

EAST AREA PLANNING COMMITTEE

5 August 2015

Order Name: Oxford City Council – 6 Feilden Grove (No.1) Tree Preservation Order, 2015

Decision Due by: 11th September 2015

Site Address: 6 Feilden Grove, Harberton Mead, Headington Hill, Oxford

Ward: Headington Hill and Northway

SUMMARY AND RECOMMENDATIONS

- (1) This report concerns an ash tree in a rear garden of 6 Feilden Grove, in the Headington Hill Conservation Area. The tree has been made the subject of a provisional Tree Preservation Order (TPO) to prevent tree surgery work as notified under a Sec. 211 Conservation Area tree work notice. The owner has objected to the Order. The provisional status of the Order lapses on 11.09.2015.

The Committee must decide whether to confirm the Order, making it permanent, so that any works to the tree require the Council's written consent; otherwise after this date the tree may be pruned without consent or conditions being applied.

- (2) This report considers the contribution that the tree makes to public visual amenity locally and to the character and appearance of the Headington Hill Conservation Area in views from Feilden Grove, William Street, Harberton Mead and Garne Way. Potential impacts associated with proposed tree pruning works to public visual amenity are discussed and balanced against the tree owners' comments and reasons in favour of pruning the tree (to the degree specified), and their arguments put forward against the confirmation of the Order.
- (3) This report concludes that tree work proposals would be harmful to public visual amenity and are not justified or proportionate to the reasons given to justify them. Confirmation of the Order is appropriate for the protection of public visual amenity, and is consistent with Government advice on the making of TPOs. This would not prevent the tree owners from applying to carry out future tree work under the Order, or from appealing to the Planning Inspectorate against any decision made by the Council under the Order.

The report therefore recommends the Committee to confirm The Oxford City Council – 6 Feilden Grove (No.1) Tree Preservation Order - 2015 without any modifications.

1.0 Representations Received:

One letter of objection to the Tree Preservation Order was received from Mr Roger Undy, the owner of the tree at 6 Feilden Grove.

2.0 Background:

On the 5th of January 2015 the Council received a Section 211 Notice (Town and Country Planning Act 1990) of intent to carry out tree work in the Headington Hill Conservation Area at 6 Feilden Grove from Ringrose Tree Services, acting as agents for Mr Undy. The work proposed was to fell one horse chestnut tree in the front garden and to reduce the crown extents of two ash trees in the rear garden by 3m all around.

No objection was raised to the removal of the horse chestnut due to its generally poor physiological and structural condition, such that the tree had low public amenity value and had a short useful life expectancy. No objection was raised to the crown reduction of one of the ash trees (Ta) in the rear garden on account of the tree having already been previously topped; this was probably undertaken to reduce potential risk of the tree's tightly twin-stemmed structure from splitting apart.

Mr Undy could not be persuaded to withdraw the element of the Section 211 notice relating to the proposed crown reduction work to the remaining ash tree, and therefore to prevent the proposed work from taking place the Oxford City Council – 6 Feilden Grove (No.1) - Tree Preservation Order - 2015 was made on 11th of February 2015. The Order applied Section 201 of the Town and Country Planning Act, thereby taking immediate provisional effect for a period of six months, which lapses on the 11/09/15. The Planning Committee now need to decide if the Order should be confirmed making it permanent. Members could instead decide not to confirm the Order in which case the tree is likely to be pruned to the extent specified in the Section 211 Notice (i.e. by 3m (10 feet) all around.

3.0 Objection:

A letter of objection to the Order was received from the owner of the tree. He objects to the TPO on the following grounds as summarised below;

1. Mr Undy disagrees that the ash tree is a significant public visual amenity; as a silver maple partially obscures it from William Street. In particular he disagrees that the work proposed under the Sec.211 Notice would have had any significant impact on the character and appearance of the conservation area.
2. The proposed tree work is in accordance with professional arboricultural advice given to Mr Undy, for the purpose of managing risk in accordance with his duty of care obligations under common law.
3. The Council has been inconsistent in its interpretations to similar applications on his property; the crowns of 2 other ash trees have been previously reduced without objection; and no objection was made to the removal of a limb on the tree now in question (although this was never carried out).

4.0 Officers Assessment:Response to objections

HeadingtonHill Conservation Area

Headington Hill stands to the east of the Cherwell Valley, and when viewed from the west, its hillside forms a green landscape background to the historic city in its valley setting. The retention of trees are seen as important elements of public enjoyment and these points are specifically referred to in the landscape character assessment used to support the Council's decision to designate Headington Hill as a conservation area on 24th October 1977.

The Site

The site, 6 Fielden Grove, is a residential detached bungalow property located at the south western end of the Headington Hill Conservation Area; Site Plan at Appendix 1.

The Tree

The tree is a mature common ash tree (*Fraxinus excelsior*); referenced as T1 in the Order and this report. The tree is moderately large (approximately 18m tall) with an open crown structure, which is typical for the species. It has good structural form and has evidently not been subject to any previous systematic pruning, so that its crown has a natural appearance. The tree appears to be in fair health and good condition with no apparent symptoms of structural defect, disease or physiological dysfunction.

