

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 3 PLANNING COMMITTEE

28 May 2009

Report of Central Services Director

Part 1- Public

Delegated

1 TREE PRESERVATION ORDER NO 2 2009

1.1 Background

1.1.1 On instructions received from the Director of Planning, Transport and Leisure, a Tree Preservation Order (No 2 2009) was made on a Corsican Pine tree in the rear garden of 429 London Road, Ditton, on 5 January 2009.

1.1.2 The grounds for making the Order are to protect the tree in the interest of visual amenity.

1.1.3 The Order is the subject of an objection from the owner, Mr J Wright, submitted by his agent, Mr M Cotterill.

1.1.4 A copy of the plan annexed to the Order is attached as **[Annex 1]**.

1.2 Objection received from Mr Cotterill:

(1) The tree was planted by the Owner and is part of a small arboretum that he has created and maintains for his, the benefit of his family and the local indigenous wildlife. This reflects his passion for trees and as a qualified horticulturist he considers himself to be capable of identifying when pruning, felling or seeking additional qualified assistance is the right action to prolong the life of any of his trees.

The removal of the tree by the Owner will only be considered for two reasons, these are (a) as part of an agreed procedure associated with the receipt of Planning Permission to develop the adjacent area. This is being resisted by the Planning Officer and is therefore out of the control of the Owner, and (b) further damage or deterioration in its condition due to natural causes rendering it to be considered unsafe.

(2) The tree has at some time in the past sustained damage due to wind or lightning. As a result it has lost boughs on one side only. It has therefore subsequently grown in a lop-sided fashion putting additional out of balance forces

into the trunk, this will have a detrimental effect on the overall life of the tree. Remedial action has not been possible.

The tree report submitted with the recent planning application has put the tree into Category B, i.e. it is of moderate quality and value.

The tree report does however suggest a replacement strategy and the Owner is prepared, if permitted to find a replacement of equal quality in compensation.

From the above it is hoped that you will appreciate that the Owner considers the Tree Preservation Order to be unnecessary since the tree is not at risk from him for any reason other than that its natural life was over.

1.3 DPTL response to objection from Mr Cotterill

Whilst I appreciate that the owner planted the tree originally, and would not plan to remove it unless it deteriorates and becomes dangerous, it is considered that the tree is potentially under threat as a result of development proposals for the site.

There are two recent planning applications of relevance. In both instances the tree would potentially have been affected by the access road to serve the development sought.

The first application (TM/07/01375/OA) sought permission for two detached houses on land to the rear, adjoining the boundary with properties in Primrose Drive. This application was refused, and a subsequent appeal was dismissed. The submitted plans showed the tree to be retained; however the Inspector, in dismissing the appeal, expressed concern that, because of the proposed widening of the access, it was not likely that the tree would be able to be retained. I attach **[Annex 2]** a copy of the Inspector's decision; please refer to paragraph 7.

The second application (TM/08/03276/OA) was for the erection of a three bedroomed bungalow on the same piece of land. In response to the concerns expressed in connection with the previous proposal, this application was supported by a report from a qualified arboriculturalist. Relevant excerpts from this report are attached **[Annex 3]**. The relevant tree is referred to in this report as T1. Members will note that this application proposed the removal of the tree, and its replacement with a different species in a slightly different location. It was in these circumstances that it was considered appropriate to protect the tree by way of a TPO. No other trees on the site were considered worthy of protection.

The application has been refused and is the subject of a currently undetermined appeal. One of the reasons for refusal cited by the Borough Council is the loss of the Scots Pine tree and the consequent detriment to the visual amenity of the area.

Notwithstanding the apparent intention to remove the tree that was indicated in the application, the grounds of appeal submitted by the appellant contain the following paragraph:

“In preparing the application the requirement to provide a 3.7m wide access for emergency vehicles has been considered. This can be generally achieved except at the location of the Scots Pine tree where only 3.5 metres is available. However, the regulations also permit a minimum width of 3.1metres to occur at ‘pinch points’, it would therefore appear that the proposed access will meet current requirements and there will be no need to remove the Scots Pine.”

This is welcomed, however no amended plans to show the retention of the Scots Pine have been submitted in connection with the outstanding planning appeal to confirm this change in position by the appellant.

As Members will see, the tree was categorized as 'B' in the tree report, being of moderate quality and value. However, this categorization suggests that the tree makes a significant contribution to the area and, indeed I believe that it might have been categorized as an 'A' grade tree had it not sustained some storm damage in the past. Despite the tree being slightly unbalanced it is considered to be of reasonable form with high amenity value. Although a replacement strategy was suggested in the original tree report, it is not possible to plant a replacement tree of this size and age.

Whilst I note that the planning appeal documentation appears to indicate an intention to retain the tree, I remain concerned that the current development proposals, if approved, would still represent a potential threat. Whilst one might take the appellant’s current stated position at face value, given the proximity of the tree to the access proposed to serve that development, there is no guarantee that adequate physical protection could be afforded to it during construction works, for example.

Under these circumstances I would suggest that the TPO should be confirmed.

1.4 Legal Implications

1.4.1 None

1.5 Financial and Value for Money Considerations

1.5.1 Not applicable

1.6 Risk Assessment

1.6.1 Not applicable

1.7 Recommendations

1.7.1 Members are asked to either:

- (i) Confirm the Tree Preservation Order as served or
- (ii) Uphold the objection to the Order

Background papers:

contact: Trevor Bowen

File TPO 818

Julie Beilby
Central Services Director