

Bath & North East Somerset Council

MEETING: **Development Control Committee**

AGENDA
ITEM
NUMBER

MEETING DATE: **31 August 2011**

TITLE: **Tree Preservation Order: Bath and North East Somerset Council (Land between 6 and Wilmslow, Bannerdown Road, Batheaston No.15) Tree Preservation Order 2011**

WARD: **Batheaston**

List of attachments to this report:

Plan of Site

AN OPEN PUBLIC ITEM

1. THE ISSUE

- 1.1 This report primarily requests the Committee to confirm, without modification, the Tree Preservation Order entitled Bath and North East Somerset Council (Land between 6 and Wilmslow, Bannerdown Road, Batheaston No.15) Tree Preservation Order 2011 ("the TPO"), which was provisionally made on the 25 March 2011 to protect a tree which makes a significant contribution to the landscape and amenity of the area.

2. RECOMMENDATION

- 2.1 That the Committee resolve to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (Land between 6 and Wilmslow, Bannerdown Road, Batheaston No.15) Tree Preservation Order 2011

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 could 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 landscape and amenity of the local area.
- 3.6 **Council Wide Impacts:** The confirmation of the TPO will involve officers from Legal Services and 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 the tree.

4. THE REPORT

BACKGROUND

- 4.1 The tree which is the subject of the TPO is a mature Lime on land between 6 and Wilmslow, Bannerdown Road and close to Fosse Lane shown encircled in black and marked T1 on the attached plan.
- 4.2 A planning application was received to develop the land on which the tree stands, reference 11/00608/FUL. The proposal indicated that the tree was to remain but the layout had not been informed by the recommendations within an arboricultural report dated May 2009.
- 4.3 The tree was assessed and was considered to be of sufficient merit to be worthy of a Tree Preservation Order.
- 4.4 The making of a Tree Preservation Order was considered expedient following receipt of the planning application reference 11/00608/FUL.

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 Six letters objecting to the TPO have been received. Two are from the shared owners of the land; three are from residents in Fosse Lane living opposite the tree and one from the neighbour at Wilmslow. In addition to the letters received, the minutes of a meeting of Batheaston Parish Council indicated that the Parish Council could not support the TPO. The decision will be reviewed at a meeting on 30th August.
- 4.7 The main objections are identified below.
- The TPO would hamper future management of the tree.
 - The tree blocks light to residents in Fosse Lane.
 - The tree will damage the tall retaining wall beside Fosse Lane.
 - The tree does not have sufficient amenity value to merit a TPO.
 - The tree is not under threat and so a TPO is not expedient.
 - The tree could fail in a storm and causes neighbours to worry.
 - The tree is too big and should be cut back or removed.
- 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 Officers have assessed the tree for amenity value as part of the TPO process and found that it is an important tree within the locality. Two Tree Surveys have been carried out by independent Arboricultural Consultants on behalf of the planning applicant. Both of the qualified and experienced Arboriculturalists stated that the Lime is a B category tree as assessed in accordance with BS5837:2005 Trees in Relation to Construction. Recommendations. A tree considered to be included within the B category is considered to be 'in such a condition as to make a significant contribution.'
- An application to carry out management to the tree can be made under the TPO. The April 2011 report does not identify any management recommendations currently required.
- No evidence has been provided to indicate that there is any current damage to the boundary wall and the April 2011 report states, 'no sign of movement within the wall'. If there are any future issues an application could be submitted for appropriate works.
- Without a TPO the tree could be managed inappropriately or felled with no due consideration. Any consent for appropriate management can include a condition to ensure that the quality of workmanship is based on current good practice. Should felling be necessary in the future then replacement planting can be conditioned.
- The original planning application was amended to take into account the root protection area required during construction activities and to accommodate the tree. The amendment did not occur until after comments by the Arboricultural Officer. Landscape conditions are not considered an appropriate long term solution to protect the tree. A TPO is considered to remain expedient because the objection letter from one of the shared owners states that they consider that the tree is in the wrong place.

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 **Part VIII of the Town and Country Planning Act 1990** and in the **Town and Country Planning (Trees) Regulations 1999**
- 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 tree. One objection letter from a shared owner of the property makes reference to the assessment and considers that the tree does not reach the lower threshold to justify a TPO. The form is used purely as an aid to the decision process and is not definitive. The TPO was made on 25 March 2011. 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 makes a significant contribution to the landscape and amenity of this part of the Batheaston.
- 6.2 Confirmation of the TPO would ensure the retention of the tree. Should it be found in the future that it would be unreasonable to retain the 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.

Contact person	Jane Brewer – Senior Arboricultural Officer 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.