

**BABERGH DISTRICT COUNCIL**

**FROM: Head of Leisure and Community Services**

**REPORT NUMBER    **F11****

**TO:    LICENSING AND APPEALS  
         COMMITTEE**

**DATE OF MEETING    25 April 2006**

**TREE PRESERVATION ORDER NO. BT00400**  
**- LAND ADJACENT TO FERNDALE COTTAGES, HOLLOW LANE, CHELMONDISTON,**  
**IPSWICH, SUFOLK**

**1.    SUMMARY**

1.1    The purpose of this report is to consider an objection to the making of a Tree Preservation Order No. BT00400, and the recommendation that the Tree Preservation Order (TPO) be confirmed without modification.

**2.    RECOMMENDATION**

2.1    That Tree Preservation Order No. BT00400 be confirmed without modification.

The Committee is able to resolve this matter.

**3.    FINANCIAL IMPLICATIONS**

3.1    The Town and Country Planning Act (Trees) Regulations 1999 contain provisions for financial compensation and this may be payable in certain circumstances if consent is refused under the Order for works to protected trees or if consent is granted subject to conditions. However this is the case when making any TPO and there are no extraordinary financial considerations in this case.

**4.    KEY INFORMATION**

4.1    Tree Preservation Order BT00400 (TPO BT00400) was served on 15 December 2005. It has a provisional existence of six months and will expire on 15 June 2006 if not confirmed by this Committee.

4.2    The trees that are the subject of this Tree Preservation Order (TPO) are situated on land to the south of Hollow Lane, Chelmondiston, between Hill Cottage and 1 – 3 Ferndale Cottages. To the west the land rises steeply towards Hill Cottage and St Andrews Parish Church. To the east the land rises more gently towards Pinmill Road. The location of the trees however is relatively level and can be characterised as domestic garden area. It is predominantly laid to lawn with shrubs, but also contains an access drive and a large double garage. In addition to the protected trees there are a number of other smaller, less significant trees within the curtilage. The site boundary with Hollow Lane is marked with a mixed species hedge. The site is positioned less than fifty metres from Chelmondiston Conservation Area at the nearest point.

- 4.3 TPO BT00400 encompasses two trees recorded as individual specimens within the TPO documentation. T1 is a mature Poplar tree estimated to date from the mid 1950's. It is located close to Hollow Lane, to the north of the garage and is approximately twenty metres tall with an average crown radius of five metres. This tree is of fine form with no obvious external indicators of decay, instability or disease. T2 is an early mature Larch, estimated to be 40 years old. It also has good form and is approximately seventeen metres tall with an average crown radius of three metres. As with T1, there are no obvious external faults or weaknesses with this tree.
- 4.4 Both trees are important amenity specimens. They dominate their location, providing an excellent visual amenity to local residents as well as pedestrian and vehicular users of Hollow Lane. They create a scenic backdrop both to the Conservation Area, and also to other parts of the village, e.g. Pinmill Road. T1 and T2 combine to provide a variety of wildlife habitats and their retention helps ensure the continuation of substantial tree cover within this part of the village. The significance of T1 and T2 is reinforced by an objective assessment using the Helliwell System (a nationally recognised arboricultural appraisal method) that confirms their quality and importance. Under this system T1 has been scored at 192 points and T2 has been scored at 128 points (trees of 100 points or more are normally considered worthy of protection by a TPO).
- 4.5 The serving of this TPO has been prompted by a planning application B/05/02077/FUL that proposes the construction of a two storey dwelling on the land wherein the trees are located. As a result of this application the trees are under threat of damage or removal. The Local Planning Authority considers the trees to be of significant public amenity value and as such determined they should be afforded statutory protection by the making of a Tree Preservation Order in the interests of maintaining the visual amenity of the area.
- 4.6 One letter of objection to the making of TPO BT00400 has been received from Mr Simon Ruffles, the owner of the land on which the T1 and T2 are sited. It should be noted that Mr Ruffles states that he has no objection to the inclusion of T2, but he objects to the inclusion of T1, and is concerned that there are inaccuracies in the TPO statement and that certain procedural matters in serving the TPO were not completed correctly. Mr Ruffles' objections are summarised as follows:
- (a) T1 stands sixty feet tall and is dangerous due to it being within falling distance of three houses and a garage. It also lies within striking distance of a major electricity transformer and several pylons. In situ, the tree comes within two metres of the power lines serving Ferndale Cottages.
  - (b) Planning permission was granted on the site to build a similar dwelling at some time believed to be within the last seven years and at that time no requirement for a TPO was considered necessary.
  - (c) The trees are sited eighty metres from the Area of Outstanding National Beauty (AONB), not fifty metres as the TPO documentation states, and have no visual impact on it.
  - (d) The TPO was not served correctly. Mr Ruffles states that he did not receive an original copy of the order at his 3 Ferndale Cottages address. He advises that the Council "has not stated why it believes a tree preservation order should be placed on these trees". Mr Ruffles is also concerned that incorrect legislation is quoted on the documentation.

