

## **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL**

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**REPORT TO:** Planning Committee

1 August 2012

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

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

#### **Addendum to the report**

The Author of the report is the Director of Planning and New Communities. The recommendation in (3) is made by the same Director.

#### **Clarifications to report**

##### *Background*

The owners of The Old Rectory, Little Gransden, gave the Council six weeks written notice of their intention to fell a cedar and wellingtonia in the grounds of their property in January 2012. This notice was required because the trees are in the conservation area. The owners made the case that, while they appreciated and wanted to retain the trees, they were causing cracking in parts of The Old Rectory, a listed building, and that solutions other than felling would not be successful or would be disproportionate to the value. Their case was informed and supported by technical and insurance reports.

An extension to the notification period to allow further investigation and assessment was considered by this Council. It was instead decided that the Council should serve a Tree Preservation Order (TPO) to allow more time for public representations, investigation and a further consideration of all the issues. The TPO was served in March 2012 and the Council had up to six months to decide whether to confirm the TPO.

Objections to the TPO were received from the owner and their agent and representations in support were received from the Parish Council and many members of the public. The Parish Council sent reports from an arboricultural consultant and structural engineer in support of their case.

There was a strong local public reaction to the potential loss of the trees. The trees were felt to be an important part of the setting of The Old Rectory and valuable landscape features which enhanced views within and from outside the village. They were much loved parts of the village's character, appearance and history. The Parish Council questioned the case put forward by the owners, particularly that the trees were the cause of the cracking, that the cracking was significant and did not justify the felling of the trees if they were the cause, and that alternative options needed more investigation. The Parish Council argued that additional and independent reports should be commissioned.

The Council commissioned reports from an arboricultural consultant and, following that, a structural engineer. These took account of the reports produced for the owner

and Parish Council. Specialist advice was also obtained from Counsel with particular experience in the issues raised by this case.

The conclusions of the Council's reports were consistent with most, if not all, of the content and findings of the reports commissioned by the owners and Parish Council. In essence our reports identified the high amenity value of the trees, that the cedar was very probably the cause of movement in The Old Rectory, and that underpinning was the appropriate solution.

### *Options*

If the Tree Preservation Order is confirmed and a subsequent application to fell the trees is refused then the Council would have potential liability for the cost of underpinning estimated by our consultant to be in excess of £20,000. This would likely to be reduced by the cost of felling the trees.

Counsel identified four options open to this Council:

- A. It could decline to serve the Order.
- B. It could confirm the Order, and in due course allow the trees to be felled, imposing a condition that suitable replacements be planted.
- C. It could confirm the Order, and refuse consent for the felling of the cedar, accepting as it does so that it has to pay compensation, and seeking to minimise the amount payable.
- D. It could confirm the Order, refuse consent for the felling of the cedar, refuse to pay compensation, and contest liability in the Upper Tribunal.

### *Planning considerations*

The tree is considered to have a high amenity value which, on its own, merit the TPO being confirmed. In reaching a decision, however, this Council needs to balance that amenity value against the extent of underpinning required to provide a solution and the potential compensation costs. The recommendation in the report reflects the view that while the high amenity value of the trees, reflected in local support for their retention, is fully recognised, it is not outweighed by the extent of works and potential compensation.

If the TPO was confirmed but subsequently consent given for felling, this would unnecessarily delay a decision which could be made by not confirming the TPO now. Confirming the TPO does mean that a subsequent consent for felling could be subject to a condition that suitable replacement trees should be planted. The owners have given their commitment in writing to planting replacement trees, however, and this has been accepted as a sufficient guarantee in writing the report's recommendation. (The owner's written commitment is included in this update.)

Counsel's options C and D give two different approaches if the TPO is confirmed and consent for felling refused. Counsel makes clear that option D is almost certain to result in significantly higher cost than option C and has nothing to commend it.

For clarification, the original six week notification period of proposed works (felling) which was required because the trees are in a conservation period has ended. Protection of the trees can only therefore be achieved by confirming the TPO.

### *Recommendations*

The recommendations in the report follow option A which is to decline to serve the Order. The TPO will not be confirmed and will lapse on 9 September 2012.

