

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	21 st November 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (Governors House, Stuart Place, Twerton, Bath No. 281) Tree Preservation Order 2012
WARD:	Twerton

AN OPEN PUBLIC ITEM

List of attachments to this report:

Plan of Site

Copy of letter of objection to the Tree Preservation Order

1 THE ISSUE

1.1 An objection has been received from Guinness Hermitage following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (Governors House, Stuart Place, Twerton, Bath No. 281) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 16 August 2012 to protect a Tulip Tree which is encircled in black and identified as T1 on the plan which makes a contribution to the landscape and amenity of the conservation area.

2 RECOMMENDATION

2.1 The Development Control Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (Governors House, Stuart Place, Twerton, Bath No. 281) Tree Preservation Order 2012 without modification.

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 tree which is the subject of this report makes an important contribution to the amenity in the local area.

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 tree when considering any application for development or alterations on the site which might affect it.

4 THE REPORT

4.1 Background

4.2 The tree which is the subject of the TPO is one Tulip Tree growing adjacent to the car parking area fronting Caledonian Road within the grounds of Governors House and encircled in black and marked T1 on the attached plan.

4.3 The Council's Senior Arboricultural Officer received requests from Councillor June Player and ten other local residents, one of whom lives in Governors House, requesting a Tree Preservation Order because they were concerned that the owner, Guinness Hermitage, was intending to fell the tree following damage to the surface of the car park.

4.4 The tree is not within the Bath Conservation Area so the owner could remove the tree without the need to notify the Council. The tree was viewed and assessed to be considered to be of sufficient landscape merit that a Tree Preservation Order should be made to ensure that there was an opportunity for the tree and the opinions of local people to be given due consideration.

4.5 Letter of objection to the Tree Preservation Order

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

4.7 One letter of objection has been received from Guinness Hermitage. The Committee are advised to read the letter of objection attached.

4.8 The main objections as detailed within the letter are summarised below.

- i) An initial investigation to determine the extent of the root growth would be required to determine what roots are present and what threat they may pose to the listed wall and other car parking spaces. This would be a cost to the residents and may result in the requirement to undertake root severance which could kill the tree.
- ii) The root growth could cause damage to the highway and drains which could potentially result in a cost to the residents for repairs.
- iii) The retention of the tree would result in regular pruning operations which would be a cost to the residents which has been estimated to be an initial cost of £450 and annual cost of £300.
- iv) One car parking space has been cordoned off because of the tripping hazard caused as a result of disruption to the pavious. More spaces may be affected in the future. Any change to the car park surfacing to reduce the problem would require agreement from English Heritage and possibly require a planning application with no guarantee that consent would be given.
- v) The costs of the installation of a root barrier and to replace the surface could be in excess of £16,000 which would be a cost to the residents.
- vi) All parking spaces are necessary to limit the need for on street parking.

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

- i) The proposal to fell the tree was based on disruption to the block pavious within the car parking area. Guinness Hermitage is concerned that the tree will cause more damage, however, no other signs of damage were evident on site. The loss of the tree just in case more damage is caused is not considered an acceptable president to support the felling. The Tulip tree is approximately 12 meters from the front of Governors House which is a listed building and which includes a lower ground level which will reduce any likelihood of damage. The low front boundary wall is approximately 4 meters away. The brick pavious have already been disrupted and works are already needed to repair the damage and remove the risk of tripping. The severance of roots would be subject to the advice of an Arboriculturalist as part of a watching brief during the investigation. An application under the TPO would be necessary for any root severance.
- ii) Potential damage to drains and the highway are not necessarily foreseeable and would be dependent on the soil conditions, depth of drains and construction of the drains. Past excavations within the public footpath are evident near to the tree and whether any root severance was caused which may reduce the likelihood of damage is unknown. The construction of the road will influence and limit the root growth to the East and North.
- iii) The tree has the potential to grow larger if left without intervention so regular pruning would be necessary to contain it's size. The management options and intervals required for pruning will be dependent on the tree's response to any initial works which would currently require an application.
- iv) Guinness Hermitage has not indicated whether it has made any approach to English Heritage with regards to the change in surfacing to determine whether English

Heritage would need to comment. The Council's Officer has approached the Historic Environment Team leader who has informally indicated that a change in the surface material is unlikely to require listed building approval. In addition, he commented that whilst the parking spaces seemed to be visually centred on the façade of the listed building the loss of symmetry should one parking bay be removed seemed to be outweighed by the preservation of the tree.

- v) The requirement for the installation of a root barrier has not been demonstrated. Repairs are already considered necessary by Guinness Hermitage which would already be a cost to the residents. The additional costs have not been supported by evidence, for instance, the need for the construction of a sub base has not been established.
- vi) During the three occasions which the Council's Officer has visited the site there have been vacant car parking spaces available. A resident of Governors House has stated that this is normal.

Guinness Hermitage has consistently referred to the cost to the residents of Governors House, however, it has not provided any supporting evidence to indicate that the views of the residents and local community has been taken into account.

4.12 Relevant History

4.13 None

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 Government guidance, and takes account of the visual impact of trees 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 28th May 2012 and 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 contributes towards the local visual amenity and is valued by local residents.

6.2 Confirmation of the TPO would ensure the retention of the tree, however, an application supported by sound arboricultural reasons for pruning or felling as the need arose in the future can be made under the TPO. The Council will then be able to condition the quality of the workmanship and appropriate replacement planting if considered appropriate.

6.3 In keeping with the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

Contact person	Jane Brewer 01225 477505
Background papers	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.