

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning and New Communities Committee

2 April 2014

**AUTHOR/S:** Head of New Communities

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### **Land outside The Limes, 333 High Street, Cottenham Cambridgeshire**

#### **Report on Tree Preservation Order C/11/17/20/10 09/13/SC**

#### **Recommendation: to allow the Order to lapse**

**Deadline to allow the provisional Tree Preservation Order to lapse: 2 May 2014**

**To be presented to the Committee by Jane Green**

#### **Executive Summary**

1. The Lime Trees which are the subject of the provisional TPO 09/13/SC are located within County Council Highway verge land immediately to the west of the garden boundary wall of The Limes, 333 High Street Cottenham.
2. "The Limes" is a Grade II listed residential property located set back on the eastern boundary of the B1049 within the boundary of the Conservation Area.
3. The site has a commanding location looking due west towards the spacious tree lined village green.
4. This submission recommends that Tree Preservation Order 09/13/SC served 2 December 2013 should be allowed to lapse.
5. The 4 Limes trees will revert to being covered by Conservation Area Regulations.

#### **History**

6. It is recognised that the Lime trees located on the County Council verge have posed historical management issues both to adjacent properties and pedestrians and those using the bus stop.
7. The trees have been the subject of a formal complaint to the County Council by the owner of the adjacent property known as The Limes.
8. The owner confirms in his letter of objection dated 30<sup>th</sup> December 2013 that the County Council has recently removed one Lime tree from within the line (leaving the four trees currently the subject of the Provisional Order) on the grounds of it being diseased and dangerous.
9. The County Council's response to the owner's concerns was to advise the District Council of the intention to pollard the Lime trees.

10. Retention of the Lime trees by canopy management was never going to address the issue of the base of the Lime trees causing direct damage to the adjacent property. Lateral pressure is being applied by the Lime trunks buttressing against the soft brick and lime mortar of the garden wall which is curtilage listed.
11. The Council served the provisional TPO 09/13/SC on 2<sup>nd</sup> December 2013 which has gained a protected period of time in which fully assess the implications of serving the Order.

#### **Powers to make Tree Preservation Orders**

12. A local planning authority may serve an Order in relation to land it owns or that is owned by another Council.
13. However as the barrister Charles Mynors advises “ *as to making a tree preservation order on land owned by another local authority (such as a district council making an order on land owned by a county council) the Government’s view is that this would “ very rarely be appropriate” . Refer to The Law of Trees Forests and Hedgerows second edition 2011.*

#### **Reasons to serve and confirm a Tree Preservation Order**

14. The prospect of the County Council pollarding full canopied Limes would be a valid reason to serve a provisional TPO. The results of such a pruning exercise would appear inappropriately severe against the immediate backdrop of the surrounding full canopied Limes contributing to the character of the Conservation Area.
15. The reasons to both serve and confirm an Order should be identical
  - The preservation of trees is desirable in the interests of protecting visual amenity
  - That it is expedient to achieve the protection of visual amenity by the preservation of trees
16. Issues raised in a Supreme Court Judgement in 2012 were aired in the matter of TPO 01/12/SC and the Old Rectory Little Gransden
17. Para 24 of the Supreme Court Judgement reads:
  - *“In simple terms the question is whether a public authority when deciding whether to exercise a discretionary power to achieve a public objective is entitled to take into account the cost to the public of so doing”*
18. Serving an Order is a discretionary function and does subsequently expose any Council to compensation liability.
19. The Lime trees which are damaging the listed garden wall are owned by another Authority.

#### **Exceptions as defined by The Town and Country Planning (Tree Preservation) (England) Regulations 2012**

20. The 2012 Regulations state that :

- *“Nothing shall prevent the cutting down, topping, lopping or uprooting of a tree -*
- *- so far as may be necessary for the prevention or abatement of a nuisance”*

**The duty of the owner and occupier of the land on which the trees are growing.**

21. The owner or occupier of land on which a tree is growing owes a duty of care to the neighbouring land owner in respect of the tree not causing injury or harm or actionable nuisance

- The Lime trees are causing harm as a result of the lateral pressure being applied by the root plate and typical Lime stem buttressing. In the case of the trees at the northern and southern corners of the garden curtilage wall directly against the brickwork
- The soft brick and lime mortar construction has had to give way under the resultant pressure
- The trees are causing actionable nuisance resulting in direct harm to the listed garden curtilage wall

**The damage being caused to the listed garden curtilage boundary wall**

22. A site inspection by the Council's Conservation Officer has revealed that:

- At the location of the previously removed Lime tree it can be clearly seen that tree growth has damaged the face of the brickwork and pushed the wall out of alignment leading to a need for localised repair.
- It can therefore be assumed that similar damage to the face of the wall is occurring at the northern and southern end of the wall where two of the Lime trees are touching the brick face.
- In any event the expanding girth of the remaining trees severely limits the ability to maintain the pointing to the brick work in the vicinity of their location. Where they are touching the wall the trees are exerting a lateral force which is increasing undermining the wall's stability.
- The wall's construction in brick and lime mortar provides sufficient strength for its purpose carrying its own weight in order to define the property's boundary. Cement mortar, albeit historically totally inappropriate, provides greater strength than lime mortar but would still be insufficient to arrest the growth of the trees and is therefore not a viable option.

23. In general terms in the event of damage / unauthorised works the onus rests with both the owner of the building, for allowing the damage to take place though often inadvertently and the perpetrator for actually causing it. In this case the damage is seen to be caused by the Lime trees which are the responsibility of the County Council by virtue of being located in the adopted highway.

24. The wall, in its present form, as an element of the listed building of architectural and historic interest is a finite resource which once lost or irrevocably disturbed from original cannot be replaced. Consequently the continuing and increasing damage to the wall is a growing concern particularly as the wall becomes more vulnerable, both from the lateral pressure exerted by the trees and the potential attraction for vandalism as the wall deforms.

**Consultation by South Cambridgeshire District Council as Local Planning Authority**

25. Cottenham Parish Council have not formally commented following receipt of their copy of the provisional TPO within the first 28 Days after service on 2<sup>nd</sup> December 2013.

**Representations by Members of the Public**

26. None have been received from local residents..

**Recommendation**

27. The recommendation is that the provisional TPO should not be confirmed and instead be allowed to lapse for the following reasons:
- The trees do contribute in an holistic way to the current character of the Conservation Area. However the TPO will conflict with the landowner's ability to repair his garden wall, which is listed.
  - The TPO has also been served on trees owned and managed by another Authority

**Contact Officer: Jane Green – Head of New Communities**