

WEST AREA PLANNING COMMITTEE

8th April 2014

Order Name: Oxford City Council –Folly Bridge (No.1) Tree Preservation Order, 2013

Decision Due by: 30th April 2014

Site Address: Land to the south of 5 Folly Bridge, Oxford, Oxfordshire

Ward: Hinksey Park

Recommendation:

To confirm the Oxford City Council – Folly Bridge (No.1) Tree Preservation Order, 2013 with a modification changing the wording in the order Schedule; at paragraph 2(2), line four: "...Regulations 2011." should read "...Regulations 2012.

Background:

The Oxford City Council – Folly Bridge (No.1) Tree Preservation Order, 2013 was made on 30th October 2013. It protects two crack willow trees, identified as T.1 and T.2 on the plan (Appendix 1) standing on small triangles of land north and south of the Thames towpath, to the west of Folly Bridge on the Abingdon Road. The Tree Preservation Order (TPO) was made in response to a Section 211 Notice [Intent to carry out works to trees in a conservation area] to remove both trees (Ref.13/02520/CAT. The Notice was given by Jenks Ltd, tree surgeons acting as agents for Mr Levinson of 5 Folly Bridge.

The TPO was served on parties with an interest in the land. The order currently has provisional status and it must be confirmed to become permanent. If the order is not confirmed before the end of six months, in this instance that being the 30th of April 2014, the order will no longer take effect and the proposal to remove the two trees may take place. The objection that has been made to the order must be considered in reaching a decision on whether the order should be confirmed or not. A typographical error in the Model Order of the TPO Schedule reads "...Regulations 2011." it should read "...Regulations 2012. This can be corrected by a modification to the wording of the TPO at confirmation.

Reasons for making order:

To protect in the interest of public amenity, trees that are at risk of removal, and which make a valuable contribution to public views in the local vicinity along Folly Bridge, Abingdon Road and the Thames tow path and to the character and appearance of the central conservation area in the local vicinity.

Relevant Site History:

02/02134/CAT – Description: 'Prune 2 no. willow trees and two smaller trees in the Central Conservation Area at 6 Folly Bridge' (pollard southern tree or reduce crown by 50%, formatively prune northern tree and reduce branches toward Caudwell Castle);

Decision- 'Raise no objection'; Comment: Work appears to have not been carried out. 13/00436/INV–Alleged unauthorised clearing of land works to trees in CA; Decision: Case closed; Comment: No breach of planning found.

13/02520/CAT- Description:'Fell 2No Crack Willow trees in the Central conservation area'. Decision- 'Raise objection'; Comment: Tree Preservation Order made on 30th October 2013.

14/00873/TPO - Mr. Levinson submitted a TPO application (26/03/2014) - to fell (T2),the southern willow (and plant a replacement tree). The application will be redundant if the order is not confirmed.

Representations Received:

In relation to the Sec. 211 Notice of intention to remove the trees,2 written objections from members of the public were received fromSimon Millar and AdrienShun-Sin.

One objection to the Tree Preservation Order has been made by Mr. Levinson of 5 Folly Bridge.

Officers Assessment:

Site:

1. The site is a small triangle of land to the south of 5 Folly Bridge and adjacent to Folly Bridge and the Abingdon Road to the east. The site is bisected by a short section of Thames towpath, with a foot bridge at its western end. The site is within the Central (University and City) Conservation Area. Adjacent to the site, Folly Bridge and the tollhouse are listed grade II and Grandpont Causeway is a Scheduled Ancient Monument.

Trees and their amenity:

2. The TPO covers two willow trees located on either side of the Thames towpath on the land adjacent to Folly Bridge. The trees almost certainly arose naturally,crack willow being a common native species of the lowland river systems. The trees are cautiously estimated to be around 50 years old; they have not previously been pollarded, coppiced or crown reduced.
3. The trees' have a heavy ivy covering, which made a full visual assessment of their structural condition challenging; however aclose inspection revealed no significant defects, other than some deadwood in the canopies, which is considered to be a result of a past period of crown retrenchment, from which the trees are now recovering strongly.
4. The amenity value of the trees is associated with their prominence in the street scene; theyalso act as a visual signpost and 'gateway' to the river and Thames towpath; in this respect they make a positive contribution to the conservation area, and local public visual amenity. During the summer in particular the trees' light green canopies provide an attractive juxtaposition to the bridge and nearby buildings.
5. Due to the trees proximity to a busy main road and pedestrian routes, and given the species propensity for branch and stem failures in maturity, regular pollarding or

crown reduction crown management is soon likely to be required at regular intervals. Crown reduction or pollarding would change their existing natural form, and arguably, reduce the aesthetic appeal of the trees; the counter perspective is that pollard willows are a widely recognised sight along the Thames, and a feature with long historic and cultural significance.