### **Written confirmation of the owner's commitment to replace the trees if the TPO is not confirmed.**

E mail from Mrs Seabright of 19<sup>th</sup> July 2012:

Dear Roz

Thank you for your letter. Yes, we will replace the trees as I originally promised, in the next planting season if I can source them of a suitable size. Obviously we would place them further away from the house but away from the bottom of the garden where the ground is infected with honey fungus.

I hope this helps allay any fears anyone had that I would not fulfil my original promise.

Kind regards

Victoria

### **Application to fell the trees which are the subject of the TPO**

An application dated 20 July has been received to fell the trees which are the subject of the TPO, which indicates the intentions of the owners of The Old Rectory if the TPO is confirmed. This application will be processed and consultation sent out prior to planning committee next week. There is an 8 week consultation period until 17 September 2012.

### **Additional representation**

Email from Dr.A.E.Hill:

The threatened felling of two old trees in The Old Rectory, Little Gransden.  
26th July 2012

Dear Mr Bevan,

I am writing to you in support of extending the TPOs on the two trees at the Old Rectory, Little Gransden. I hope that I can contribute by presenting some of the key facts in a light that might help you understand the problem more. I should like to make the following points :

1. Seasonal Movements. Dr. Giles Biddle has made a report for the Parish Council which I hope you have seen because it sums up very fairly and concisely the main points and gives a clear assessment, as does a subsequent one by Richard Jackson. Essentially, in a borehole the presence of one cedar root was recorded but there were other roots found but not analysed - why not ? The garden is full of shrubs and other trees, all of which are potential 'suspects'. The levelling data show seasonal rise and fall of the building due to the clay soil which is a sign of being caused by vegetation - but it cannot indicate any particular trees or plants. Furthermore, most houses on clay show this movement and *per se* this means nothing. It is absolutely

essential to uncouple in one's mind the notion that vertical (annual) cyclic movements of the building indicate damage or subsidence. Structural damage is not predicated unless another condition is met - a change in foundations and/or their loading.

2. The Time Line. The trees and the house have lived together a long time. The cedar and Wellingtonia would have been mature very many decades ago and once this has happened the root area is constant - mature root systems do not go on searching for water and nutrients to greater and greater distances throughout the lifetime of the tree; it is therefore possible to draw up tables of the effective distances for damage caused by various tree species and the cedar is at a distance from the building where the risk of damage is considered to be extremely remote.

Something has happened recently to precipitate cracking, and that can only be the rebuilding of parts of the house. This introduces foundational disparity: the older thin flexible lime-mortar foundations still move but the newer ones are more rigid concrete and the stress causes cracking.

3. Rebuilding. In my opinion, the failure to recognize the possibility of differential movement after rebuilding is a failure by the builders to adequately match the old with the new. It is very common everywhere, a mixture of incompetence and laziness. But the insurers must know this and might have had to be informed about this re-build, so they are ultimately responsible for the consequences. It seems to me that the failure to acknowledge this rebuilding and its obvious result is the 'elephant in the room' and I think that the Council has not recognized this crucial point.

4. Summary. I agree with the conclusions of G. Biddle and others about the unlikely scenario of the trees in question suddenly causing the problem. They would have to quite suddenly be withdrawing enough water from the soil under the building - if they have any serious presence there at all - and dehydrating the clay topsoil to the extent of causing subsidence, and all this after 50-100 years of maturity. This must be set in its physiological context, which makes it virtually impossible to take seriously. The whole case seems to hang on one finding of a small piece of cedar root (probably 2 mm diameter) with no proper identification of any other roots from the numerous and often closer trees on the site. In addition, the root data from Matlab and OCR are not in agreement. The data so far is wholly inadequate to justify felling such important trees and would probably not stand up in court. **All** the trees, shrubs and possible climbers on the site will be graded contributors to the seasonal movement but this has had no destructive effect without disturbing the foundations.

If you would like to discuss these matters in more detail I am very willing to answer any questions that you might have.

Yours Sincerely,  
Adrian Hill M.A., Ph.D.

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