regard to all the facts, no identified breach to the Human Rights Act 1998 should arise as a result of this report.

Risk Assessment : None

Climate Related Risks and Opportunities : None

Title and Location of any Background Papers used in the preparation of this report:
Guidance book - Tree Preservation Orders: A guide to the Law and Good Practice) otherwise known as the “Blue Book”, Chapter 3. Available in the bookcase in the conservation/environment team area of the planning department. Also available on the government website www.communities.gov.uk

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes

No

Key Decision:

Yes

No

1. Introduction

- 1.1 An amenity assessment for a Tree Preservation Order on a sycamore was requested by the tree owners, Market Rasen Town Council, as they considered the tree to be in danger due to a neighbour's request for tree works to be done to cut overhanging branches back to the boundary line.
- 1.2 The tree was discussed with the Lincolnshire County Council Trees and Woodlands Officer, Nigel Sardeson, who had already been to see the tree.
- 1.2 A site visit was made to the playing field to assess the tree on 7th June 2011.
- 1.3 The Tree Preservation Order Market Rasen No.1 2011 was made on 30th June 2011.
- 1.4 The neighbour at The Limes Bungalow made an objection against the TPO, which was received on 8th July 2011.
- 1.5 A second visit was made on 15th August 2011 to view the tree from the garden of the objector and to take various measurements and photos.

2. Discussion

- 2.1 The Town Council contacted WLDC to enquire how to protect their sycamore as they were concerned that "the tree may be severely mutilated if the owners of the Limes Bungalow carry out pruning work to their specification to remove overhanging branches". According to the Town Council, the neighbour had contacted them about cutting the tree back to the boundary line. The Town Council had then discussed the proposed work with the LCC Officer, Nigel Sardenson, who advised them the work was inappropriate as it could lead to future disease and instability if the tree was cut back in line with the boundary fence rather than being pruned at correct target pruning points (branch junctions). The LCC officer had advised the Town Council to contact WLDC to enquire about getting the tree protected to ensure inappropriate works were not done up to the boundary line as would be permitted under common law.
- 2.2 The tree is situated close to the boundary fence across the rear of the playing field off Mill Road, Market Rasen. The site visit was made to the playing field side of the tree only because an amenity assessment is to determine the quality and amount of visual amenity provided by a tree to a public area.
- 2.3 The neighbours at The Limes bungalow, and other surrounding properties, were not notified of the TPO until after it had been created. This is standard practice because a TPO is made when a tree is thought to be in danger, as it is usually the tree owner or one or more

of the surrounding people that the tree is in danger from. Therefore we generally do not consult with people near the tree before the TPO is made, because if we notify them before the tree is protected then there is a strong possibility of the tree being cut back or felled before it can be protected. This is why everyone is given the opportunity to raise any issues during the first couple of months after a TPO is made; like a consultation process. This means that while any objections are made and considered, the tree is at least protected in the meantime from any potentially damaging pruning works until the decision is made as to whether the TPO should be confirmed or removed.