Amenity Contribution

Officers disagree with Mr Undy's opinion of the public visual amenity contribution of T1. The tree stands near the south western corner of the rear garden and is visible from several public view points; the most prominent is from William Street [Photos 1 & 2], where the tree forms a significant element in the green background over the northern end of the street in a tree belt that marks the western edge of the conservation area. The ash is partially visible in an easterly view from the corner of Pritchard Road and Harberton Mead [Photo 3]. It also contributes to an important view of the western boundary of the conservation area seen from John Garne Way [Photo 4]. There is also a limited view from Feilden Grove over the roof of the house [Photo 5].

Proposed work

The proposal is to reduce the entire crown of the tree by 30% by volume, which is equivalent to approximately 3 linear metres off each branch. Whilst the main structure of the tree will remain, i.e. its stem and main crown scaffold limbs, the work will permanently alter the natural form of the tree and the majority of the leaf area will be removed; the tree's natural crown outline will be truncated, and subsequent regrowth will produce a different crown form and outline due to multiple shoots emanating from large diameter stumps.

This would destroy the natural crown form and thus significantly detract from the tree's current aesthetic quality; this would be most apparent in the winter when the crown is bare. These resulting impact is clearly demonstrable by comparing the appearance of T1 against the other ash tree which has now already been pruned [Ta in Photo 5]. The impact would be to harm the appearance and quality of the tree belt which denotes the conservation area's western boundary, and detract from individual street scene views.

Pruning trees is not contrary to good arboricultural practice *per se*; however it does cause physiological injury (proportionate to the degree of pruning) by creating wounds that disrupt the tree's water column, and that breach anatomical barriers to decay ingress; pruning also removes leaf area, the tree's source of sugar production vital for metabolic processes including growth, active defence and energy reserve storage. The tree's physiological response to pruning is to try to occlude wounds and restore the previous equilibrium between its root system and its crown. However, its ability to achieve this will be impaired by the injury of pruning. The additional burden on the energy demands of the wounded tree can result in it becoming susceptible to pests and diseases, in particular crown rot decay causing fungi; ash is particularly susceptible to crown rots associated with the fungus *Inotushispidus* (ash heart rot).

The physiological impacts to tree health associated with pruning underpin the arboricultural principle that there should be a proportionate rationale to justify decisions to prune trees; the issue is addressed in detail in the British Standard for Tree Work- Recommendations (BS.3998:2010). Significant tree surgery, which includes any systematic crown reduction work, should ideally only be done to mitigate identified structural defects (e.g. reduction of mechanical stress on a point of local weakness, such as might be found in association with a large stem or branch cavity). In this case no such defects have been identified as a rationale to justify the proposed tree surgery.

Officers accept that the Council has taken different decisions in relation to different tree work proposals made under previous Sec.211 notifications at this property. However rather than demonstrating inconsistencies in its approach to decision making officers contend that this is because in accordance with central Government advice on the making of TPOs set out in the Planning Practice Guidance, the Council judges each case on its individual merits and the strength of the arguments made and any technical evidence that may be provided in support of them.

Safety is of paramount importance and the Council takes matters of tree hazard extremely seriously; it is not acceptable to place public amenity ahead of maintaining a reasonable degree of public safety. However in determining a Section 211 notice (in essence the question whether making a TPO is expedient) the Council applies Government guidance; i.e. Paragraph:091 (Reference ID: 36-091-20140306) of the NPPF Planning Practice Guidance, which advises that in considering proposals the Local Planning Authority should:

- (1) Assess the amenity value of the tree(s) and the likely impact of the proposal on the amenity of the area, and
- (2) in the light of the assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

In general terms, it follows that the higher the amenity value of the tree(s) and the greater the impact on the amenity of an area, the stronger the reasons (and evidence required to substantiate the reasons) necessary before such a proposal can be considered.

5.0 Conclusion:

It is the Tree Officer's advice that the ash (T1) is a significant asset to public visual amenity, in terms of its contribution to several public views, and in particular as a component of the Headington Hill Conservation Area's western boundary tree belt. The sylvan character and appearance of Headington Hill is the principal reason for its designation as a conservation area.

The objection to the TPO lacks any technical supporting evidence in terms of safety concerns, and the assessment criteria of amenity contribution and expediency for the making of a TPO are met. Applications to carry out tree work can be made at any time without cost; any applications will be determined on its merits. Applicants have the right to appeal any decision against them to the Planning Inspectorate.

6.0 Officer's recommendation:

To confirm the Oxford City Council – 6 Feilden Grove (No.1) Tree Preservation Order, 2015 without modification.

THIS REPORT HAS BEEN SEEN AND APPROVED BY THE PLANNING BUSINESS MANAGER

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a decision to make and confirm the Tree Preservation Order. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Background Papers:

- Oxford City Council – 6 Feilden Grove (No.1) Tree Preservation Order, 2015 (File)
- Submissions of objection

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