

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

3 July 2013

AUTHOR/S: Planning and New Communities Director

THE OLD RECTORY, LITTLE GRANSDEN

Tree Preservation Order 01/12/SC and Refusal of Application to Fell C/11/17/063/01–9424 - Claim for Compensation

Notes:

Planning Committee in August and September 2012 considered reports on this case. Since September material considerations have changed significantly and this is the reason for bringing this case back to the Committee for reconsideration.

To be presented to the Committee by David Bevan.

Recommendation: To revoke the Tree Preservation Order (TPO) for the Cedar and Wellingtonia at the Old Rectory.

Reasons for Recommendation

That the potential compensation for the costs of underpinning for which the Council would be liable now outweighs the value of the trees. Revoking the TPO is the simplest and most effective way of allowing the trees to be felled.

Background

1. The Old Rectory is a grade II listed building within the Little Gransden Conservation Area. A Tree Preservation Order (TPO) for a Cedar and Wellingtonia in the grounds of the Old Rectory was made as a precautionary measure in March 2012. This followed a statutory notification to fell the trees on the basis that they were causing damage to the historic property.
2. Planning Committee on 1 August 2012 decided to defer a decision on whether to confirm the TPO. Planning Committee on 5 September 2012 confirmed the TPO, contrary to recommendation, noting the level of damage and nuisance caused by the trees but preferring underpinning of the building to felling. Whilst aware that the costs of underpinning would be a potential liability for the Council if compensation was sought following any subsequent refusal to fell, the Committee considered that such exposure was justified by the high amenity and heritage value of the trees and the unacceptable impact of their felling on the conservation area. The Committee then refused the owners' application to fell the trees, also contrary to recommendation, at the same meeting.
3. The relevant reports to, and decisions made by, the Planning Committee on 1 August and 5 September 2012 give important background to this report and are included as appendices A and B.

Material Considerations

Basis for compensation

4. Regulations provide that the refusal of consent for felling requires the planning authority to compensate for a 'consequent' loss or damage if claimed. Any compensation claim must be made within 12 months of the decision to refuse (in this case by 4 September 2013). Legal proceedings can start anytime within that period but, here, the prospective claimant had given advance notice of its preliminary view of the scale of the claim before the formal claim was served on 6 June 2013. This gives this Council a time frame for the options described below.
5. Counsel has advised that for a claim to succeed it must only be demonstrated that the works were reasonable in nature and extent and the costs incurred were reasonable. This is not the same as saying that the work must have been optimal or that the incurred cost must have been the most economic. The works will not necessarily be those which the Council prefers (except where they may be properly controlled by listed building consent). The recoverable cost is of the works as carried out, rather than as estimated.
6. If this claim is settled, then no further claim can be made in relation to the application to fell which was refused in September of last year. However, new applications could be made and further compensation claims submitted if refused. These could, for example, be after underpinning works are carried out and are believed not to be totally successful. Our structural engineer advised us that a level of risk of movement and damage would remain after underpinning.

Claim for compensation

7. Solicitors appointed by the owners' insurance company wrote to us on 22 March 2013 to tell us that they were preparing a claim. The letter set out indicative costs for works "in the order of at least £82,940.70 to £94,794 (inclusive of VAT and subject to site conditions encountered during the course of the works), plus fees and plus sundry costs." The letter noted that "the figures provided here are purely for indicative purposes. As with any building project it may be that they prove to be higher once the repairs are underway."
8. The solicitors sent their formal Letter of Claim on 6 June (appendix C). The letter referred to on-going discussions with this Council's Principal Conservation Officer to ensure that the heritage significance of the building is safeguarded from the impacts of tree roots and that underpinning is sympathetic to that significance. It goes on to say:

"Subject to any specific Listed Building Officer requirements the repair costs, should the Cedar remain, are considered by Engineers to potentially and broadly range as follows:

- 1) £80,000.00 plus VAT for a partial traditional underpin
- 2) £250,000 plus VAT for a partial piled solution extending to internal areas
- 3) (Conservative) £400,000 plus VAT for a fully piled raft

The above figures are, for the time being net of the usual associated costs ... which will be calculated and added and advised to you once the repair scheme has been finally determined."

