

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

Agenda Date: 1st July 2010

REPORT OF THE HEAD OF SPATIAL PLANNING

REFERENCE: TA /0052/10

Date: 04/05/2010

APPLICANT: OCA UK Ltd, 4 The Courtyards, Wyncolls Road, Colchester, Essex, CO4 9PE

LOCATION: Land adjacent Wayside, Ashford road, Harrietsham, Maidstone, ME17 1BH

PROPOSAL: To fell one Beech tree and treat one stump subject to Tree Preservation Order No 2 of 1997, situated adjacent to 'Wayside'.

CASE OFFICER: Guy Stephens

The recommendation for this application is being reported to Committee for decision because:

- It is contrary to views expressed by Harrietsham Parish Council.

POLICIES

- South East Plan, 2006, Policy C4: Landscape & Countryside Management
- Maidstone Borough Council, Landscape Character Assessment & Landscape Guidelines, 2000
- Government Policy: ODPM, 'Tree Preservation Orders: A Guide to the Law and Good Practice'

PLANNING HISTORY

TA/0195/09 – Land adjacent to Wayside- an application to fell one Beech tree and treat one stump subject to Tree Preservation Order No 2 of 1997 – an appeal for non-determination was lodged on 22 February 2010. Planning Committee, on 18 March 2010, resolved that it would have granted consent had an appeal not been submitted.

TA/0132/07 – Booth Field, Church Road, Harrietsham- an application for consent to remove and treat stump of one Beech tree- refused.

TA/0025/04 – Booth Field, Church Road, Harrietsham- an application to remove 2 lowest branches of 1 no Lime, trim lower branches of 1 no Lime to clear corner of pavilion and crown lift 5 no trees – approved/granted with conditions.

CONSULTATIONS:

Harrietsham Parish Council: wishes to see the planning application refused due to the high amenity value of the tree. However, if the Landscape Officer's view is different, the Parish Council wish to be consulted regarding the replacement tree.

REPRESENTATIONS

None

CONSIDERATIONS

ISSUE FOR DECISION:

The applicant made an appeal (APP/TPO/U2235/1090) to the Secretary of State, under section 78 of the Town and Country Planning Act 1990 (as amended) on 22 February 2010 for non-determination of application, TA/0195/09. They requested that the appeal be dealt with by means of a hearing.

The Planning Committee, at its meeting on 18th March, resolved that it would have granted consent for the application, with amended conditions, had an appeal for non-determination not been submitted. It also agreed, as a consequence, that the appeal should not be defended. A copy of the original report and the associated minutes are attached to this report as **Appendix A**.

As a result, the applicant, OCA, considered that the timescale for getting the case formally determined could be reduced by submitting an identical application to that subject to the appeal, which could then be decided by the Council. The Committee is not bound by its previous view and, on consideration of the facts now being reported, can change its decision, although it should be reiterated that the reasons for the work and the considerations are essentially the same as those originally reported. In the meantime, OCA requested to the Planning Inspectorate that the current appeal be placed in abeyance whilst the new application is considered and a decision issued.

SITE AND SURROUNDINGS

The tree in question is a mature Beech tree situated on the south western boundary on Booth Field and protected by TPO No 2 of 1997 along with the seventeen mature trees on the playing field. Within this group there is a mixture of Sycamore, Plane, Horse Chestnut, Lime and Corsican Pine, all of which enhance the area and are prominent from many public viewpoints.

DESCRIPTION OF TREE AND PROPOSED WORKS.

The mature Beech tree is 23 metres in height, with a stem diameter of 980 mm and an average radial crown spread of 8 metres. It is natural in shape with multiple scaffold branches forking at 5 metres. Minor deadwood was noted throughout the crown, although this is a common feature for a tree of this age. The bud size and extension growth was noted as being healthy.

An investigation has been carried out to establish the cause of alleged damage to the adjacent property, 'Wayside'. The application to fell the tree included an engineering report which concluded that the damage is a result of subsidence caused by tree root action which can be attributed to the nearby Beech tree. The report provides technical evidence such as level monitoring, soil and root information to support this claim.

