

ITEM 9

Application Number: 12/02534/TPO
Other

Tree preservation order consent to fell one English Oak tree (T1)

AT 83 Newport Road, Woburn Sands, Milton Keynes

FOR OCA UK LTD

Target: 29th January 2013

Ward: Danesborough

Parish: Woburn Sands Town Council

Report Author/Case Officer: Richard Sakyi

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1.0 INTRODUCTION AND BACKGROUND

(A brief explanation of what the application is about)

1.0.1 An application was submitted to the Council as the Local Planning Authority on 29th February 2012 seeking tree preservation order consent to fell and treat English Oak (T1) and English Oak (T3), (TPO Reference: SP/540/15/110 confirmed on 8 February 1989) within the front garden of number 83 Newport Road, Woburn Sands. Additional information in respect of the justification for the proposed works was requested by the Council's Arboricultural Officer in order to fully understand the need to remove the two mature oak trees. Subsequently, the applicant appealed against the Council for non-determination (deemed refusal) of the application on 21 May 2012. An appeal hearing took place on 27th September 2012 and the Inspector's decision which dismissed the appeal was issued on 3 October 2012 (copy appended to the report as appendix 4).

1.1 The Site

The application site is located on the eastern side of Newport Road and comprises a detached property located approximately 25 metres back from the main road. There are three large trees within the front curtilage of the property, which form part of an irregular line of oak trees which line the eastern side frontage of Newport Road. The trees, in particular T1, are clearly visible from the public realm being located to the front of the site. Details of the location of the site and its relationship to surrounding properties can be seen in the plans attached to this report.

1.2 The Proposal

Tree preservation order consent is sought to fell and treat one English Oak (T1) (it has since been established that (T3), subject of the previous application, is not covered by the Tree Preservation Order and had been

included in the original application in error). The application is, therefore, a re-submission of the previous application reference 12/00349/TPO, amended to refer only to (T1). The current application is accompanied by a tree report and a statement of reasons (justification) for seeking to fell the tree as summarised below: -

1. The above tree works are proposed and justified by the Applicant as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building;

2. The above tree works are proposed by the Applicant to limit the extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs and associated costs are likely to vary between £40,000 and £167,500, depending upon whether the tree can be removed or has to remain.

3. The tree works are proposed to limit the duration of any claim period and therefore allow the landowner their right to the peaceful enjoyment of their property.

4. The Applicant states that it is the case that an alternative to felling such as pruning or significant 'pollarding' of the tree would not provide a reliable or sustainable remedy to the subsidence in this case. They do not consider that any other potential means of mitigation, including root barriers, would be effective or appropriate in the circumstances.

5. It is proposed that a replacement tree planting of one container grown Field Maple tree, 10-12cm stem diameter at a location in the front garden on the front boundary would be suitable replacements for Oak T1.

This application is submitted by OCA UK Limited and not by the owners of the tree. Details of the proposal as described above can be seen in the plans appended to this report.

2.0 RELEVANT POLICIES

(The most important policy considerations relating to this application)

2.1 National Policy

National Planning Policy Framework paragraph 11 – 14 and 109

2.2 Local Policy

Core Strategy

CS20 – The Historic and Natural Environment

Adopted Milton Keynes Local Plan 2001-2011

D1: Impact of Development Proposals on Locality

3.0 MAIN ISSUES

(The issues which have the greatest bearing on the decision)

- 3.1 1. The amenity value of the tree and the likely impact of felling and;
2. Whether the felling is justified in the circumstances of this case.
3. The benefits versus the dis-benefits of allowing the application to fell the tree.

4.0 RECOMMENDATION

(The decision that officers recommend to the Committee)

- 4.1 It is recommended that tree preservation order consent be granted subject to the conditions at paragraph 6 in the report.

5.0 CONSIDERATIONS

(An explanation of the main issues that have lead to the officer Recommendation)

- 5.1 The permission requested to fell this tree has resulted from the fact that it is the suspected cause of ongoing subsidence at 83 Newport Road. This property has had a history of subsidence and had underpinning works done in 1990. Evidence submitted in the application suggests that vegetative subsidence is the cause and this has been contributed to by two Oak trees (one subject to the preservation order and one which is not). The Council's officers consider based on the evidence submitted so far that vegetation is the likely cause.
- 5.2 The tree in question, identified as an Oak, forms part of an irregular wooded line of mature Oak trees that run along Newport Road, for a distance of approximately 0.5km. The trees are generally positioned within the front gardens of the dwellings and provide an attractive, leafy and softening street scene and screening for the built development behind. As a line of trees they provide the area with a significant level of amenity value and contribute to the pleasantness and biodiversity of the locality. Individually using the Halliwell system to calculate amenity value the tree in question is worth T1 1152 = £32,797. T1 clearly contributes to the character of the area and ultimately the loss would be detrimental to the character of the area and the line of Oak trees overall. The above view was supported by the planning inspector at paragraph 5 in her decision notice appended to the report.
- 5.3 Notwithstanding the inspector's decision, the applicant has submitted this application seeking consent to fell the Oak tree (T1). The Applicant's arboricultural report indicates that the estimated cost of superstructure and repair works if the tree is removed to be £40,000.00 and estimated cost of works if tree is retained to be £167,500.00. The damage to the property is fairly minor in nature, but it occurs in many rooms both on the ground and first floor with widespread cracking in the internal plaster, although there is little evidence of damage externally. Given the proximity of the oak tree to the property, it is considered more likely that this is the cause of the subsidence. The applicant has indicated that pruning works to the tree could provide an effective or sustainable means of controlling its water use however in order to provide a long-term solution to the current subsidence damage the tree ought to be removed.

