

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

5 September 2012

**AUTHOR/S:** Planning and New Communities Director

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### **THE OLD RECTORY, LITTLE GRANSDEN CONFIRMATION OF TREE PRESERVATION ORDER 01/12/SC 2012 MADE MARCH 2012**

**Recommendation: the Tree Preservation Order is not confirmed**

**Deadline for confirmation of provisional Tree Preservation Order: 9 September 2012**

**This confirmation was reported to the Planning Committee in August because the Head of Planning & Economic Development was of the view that the application should be presented to the Committee for decision. It was subsequently deferred to this meeting.**

**Members visited this site on 31 July 2012.**

**To be presented to the Committee by David Bevan**

#### **Site and Proposal**

1. Members will recall deferring the decision on whether to confirm the Tree Preservation Order at the meeting on 1 August. The main officer report with its supporting advice from Counsel is **appended** to this report.
2. An addendum to the report and statement from the owner were sent to Planning Committee members on 27 July. A response to a letter from the Parish Council's legal advisors was sent to Planning Committee members on 31 July. A verbal update on the letters from the Parish Council and its legal advisors, an email from Dr A.E.Hill and an electronic petition was given at the meeting.
3. Since the August meeting, a structural engineer has been commissioned to produce a report which deals with the potential causes of movement and other factors which are material to reaching a decision, and answer specific questions, as requested by Planning Committee members.
4. Advice has been sought from the structural engineer and our arboricultural consultant, John Cromar, on points raised by the Parish Council and others. This included a letter of 14 August from John Cromar which concluded that data presented in original reports was fit for purpose and allowed accurate conclusions to be drawn.
5. The Head of Planning & Economic Development offered to facilitate a meeting between the Parish Council and owner of the Old Rectory to discuss possible solutions and how they could be funded. The offer was not accepted by the owner, who gave the reasons for her decision, but this should not influence the Committee's decision.

6. The Planning Committee will also consider (Item TBA) whether to give consent to an application to fell the two trees covered by the Tree Preservation Order which is the subject of this report. The decision on that application should follow and relate to the decision on whether to confirm the Tree Preservation Order.

### **Representations from the public**

7. Five letters have been received since the August Planning Committee from the occupiers of 2 Church Street, 8 Church Street, 77 Main Road, 10 Primrose Hill and 4 Windmill Close in Little Gransden. The letters make these points:
  - the trees are in a private garden and cannot be seen from many places in the village so are not a public amenity
  - the campaign to keep the Tree Preservation Order does not have the backing of the whole village
  - many who signed petitions (including the writers of the letters) did not have the full facts and understand the issues, cost implications and impact on the owners
  - the writers should not be counted as supporting the confirmation of the Tree Preservation Order despite signing petitions in support
  - professional reports have explained why, reluctantly, the trees should be felled and no further expenditure on reports is justified
  - as council tax payers they do not want themselves or the Council to fund keeping the trees

### **Structural engineer's report**

8. Following the requests made at Planning Committee, a second independent structural engineer's report was commissioned. This has been produced by Peter Woolley, Managing Director at Hannah-Reed and is appended to this report. It includes the brief given by this Council. Key points made in the report are as follows:

*Concerns about the methodology and data raised by Dr Biddle and Richard Jackson*

9. The structural engineer says that the concerns raised by these consultants commissioned by the Parish Council are answered by visiting the site (which the consultants were not able to do) or are invalid or do not affect the conclusions reached.

*Causes of the movement*

10. The structural engineer notes the consensus in reports which identifies the cedar tree as the cause of movement, and deals with points raised by Dr Biddle who gives qualified acceptance to this view and Richard Jackson who dissents from this view.
11. Following his own investigation the structural engineer believes that the cedar, and possibly the wellingtonia, are the cause of movement and not the existing historic foundations to the house or modern changes to the building.

#### *Rates and trends of cracking*

12. The structural engineer identifies the degree and increase in seasonal movement and settlement since March 2010. There is a risk identified that the amplitude of seasonal cyclic movement will continue to increase.

#### *Seriousness of the movement*

13. The structural engineer says that the movement is not serious in purely structural terms, but is enough to give rise to damage. It represents a significant nuisance to the owner in terms of: worry about foundation instability; continued needs for repairs and redecoration; doors and windows likely to bind; possible difficulty in insuring and/or selling the property; and consequent reduction in value.
14. The engineer makes a distinction between “normal and superficial cracking arising from thermal and moisture effects in superstructure, which many people are willing to live with, and movements arising from foundation instability, which most people in my experience find worrisome and intolerable”.