LEGAL CONTEXT

In considering applications the (Local Planning Authority) LPA:

- assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and
- in the light of the amenity assessment, consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

It also considers whether any loss or damage is likely to arise if consent is refused or granted subject to conditions. In general terms, it follows that the higher the amenity value of the tree or woodland and the greater the impact of the application on the amenity of the area, the stronger the reasons needed before consent is granted.

The LPA's consent is not required for cutting down or carrying out work on trees so far as may be necessary to prevent or abate a nuisance. The term 'nuisance' is used in a legal sense, not its ordinary everyday sense.

For TPOs made before 2 August 1999, when refusing or granting consent subject to conditions, the LPA may issue an 'article 5 certificate'. It may only be issued if the LPA are satisfied:

- that their decision is in the interests of good forestry, or
- that the trees, groups of trees or woodlands to which the certificate relates have an 'outstanding' or 'special' amenity value.

In simple terms the effect of an article 5 certificate is to remove the LPA's liability under the TPO to pay compensation for loss or damage caused or incurred as a result of their decision.

LPA's are advised to use article 5 certificates with discretion and not simply as a means of avoiding the potential liability of compensation. The LPA should consider each case on its merits and must, when issuing a certificate, be satisfied that their decision is in the interests of good forestry, or that the trees, groups of trees or woodlands have an 'outstanding' or a 'special' amenity value.

CONTRIBUTION TO AMENITY

Although there are a number of other trees within the Booth Field the Beech tree is the most prominent and its removal would be detrimental to the character of the local area. All the trees in this area are situated in a parkland setting and have been able to grow in their natural form. The Council's amenity evaluation assessment gives an amenity value rating (AVR) of 20, which is clearly above the benchmark of 17, but it is not considered an 'outstanding' or 'special' tree and, therefore, an article 5 certificate could not be issued.

ASSESSMENT OF CASE

The evidence provided by OCA indicates that the damage which 'Wayside' is experiencing is attributed to soil desiccation causing a downward rotational movement of the rear left hand side corner of the property.

In cases where it is suspected that trees may be the primary cause of the damage there are three pieces of evidence which are essential, these are:

1. Evidence of soil desiccation
2. Proof of seasonal movement
3. Live roots have been found underneath the foundations.

In this case all the necessary evidence has been submitted to support the claim that the cause of the damage, albeit relatively minor, can be attributed to the tree root action.

The Beech tree is of significant amenity value and its removal would have a detrimental effect on the character and amenity of the surrounding area. It would normally, therefore, be preferable to retain the tree by using alternative engineering solutions such as root barriers. However, any such solutions would mean that the roots would have to be partially severed, therefore, making the tree unstable.

A second option would be to reduce the crown, therefore reducing the amount of water it extracts from the soil. However recent studies have shown that to have any impact on soil moisture, severe crown reduction of 70%-90% would have to be carried out. This would result in the Beech tree being severely disfigured and, furthermore, the removal of such a large amount of living tissue would quite probably result in the decline of the tree.

It should be noted though that if consent is granted for the Beech to be felled it may result in heave, which can cause damage to structures. It occurs when clay starts start to absorb more water than it was able to beforehand and therefore it expands. This could, in theory, occur if this Beech is removed. However, it is

important to note that the engineers acting for the applicant, OCA, have ruled out the possibility of this happening. But it is recommended that there is an informative attached to any consent to the effect that the landowner should satisfy himself that there is not a possibility of heave and, if there is, take necessary steps to minimise the potential impact, such as phasing the work.

Potential Costs

Appeal Costs

Whilst this application is not subject to the appeal for non- determination of the previous application it will, no doubt, be a consideration should Committee refuse the application and the appeal be restarted.

With regard to appeal costs, generally each party meets their own but an application can be made against another party for wasted expense caused by unreasonable actions. There is no appeal fee in this case and little work will have been accrued prior to the stage when actions in the appeal timetable would have to be carried out. If there were an application for costs the Council has not acted unreasonably, therefore any claim would be defended. If Members decide to grant consent then the applicant would be likely to withdraw the appeal and each party should meet their own costs.

