

# Bath & North East Somerset Council

MEETING: **Development Control Committee**

AGENDA  
ITEM  
NUMBER

MEETING DATE: **1 August 2012**

TITLE: **Tree Preservation Order: Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267A) Tree Preservation Order 2012**

WARD: **Combe Down**

**List of attachments to this report:**

**Plan of Site**

**Letter of objection and accompanying tree report**

**AN OPEN PUBLIC ITEM**

## **1. THE ISSUE**

- 1.1 Tree Preservation Order (TPO) entitled Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267) Tree Preservation Order 2011 was brought to Committee on 18<sup>th</sup> January 2012 following an objection to the inclusion of one tree within the group of Beech. The Committee resolved to confirm the TPO with a modification to alter the schedule from 13 to 14 trees within the group.

Legal advice resolved that modifying the TPO to add a tree was not possible so a new TPO was made on 7 March 2012 entitled Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267A) Tree Preservation Order 2012 ("the TPO") which protected 14 trees to fulfil the Committee's resolution to include all 14 trees.

The serving of the new TPO provided the objector to the original TPO with a second opportunity to object to the inclusion of the Beech tree closest to the property.

## **2. RECOMMENDATION**

- 2.1 That the Committee resolve to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267A) Tree Preservation Order 2012.

### 3. FINANCIAL IMPLICATIONS

- 3.1 **Financial:** Under the law as it stands the owner of a tree cannot claim compensation from the Council for making a tree the subject of a tree preservation order. However if the tree is covered by a tree preservation order and the Council refuses an application to fell the tree, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.
- 3.2 **Staffing:** None.
- 3.3 **Equalities:** In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.
- 3.4 **Economic:** None.
- 3.5 **Environment:** The group of trees which are the subject of this report are important within the Cotswold Area of Outstanding Natural Beauty, make an important contribution to the landscape and amenity of the local area and are an important feature of the Bath Skyline Walk.
- 3.6 **Council Wide Impacts:** The confirmation of the TPO will involve officers from Legal Services. Officers from Development Control will need to take account of the trees when considering any application for development or alterations on the site which might affect the trees.

### 4. THE REPORT

#### BACKGROUND

- 4.1 The trees which are the subject of the TPO are a row of 14 mature Beech growing along the northern boundary of 29 Flatwoods Road shown encircled in black and marked G1 on the attached plan.
- 4.2 A request was received from the former owner of the property for the trees to be considered for protection because the house was being sold and the former owner wished to safeguard the future of the trees.
- 4.3 The trees were assessed and was considered to be of sufficient merit to be worthy of a Tree Preservation Order. A group designation was considered appropriate because the trees were all Beech and had been planted intentionally as a row and formed one landscape feature.
- 4.4 The making of a Tree Preservation Order was considered expedient in view of the future change in ownership.
- 4.5 Since the making of the TPO it was noted that the Beech next to the western boundary may not have been included when the trees were counted. The error in the number of trees referred to within the schedule, therefore, resulted in an ambiguity within the document.

#### **4.5 Letters of objection to the Tree Preservation Order**

The Council are required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

4.6 One letter objecting to the inclusion of the tree nearest the house has been received from the new owners of the property supported by a tree report which have been attached.

4.7 The main objections are extracted from the report by Aspect Tree Consultancy and summarised below.

- The eastern tree is a minor component of the group and only partially visible from public locations. This tree has a limited amenity value and is not a fundamental component of the group.
- The loss of the tree would not be detrimental to the local amenities or the health and long term viability of the remaining trees.
- The tree has an unsustainable spatial relationship with the property.
- The Council has given consent for works to the tree which is considered contrary to the advice contained within BS 3998:2010 Tree Work – Recommendations. The approved specification does not seek to minimise the potential negative impact on the trees health or long term viability.
- The tree has structural weaknesses at the base of two branches and the removal of the tree would favour the adjacent tree.