#### *Solutions for the movement and degree of risk*

15. The structural engineer says that one solution would be the removal of the cedar and, to eliminate risk from a second potential cause, the wellingtonia. He does not believe that a root barrier would work in this case and agrees that underpinning is the appropriate alternative solution if the tree(s) are not felled.
16. His approximate estimate of the costs of underpinning of £40,000 including VAT is greater than the approximate estimate of £22,000 plus building regulation fees given by our first structural engineer, Andrew Firebrace Partnership.
17. The structural engineer believes that following underpinning there is more risk than that identified by Andrew Firebrace Partnership. He says that tree roots are likely to travel past the foundation into the building and that the impact may not be limited to minor cracks.

#### **Material considerations**

18. The high amenity value of the two trees which are the subject of the Tree Preservation Order has been accepted. Their loss would detract from the setting of the listed Old Rectory and the conservation area and from a number of public views. The amenity value would, in isolation, fully justify the confirmation of the Tree Preservation Order.
19. The second question which has to be addressed in deciding whether to confirm the Order is whether it would be expedient to do so. Material considerations are the impact of the trees on the listed building and its owners and, if the impact is significant and harmful, the nature and costs of an appropriate solution.
20. Counsel's advice highlighted that “In this case, unusually, the Council has available to it a great deal of information and analysis”. That information and

analysis has been supplemented by the second independent structural engineer's report.

21. There is a consensus between the majority of the reports produced on the causes of movement and solutions for dealing with it which the new structural engineer's report supports. The new report also deals with arguments which partly or wholly dissent from the majority view.
22. The new structural engineer's report (and majority view) identifies the cedar in particular as the cause of movement rather the historic construction or modern changes to the house, and that appropriate solutions are felling or underpinning with the latter costing approximately £40,000 including VAT. The structural engineer notes the risk remaining following underpinning.
23. The same report cites the wellingtonia as a possible source of the movement. The officers' view is that Tree Preservation Order status and protection would not be justified for the wellingtonia alone. This is because it has less amenity value than the cedar, has been damaged by lightning and its growth has been suppressed by the cedar. There are doubts over its stability if the cedar was felled.
24. The new structural engineer's report identifies that the movement is causing a significant nuisance to the owner which goes beyond the level of superficial and 'everyday' cracking which many owners might chose to live with.

### **Options**

25. There are three main options available to the Council.
  1. That the Council accepts that the trees will be felled. If it decides not to confirm the Tree Preservation Order the protection of the trees will end.
  2. That the trees will be felled with an assurance or requirement that they will be replaced. The owners have written confirming that they will replace the trees and the Council could decide to decline the Tree Preservation Order with the knowledge of that assurance. Alternately, the Tree Preservation Order could be confirmed on the basis that an application to fell might be accepted with a condition requiring suitable replacement planting. This may be considered unnecessary given the owner's assurance.
  3. That the Tree Preservation Order is confirmed with the intention that future applications to fell will likely not be accepted. If the Council takes this approach then it would incur a potential liability for the cost of statutory compensation on any subsequent refusal of consent to fell. This would be likely to equate to the costs of underpinning as set out above less the cost of removing the trees (estimated as £10,000 - £12,000), with the costs being those which could be reasonably expected before work starts.
26. If the Council confirms the Order and refuses consent for felling there are two routes it could take with respect to compensation. These are set out in Counsel's advice appended to this report.

## **Conclusions/summary**

27. There is a consensus that the trees, particularly the cedar, have a high amenity and heritage value which, taken alone, would fully justify the confirmation of the Tree Preservation Order. The expediency of confirming the Order also has to be considered and this includes the impact of the trees on the listed Old Rectory and its owners, and the nature and cost of solutions for any significant problems caused by the trees.
28. The consultants commissioned by this Council and the majority opinion of other consultants who have been engaged on this case identify the tree(s) as the cause of movement and that the appropriate solutions are felling the trees or underpinning.
29. The professional view of officers is that while the amenity and heritage value of the trees is high, this is outweighed by the cost of underpinning which would be a potential liability for the Council. Officers believe that the harmful impact will be mitigated in the longer term by replacement planting achieved through the commitment given by the owner.

## **Recommendation**

30. That the Tree Preservation Order is not confirmed because:
  - The trees are causing movement to the Old Rectory which is resulting in a level of damage to the listed building and a significant nuisance to the owners.
  - Confirmation followed by an approval for an application to fell with a condition requiring replacement planting is not necessary given the written commitment of the owner.
  - The costs of underpinning, which is the appropriate solution if the trees are not felled, is a potential liability for the Council and, even when reduced by the cost of felling, outweighs the high amenity and heritage value of the trees.

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