- 5.4 Subsequent to the appeal decision, the applicant submitted to the Council a formal claim for compensation in a letter dated 10 October 2012 which set out all costs incurred to date and the estimated final total amount which would be claimed of £167,500.00 constituting the costs for repair of the property and costs for once-and-for-all engineering solution (in this case, a piled raft).
- 5.5 In accordance with the terms of the Tree Preservation Order affecting the Oak Tree (T1) and also section 203 of the Town and Country Planning Act 1990, an applicant can claim compensation for all loss and damage incurred as a consequence of a refusal (or deemed refusal) of consent for works to a tree subject to a TPO against the Local Planning Authority making the decision. This includes all costs incurred in repairing the damage as well as rectifying the cause of the damage, together with all associated legal and consultant's costs. Such compensation claims are assessed at the Lands Tribunal. An opinion on the likelihood of a claim being successful has been obtained and is set out in the accompanying report in Part II of the Agenda.
- 5.6 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. Saved Policy D1 of the Milton Keynes Local Plan deals with the impact of development on the locality. It is a general policy aimed at all categories of development however the emphasis is to reduce the adverse impact of development in the locality including statutory protected and other important built and natural features and wildlife habitats within which they are situated.
- 5.7 The estimated costs for repair and engineering solution are considered significant and if the Council is deemed liable, this would have to be weighed against the public benefit of keeping the tree. This is a material consideration which should be afforded weight taking into account the current contribution of the tree towards the amenity value, street scene and character of the area. The Planning Inspector stated at paragraph 15 in the decision letter that; "There should be no automatic felling of trees with high public amenity simply because they may be implicated in causing damage to a property when there are other ways of tackling the problem. I accept that this may be costly but the building should have been stabilised before, in 1990 to take into account tree growth and the proximity of the oaks in once and for all solution." Notwithstanding this statement the issue of removing the tree and the costs and repair of subsidence of the property have to be reviewed in the light of the latest information available.
- 5.8 The tree officer has objected to the removal of the tree and has indicated the trees are of a significant value, scoring very highly on the Arboricultural Association's Amenity Valuation system. The loss would devalue the local aesthetics and possibly the property's value (there is evidence to suggest that the presence of trees has a positive effect on property values – notwithstanding the loss of value that tree related cracking can cause (CABE Space "Does Money Grow on Trees)). He goes further and concluded that based on the condition and value of the tree and the comments from the inspector: that the trees should not be removed and alternative remedies in line

with the inspector's views should be sought. However, this advice from the arboricultural officer does not take into account the financial implications of taking such a decision.

- 5.9 It is acknowledged that the loss of the tree will have a detrimental effect on the amenity value and diminish the character and appearance of the area in general. Whilst this is the case and supported by an appeal inspector, a recent court decision advises that a public authority, when exercising a discretionary power that may result in payment of compensation, are entitled to take into account the cost to the public purse of doing so. The potential compensation in this case is considered to be very significant and will fall on the public purse if the Council is found to be liable. Notwithstanding the inspector's decision, the very large amount of potential compensation involved is a material consideration which cannot be ignored and can be given weight in determining this application.

The Council's position in determining this application is discretionary; whilst a tree such as the Oak Tree (T1) might be of amenity value and thus desirable to be retained, this must be balanced against the financial implications to the Council of not allowing the application which in this case will most likely to be to be held liable for costs of up to £167,500.

Having weighed the benefits of keeping the tree, the objections raised by the Town Council and local residents, the Arboricultural officer and the associated costs involved it is recommended that consent should be granted to fell the preserved oak tree (T1) subject to conditions listed below.

6.0 CONDITIONS

(The conditions that need to be imposed on any planning permission for this development to ensure that the development is satisfactory. To meet legal requirements all conditions must be Necessary, Relevant, Enforceable, Precise and Reasonable)

1. Prior to the removal of the tree hereby approved, the size, siting and species of a replacement tree shall be submitted to and agreed in writing by the Local Planning Authority. The replacement tree shall then be planted on site in accordance with the approved details, in the first available planting season. Any tree that within a period of five years after planting dies or, in the opinion of the Local Planning Authority, becomes seriously damaged or defective shall be replaced with another of the same species and size as originally approved in a timetable to be agreed in writing with the Local Planning Authority.

Reason: To protect the appearance and character of the area and to minimise the effect of the loss of the protected tree on the area.