Expediency:

6. The expediency in making the order is directly related to the Section 211 Notice [Intent to carry out works to trees in a conservation area] to remove both trees (Ref. 13/02520/CAT. The trees will be at continued risk of being felled if the TPO is not confirmed.
7. Subsequent to the making of the provisional order, some communications have exchanged between officers and Mr. Levinson; this included a dialogue over the form of tree management (pruning) which officers would be able to support. No agreement was reached.

Objection Comments:

8. Mr. Levinson of 5 Folly Bridge has written in objection to the Tree Preservation Order. His letter is reproduced at Appendix 2; the main objections and supplementary comments are summarised as bullet points below, and the issues are discussed in more detail in the following section;
 - Professional advice sought by Mr. Levinson concluded that the trees were dying and only have a useful life expectancy of 5-10 years.
 - The crown reduction pruning or pollarding [which the Council states is appropriate management] would negate any positive contribution of the trees to the character and appearance of the conservation area and to public visual amenity.
 - The Council has prevented [management] work (by making the order).
 - The Council has not taken into account Mr. Levinson's offer to plant replacement trees.
9. Mr. Levinson also asserts a number of further points that are not considered to be directly material to the decision before the Committee, i.e. whether or not to confirm the order; however for completeness, these are summarised below;
 - An initial internal e-mail (subject to an Freedom of Information request) suggested that Mr. Levinson was the owner of both pieces of land, i.e. north and south of the towpath when in fact Mr. Levinson only claims ownership of the southern piece of land.
 - The Council has not been consistent to its approach to determining conservation area tree work notifications and the making of related TPOs; he cites previous cases affecting other nearby land where the Council raised no objection to proposed tree removals and did not make TPOs.

Officer's response to Objection:

10. Officers disagree with the contention that the willows are dying and only have a useful life expectancy of 5-10 years. Officers advise that the dead wood present in the canopies is a result of a period of crown retrenchment, from which the trees are now recovering strongly. This opinion is based on observational experience of the regenerative growth characteristics of crack willow generally; and from direct observations of the recent improvements in the condition of the trees over a period of several years.
11. Officers also disagree that the crown-reduction pruning or pollarding would negate the positive contribution of the trees to the character and appearance of the conservation area and to public visual amenity. Crown-reduction pruning or pollarding would indeed change the trees' existing natural forms; however whether this detracts from their aesthetic appeal is a matter of individual subjective opinion. Pollard willows are a widely recognised iconic artifacts of flood plains; they are a semi-natural features with biological diversity value, and they have historic and cultural significance in these areas.
12. Contrary to Mr Levinson's assertion, the Council has not prevented [management] work by making the TPO. Whilst the order has prevented the present proposal to remove of the two trees, this is not intended to prevent appropriate management of the trees. The planning history shows that the Council supported a proposal (made under Sec.211) in 2002, to pollard one of the trees and crown reduce the other; no objection was made because the Council accepted that any short term harm to visual amenity was balanced by the justifications of public safety and sustainable management.
13. The Council has taken into account Mr Levinson's offer to plant replacement trees. However, officers advise that the existing trees already make a positive contribution to visual amenity and to the character and appearance of the conservation area; and that these benefits will be adversely impacted by the removal of the trees. In addition, the existing trees can be safely and sustainably managed as either pollards (cyclically cutting back of re-growth to 3m high parent stumps) or by periodic crown-reduction pruning (branches trimmed back by a specified amount to viable growth points, so as to decrease crown volume by 20-30%).
14. The Council can only secure replacement tree planting by making a condition on a consent granted under a TPO application; however, replacement planting conditions can only be legally enforced against the owner of the land where the TPO is in effect; there is no apparent proof of legal ownership of either part of the land, so Mr. Levinson's offer of replanting may not be enforceable by such a condition.

Ownership/ Control Issues:

15. Ownership of the land where the trees stand is uncertain. No ownership has been demonstrated to the Council; and inquiries with Corporate Assets, the County Council and the Land Registry yielded no information. However, a decision on whether to confirm the TPO is not contingent upon resolution of this issue; the order does not transfer ownership or duty of care responsibilities, nor affect statutory

matters under the Highways Act. The County Council as Highway Authority has responsibility to ensure the safety of the public highway and has powers to carry out necessary works to trees adjacent to the highway to maintain its safety.

16. The TPO simply creates a planning control, which requires that anyone wishing to carry out any works to the trees must obtain the written consent of the Council as Local Planning Authority. Essentially the TPO enables the Council to prevent the removal of the trees, or other works that would be harmful to public amenity and the character and appearance of the conservation area without there being good reason. Each TPO application is judged on its individual merits, taking into account the impact of the proposal balanced against reasons provided in justification of the proposed works. A similar approach is taken in determining the Council's responses to Sec. 211 Notices. In fulfilling its statutory functions, the Council follows relevant Government guidance, currently contained within *Planning Practice Guidance- Tree Preservation Orders and trees in conservation areas*. Applications under the TPO are free and can be made at any time. Refused applications, or conditions imposed which the applicant considers to be adverse can be appealed to the Planning Inspectorate.

