Tree Sub Committee: 5 April 2012 **Agenda Item No.**

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Application No.: TPO 459

Town/Parish Council: Ashow

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TPO 459: Field House, Grove Farm Road, Ashow

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1 INTRODUCTION

1.1 A provisional Tree Preservation Order, TPO 459, was made on 19 December 2012 following receipt of notification under section 211 of the Town and Country Planning Act of the intention to fell the trees now protected by this TPO.

1.2 The Order came into effect provisionally on 19 December 2012 and remains in force for a period of six months. If the Council choose to confirm it, it will remain in force indefinitely.

1.3 The reason for making the Order, as given in the original notice of making the Order was:

> *The silver birch tree, T1, is a prominent and attractive feature on Grove Farm Road forming part of the rural character of the Ashow Conservation Area. The ash trees forming the group G1 are prominent skyline features. They form part of an old hedgerow, are widely visible and are characteristic of the surrounding landscape.*

1.4 In order to assist the Council in deciding whether the Order should be confirmed those with an interest in land affected by the Order were invited to make representations in relation to the provisional Order.

2 CASE HISTORY

2.1 A notification of intention to carry out work to trees in a conservation area was first received on 7 July 2011. This notification did not include sufficient detail of the work proposed to be validated. Following subsequent clarification this notification was made valid on 10 August 2011. This notification included work to a number of trees throughout the site, including proposals to crown reduce the trees now covered by TPO 459.

2.2 The Green Infrastructure Manager visited the site on 19 August. He considered most of the work to be acceptable but not the proposed crown reductions of the birch and ash trees now covered by TPO 459. These trees were considered to be visually important and the work proposed unnecessary and detrimental to the health and visual amenity of the trees.

2.3 In an attempt to avoid the need to make a TPO, and following discussions on site with both the applicant, Mrs Williams, and the neighbours, Mr and Mrs Fryer, a revised notification was negotiated with Mrs Williams. This included the removal of a single long branch on the birch tree, extending over the driveway of Mr and Mrs Fryer's property, Grovewood. The revised notification showed no work to the ash trees.

2.4 A decision notice offering no objection to the revised notification was issued on 12 September 2011.

2.5 Subsequently a further notification was received on 22 November 2011. This notification was to fell the birch and ash trees.

2.6 The County Forester, covering for the Green Infrastructure Manager, visited the site on 15 December. He considered the trees to be visually important with little evidence of a significant risk.

2.7 Consequently TPO 459 was made in order to prevent the notified removal of the trees from going ahead.

2.8 Following receipt of objections to the TPO, on 9 March 2012 the Green Infrastructure Manager held a meeting on site with Mr and Mrs Williams, Mr and Mrs Fryer and the ward councillor, Cllr Bertie MacKay, in an attempt to find a mutually acceptable solution.

3 SUMMARY OF REPRESENTATIONS

3.1 Objections have been received from four parties:

- Mr and Mrs N Williams of Field House
- Mr and Mrs D Holt of Witherwell Barn
- RW and H Fryer of Grovewood
- Ashow, Burton Green and Stoneleigh Joint Parish Council

3.2 No other representations have been received. The objections are summarised below.

3.3 Amenity significance of the ash trees (G1)

3.3.1 The ash trees are estimated to be 60 – 63 years old and therefore the hedgerow is not ancient. They have no historic significance.

3.3.2 Other similar sized trees were removed in 2007/8. The hedgerow would still exist if the trees were removed.

3.3.3 The trees are not attractive and are only visible from the bedroom window of two residents.

3.4 Danger posed by the ash trees (G1)

3.4.1 Widely accepted data relating to the safe distance of trees from buildings in order to avoid structural damage by subsidence suggest that ash trees should be situated at least 21m from buildings. The trees are situated between 9.7m and 12m from the conservatory and therefore pose a predicable risk of structural damage. The Council have failed to adequately assess this risk.

3.4.2 The trees sway during strong winds and this is unnerving to the family, who may be dining in the conservatory. The trees are fast growing and growing by approximately 1m each year so the risk posed in strong winds is increasing.

3.4.3 Poor quality reduction in the past has adversely affected the structural integrity of the trees.

3.4.4 These risks are exacerbated by climate change.

3.5 Overpowering nature of the ash trees (G1)

3.5.1 The trees are approximately 25m tall and are perceived as oppressive and disconcerting by the family, particularly during the summer.

