

Planning Committee: 16 September 2009
Application No: TPO 395

Item Number:

Town/Parish Council: Kenilworth

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Odibourne Allotments, Lower Ladyes Hills, Kenilworth, CV8 2GG
Provisional Tree Preservation Order: TPO 395 – 1 x Ash

1.0 Introduction

- 1.1 A Provisional Tree Preservation Order has been made in respect of the tree the subject of this report which is located in the Kenilworth Conservation Area following the receipt of a notification to undertake works to it.
- 1.2 That Order (TPO 387) initially took effect, on a provisional basis on 17 November 2008. However following a review of the manner in which Tree Preservation Orders are made and the receipt of legal advice in that respect, it was determined that for procedural reasons, the initial Order should be withdrawn and a further Provisional Order made.
- 1.3 That replacement provisional Order was made on 13 May 2009 (TPO 395) and remains in force for a period of six months or until the Order is confirmed by the Council whichever first occurs.
- 1.4 In order to assist the Council in deciding whether the Order should be confirmed, local residents and other interested parties in the immediate vicinity were invited to make representations in relation to both provisional Orders. The following responses have been received:-

2.0 Summary of Representations

- 2.1 Kenilworth Town Council, who own the freehold to the site object to the making of the Order for the following reasons:-
 - The ash tree is detrimental to the regular maintenance of the Finham Brook and the upkeep of the allotment site;
 - The tree will likely triple in size in the next few years;
 - The root system is growing vigorously into the brook, hampering attempts to keep the brook flowing and to minimize the regular flooding of the site;
 - The root system is spreading into the brook and causing a dam effect which during heavy rain holds water back putting pressure on the foundations of the Odibourne road bridge which is showing signs of stress.
 - The tree is leaning excessively and is considered to be a safety hazard.
 - The tree was not intentionally planted in this position and it would be appropriate to remove it.
- 2.2 The Kenilworth Allotment Tenants Association object to the making of the Order

for the following reasons:-

- The Association has successfully managed and maintained trees and hedges at the site for many years including the planting of 150 metres of new hedging including trees.
- The tree is self seeded, has no amenity value and reduces growing space on 9 allotment plots.
- A tree of this size and shape which is yet to mature has no place on an allotment site. It sheds leaves, seedpods, etc over surrounding allotments; encourages aphids which attack crops and drip honeydew onto allotments.
- The tree is producing saplings alongside Washbrook bridge damaging the bridge abutment which were removed by Warwickshire County Council.
- The base and roots of the tree are pushing into the brook and damaging the stone wall which was built to prevent bank erosion. The Warwick District Council website advises that watercourses should be kept free of excessive undergrowth, roots etc.
- The tree is leaning and when the brook is in flood its roots and subsoil are under pressure: should the tree fall it may block the river and cause flooding.
- Several years ago, one of the then 2 trunks of the tree was struck by lightning and fell into the brook. Significant time, energy and cost on the part of the Association were involved in the removal of the tree.

2.3 Miss Longworth of 29 Reeve Drive, Kenilworth rents an allotment at the site which she comments is dominated by the tree along with several other plots. Miss Longworth objects to the making of the Tree Preservation Order which is detrimental to the allotment and poses health and safety issues and comments that:-

- The tree prevents the site from being cultivated properly and is a safety hazard.
- It creates heavy shade; in midsummer covers everything with a sticky substance which encourages sooty mould; and is infected with insects.
- Certain crops will not grow beneath the tree apart from root crops where there is an issue of crop rotation.
- An allotment is an inappropriate position for such a large tree which will continue to grow.

Miss Longworth also echoes the concerns about the stability of the tree and the resultant danger to anyone working in the vicinity.

2.4 A Ashton of Clinton Lane, Kenilworth objects to the making of the Tree Preservation Order and echoes some of the comments summarised above.

2.5 Jane Harwood of Sunningdale Avenue, Kenilworth also objects to the making of the Tree Preservation Order and echoes some of the comments summarised above.

2.6 Ward Councillor Shilton objects to the making of the Tree Preservation Order and supports the objections that have been made.

2.7 Nicholas Hillard, the Secretary of the Crackley Residents Association is concerned that further indeterminate vegetation removal in the area should be

avoided.

