

Planning Committee: 23 August 2005
Application No: TPO 283

Item Number: 44

Town/Parish Council Stoneleigh

Case Officer Sandip Sahota
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Manley, Ashow, Warwickshire
Provisional Tree Preservation Order: 1 Scots Pine (TPO283).

SUMMARY OF REPRESENTATIONS

The Tree Preservation Order took effect, on a provisional basis, on 3 June 2005 and continues in force on this basis for a further six months or until the Order is confirmed by the Council whichever first occurs. Before the Council can decide whether the Order should be confirmed, the people living in the vicinity of the Order have a right to make representations.

Otter's Pool, Ashow – OBJECT on grounds that the tree is unsafe - a very large branch recently fell off the tree and landed on her land causing minor damage; is of the opinion that there is another branch showing signs of deterioration.

Capabilities Landscapes on behalf of Manley, Ashow – OBJECT on grounds that permission was given by the Council to fell the tree in April 2005.

KEY ISSUES

The Scots Pine is situated within the front garden of 'Manly' close to the road frontage and lies within the Ashow Conservation Area.

Background:

The Town & Country Planning Act 1990 makes special provision for trees in conservation areas which are not the subject of a TPO. Under section 211 anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the Local Planning Authority six weeks' prior notice (a "section 211 notice"). The purpose of this requirement is to give the LPA an opportunity to consider whether a TPO should be made in respect of the trees. The LPA can deal with such a notice in one of two ways:

1. Make a TPO if justified in the interests of amenity. The proposal would then have to be the subject of a formal application under the TPO, or
2. Decide not to make a TPO and allow the six week period to expire, at which the point the proposed work may go ahead as long as it is carried

out within two years from the date of the notice.

Crucially, the LPA cannot refuse consent. Nor can they grant consent subject to conditions.

In February 2005 a section 211 notice was served by the owner to remove the tree due to concerns regarding the safety of his and the neighbouring property, as the tree had lost a number of limbs in the past. The Council's Arboricultural Officer visited the site and recommended that the tree was worthy of a TPO. However, due to other work commitments the six week period elapsed without the TPO being made. Since the LPA cannot refuse consent, permission was given to fell the tree on 7th April 2005.

However, there is case law to the effect that these events do not prevent the Local Planning Authority making a Tree Preservation Order at a later date.

Assessment

The Scots Pine is a tall mature specimen. The tree by reason of its size and height is a dominant feature clearly visible in the street scene and from further away when approaching the village and therefore makes a significant positive contribution to the amenity of the Ashow Conservation Area.

The representations mainly acknowledge this, but express concern with regard to the safety of the tree.

The report from Capabilities Landscapes, whilst acknowledging that "*The Scots Pine is of considerable landscape importance*" goes onto to state that "*The Scots Pine is over mature...it has a considerable amount of deadwood throughout its crown and three split hanging limbs. It has lost 5 limbs in the past including the last hollow major limb to suffer from wind blow last month*".

However, The Council's Arboricultural Officer is of the view that any possible failure will be limited to high branches, not the stem, which are unlikely to hit the property.

There is no such thing as a 'safe' tree, and by the same token there is no such thing as a 'dangerous' tree. There is a continuing scale between the two of increasing risk, which is determined by three factors:

1. The probability of it falling
2. The probability of something/ someone being there to be damaged/ injured at the time
3. The probability of the bit that falls causing damage/ injury if it hits something/ someone.

The loss of lower branches is a common characteristic of Scots Pine. In this case the tree has now lost all of its lower branches, with three upper branches remaining. The driveway to Otterspool is close to its northern boundary whilst the driveway to Manly is close to its southern boundary. The tree is situated close to the road frontage set just off the common boundary between Manly and Otterspool. Manley is set back approximately 15 metres from the tree, whilst the neighbouring property is set back approximately 25 metres from the tree. Furthermore, the tree has a narrow crown. If a branch falls it is unlikely to drift, but rather would come straight down onto an open lawned area. Moreover, if a branch is going to fall it is most likely to do so during a period of high wind or rainfall, when people are least likely to be in the front garden. In terms of the above three factors, therefore, the tree in question is considered to be an acceptable risk.

The representations made by those in the immediate vicinity of the tree are realistic because they acknowledge that in certain circumstances the presence of a significant tree in the vicinity of buildings can cause problems. However, as set out in the provisional TPO the objective of placing such protection on the tree is *"...to ensure that the tree is retained and to control any proposed works to the tree."* This means that by way of prior applications the future management of the tree can take place in liaison with the Council's Arboricultural Officer, and appropriate measures can be recommended at the appropriate time if there is in the future genuine concern/evidence that the tree is having an unreasonable adverse effect upon the neighbours amenity or the fabric of their properties.

The responsibility for the tree remains at all times with the land owner, whether or not the TPO is confirmed. The making of a TPO does not mean that the tree is necessarily left "unchecked". It means that the tree's contribution to the amenity of the area has been acknowledged by the Council and that there is a reasonable justification to have full control over proposed works to the tree in these circumstances. As the tree is in a Conservation Area it is accepted that a degree of control is already present, but a prior notification to carry out works to an 'unprotected' tree in a Conservation Area cannot be refused. The only way is by making a provisional TPO, carrying out a notification procedure and evaluating the responses.

Taking into account the size and the age of the tree it is considered that a confirmed TPO would ensure that the Scots Pine continues to make a positive amenity contribution whilst also enabling proper control over the nature and scale of any future works to keep the tree 'in check'.

Notwithstanding the previous consent to fell the tree, the tree is still in situ, and therefore, in the interests of protecting the visual amenity of this part of the Ashow Conservation Area, it is considered appropriate to ensure that the tree is retained and to have control over works which may affect the future health and amenity of the tree.

RECOMMENDATION

That TPO283 be confirmed, to ensure that the Scots Pine continues to make a positive contribution to the visual amenity of this part of the Ashow Conservation Area and that any future works to the tree are able to be fully controlled.