3.5.2 The trees reduce the enjoyment of daylight by the residents.

3.6 Danger posed by the birch tree (T1)

3.6.1 The tree is located approximately 7.5m from Grovewood. The recommended safe distance for birch trees to avoid subsidence is 10m.

3.6.2 It is widely accepted that birch branches are very brittle. Poor pruning practice (eg topping) in the past have resulted in branches at unnatural and structurally unsound angles.

3.6.3 There have been branch failures of branches up to 2.5cm in diameter. These branches often fall over the car parking area at Grovewood.

3.6.4 The tree exhibits extreme lateral movement during high winds and leans towards Grovewood.

3.6.5 The tree has a limited life expectancy of around 15 years. It is inappropriate to place a TPO on a tree with a limited life expectancy.

3.7 Amenity importance of the birch tree (T1)

3.7.1 The tree is not attractive and does not add significantly to the local environment.

3.8 Replanting proposals

3.8.1 It is proposed to replace both T1 and G1 with single oak trees. These trees are more in keeping with the historic planting on the Stoneleigh Estate.

3.9 Compensation

3.9.1 Clear legal precedents exist that if the council confirm the TPO and damage later occurs, the council will be liable. This is a misuse of public funds.

3.10 Errors in the TPO

3.10.1 The address given on the Order is incorrect. The street name is Grove Lane, not Grove Farm Road as indicated.

3.10.2 The plan attached to the order is out of date in that it does not show the conservatory to the rear of Field House, completed in 2008. As the conservatory is close to group G1 of the TPO the plan is misleading.

4 KEY ISSUES

4.1 The key issues to be addressed in deciding whether or not to confirm the Tree Preservation Order are whether the trees are of sufficient amenity importance to justify a Tree Preservation Order, and whether the public benefit afforded by the trees outweighs any private inconvenience experienced by individuals because of the trees.

4.2 Whether or not it would be desirable at this time to allow work to the trees is not an issue that should have a bearing on the decision as to whether or not to confirm the TPO. If the TPO is confirmed it is open to anyone to make an application at anytime to carry out works to the trees, including felling.

5 ASSESSMENT

5.1 Amenity significance the trees

5.1.1 The group of ash trees (G1) is clearly visible from Grove Farm Road (Grove Lane) and forms an attractive back drop to the dwelling at Field House, seen over the roof line. Distant views are also possible from Ashow Road and the properties on the east of Ashow Road and Long Row.

5.1.2 The site stands within the Arden Parklands landscape area. The group of ash stands at the edge of the village envelope and a general guideline for the Arden landscape area within the Warwickshire Landscape Guidelines is to strengthen tree planting around the edge of built developments to soften that edge.

5.1.3 The estimate of tree age of 63 – 66 years is likely to be a significant underestimate. The method used (1 inch girth represents one year) is at best very approximate and is not applicable to multi stemmed trees, trees grown in close groups or trees that have previously been subject to crown management. All of these factors will reduce the annual growth increment. The trees stand within a hedgerow which appears on the first series Ordnance Survey maps.

5.1.4 The birch (T1) is a prominent specimen situated near to the public highway on Grove Farm Road (Grove Lane). It has an attractive, spreading crown and is widely visible.

5.2 Risk of subsidence damage

5.2.1 The data referred to in objections (see 3.4.1 and 3.6.1) are not in fact recommended safe distances. These figures represent the maximum distance to damage ever recorded in a study on very highly shrinkable clay in the London area. As such they represent extreme examples and are statistically unlikely.

5.2.2 Soils in Warwickshire are significantly less plastic than those encountered in London and the South East. Even in the original study, 50% of ash trees causing damage were closer than 6m to the building,

5.2.3 These figures have been widely misused by both the insurance industry and the media. The extent of this misuse is such that the authors were moved to publish an article in the Arboricultural Journal (Gasson and Cutler 1998) stating:

> *"There is increasing concern that data on tree root spread in 'Tree Roots and Buildings' (Cutler and Richardson, 1989) are open to misinterpretation by insurers, home owners and arboriculturists. Insurers have tended to use maximum root spread figures, which we believe to be statistically and biologically unsound"*

5.2.4 This article went on to propose guideline figures of 10m for ash and 4m for birch.

5.2.5 Since the original study (carried out in the late 1970s) there have been significant changes to Building Regulations specifically intended to reduce the

vulnerability of buildings on shrinkable clay soils. The modern conservatory, completed in 2008, should have been built to meet the building regulations in force at that time, which would have required foundations of a sufficient depth to enable the building to co-exist with any existing trees.

