



Report No
Development Management Committee
Date 19 th October 2011

Subject: Objection to Tree Preservation Order Scotter No.1 2011

Report by:

Rachel North
Director of Strategy & Regeneration

Contact Officer:

Carol Slingsby
Environment Officer (Green Infrastructure)
01427 676650
Carol.slingsby@west-lindsey.gov.uk

Purpose / Summary:

This report relates to an objection received in relation to the making of a new Tree Preservation Order protecting various trees on land owned by the objector.

RECOMMENDATION(S):

- 1) That Members, notwithstanding the objections made by the land owner, approve the confirmation of the Tree Preservation Order Scotter No.1 2011, with the modification that G4 is excluded from the TPO.**

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 Planning consent, Ref: 124804, was issued on the land in 2009 for the construction of a large detached house. The decision notice contained two conditions relating to the protection of trees on the site during construction works and until the occupation of the dwelling.
- 1.2 Adjacent neighbours raised concerns about the trees, pointing out that one tree had been removed during the construction works and another had been damaged, and they were concerned for the safety of the remaining trees. In addition, the screening provided by the trees was an important feature for the neighbours. Although the neighbours did not request a TPO assessment, it was felt that the only way to continue protection of the remaining trees and the important screening they provide was to carry out a TPO assessment.
- 1.3 The property was visited by council officers Simon Sharp and Carol Slingsby, and the trees were inspected for their amenity value. Amenity value forms the basis of an assessment for a Tree Preservation Order. The Tree Preservation Order Scotter No.1 2011 was made on 23/05/11.
- 1.4 In the year prior to the planning application and the construction works, concerns for the trees had also been raised by another local resident who had contacted the council asking whether or not the trees were protected because the owner had cut down some of the trees. At that time, the trees were not protected and so the owner was within his rights to remove them.

2. Discussion

- 2.1 The decision notice for planning consent 124804 contained Condition 3 which required protective fencing to be placed around the crown spread of the trees for the duration of the construction works. Condition 10 stipulates no buildings works, storage, burning, service trenches and no other development shall take place within the trees protection areas until the property is occupied. It was brought to the council's attention that during the construction works one tree was removed and the protective fencing was not kept in place, resulting in another tree trunk being damaged.
- 2.2 Although the planning conditions were meant to protect the trees, due to their wording they only protected the trees for the duration of the construction works up until the dwelling became occupied. Once work has been completed the owner could have removed all the trees if he so wished as the protection of the planning conditions did not extend past the time of occupation of the new dwelling. As the retention of the trees was considered to be a major consideration in the planning consent being issued, to provide screening and softening of the new dwelling, it was felt the protection of the trees should be extended past

the time of occupation, and so the decision was made to carry out an amenity assessment of the trees.

- 2.3 An initial site visit was made by Mr Sharp & Mrs Slingsby on 05/05/11, then an amenity assessment of the trees was carried out on 18/05/11. In terms of amenity value to the surrounding area, feature within the main road through Scotter, structural greenery within the street scene, provision of biodiversity and habitat in a residential area, and their important screening and softening of the new dwelling for the neighbours and from within the street, the trees met the criteria for a TPO to be placed on them. Gainsborough Road is a long straight road with this property being on a slight bend. The trees are prominent from quite a distance along Gainsborough Road and appear directly in front view when driving along the road out of the village centre. The trees size and prominence are evident in the photographs.
- 2.4 The TPO was created to cover four groups of trees; G1 covers the trees across the front of the property. G2 covers a row of maples along the side boundary of the front garden. These two groups provide screening and feature along the main road. G3 covers three pines between the neighbours at No.47 and the new dwelling, which provide screening for the neighbours at No.47. Please note that the house shown on the OS map is the original dwelling and not the new dwelling. The new dwelling is closer to the trees in G3. G4 was placed on a row of birch trees across the rear garden to provide screening for the neighbours along the rear boundary. Unfortunately the importance of screening to the neighbours across the rear garden was over estimated and their objections raised nuisance issues caused by the trees, such as an excess of leaves in autumn blocking drains and gutters. They felt the problems caused by the trees were more important than the screening and so I have agreed to modify the TPO and remove G4 from the Order. This leaves the points raised by the tree owner as the only objection remaining.
- 2.5 The land owners objection letter was received, in which the main points of his objection are that;
- a) the trees across the frontage are over grown, over hanging the pavement and interfering with overhead cables The TPO would cause inconvenience to pedestrians and potential power supply issues,
 - b) The sycamores in G2 have roots which recently caused damage to drainage and driveway. The TPO would mean that potentially the roots could damage the new drainage and driveway. They are also close to the property and may result in roots causing underground damage.
 - c) The conifers to the side of the house in G3 are tall and could grow higher. The trees are close to the house and may result in roots causing damage or high winds could result in trees causing damage to the house.
- 2.6 In reply to the objection points raised;
- a) The trees across the frontage are not overgrown. They form a natural setting and are medium sized for their species. Under the Highways Act, tree owners have an obligation to keep the highways

clear of obstructions or dangers caused by their trees, and so any branches can be cut back to about 2.5m above a footpath and 5.2m over a road without having to make an application. Branches will grow towards and around the cables regardless of whether a TPO is on the trees or not. If any branches need cutting back from cables a TPO will ensure the work is not too extensive and is done to proper arboricultural standards, thus avoiding poor pruning works that may be detrimental to the trees amenity value and health and often causes dense regrowth to occur.

b) The sycamore trees in TPO group G2 are a row of mature trees which provide structural greenery and prominent amenity feature along Gainsborough Road, particularly on the approach into the village. I was not aware of any damage to the previous drainage pipe and driveway when the TPO was made, but as the previous property was probably built in the 50's or 60's, and assuming the drainage and driveway also date from this time, then it is likely any damage by root growth was aggravated with the age and deterioration of the pipe and driveway. The trees are now mature and most of the thick woody root growth has already occurred. Construction methods have improved since the original property was built and should have considered the proximity to mature trees. If any protected tree eventually causes damage or is a nuisance then any appropriate works or even removal of the tree is likely to be allowed to prevent the damage or nuisance reoccurring.

c) The conifers to the side of the house provide screening of the new building and are considered to be an adequate distance from the property with acceptable clearance between. Providing the property foundations have been made to modern standards following NHBC guidance in relation to foundation depth suitable for the soil type and proximity of trees then there should be no reason to suspect potential damage by roots. The majority of conifer species grow with an excurrent form (pyramidal crown shape) rather than the broad rounded shape of many deciduous trees. If in the future, the trees grow to such an extent that they need cutting back from the house then this type of work would be given consent, but the TPO would ensure the work is done following proper pruning standards.

Unfortunately the reply letter did not alleviate the tree owners concerns and so his objections remain.

- 2.7 Confirming the TPO will not prevent any necessary tree work from being carried out. 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 no trees can be removed without good reason, and if any pruning works are required that it is done to British Standards for tree work (BS3998) 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 their amenity value and long term retention.

- 2.8 Making an application for consent to carry out tree works is currently free of charge and takes between 3 to 8 weeks to process.
- 2.9 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 trees provide important feature and amenity value to the surrounding area as well as screening to the neighbours, and confirming the Tree Preservation Order is the only way to ensure trees on the land are not removed or inappropriately pruned affecting their shape, health and long term retention. There is already evidence of tree removal prior to the planning application to develop the site, and tree removal and damage during construction works when the trees should have been protected. Under the circumstances, it is considered expedient to confirm the Tree Preservation Order protecting the remaining trees in groups G1, G2 and G3, with modification that G4 in the rear garden is removed from the protection.

