

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

1 August 2012

AUTHOR/S: Executive Director – Corporate Services /
Head of Legal and Democratic Services

THE OLD RECTORY, LITTLE GRANSDEN CONSIDERATION OF WHETHER TO CONFIRM TREE PRESERVATION ORDER 01/12/SC 2012 MADE 9 MARCH 2012

Purpose

1. To seek a determination from Committee as to whether this Tree Preservation Order, made provisionally on 9 March 2012, and relating to a Cedar and a Wellingtonia situate at and affecting The Old Rectory, Little Gransden, should be confirmed prior to it lapsing on 8 September 2012.
2. This is a key decision because
 - it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.
 - it is not in accordance with the revenue budget, capital programme or borrowing limits approved by the Council, subject to normal virement rules.
 - it increases financial commitments (revenue and / or capital) in future years above existing budgetary approvals.
 - it is of such significance to a locality, the Council or the services which it provides that the decision-taker is of the opinion that it should be treated as a key decision.

Recommendations

3. That the Executive Director – Operational Services recommends to Planning Committee that Tree Preservation Order 01/12/SC 2012 is not confirmed and accordingly be allowed to lapse on 9 September 2012 in accordance with Regulation 26(2) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 ('the 2012 Regulations').

Reasons for Recommendations

4. (a) If the Tree Preservation Order is confirmed and any subsequent application to fell the preserved trees is refused, then it is considered the likely quantum of the Council's potential liability to the affected property owner for statutory compensation is disproportionate to the amenity value afforded by the retention of the trees.
- (b) If the Tree Preservation Order is confirmed and any subsequent application to fell the preserved trees is then approved in the face of this protection, the affected property owner and the Council will both have unnecessarily incurred additional cost and delay in arriving at the same position, with attendant lack of certainty for all stakeholders in the meantime.

Background

5. Tree Preservation Order 01/12/SC 2012 was provisionally made on 9 March 2012, in respect of a Cedar and Wellingtonia located within the curtilage of and in proximity to the Old Rectory, Little Gransden. The Old rectory is a Grade II Listed Building situate within a designated conservation area.
6. Specialist reports fully indicate these trees, especially the Cedar, are causally implicated in damage to the fabric of The Old Rectory being occasioned through the mechanism of seasonal movement.
7. The Tree Preservation Order was made as a precautionary measure following the receipt of a statutory notification given on behalf of the property owner, proposing the felling of the trees concerned in order to address this seasonal movement and resulting damage being suffered by The Old Rectory. Such notification was necessary due to the property and trees being within the conservation area, and prompted significant local representations seeking preservation of the trees.
8. The Tree Preservation Order was duly made in recognition of the acknowledged contribution made by the trees concerned to the amenity of the locality, which is considerable given their establishment, scale and setting. The Order was made so that appropriate consideration could be given to the technical studies already to hand, and to enable these to be supplemented by further expert input required to assist the Council's understanding of the relationship between the trees and the deterioration of the listed building.
9. The provisional protective effect of the Tree Preservation Order endures for an initial 6 month period within which the Order has to be confirmed or the same then lapses. This 6 month period expires on 8 September 2012.
10. The general effect of the Tree Preservation Order during the provisional period and after, if confirmed, is that the trees concerned may not be felled or otherwise significantly worked upon without formal consent first being obtained.
11. If a preserved tree is proven to be causing damage to property, and if formal consent is then refused for tree works to remediate that damage, Regulation 24 of the 2012 Regulations provides for the property owner to be compensated for future damage to the property that is reasonably foreseeable. The policy purpose of such compensation is to recognise that any continuing public amenity in the preserved tree has been secured by diminishing the private value or benefit of the affected property when compared with its condition if the tree was removed or suitably worked upon.
12. The potential liability to pay compensation is therefore a material consideration when determining whether to confirm a Tree Preservation Order when it is suggested damage is being caused.
13. The Council now has to consider whether or not to confirm the Tree Preservation Order. It is likely, and the Council has been informed, that any decision to confirm the Tree Preservation Order will result in a timely application for consent to remove the protected trees on the basis of their alleged implication in the damage sustained to The Old Rectory.
14. Given the competing considerations and aspirations that have been advanced, the complexity of the technical assessments, the very recent changes to the regulatory framework relating to Tree Preservation Orders (implementation of which broadly

coincided with the issue of this Order), and the potentially significant compensation liabilities that might result, specialist advice has been sought on the question of confirmation from Counsel expert in this area of practice.