Compensation

In terms of compensation the position is more complex but in this case the TPO does make provision for compensation for loss/damage caused or incurred as a consequence of the refusal of any consent. One issue that could arise is that loss or damage may not be incurred as a consequence of refusal if no consent were required at all, as in the case of a statutory exemption for nuisance under s198 (6), see above. If that were not the case then any compensation liability would arise from the date of the deemed refusal. Only damage caused by the tree roots after the date of deemed refusal would be relevant except in so far as it could be evidenced that the refusal had necessitated more costly works than would have been needed if consent were given. The liability for compensation would only accrue if the Inspector goes on to refuse the appeal.

In this case if the cause of the damage is not removed then an alternative solution would have to be sought, for example, if the Beech tree is not removed the foundations of 'Wayside' would have to be underpinned.

A breakdown of the cost of structural works has been submitted by the appellant showing the difference between the tree being retained or removed.

If the tree is retained then the cost for carrying out major works to the property has been estimated between £56k-£71k due to major disruption to the policy holder; whereas, if the tree is removed, the works will be kept to a minimum and the costs have been estimated between £12k -£15k.

CONCLUSION:

The applicant has essentially submitted an identical application to TA/0195/09, based on the same reasons and containing the same evidence. Therefore, the original conclusion that, whilst the Beech tree has an important amenity value and the proposed work would have an adverse impact on amenity of the local area it is considered to be the only option in regard to the reasons put forward by the applicant in support of the application, remains unchanged.

The proposed conditions have, however, been amended from the original recommendation to reflect the Committee's resolution that the cordwood be stacked on the Booth Field and not removed from site and that the replacement tree be of a more mature size. The Parish Council's concern that it wishes to be consulted over the replacement tree been addressed in condition C203.

RECOMMENDATION:

GRANT CONSENT to fell one Beech tree and treat one stump subject to Tree Preservation Order No 2 of 1997 subject to the following conditions and informatives:

Conditions

C195 (amended) Provision for securing wildlife habitats

A proportion of the cordwood above 20cm in diameter shall be retained and stacked safely on site for the colonization of saproxylic fungi. All other brushwood and arisings shall be disposed of to leave the site in a safe and tidy condition;

Reason: In the interests of biodiversity and good arboricultural/forestry practice.

C196 Standard of Works (Trees)

All works hereby permitted shall be carried out in accordance with the provisions of BS 3998 (1989) "Recommendations for Tree Work" by a competent person only;

Reason: In the interests of amenity and good arboricultural practice.

C202 Replacement Planting (Heavy Nursery Standard)

One replacement Beech tree (*Fagus sylvatica*) of not less than Heavy Nursery Standard size (12-14cm girth, 3.6-4.25m height), conforming to the specifications of BS 3936 Part I "Nursery Stock", shall be planted during the tree planting season (October to February) following substantial completion of the felling hereby permitted, and be maintained thereafter to the satisfaction of the local planning authority.

Reason: In the interests of amenity and good arboricultural practice

C203 Replacement Planting (Specified Location)

The replacement tree(s) as specified shall be planted at the location(s) described below in accordance with the advice contained within the attached guidance notes;

The replacement tree should be planted in a prominent position in Booth Field subject to the agreement of the Booth and Baldwin Charity and Harrietsham Parish Council.

Reason: In the interests of amenity and good arboricultural practice

C206 Replacement Planting (Maintenance)

Any replacement tree which dies or becomes seriously damaged or diseased within five years of being planted must be replaced with another of similar size or species within the course of the next planting season, unless the local planning authority give written consent to any variation;

Reason: In the interests of amenity and good arboricultural practice

Informatives

- It is recommended that the landowner should satisfy himself that there is not a possibility of heave and, if there is, take necessary steps to minimise the potential impact, for example through phasing the work.
- Owner Consent

This decision does not override the need for the applicant to obtain the consent of the tree owner before commencing the work granted consent.

- Provision for birds and bats

In taking the action specified in this Notice, special care should be taken not to disturb wild animals that are protected by the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000 and the Conservation Regulations 1994. This includes birds and bats that nest or roost in trees.

Background documents:

TA/0195/09: Land adjacent Wayside, Ashford Road, Harrietsham

406/115/12: TPO No 2 of 1997, Trees on Booth Field, Church Road, Harrietsham