

## WEST AREA PLANNING COMMITTEE

7<sup>TH</sup> MAY 2014

**Order Name:** Oxford City Council - Burgess Mead (No. 1) TPO, 2014

**Decision Due by:** 9<sup>th</sup> June 2014

**Site Address:** 17 Burgess Mead, **Appendix 1**

**Ward:** St Margaret's

**REFERENCE** **14/00594/TPO**

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### **Recommendation:**

1. To confirm the Oxford City Council – Burgess Mead (No.1) TPO, 2014 with a modification changing the wording in the order Schedule; at paragraph 2(2), line four: "...Regulations 2011." should read "...Regulations 2012.;
2. To grant consent for the weeping willow tree, T.1, to be felled on condition that a new tree of an appropriate species, such as crab apple or silver birch, is planted within the rear garden of 17 Burgess Mead before the end of December 2014. If the new tree dies or fails to become established for any reason within 5 years of planting it must be replaced to the satisfaction of the Local Planning Authority.

### **Background:**

The Oxford City Council – Burgess Mead (No.1) Tree Preservation Order, 2014 was made on 10<sup>th</sup> January 2014. It protects a weeping willow tree, T.1, standing within the rear garden of 17 Burgess Mead; plan at Appendix 1.

The order was made in response to concerns raised by several residents in the area that the tree was about to be felled. The Council's Tree Officer contacted the owners of the tree and their arboricultural contractor to confirm their intention to fell the tree before the order was made.

The order is provisional in the first instance and it must be confirmed before 9<sup>th</sup> June to become permanent. The comments that have been received on the making of the order must be considered by the Council when it decides whether or not it should be confirmed.

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.

Also, on 25<sup>th</sup> February 2014 an application was made under the TPO for consent to fell the weeping willow tree; application no.14/00549/TPO. The applicants have agreed an extension of the deadline for a decision to enable Committee to consider the case.

These matters are therefore now reported to committee for a decision.

**Reason for making order:**

To protect in the interests of amenity a mature weeping willow tree that makes an important contribution to amenity in the area, being a prominent landscape feature in public views along the Oxford canal and its towpath. In these views the weeping habit of the crown is particularly appropriate to the canal side location and its attractive and pleasing appearance acts to enhance the appearance and character of the area. The order is expedient because the tree is at risk of being felled.

**Representations Received:**

**Objections:**

Mr and Mrs Pugh (owner), 17 Burgess Mead – letter 6th Feb 2014

Dr and Dr Buley, 37 Burgess Mead – email dated 17<sup>th</sup> January 2014

S Thornton, 25 Burgess Mead – email dated 19<sup>th</sup> January 2014

K Stevens, no address given – email dated 19<sup>th</sup> January 2014

**Summary of objections:**

- Council advised tree not protected prior to purchasing property;
- Amenity value of the weeping willow tree is exaggerated – it is only visible from canal towpath and private gardens on other side of canal;
- This weeping willow is not suitable for the small townhouse garden in which it stands; overbearing, restricts use and enjoyment (Mr and Mrs Pugh are keen allotment holders and gardeners);
- Roots causing damage - paving heave, shed distorted, risk to foundations of house;
- Branches and other debris fall from tree. Garden not a place that Mr and Mrs Pugh can confidently encourage their children to play;
- Tree prevents future plans for a ground floor rear extension with a glassed topped lantern, similar to other properties;
- Wrong tree, wrong place;
- Balance between tree's public amenity value and the detrimental effect it has on several resident's home is unfairly weighted;
- The proposal is to remove the existing weeping willow tree and to either allow silver birch tree already in situ to develop or replace with a more suitable tree.
- The weeping willow tree obstructs natural light to the house so that main living room is always extremely dark;

**Support:**

M Pelling, 12 Burgess Mead – letter dated 3<sup>rd</sup> February 2014

Dr Polgreen, 1 Burgess Mead – email dated 24<sup>th</sup> January 2014

Mr Hughs, no address given – email dated 23<sup>rd</sup> January 2014

**Summary of support:**

- Significant specimen tree which contributes to the amenity in the local area. The tree is majestic and beautiful. It is a major part of the view north of Aristotle Lane bridge along the canal and because it has not been pollarded its dimensions are splendid and graceful. The canal path is well used by the public and the tree is therefore a public amenity;
- Large tree not inappropriate for residential areas and provide a range of benefits