4.8 The objections to the Tree Preservation Order outlined in section 4.7 above have been considered by Officers and the following comments are made:

- The Councils Arboricultural Officer considered that it was appropriate to consider all the trees in the row as one group than as a row of individual trees. The competition for light and other resources and the possibility that the trees were planted at differing times has resulted in the trees developing variable sizes with some more dominant than others. The point made in the report could equally be made to smaller individuals within the group as a reason to support a felling application should the TPO be confirmed. In terms of the overall landscape view, the tree being shorter than its neighbour provides a gradual decline in height at the end of the row towards the house rather than an abrupt end which would be the case if this tree were removed. The next tree in the row remains within falling distance to the house, the owner has expressed their concerns regarding the end tree by virtue of its size and proximity. Any future occupant could equally be concerned regarding the taller tree behind which would then be the closest to the house.
- The objection to the TPO relates to one tree, however, treated as individuals this argument could expose other trees to the same reasoning in future felling applications should the TPO be confirmed.

- The tree is a mature individual which is over 9m from the property. This is not considered to be excessively close to prevent the inclusion of the tree within the group. The Tree Report refers to guidance extracted from Tree Preservations Orders – A guide to the law and good practice with particular regard to trees and development. Whilst it is accepted that the proximity of retained trees to proposed dwellings should be considered during the planning process the Councils Arboricultural Officer contests the application of this particular extract to the current TPO since the previous owner of the property lived in harmony with the nearest tree.
- The tree report relies heavily on the consent issued by the Council, not only in the actual works consented but also because this individual treatment has been used to justify separating the tree from the group. The consent was a result of an application made by the objector to the original TPO. The proposed works were intended to help address a number of the objector's concerns by reducing the end weight of the extended heavier limbs whilst retaining the tree. The Council sought to provide a balanced and fair approach and display empathy towards the objector. With regards to the application it was considered that the selective reduction of the extended branches by up to 2-3m to reshape the canopy was feasible in the context of the guidance within BS 3998:2010 regarding the number and size of cuts.
- It is accepted that the tree does not have a perfect form and that there are structural weaknesses. An assessment may find similar faults of the other trees within the group. The Council has given consent for work which will reduce the end weight of the extended branches and it is maintained that the tree could remain for over 20 years. The removal of the tree would favour the next tree in the row and it is agreed that the canopy of the next tree is likely to develop to fill the gap created by the loss of the current end tree.

## **5.0 LEGAL AND POLICY FRAMEWORK**

### Tree Preservation Order

- 5.1 A tree preservation order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a tree preservation order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

- 5.2 The law on tree preservation orders is in the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England ) Regulations 2012 which came into effect on 6th April 2012.

- 5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

- 5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands considered to be under threat. This is in keeping with the Office of the Deputy Prime Minister (formally the Department of the Environment, Transport and Regions) guidance, and takes account of the visual impact of the tree/s and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.
- 5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the trees. The TPO was made on 7 March 2012. This took effect immediately and continues in force for a period of six months.

### Planning Policy

5.6 Bath and North East Somerset Local Plan including minerals & waste policies 2007

*C2.22 'Trees are an important part of our natural life support system: they have a vital role to play in the sustainability of our urban and rural areas. They benefit:*

- *the local economy – creating potential for employment, encouraging inward investment, bringing in tourism and adding value to property;*
- *the local environment by reducing the effects of air pollution and storm water run off, reducing energy consumption through moderation of the local climate, and providing a wide range of wildlife habitats;*
- *the social fabric in terms of recreation and education'*

*C2.23 'Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing'*

*C2.25 'Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree'*

## **6. CONCLUSION**

- 6.1 The tree which is the subject of the objection is an integral part of the group and as such contributes to the landscape and amenity of this part of Combe Down.

- 6.2 Confirmation of the TPO would ensure the retention of the group of trees. Should it be found in the future that it would be unreasonable to retain the individual tree, the Council will then be able to ensure that a replacement tree of a similar species is planted.
- 6.4 In keeping with the policies referred to above and the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.
- 6.5 This report has not been sent to Trades Unions because there are no staffing implications.

<b>Contact person</b>	Jane Brewer – Senior Arboricultural Officer 01225 477505
<b>Background papers</b>	The file containing the provisional Tree Preservation Order, relevant site notes, documentation and correspondence can be viewed by contacting Jane Brewer on the above telephone number.