15. The Advice of Dr Charles Mynors, barrister at law of Francis Taylor Building, Inner Temple, London, is appended to this report. Dr Mynors is widely acknowledged to be a leading authority on the law relating to trees and forestry, and also that relating to built heritage assets. Dr Mynors is the author of the standard texts commonly used by practitioners in both of these fields.

Considerations and Options

16. These are set out and fully discussed in Counsel's Advice as appended, so generally need no further amplification here.
17. However, and as flagged by Counsel at paragraph 58 of his Advice, where his 'Option C' is discussed (ie to confirm but not to contest liability for compensation), it is lawfully open to the Parish Council to underwrite part or all of the liability in recognition that this is an exceptional issue of very local concern.
18. Whilst the Parish Council will undoubtedly not have a current budget for such expenditure, and the sums involved will be substantial in the context of the 'normal' reserves expected to be maintained by a small parish, there is no lawful or practical reason why any contribution offered could not be incorporated in the Parish Council budget and resulting precept for the next financial year. The existence or absence of such a contribution is properly capable of being a consideration material to the question of confirmation.

Implications

19.	Financial	Confirming the Tree Preservation Order contrary to officer recommendation is likely to give rise to a compensation liability in the range of £20,000 to £50,000 for remediation works plus attendant professional fees and costs, which, if the compensation element is litigated, may exceed any compensatory award severalfold.
	Legal	Counsel has been engaged to advise, and that Advice is appended to this report.
	Staffing	No staffing issues are indicated.
	Risk Management	The risks inherent in the determination being sought are set out in Counsel's Advice as appended.
	Equality Impact Assessment completed	No No equalities issues are indicated.
	Climate Change	No significant climate change issues are specifically indicated although two substantial trees may be removed consequent upon this determination.

Consultations

20. As is described in Counsel's Advice, as appended to this report (paragraphs 9 to 19), there has been considerable lay, democratic, and specialist professional engagement arising from the notification of the initial felling proposal and from the subsequent making and publicising of the Tree Preservation Order.

21. Counsel has had sight of all of this material and summarises the key technical content in his Advice; the working file contains all reports and representations that have been received, which can be inspected by members.
22. Some 47 personal representations have been received seeking the continuing preservation of the trees concerned and, whilst many of these were of a template or pro-forma nature, the following recurring considerations were flagged by the originators:
- The trees are essential to village character/history/sense of place
 - The trees are local landmarks
 - The trees are healthy
 - Have been present for 250 to 300 years
 - The trees are irreplaceable
 - Removal will result in lost wildlife habitat
 - The trees are not 'close' to the property
 - Causal linkage to property damage not proven
 - Property damage is due to soil/weather conditions
 - Property damage is due to alterations performed
 - Alternatives to removal not investigated
 - Cheapest option (removal) should not be pursued
 - Weight of local opinion is against removal

Conclusions / Summary

23. It is clear the trees currently protected by the provisional effect of Tree Preservation Order 01/12/ SC 2012 afford a much-valued public amenity in the village of Little Gransden. The key task for members in determining whether or not to confirm the continuing effect of the Tree Preservation Order (and on what terms) is to decide whether that acknowledged public amenity value balances and outweighs the private interests of the owner of The Old Rectory who desires to address the deterioration of that property by (ultimately) removing the trees concerned.
24. If it is concluded that the balance is in favour of requiring the retention of the trees, the consequence will be that a significant and unbudgeted liability for compensation will accordingly fall to the public purse (regardless of whether borne at a District level, Parish level, or allocated between them in some proportion to be determined).
25. The professional view of Officers is that the causal linkage between the trees and the damage to the property is established such that it is reasonably foreseeable future damage will occur if they remain without remedial work being performed. The likely compensation liability to underwrite the cost of remedial work is considered disproportionate to the amenity value afforded by the trees, hence the recommendation set out above.

Background Papers: the following background papers were used in the preparation of this report:

Working file for Tree Preservation Order 01/12 SC 2012
Town and Country Planning Act 1990
Town and Country Planning (Tree Preservation) (England) Regulations 2012
Advice of Dr Charles Mynors dated 23 July 2012

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