2. All works should be done at such a time as to avoid disturbing nesting birds. Works during the months of March to August inclusive should be avoided unless a survey has been carried out to determine the absence of active nests. All Works should be done to recommendations in BS 3998, 2010 "Tree work Recommendations"

Reason: To protect birds during their breeding season and to accord with 'Saved' policy NE2 of the Milton Keynes Local Plan 2011.



Location: 83 NEWPORT ROAD, WOBURN SANDS, MILTON KEYNES, MK178UN
 Job Ref.: 48698
 Survey Date: 14/10/2011
 Scale: 1:300 @ A4

4 The Forebush
 Pleinville Square
 Pleinville Road
 OCA Centre
 OCA 999
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 OCA 999

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Appendix to 12/02534/TPO

A1.0 RELEVANT PLANNING HISTORY

(A brief outline of previous planning decisions affecting the site – this may not include every planning application relating to this site, only those that have a bearing on this particular case)

A1.1 10/01440/TPO

Tree preservation order consent to granted to undertake the 25% crown reduction and re-shape one English Oak tree (T1)
PTPOZ 07.09.2010

12/00439/TPO

Tree preservation order consent to fell and treat English Oak (T1) and English Oak (T3). Tree Preservation Order Ref: SP/540/15/110.
Non-determination 03.10.2012

A2.0 ADDITIONAL MATTERS

(Matters which were also considered in producing the Recommendation)

A2.1 None

A3.0 CONSULTATIONS AND REPRESENTATIONS

(Who has been consulted on the application and the responses received. The following are a brief description of the comments made. The full comments can be read via the Council's web site)

Comments

Officer Response

1.1 Landscape Services Manager - Trees

Noted at paragraph 5.6 and 5.7 in the report

Objects to the proposal on the following grounds: -

The tree in this TPO application has been subject to a felling application and subsequent appeal against non determination. The appeal was dismissed on the grounds that there are reasonable and preferable alternatives to felling and that the works proposed were not sufficient to justify the course of action proposed when weighed against the loss of amenity that would result.

These comments hold true for this application. The trees are of a significant value, scoring very highly on the Arboricultural Association's Amenity Valuation system. Their loss would devalue the local aesthetics and in all probability, local property values.

Another issue is the nature of the damage. Trees can absorb sufficient moisture from some load bearing soils to cause them to shrink and thus cause subsidence. The effect is rare but it has been accepted that on the balance of probabilities this has occurred here. However a major variable factor is the weather. The data that was submitted to the previous application and appeal followed an almost unprecedented cumulative series of dry seasons, which were more likely to cause the shrinkage effect. The recent and equally unprecedented wet weather conditions have

reversed the cumulative effect of the dry periods in many parts of the country. The current condition of the building has not been established.

Based on the condition and value of the tree and the comments from the inspector, my feeling is that the tree should not be removed and alternative remedies in line with the inspector's views should be sought.

1.2 Parish - Woburn Sands

Noted at paragraph 5.7 in the report

Objects to the proposal on the following grounds: -

1. The tree is at the front of the property and therefore makes a significant contribution to the street scene on the approach to Woburn Sands.
2. Earlier applications to fell this tree were refused and the refusal upheld by an Inspector.
3. Two highly technical reports are submitted to support the application and WSTC has no experts to verify the contents. Both reports conclude that this tree's roots beneath the front of the building are the cause of structural defects and that only felling will allow repairs to be effective. However, this is not proven by the associated documents which do prove the subsoil has contracted and expanded over time, and that the roots beneath the foundation are those of an oak tree.
4. The long term solution to the structural problems may be underpinning, given the shallow foundations, rather than the shorter term solution of felling an old oak tree with TPO.
5. The variations in cost estimates together with these points make us somewhat sceptical as to the validity of the reports.
6. This Council would rely upon the recommendation of MKC tree officer and Conservation Officer to support our concerns, not least the precedent which will be set if granted to destroy other TPO trees on this approach road to the heart of Woburn Sands.

1.3 Local Residents

The occupiers of the following properties were notified of the application: 81, 83 and 85 Newport Road, Woburn Sands Milton Keynes.
Three letters have been received from the occupiers of the neighbouring properties (number 65, 79 and 81 Newport Road) objecting to the proposal on the following grounds: -

Noted at the considerations section of the report

1. Support the objections of the Town Council and the Tree Officer
2. The new application doesn't consider the issues of the shallow foundations, or alternatives to cutting down the tree.
3. We do not want to see this wonderful and historic tree cut down just to save money because this will definitely set a precedent for all the houses on the road.
4. The oak trees have been a key feature of the Newport Road street scene, and it would be regrettable to lose any of them.
5. The problem of subsidence may be caused by the soil and the topology of these sites, rather than the oak trees.
6. The future does not look too rosy for any of the oak trees along Newport Road, and that would be a source of great regret (precedence).
7. This should be the final and only option remaining which we believe is the not the case.
8. As the engineers are the same who recommended this, how robust does it make the report?
9. This feels as if it is a cost driven insurance exercise, have other quotes been obtained to get a more reliable figure than £165K which is stated at the top end.
10. The trees were established well before the construction of the buildings, and every effort must be made to protect the trees.