The Council's potential liability

9. The cost of £80,000 plus associated costs and VAT for a partial traditional underpin given in the Letter of Claim is substantially more than the £40,000 including VAT for underpinning which was given in the report to the September Planning Committee on the advice of our structural engineer. The most obvious reason for that difference is that the figure given in the Letter of Claim (following information given in the earlier letter) is for a deeper foundation than our structural engineer considered necessary. The second and third options given in the claim letter are for substantially more expensive solutions.
10. Council officers have argued that it is reasonable to deduct the cost of the removal of the Cedar from the cost of underpinning in determining the size of the claim. In the September report we estimated the cost of removing the two trees covered by the TPO as £10,000 - £12,000. The insurer's solicitors have provided two estimates of £4,250 and £4,860 for removing the Cedar (only) but have rejected the notion of discounting notional felling costs in principle. No judicial direction on this point has been found.
11. As noted above, on-going discussions with the owners' insurer and its advisors aim to agree an underpinning scheme which protects the listed building from the impacts of tree roots and conserves its heritage interest. Such a scheme should receive listed building consent. The owners' insurer and its advisors are also seeking a solution which gives them reassurance that further damage will not occur in the future.
12. The design and cost of the scheme may be affected by the need for a solution which is sympathetic to the Old Rectory as a listed building. Options which cause no or minimal harm to its heritage significance should be chosen. If there is no alternative to an option which would cause harm, then that harm would be weighed against the public benefits of retaining the trees in deciding whether listed building consent should be given.
13. While the liability cannot be definitely established at this point, the figures given above indicate the potential range of costs and their significant differences with the estimate from our structural engineer given in the report to the September Planning Committee. Counsel's advice that the remedial works have only to be reasonable in nature, extent and cost for a claim for compensation to be successful, along with other points on cost and risk given above, are also important considerations.
14. The differences in costs justify a review of whether the high amenity value of the trees and their contribution to the conservation area still outweigh the Council's potential increased liability for compensation and other factors. If not, then it necessary to identify how the felling of the trees can be allowed. (The report to the September Planning Committee noted that, if the Cedar was to be felled, the Wellingtonia alone would not justify TPO status and protection.)

Options

15. Four options have been explored. The Council recognises the great contribution that the trees make to the setting of the Old Rectory and the Little Gransden Conservation Area, and how much they are appreciated by the local community. Weighing the high value of the trees against the potential costs of underpinning for which this Council would be liable is a very difficult decision. The increase in estimated costs since the September Planning Committee means that the balance has changed and officers believe that the potential liability now exceeds the high value of the trees and that, unfortunately, they should be allowed to be felled.

The options are:

Recommended option

- 1) The Council revokes the TPO so that its protection of the Cedar and Wellingtonia are removed, allowing the trees to be felled. (See paragraph X under Comments below.)

Other options

- 2) The Council agrees that the felling of the trees should be allowed, and invites an application to fell the Cedar, or Cedar and Wellingtonia, covered by the TPO in time for it to be determined before 4 September.
- 3) The Council continues to support the protection and retention of the trees and agrees to underwrite the cost of an underpinning scheme.
- 4) The Council continues to support the protection and retention of the trees but does not agree to underwrite the costs of an underpinning scheme.

Comments

16. If option (1) is chosen then the Council's potential liability for reasonable costs, which could range from £80,000 to £400,000 plus costs, will be removed. A revocation order will be made which takes immediate effect. The trees could then be felled five days after prior notification.
17. Option (2) would have the same result of removing the Council's potential liability. However, to be implemented, a tree application to fell the tree or trees would be needed. The owners have said that they will not submit such an application and it does not appear to be in the interest of any other party to do so.
18. If option (3) is chosen, then the Council will be liable for potential compensation costs which could range from £80,000 to £400,000 plus costs. The Council would be liable for the costs of works as carried out which is indicated by these figures but not definitely known.
19. If option (4) is chosen then legal proceedings will undoubtedly be started by the insurer's solicitors before the 4 September deadline and the compensation claim will be decided by the Lands Chamber of the Upper Tribunal. This is likely to result in total costs which are significantly higher than the costs of the works and Counsel's advice was that this option had nothing to commend it.
20. If either options (3) or (4) are chosen by this Committee then, because of the level of exposure of this Council and the lack budget provision, a recommendation to Cabinet should be made.

Conclusions

21. The high heritage and amenity value of the trees and their positive contribution to the Little Gransden Conservation Area are fully recognised.

22. The increased potential compensation costs of underpinning mean that the material considerations reported to the September Planning Committee have changed.
23. Given the significant increase in the potential costs of works, officers believe that this increase and future risks now outweigh the value of the trees.
24. Revoking the TPO (option 1) is the most straightforward and effective way of allowing the trees to be felled.
25. The owners have written previously saying that they will replace the trees if they are allowed to remove them. Confirmation that this is still the case will be sought before the July Planning Committee.

Recommendation

26. To revoke the Tree Preservation Order (TPO) for the Cedar and Wellingtonia at the Old Rectory.

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