- 2.5 The neighbour's objection letter raises the following main points (in brief);
- a) The council made the TPO without any consultation with the neighbours.
 - b) The tree is overgrown and troublesome – there are two trunks side by side, tight against the boundary fence, the branches protrude into the garden more than 4.65m, blocking all the sunlight from the front garden. It causes so much work in the autumn with dropping leaves (56 black bin bags were collected last year), plus the gutters have to be cleaned out at least 3 times a year.
 - c) if the person doing the assessment had viewed the tree from the garden, the impact of the huge, very, very overgrown tree upon the property and wellbeing would have been seen.
 - d) the felling of the tree has not been requested, only that the tree is managed in a more appropriate way instead of being neglected. Some degree of topping and lopping is required.
 - e) I doubt the local skate-boarders truly appreciate the overgrown undergrowth and sycamore tree(s)! What about the impact and problems the tree is causing to our daily lives.
- 2.6 In reply to the objection points raised;
- a) Reasons why the council does not consult neighbours prior to a TPO being made are given in paragraph 2.3 above. All nearby people are notified as soon as the TPO is created to ensure everyone has the opportunity to comment or object against the TPO and their objections considered.
 - b) The tree is not overgrown. It is a large species tree of natural shape and is currently of medium size. It has the potential to grow larger if left to grow. There are several other trees in the immediate vicinity so it is most unlikely that all the leaves are from this sycamore. Further response is below in para. 2.7.
 - c) The tree has since been viewed from the garden and various photographs taken. The cutting back of one side of the tree would not reduce the size or crown outline of the tree in relation to the morning sun and shadow cast across the front garden and windows, as the crown on the side of the field would still remain full sized. Any proposed works of cutting branches back to the boundary line would leave the crown unbalanced. The pruning works to remove many overhanging branches would create numerous columns of dysfunctional wood which creates ideal conditions for fungus to develop and cause decay. Being a

sycamore, such works would also stimulate the tree into producing reactionary growth which grows quickly and would be more dense than the original tree branch structure. Assessment details are below in para. 2.7.

- 2.7 A site visit has been made to the objector's property:
The tree is close behind the boundary fence but is not tight against the fence. The crown spread is 5.6m from the fence into the garden and is 14.7m from the main part of the bungalow. The nearest part of the bungalow is 7.55m from the boundary fence and slightly more from the tree trunk. These measurements are probably best represented on the attached map. The tree has two stems but close inspection of its base was not possible due to undergrowth and nettles along the playing field edge. The tree is approx 13.9m high. It does not overhang any part of the bungalow although leaves will blow across to the roof and gutter as would leaves from other adjacent trees. There are several other trees, cherry, apple, birch and other sycamores along this side of the bungalow, some within the garden and some outside the garden, all contributing to the amount of shade and fallen leaves. The tree causes shade across the garden and up the property walls and windows during the morning, as indicated on a photo in the presentation. This was the first site visit of the morning and the photos show the amount of shading to the front garden and windows at this time of day, between 9-10am before the sun reaches its highest point. As the sun moves around to the south through the morning, the shadow will rotate northwards off the bungalow towards the garage by late morning/lunch time. The garden is fairly large with the largest area of the garden well away from this tree and getting direct sunlight throughout the day.
- 2.8 Confirming the TPO will not prevent any necessary tree work from being carried out or allowing some control on the size and spread of the tree. The purpose of a Tree Preservation Order is not to prevent works from being done, but is to allow regulation of any tree works in order to prevent unnecessary or damaging works from taking place. Keeping the protection will ensure that any pruning works required are done to British Standards Recommendation for Tree Work, (BS3998:2010) and follows industry good practice. In this way, any pruning will be done at correct pruning points minimising the risk of disease and decay developing and reducing excessive, dense regrowth, and should prevent the trees from being inappropriately pruned which would reduce its amenity value and long term retention.
- 2.9 Making an application for consent to carry out tree works is currently free of charge and takes between 3 to 8 weeks to process.
- 2.10 LPA's have the power to make a Tree Preservation Order if it appears expedient in the interests of amenity to make provision for the preservation of trees. The Secretary of States view is that a TPO should be used to protect selected trees if their removal would have a significant impact on the local environment and its enjoyment by the public. "Amenity" does not just refer to visual amenity but can also include such considerations as future benefit, contribution to the

landscape, screening an eyesore or development and can include other factors such as wildlife value or scarcity.

3. Conclusion

- 3.1 The tree contributes to the tree landscape feature across the end of the playing field and amenity value to the surrounding area. Confirming the Tree Preservation Order is the only way to ensure the tree is not inappropriately pruned affecting its shape, health and long term retention. If the TPO is not confirmed, the neighbour will have the common law right to cut the tree back to the boundary line without having to ask prior permission of the Town Council (tree owners) or WLDC.

