

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

2 October 2013

AUTHOR/S: Planning and New Communities Director

THE OLD RECTORY, LITTLE GRANSDEN – SETTLEMENT OF CLAIM FOR COMPENSATION RELATED TO TREE PRESERVATION ORDER 01/12/SC AND REFUSAL OF APPLICATION TO FELL C/11/17/063/01–9424

Purpose of this report

1. This report advises Planning Committee about the settlement of a compensation claim by the owners of the Old Rectory, Little Gransden, resulting from the refusal of an application to fell trees which were protected by a Tree Preservation Order. The report is for information and does not require a decision.

Background

2. Planning Committee on 5 September 2012 confirmed a Tree Preservation Order (TPO) for a Cedar and Wellingtonia at the Old Rectory and refused an application to fell the trees.
3. However, on 3 July, 2013 Planning Committee agreed to revoke the TPO. The reason for this decision was that potential compensation for the cost of underpinning the property, for which South Cambridgeshire District Council would otherwise be liable, had risen to a level that Members considered outweighed the amenity value of the trees.
4. Following this decision, Councillor Page made a claim against this Council to the High Court of Justice on the grounds that the Council had acted unlawfully in revoking the TPO. He asked for an injunction to prevent the owners from felling the trees until his case had been heard. If a Judicial Review was permitted by the Court, Councillor Page sought that the Council's decision to revoke the TPO be quashed.
5. On 17 July, 2013 the Court found that the Planning Committee's decision was validly made and dismissed the application for the Judicial Review. However, the owners were ordered not to fell the trees until sufficient time had been given for an appeal. Councillor Page was ordered to pay costs of £2,000 to the Council and £1,000 to the owners. The legal costs of the proceedings were £5,762 for the Council and £9,568 for the owner.
6. The Court of Appeal subsequently refused applications by Councillor Page for permission to appeal and an extension of the injunction, and did not award costs. Following this ruling the two trees were felled.

The claim for compensation

7. On 25 July, 2013 solicitors acting for the owners of the Old Rectory asked this Council to accept liability for a statutory claim for compensation. The solicitors recognised that the Planning Committee's decision to revoke the TPO on 3 July, 2013 had substantially reduced the compensation it should pay to the owners as

underpinning was not now needed. However, they argued that losses had still been caused by the Council's refusal of the application to fell on 5 September last year. If the Council admitted liability, the solicitors argued, it and the owners would avoid the legal costs of taking the case to the Lands Chamber.

8. The solicitors wrote on 5 August 2013 to give an indication of the level of their claim. It would cover the period between 5 September 2012 and when the injunction was lifted on 23 July, 2013, and the trees could be felled. The claim included legal fees related to the court proceedings and professional and site investigation fees for the preparation for underpinning works needed because of the impact of the trees. The costs of pursuing the claim would be added.
9. More detailed information and supporting documents justifying their claim was sent on 22 August, and the solicitors quantified the cost of the claim as £43,572 plus the cost of pursuing the claim. An offer to settle for a lower amount was made which would avoid the additional and possibly punitive costs of proceedings.
10. A settlement figure of £38,700 (to include for costs) was negotiated with the solicitors, which was nearly £14,000 less than the total that was likely to be recovered by the owners if they had gone to the Lands Chamber. Settling the claim also removed the threat of additional interest charges and legal costs of the litigation.

Settlement of the claim for compensation

11. The Leader and Deputy Leader of the Council, and Portfolio Holder for Planning Policy and Localism were briefed by the Legal Officer on the results of the negotiation. The Council Leader agreed to deal with the claim on this basis and it was settled on 4 September, 2013.

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