

PLANNING COMMITTEE

15 MAY 2012

REPORT OF THE TEMPORARY HEAD OF PLANNING

A.3 PROVISIONAL TREE PRESERVATION ORDER 11/00048/TPO

Pedlars Wood, Central Avenue, Frinton on Sea

1. PURPOSE OF THE REPORT

- 1.1 To determine whether the above provisional Tree Preservation Order (TPO) made in respect of 2 no. woodlands known as Pedlars Wood and situated either side of Central Avenue, Frinton on Sea, should be confirmed, confirmed in a modified form or allowed to lapse.

2. BACKGROUND

- 2.1 On 21 October 2011 a Section 211 Notice was served on the Council by OCA UK Limited – Consulting Arboriculturists acting on behalf of the owner of 128 Walton Road, Frinton on Sea, giving 6 weeks notice of their intention to fell two trees, an Ash (multi-stemmed) and an Oak, situated in Pedlars Wood because they were believed to be implicated in the damage to 128 Walton Road. The evidence submitted with the notice claimed that the damage was the result of clay shrinkage subsidence following moisture extraction by nearby vegetation.
- 2.2 The Section 211 Notice stated that the tree removal works were proposed both as a remedy to the current subsidence at the above address and to ensure the long-term stability of the building.
- 2.3 When a Section 211 Notice is received the Council has to decide whether or not the works described in the notice are acceptable. If the works are acceptable then the person serving the notice is advised accordingly. If they are not then a decision has to be made whether or not to negotiate lesser works with the applicant or to make a new Tree Preservation Order to stop the works being carried out. It is not possible to refuse a Section 211 Notice.

3. CONSIDERATION OF THE SECTION 211 NOTICE

- 3.1 It is not necessary for those serving a Section 211 Notice to submit evidence in support of the proposed works however in this instance OCA have submitted detailed reports relating to the damage to 128 Walton Road, the characteristics of the soil and the soil moisture content.
- 3.2 In order to assess the evidence submitted the Council engaged a Consulting Structural Engineer.
- 3.3 In the report produced by the structural engineer it was concluded that the Ash was implicated in the damage to the dwelling and that it should be allowed to be felled but that the evidence did not demonstrate that the Oak was affecting the dwelling.

4. SITE ASSESSMENT AND AMENITY VALUE

- 4.1 Both the Ash and the Oak are situated within woodland on the northern side of Central Avenue. The visual amenity value of these trees is a result of their integral contribution to the woodland and the positive contribution that it makes to the character and appearance of the Frinton and Walton Conservation Area.
- 4.2 The woods are important features in the landscape when viewed from Walton Road, Central Avenue and surrounding estate roads. The woodlands provide a suburban oasis and there is unrestricted public access to the southern section. Although the northern section has restricted access it is visited by several hundred schoolchildren each year by invitation of the owner and is a valuable community asset.
- 4.3 The Ash makes only a moderate contribution to the appearance of the woods and the Structural Engineer engaged by the Council is of the view that it is implicated in the damage to the dwelling and should be felled. Although it is afforded protection by the new TPO an application for it to be felled would be favourably considered.
- 4.4 The mature Oak is an integral part of the woods and the evidence submitted in support of the Section 211 Notice does not demonstrate that it is affecting the adjacent property.
- 4.5 Although the Section 211 Notice only relates to two trees it was considered prudent to make the new tree preservation order in respect of the whole wood rather than a single tree within an established wood. Therefore a new Tree Preservation Order was made for the whole of Pedlars Wood.

5. REPRESENTATIONS/OBJECTIONS

- 5.1 Following notification of the making of the order to the owner of the property and adjacent properties, 1 letter of representation has been received.

OCA Consulting Arboriculturists have stated the following in their letter of objection.

1. *'We object to the Order on the grounds that we believe the reasons for making the order are not fully explained'.*

- 5.2 They then make reference to the current Government advice and guidance on the creation and service of Tree Preservation Orders drawing particular attention to paragraph 3.3 of the DCLG publication *Tree Preservation Orders: A Guide to the Law and Good Practice 2000*. Which states:-

"LPA's should be able to explain to landowners why their trees or woodlands have been protected by a TPO. They are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way taking into account the following key criteria".