5.2.6 The vast majority of trees situated close to buildings do not cause subsidence damage. If the figures proposed were accepted as absolutes a large proportion of the trees in eastern Kenilworth would have to be removed.

5.3 Structural stability of the trees

5.3.1 There is evidence that both the birch and ash have previously been 'topped'.

5.3.2 Whilst 'topping' can result in poorly attached regrowth and development of decay at pruning points, it does not necessarily do so. There is no evidence that this is the case here. The trees have been inspected by experienced arboriculturists from both the District and County Councils and it is their view that there is insufficient evidence of any increased risk of structural failure in these trees to justify removal.

5.3.3 Swaying in the wind is normal for healthy trees.

5.3.4 Birch is a relatively short lived species. The birch tree (T1) does therefore have a limited safe life expectancy. However, 15 years is still a significant period of time and it is not inappropriate to protect it.

5.4 Compensation

5.4.1 Section 203 of the Town and Country Planning Act 1990 provides a framework for the provision of compensation to those suffering loss as a result of a Local Planning Authority's decision with respect to a TPO. The detail of the provisions are currently set out in article 9 of the TPO itself, but will be replaced by the provisions of regulation 24 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 from 6 April 2012.

5.4.2 In summary, compensation is payable where damage can be shown to be the result of the LPA refusing consent following receipt of an application. Compensation is limited to damage which was reasonably foreseeable in the light of the evidence submitted in support of that application.

5.4.3 Where no application under the TPO to carry out works has been made no compensation is payable. The act of making or confirming a TPO does not itself make the Council liable to pay compensation.

5.4.4 In the event of an application being made and supported by adequate evidence of danger consent would be likely to be granted.

5.5 Errors in the TPO

5.5.1 The TPO is valid providing it is made substantially in the form set out within the current regulations and it is clear which trees it intends to protect. Neither the issue with the address nor that with the plan introduces any lack of clarity as to which trees are protected.

5.5.2 The address used on the TPO is that recorded in the Local Land and Property Gazetteer (LLPG). For administrative reasons it is important that the TPO can be tied to the particular record in the LLPG. Officers responsible for maintenance of the LLPG have been asked to investigate this issue and establish if the there is an error in the LLPG.

5.5.3 It is open to members to confirm the TPO with a modification to the address. However, as this would create a difficulty with tying the record to the LLPG, would not bring any significant benefit and it is currently not clear what the correct address is this is not being recommended.

5.5.4 The base mapping used to prepare the plan is the most up-to-date version of the Ordnance Survey Master Map available to the Council. The sole purpose of the plan attached to a TPO is to identify which trees are protected. It is not considered that the omission of the recent conservatory introduces any doubt as to which trees are protected.

5.5.5 Again, it is open to members to confirm the TPO with modification to the plan. This would require instructing a suitable surveyor to survey the site and prepare an up-to-date plan. Since this has a cost implication and brings no benefit it is not being recommended.

5.6 Replanting proposals

5.6.1 The owners of Field House have indicated in their objections that they would be willing to replant with two oaks.

5.6.2 If the TPO is confirmed it is open to the owners to come forward with a further application to fell the trees and to replant. In this case, the Council would be able to make replanting a condition of granting consent, and to enforce that condition.

5.6.3 If the TPO is not confirmed the Council have no power to require replanting.

5.6.4 The issue of replanting was discussed at length at the site meeting on 9 March 2012 (see 2.8). Informal pre-application advice provided by the Green Infrastructure Manager at that meeting was that an application to fell and replant the ash (G1) would receive favourable consideration as oak are consistent with the historic character of the area. However, to remove the birch at the same time without significant evidence of structural issues would represent too great a change in tree cover at once.

6 RECOMMENDATION

6.1 It is recommended that members authorise officers to confirm Tree Preservation Order 459 without modifications.

References

Gasson PE & Cuter DF. (1998). Can we Live With Trees in Our Towns and Cities?, *Arboricultural Journal.* 22 (1). pp 1-9.