4.7 The responses to the objections are as follows:

- (a) There is no desire to place either persons or property in peril. T1 is important, having been assessed using the Helliwell System as having a score of 192 points (trees of 100 points or more are normally considered worthy of protection by a TPO). If evidence is provided that shows that T1 requires attention, then appropriate surgery or felling would be considered through the normal application process. There is no fee charged for applications and if the applicant disagrees with any decision Babergh District Council makes he has the option to appeal to the Office of the Deputy Prime Minister. There is no fee payable for the appeal process. Furthermore the TPO provides exemptions to allow necessary emergency work to be completed without recourse to an application process.
- (b) Research of the planning history for 3 Ferndale Cottages has identified that the most recent planning permission for a similar dwelling on the same site was an outline consent (referenced B/651/83) issued on 15 September 1983. In view of the time elapsed, it is certain that the visual impact of T1 and T2 has increased. Furthermore at the time of the previous application it may have been considered that neither T1 nor T2 was under threat of damage or removal. The serving of this TPO has been prompted by application B/05/02077/FUL and its purpose is to inform the planning process, thus ensuring that the important amenity contribution that both T1 and T2 provide is safeguarded by reasoned evaluation when comparing proposals for which the site may be put to. Should a planning application be received which shows the loss of one or more of the protected trees, then it will be the duty of the Local Authority to determine any such application by weighing the benefits of the proposal as against the amenity value of the trees.
- (c) The AONB is not referred to in the TPO documents. The trees are located within 50 metres of Chelmondiston Conservation Area (a Local Plan designation protecting buildings and landscape primarily for their historic value and setting), and are clearly visible from locations within the Conservation Area.
- (d) The file shows that the TPO was served by first class post on 15 December 2005 to Mr Ruffles at 3 Ferndale Cottages, Chelmondiston. This method of service is in accordance with Section 233 of the Local Government Act 1972. It is not known why Mr Ruffles did not receive the documents. In response to Mr Ruffle's concern that the Council has not stated why the trees should be protected, this is fully detailed in the TPO statement. Lastly, Mr Ruffles is concerned that the 1971 Town and Country Planning Act is quoted rather than the 1990 Act. It would appear that the 1990 Act is quoted on all TPO documents except the covering letter that was sent out when the order was served. This quotes the 1971 Act, but is suffixed in brackets "as amended". For all future Notices the 1990 Act will be quoted.

4.8 The following implications of Human Rights legislation should be considered:

- (a) Article 1 of Protocol 1 "The right to peaceful enjoyment of possessions and protection of property" – appropriate if the individuals' rights to enjoyment of their property are affected.
- (b) Article 8 "The right to respect for private and family life, home and correspondence" – appropriate if the condition of the tree is causing a safety risk, hazard or health problem at the homes of the individuals.

It is understood that the tree that is the subject of objection is growing within the curtilage of the objectors' property, so that Article 1 of Protocol 1 is applicable. Mr Ruffles is concerned that the presence of the TPO will affect the use of his land. The Committee should consider whether the presence of the TPO is an unreasonable constraint on the use of his land and whether this outweighs the amenity value of the trees.

As far as Article 8 is concerned, at present there is no evidence to suggest that this tree poses a reasonably foreseeable risk to persons or property. If the tree unexpectedly becomes dangerous there are exemptions within the TPO legislation to allow tree owners to resolve the problem to an extent proportionate to abate the danger. Furthermore, and as referred to in items 4.6 (a) above, provisions exist within the TPO legislation to permit tree owners to apply to the Local Authority to undertake surgery. Each application is assessed on its appropriateness to the situation, and if the Local Authority refuses permission to proceed with requested surgery, the applicant may appeal to the Office of the Deputy Prime Minister. There are no fees payable to the Local Authority for the submission of TPO applications or TPO refusal appeals.

5. **APPENDICES**

Appendix 1 - Copy of Tree Preservation Order No. BT 00400.

Appendix 2 - Copy of objection letter dated 9 January 2006 submitted by Mr S Ruffles.

6. **BACKGROUND PAPERS REFERRED TO:**

None.

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