- including mitigation of flooding, which is particularly important in this location;
- Polluted soils and risk of vandalism means that any replacement tree is unlikely to survive, which means that an established tree has an unusually high amenity value and there is less chance than usual that a new tree will in anyway compensate for the weeping willow if it is lost;
- Tree provides valuable habitat for invertebrates, small vertebrates and birds;
- If the tree is now 'in the wrong place' too little consideration was given to value of this tree when the estate was designed and granted planning permission;
- All of the houses in the Burgess Mead development have small gardens and no.17 isn't particularly disadvantaged;
- Several such willow trees have been lost in the area within a period of a few years;
- Any tree will shed twigs and small branches during high winds and storms and this should not be used as justification for felling;

### **TPO Consent Application Reference no. 14/00549/TPO:**

On 25<sup>th</sup> February 2014 the owners of 17 Burgess Mead made an application for TPO consent to fell the weeping willow tree. The reasons given for the felling of the tree are as stated in Mr and Mrs Pugh's letter dated 6<sup>th</sup> February 2014; attached as Appendix 2 and summarized in the 'Summary of objections' as part of this report.

The proposal is to allow existing silver birch trees which grow adjacent to the canal towpath and whose growth is significantly restricted due to the presence of the willow, to grow uninhibited as a natural replacement. Alternatively, a more appropriate tree, possibly a birch or a crab apple, could be planted as a replacement.

### **Officers Assessment.**

#### **Tree and its Amenity Value**

1. T.1 is a large mature weeping willow tree. It is about 15 metres tall and has a wide spreading crown which has a diameter of about 18 metres measured north-south. The tree is a significant feature in public views along the canal towpath and from Aristotle Lane bridge, which is more prominent in the winter when other vegetation in the area is without leaf. In these views the weeping habit of the crown is very well suited to the canal side location
2. However, balanced against this the tree is not well suited to its location within a small suburban rear garden. The garden of 17 Burgess Mead measures only about 9 metres by about 8 metres, so that it is almost entirely underneath the crown of the tree. Consequently, the tree is over-bearing within the garden and severely restricts its reasonable use and enjoyment. The crown also spreads over a significant proportion of the garden of 19 Burgess Mead and casts shade over the gardens of neighboring properties north of 17 Burgess Mead.
3. The main living room is at the rear of the house and faces east towards the tree, which casts a heavy shadow across the garden and rear of the house during all of the morning and early afternoon when the sun is in the west and

south. Later in the day sunlight is obstructed by the house itself, so that the entire garden and rear of the house is then shaded.

4. The tree stands outside of, but adjacent to, the North Oxford Victorian Suburb Conservation Area and therefore makes a positive contribution to its appearance and character, and its setting. However, there are many other trees in the area, including several young silver birch trees that were planted on the west side of the towpath adjacent to the garden of 17 Burgess Mead as part of the Burgess Mead development. The growth of these trees is being suppressed by the weeping willow tree and would benefit from its removal. There is also another large weeping willow tree very nearby which stands next to the canal in the garden of a property in Hayfield Road. This tree is within the conservation area and is therefore already protected under planning law. It is much better suited to its location at the end of a significantly longer garden. It is also more prominent in public views being on the opposite side of the canal, which enables more extensive views from the canal towpath. If the weeping willow tree is removed from the garden of 17 Burgess Mead these other trees would to some extent offset the visual effect that would result. Planting a new tree would further mitigate the visual effects in the longer term and would also help to ensure that the appearance and character of the adjacent conservation area and its setting is not significantly harmed.

### **Expediency**

5. It is clear that Mr and Mrs Pugh wish to remove the weeping willow tree, T.1, and this threat to a tree which is a significant feature of public views provides expediency for the Council to use its powers to make a TPO. If confirmed the TPO simply makes it an offence to fell the tree without the Council's written consent. The TPO enables the Council to decide whether or not removal of the tree and any harm to amenity that will result is justified. If confirmed the TPO enables the Council to grant consent for the removal of the tree with conditions, for example requiring a replacement tree to be planted, or to refuse consent with reasons.