Conclusion:

Taking into account the objections that have been received to the order, officers recommend that the Oxford City Council – Folly Bridge (No.1) Tree Preservation Order, 2013 should be confirmed, with a modification changing the wording in the order Schedule; at paragraph 2(2), line four: "...Regulations 2011." to be amended to read "...Regulations 2012".

Human Rights Act 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to confirm this Tree Preservation Order with modifications. They consider that the interference with the human rights of the land owner under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to confirm this Tree Preservation Order with modification, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers:

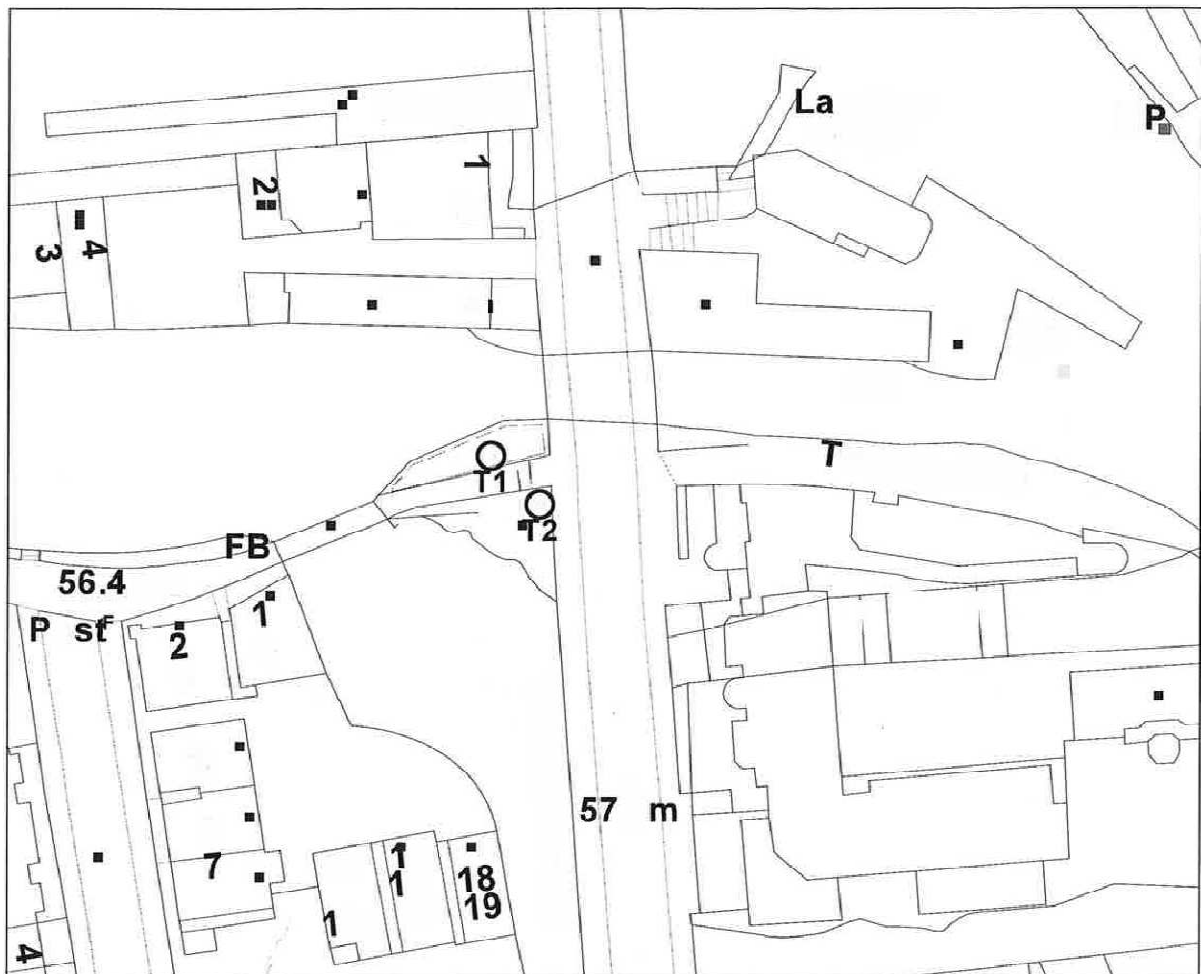
Oxford City Council – Folly Bridge (No.1) Tree Preservation Order, 2013

Contact Officer: Chris Leyland

Extension: 2149

Date: 8th April 2014

APPENDIX 1



Oxford City Council – Folly Bridge (No.1) Tree Preservation Order, 2013- Map