

## Agenda Item



**Name of Meeting: Development Control**

**Date of Meeting: 2<sup>nd</sup> August 2005**

**Report Reference: Tree Preservation Order ref. TPO 17/2005 24 Witheby, Sidmouth**

### **Report Title: Consideration of whether to confirm a Tree Preservation Order at 24 Witheby, Sidmouth**

#### **Summary**

A Tree Preservation Order was made to protect a group of four silver birch trees at 24 Witheby on 27<sup>th</sup> April 2005, following receipt of a planning application to extend the property (ref. 05/0927/FUL). The trees were perceived to be under threat as a result of the proposals put forward in the planning application and it was considered important that they be protected.

The Tree Officer has produced a report for the planning case officer with regard to the arboricultural implications of the planning application and has made recommendations with regard to the observation of appropriate separation distances between new buildings and the trees.

The property is covered by a Tree Preservation Order with an area classification made in 1963, but it appears likely that these trees are not of sufficient age to be afforded protection by this Order. A new Order has therefore been made to ensure that the trees are afforded the level of protection which their value within the local landscape warrants.

Two objections to the making of the Order were received during the statutory 28 day period for objections. One of these objections was from the owners of the tree, the other being from the agent who is acting on behalf of the owner with regard to the planning application.

It is now for the Council to make a decision as to whether it will be appropriate to confirm the Order.

#### **Recommendation**

**The Tree Preservation Order be confirmed.**

#### **a) Reasons for Recommendation**

The trees are healthy and attractive and make a significant contribution to public amenity. They are under threat as a result of proposals put forward in a current planning application and it is considered important that they be protected.

#### **b) Alternative Options**

The alternative to the recommended action would be to not confirm the Tree Preservation Order.

#### **c) Risk Considerations**

There are not perceived to be any particular risks associated with protection of the trees in this instance.

## **Main Body of Report**

### **Details of the trees protected by the Tree Preservation Order:**

The trees in question comprise a group of four medium aged to mature silver birch trees of up to approximately 13m in height. They have mean crown spread radii of 5-6m and diameters at breast height of approximately 25cm. The trees form an attractive feature as a group and make a significant contribution to public amenity. They are clearly visible from the road and neighbouring properties.

### **Summary of the letters of representation received: Copies of these letters are within the Tree Preservation Order file which is available for inspection as a background document (i).**

- **Two letters from the owners of the trees, in which the following grounds for objection to the Order are raised:**
  - It is felt that the Order has been made in an underhand manner to provide grounds for refusal of planning permission.
  - The Order prohibits pruning of the trees which will restrict the use of the garden and mowing of the grass beneath the trees.
  - It is not felt that the trees are of public amenity value.
  - It is not understood why a new Order has been made when the trees are already covered by an existing 'blanket' Tree Preservation Order.
  - The trees are a nuisance, dropping leaves, branches and seeds. There are concerns that the trees could cause damage to the existing building in the future.
- **A letter from the agent acting on behalf of the owners with regard to the planning application. The following grounds for objection are raised:**
  - It is felt that the making of the Order is inconsistent with other decisions the Council has made in the past.
  - Roots of the trees are exposed and are a danger.
  - The trees are short lived, invasive specimens which are not appropriate for the location.

Various comments are made in the letters which relate to the manner in which the planning application was dealt with rather than the making of the Tree Preservation Order per se.

### **Comments on the objections received:**

The Order is considered to have been made in accordance with usual procedures in an appropriate manner. It has not been made specifically to provide grounds for refusal of a planning application, but to ensure that trees of public amenity value are retained and safeguarded. Local Planning Authorities have a duty under the Town & Country Planning Act 1990 to consider the protection of trees when dealing with planning applications. Although the property is covered by an existing Tree Preservation Order made in 1963, it is not felt that the trees are of sufficient age to be protected by this Order. This Order has been made to ensure that the trees are afforded legal protection.

Tree Preservation Orders do not prevent any works being carried out on trees, but are designed to give Local Authorities an element of control over works. The owners of the trees will be entitled to submit applications to the Council to prune the trees should they so wish.

The view that the trees are not of public amenity value and that they are inappropriate for the location is not concurred with. They are in keeping with the landscape character of the locality and form an attractive feature which is clearly visible from the road and neighbouring properties. Some surface roots are visible, but it is not felt that these constitute an unacceptable hazard or inconvenience. It is also not considered that the dropping of leaves, twigs and other detritus would present justification for the Order not to be confirmed.

With regard to potential for the trees to cause damage to the existing building, there is currently no indication that damage is being caused or that future damage is likely. If any evidence is presented to the Council in the future to suggest that the trees are likely to cause damage to adjacent structures, this evidence can be examined at the time and the position reviewed accordingly.

As concerns the suggestion that the making of this Order is not consistent with other decisions made by the Council, this is not in itself considered to present justification for the Order not to be confirmed. Policies and procedures change over time and decisions need to be made in accordance with the circumstances of each case, having regard to current best practice. It is considered that the making of this Order was entirely appropriate and it is recommended that it be confirmed.

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Legal Implications:

The Tree Officer's comments are to be supported. TPO to be confirmed.

Financial Implications:

There are no financial implications.

Consultation on Reports to the Executive

Not applicable.

Background Documents:

- (i) TPO file ref. TPO 17/2005