### **Other Issues**

6. Advice given by the Council by email dated 4<sup>th</sup> September 2013 about the protected status of the tree was factually accurate at the time it was given. At that time the tree was not protected under planning law and until the provisional TPO was made on 10<sup>th</sup> January 2014 it could have been removed without reference to the Council;
7. The tree appears to be in good physiological health and sound structural condition. However, mature weeping willow trees typically have some dead branches in their crown which can break and fall during windy weather. While these are usually small diameter branches and the hazard associated with them can usually be remediated by regular removal of such branches and/or restricting access directly underneath the crown of the tree during windy weather, this is very difficult in a garden which is almost entirely underneath the crown of the tree. Managing the tree by pollarding i.e.

complete removal of the crown periodically, might be considered but this would have a significant detrimental effect on the appearance of the tree and its amenity value;

8. While native species trees such as crack willow are important locally for biodiversity and can provide important habitats for wildlife there is no evidence that this weeping willow tree, which is not a native species, is currently a habitat for any protected species. If the weeping willow tree is replaced with a native species tree that is suitable for both the small garden location and canal side location there could be a benefit to biodiversity in the longer term;
9. Although the multiple benefits that large trees provide to the city are recognized by the Council, there is no evidence that removal of this particular weeping willow tree will significantly affect flooding in the local area;
10. It is unfortunate that several willow trees have been lost from the area recently. These losses appear to have been of trees that have died although the reasons for this are not known. Since the trees were not protected under planning law the Council cannot enforce replacement planting. If consent is granted for the removal of the weeping willow tree at 17 Burgess Mead, it should be conditional on an appropriate new tree being planted to help ensure that mature tree cover is sustained in the area in the longer term.
11. The weeping willow tree at 17 Burgess Mead was retained by the developer when Burgess Mead was constructed. However, the tree would have been considerably smaller at the time that decision was made and the planting of silver birch trees alongside the canal near to the tree suggests that the developer didn't expect it to become as large as it has or that it might ultimately be removed. In any case, the growth of the silver birch trees is now suppressed by the weeping willow tree and would benefit from its removal;
12. If consent is granted for removal of the weeping willow tree it seems likely that a replacement planted in the garden of 17 Burgess Mead would be successful as the soils in the area clearly support tree growth and the risk of vandalism is low within the private garden area. If the TPO is confirmed, consent to remove the existing tree could be granted on condition that a new tree is planted and on the new tree being replaced if it dies or fails to become established for any reason.
13. It is probable that a rear extension would require planning permission and any application for such would be considered on its merits at the time it is made. The impact of construction work on any existing trees in the area would be a material consideration for the Council when it considers whether or not planning permission should be granted and it is possible that the disturbance of the roots of the weeping willow tree during construction would be a concern, as would the fact that the branches of the tree would directly overhang any extension.

14. In reaching its decision the local planning authority must consider the effect of removing the tree on amenity in the area and, having special regard for any effect on the appearance and character of the adjacent conservation area, consider whether or not the reasons given for removing the tree justify any harm that might be caused. Officers consider the argument that this is a *'nice tree in the wrong location'* to be a strong one in this case and in reaching the conclusion and recommendation to confirm the TPO but to grant consent for the weeping willow tree to be replaced, officers give significant weight to the fact that the existing tree is over-bearing within the garden of 17 Burgess Mead and significantly restricts its use and enjoyment.

## **Conclusion**

The large mature weeping willow tree in the rear garden of 17 Burgess Mead is a prominent and attractive feature of the landscape in public views along the canal towpath and from Aristotle bridge, but it is over-bearing within the garden and restricts both its enjoyment and use. Its removal would affect visual amenity in the area, but this would be offset by the other trees in the area and could be further mitigated by planting a new tree that is more appropriate to its garden location. Neither the appearance nor the character of the adjacent North Oxford Victorian Suburb Conservation Area would be significantly harmed. Officers consider that the reasons given for felling the tree justify this visual change in the area.

On balance therefore, having considered the comments that have been made on the making of the Oxford City Council – Burgess Mead (No.1) Tree Preservation Order and, the reasons given for the proposal to fell the protected weeping willow tree, T.1, and, having special regard for the effect on the appearance and character of the North Oxford Victorian Suburb Conservation Area, Committee is recommended to ;

1. To confirm the Oxford City Council – Burgess Mead (No.1) TPO, 2014 with a modification changing the wording in the order Schedule; at paragraph 2(2), line four: "...Regulations 2011." should read "...Regulations 2012.;
2. To grant consent for the weeping willow tree, T.1, to be felled on condition that a new tree of an appropriate species, such as crab apple or silver birch, is planted within the rear garden of 17 Burgess Mead before the end of December 2014. . If the new tree dies or fails to become established for any reason within 5 years of planting it must be must be replaced to the satisfaction of the Local Planning Authority.

## **Background Papers:**

Oxford City Council – Burgess Mead (No.1) TPO, 2014

**Contact Officer:** Kevin Caldicott

**Extension:** 2149

**Date:** 14th April 2014