- 2.8 Jill Lole, the former Chairman of the Crackley Residents Association comments that Tree Preservation Orders are made for sound reasons and states that this Order should not be removed.
- 2.9 Gill Kirkham supports the retention of the Tree Preservation Order.
- 2.10 Louis Nion comments that this tree is the last mature broadleaf tree of any size remaining at this site and that in excess of 10 such trees and many other smaller native trees have been removed in recent years.
- 2.11 Brian and Jane Buckley of Lower Ladyes Hills support the retention of the Tree Preservation Order.
- 2.12 Rod Coleman of the Close, Kenilworth supports the preservation of the tree.
- 2.13 Jerry Blackham and Trudy Flowers support the retention of the tree and comment that there are not many left.

3.0 Key Issues

- 3.1 The tree in question is a mid mature ash tree situated on the Finham Brook river bank within the Odibourne allotments site in Kenilworth. The tree by reason of it's size, position and height is highly visible in the surrounding area including from Manor Road and being one of the only trees of any stature within the allotment site has significant amenity value making a significant contribution to the character and appearance of the Kenilworth Conservation Area.
- 3.2 The positioning of the tree within the allotment site, whilst potentially causing a degree of inconvenience to allotment users would not, if necessary prevent the cultivation of crops including woodland plants such as raspberries, gooseberries and black currant which grow reasonably in partial shade. Such a use might properly be considered as a sustainable cropping enterprise within the existing environment rather than a use causing damage to the environment through the loss of existing amenity features.
- 3.3 The confirmation of this Tree Preservation Order so as to prevent the felling of the tree would not, of course prevent the submission and consideration of further applications for appropriate works to the tree seeking to manage issues such as the level of shade being cast for example by the lifting of the crown of the tree.
- 3.4 Similarly, the submission and consideration of such applications would also be an appropriate manner in which to manage the future growth of the tree which at most is anticipated to increase its size by no more than one third over its lifetime.
- 3.5 It is known that this tree previously had a second stem, situated on its land side, which was lost some time ago. Whilst the effect of that loss has been to slightly unbalance the crown such that the tree has a slight lean resulting in there being more weight towards the river, there is no evidence to indicate that

the tree is unstable or that there are any significant health and safety issues to allotment users or increased potential for the tree to shed material into the Finham Brook.

- 3.6 It is acknowledged that there is potential for the continuing presence of the tree immediately adjacent to the brook to have implications for the maintenance of, and flow of water through it. However, many parts of Finham Brook are tree lined and the Environment Agency have no significant concerns in that respect in relation to this tree. It should also be noted that were substantive such issues to arise in the future, the existence of a Tree Preservation Order could not prevent the Environment Agency, who benefit from a relevant exemption, from undertaking works to the tree that were considered necessary in relation to the maintenance or improvement of the watercourse.
- 3.7 The disruption of the stone river bank wall is not confined to the area around the tree and appears to be in a general poor state of repair. It is also possible that rather than reduce any erosion of the river bank, the proposed removal of the tree could itself result in the destabilization of part of the bank arising from the loss of tree roots which are known to play a role in holding river banks together.
- 3.8 Warwickshire County Council, who are responsible for the maintenance of the nearby road bridge over Finham Brook do not envisage that the presence of the tree results in significant impacts upon the bridge itself.
- 3.9 As a result of its position, the tree constitutes a significant element of the wildlife corridor formed by the adjacent brook. That corridor provides continuity between the naturalised area to the west of the bridge and Kenilworth Common. The retention of the tree would therefore support the Allotment Tenants' Association existing significant efforts to encourage biodiversity which they already do, for example by means of the retention of the uncultivated naturally vegetated areas around the edges of the allotment site.

4.0 Assessment

- 4.1 The effect of making the Tree Preservation Order is to bring future proposals for work to the tree within the control of the District Council. The current protection afforded by the tree's location within the Kenilworth Conservation Area only enables the Council to prevent inappropriate proposals by making a Tree Preservation Order.
- 4.2 I consider that the tree is of significant amenity value in both visual and biodiversity terms. Whilst it is acknowledged that its continued retention may inconvenience users of part of the allotment site and may have implications for the maintenance of the adjacent brook, I consider that any such issues are outweighed by the amenity benefits of the continuing presence of the tree.
- 4.3 In considering whether to confirm this Tree Preservation Order, your attention is also drawn to the Section 40 of the Natural Environment and Rural Communities Act 2006 which requires the District Council to consider the biodiversity impact of its decisions.

5.0 Recommendation

5.1 That the Tree Preservation Order 395 be **confirmed** to protect the ash tree the subject of this report.