- 5.3 OCA then says:

2. *'The paragraph goes on to list the criteria as (1) visibility; (2) individual impact; (3) wider impact and (4) expediency, with detailed guidance as to what is meant by each of these criteria. With respect, the Council*

has not provided any evidence or indicated that it has in fact assessed the 'amenity' of the woodland trees. If it has made such an assessment it has not provided the evidence to support the making of the order.'

3. *Some trees now the subject of the new TPO are located in sufficient proximity to the risk address to be on the balance of probabilities contributing to soil drying underside of foundations. The property has sustained damage, which is being investigated by Chartered Engineers as root related subsidence. The identified trees are therefore implicated in property damage and the service of the order has added a significant additional layer of complexity for the Engineers in relation to the mandatory level of evidence if they wish to apply for consent to carry out works to the identified trees'.*

In summary, we formally object to the order on the above grounds and we respectfully request that the Council gives serious consideration to the grounds of the objection as set out herein and reconsiders the confirmation of the Order.'

5.4 To address these issues in order:

It should firstly be noted that the DCLG (Department of Communities and Local Government) publication *Tree Preservation Orders: A Guide to the Law and Good Practice 2000* referred to by the company objecting to the TPO states that '*Local Planning Authority's may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the protection of trees or woodlands in their area.*

1. With regard to the issue that the reasons for the making of the Order have not been fully explained, the woodlands have been protected for their visual amenity value and for the contribution they make to the character and appearance of the Frinton and Walton Conservation area. The DCLG Guidance document makes it clear that the Local Planning Authority should be able to explain to landowners why their trees have been protected and in this case the landowner is fully aware, and supportive of, the reasons for making the TPO. There is no requirement to fully explain the reason why the TPO is made at the time it is served, to third parties, although this information would not be withheld.
2. To address the objection relating to the assessment of the woodlands it is worth noting that Pedlars Wood was protected until 29 January 2012 by Essex County Council TPO/4/49. The order was revoked, in other words cancelled by the County as part of a review of the services that they provide in relation to tree protection. At the time the order was revoked an assessment of the amenity value of the woods was made by consultants appointed by the County in accordance with the Woodland TEMPO (Tree Evaluation Method for Tree Preservation Orders). The assessment established that the woodland merited protection but a new TPO was not made as no part of the woodland was at risk and was situated within a conservation area where other controls over works to trees exist.

- 5.5 As the Section 211 notice threatened the loss of a mature Oak within the woodland it was considered expedient to formally protect the woodland.
- 3 The Consulting Arboriculturist has also objected on the grounds that the TPO has added an additional layer of complexity to the mandatory level of evidence required for an application for consent to carry out works to trees. It is accepted that consent would not be granted to fell a protected tree unless it were proven that the tree was, in fact, causing damage to a building.
- 5.6 If a tree is situated in a conservation area a Section 211 notice would need to be submitted – whilst there is no requirement for evidence to be provided with such a notice, the Council would consider any evidence submitted and take it into account in the decision making process. If a tree is covered by a Tree Preservation Order then anyone wishing to fell a tree or trees covered by the Order, on the grounds that it/they are causing damage to property, will need to demonstrate through appropriate evidence that the trees are the cause or are contributing to the cause of the damage.
- 5.7 In this case the evidence submitted with the Section 211 notice was not considered sufficient by the Consulting Structural Engineers engaged by the Council to justify the felling of the Oak. As stated in section 3 of this report an application under the TPO to fell the Ash would be looked upon favourably as it appears to be implicated in the subsidence event.

6. CONCLUSIONS

- 6.1 There is a statutory duty on local planning authorities, set out in Part 8 of The Town and Country Planning Act 1990, in the interests of public amenity to make provision for the protection of trees.
- 6.2 The woodlands covered by the TPO are healthy, viable areas of trees that have considerable amenity value to the locality. The removal of any trees within the woodland without sufficient justification would have a potentially significant detrimental impact on the local environment and its enjoyment by the public.
- 6.3 In respect of the multi-stemmed Ash and notwithstanding the amenity value of the woodlands, an application to fell this tree would be looked upon favourably.
- 6.4 Following consideration of the representations made by OCA Consulting Arboriculturists it is felt that there is no substantive reason why the order should not be confirmed unaltered.

7. RECOMMENDED

- 7.1 That Tree Preservation Order 11/00048 be confirmed without modification.

Background Papers.

None.