

# **ITEM 16 – APPENDIX K**

## **WAVERLEY BOROUGH COUNCIL** **EXECUTIVE – 7 JANUARY 2014**

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### **Title:**

**LIME TREE, MINT STREET, GODALMING**

**[Portfolio Holder: Cllr Brian Adams]**

**[Wards Affected: Godalming Central and Ockford]**

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### **Summary and purpose:**

On 4<sup>th</sup> December the Central Planning Committee considered an objection to the confirmation of a Tree Preservation Order (TPO) in relation to a Lime tree on unregistered conservation area land in Mint Street. The TPO was confirmed subject to the Council being willing to accept responsibility for its management and maintenance, in the absence of the owner. The Planning Committee have referred the matter to the Executive for decision.

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### **How this report relates to the Council's Corporate Priorities:**

Environment – The Council is committed to protecting and enhancing the Borough's landscapes. There are environmental benefits in retaining trees which merit special protection.

### **Financial Implications:**

There would be financial implications for the Council if it were to take on the responsibility of carrying out maintenance works on this tree. It has previously been estimated that the cost of pruning the tree to reduce crown size and maintain clearance of branches would be less than £1,000. This would be in addition to future maintenance costs as well as inheriting potential risk responsibilities associated with the tree.

### **Legal Implications:**

Once a TPO is confirmed there is no right of appeal to the Secretary of State. However it is possible to apply to the High Court for a TPO to be quashed. The application must be made within six weeks from the date of confirmation of the TPO and the challenge can only be made on a point of law, not on the merits of the decision.

A TPO is registrable as a local land charge which will bind the land whether or not registered. Any failure to register on the part of the local authority goes to a possible payment of compensation to a purchaser of the land who has suffered loss as a result of non-registration.

The Borough Solicitor has commented that, in order to ensure that the tree can be maintained effectively, the Council would need to enter into some kind of access arrangement with one of the adjoining owners to carry out the works. This could be in the form of a formal easement, or could simply be a more informal arrangement, such as written permission being given by the landowner. If the tree works are a one-off, then a less formal agreement with an adjacent owner may be sufficient. However, if there is likely to be an on-going requirement for maintenance of the tree, then a more formal agreement may be needed to ensure that the Council can access the land in the future, even if the ownership of adjoining land changes.

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## **1. Background**

- 1.1 A notification of intention to fell a lime tree within a conservation area, close to the rear boundary of Brook House, Mint Street, Godalming on the boundary with 8 Cow Lane, was received by the Council in June.
- 1.2 The reasons given for the desired removal of the tree were excessive shading of the adjacent property, dampness experienced in the nearest bedroom, damage to roof slates from falling branches and concern regarding the tree's large size and close proximity to the south west of Cow Lane cottages. The Godalming Town Council objected to the tree's removal on the grounds that the tree is significant within the "townscape".
- 1.3 In these particular circumstances, if Officers are not satisfied that a proposal for works is justified and no compromise is achievable within the 6 week period of notification of intent to fell, the Council can only safeguard the retention of such trees by way of making them the subject of a TPO. Following a site visit by the Council's Officers, a TPO (14/13) was duly made on 25<sup>th</sup> July 2013.
- 1.4 The lime tree in question is prominently visible to the general public from surrounding areas due to its species, size and position in the town centre. The TPO was originally made in recognition of the tree's contribution to the appearance of the area and high public visual amenity value within the landscape.
- 1.5 Principal local views of the tree are from surrounding roads; Station Road, Station Approach; Cow Lane; and Mint Street and the associated public car park. Due to its size and landscape prominence it is also visible in the wider landscape in views from further afield and on higher ground.
- 1.6 Responsibility and management for ensuring the health and safety of trees subject to a TPO ordinarily remains with the owner of the land. In this instance, the tree is recognised as being sandwiched between three separate land parcels on a small triangle of land that is unregistered and without direct access to the public highway.



**View of Lime tree to left of church spire viewed from Station Road**



**View of Lime tree from junction of Station Road and Station Approach**

- 1.8 The immediate neighbour in one of the cottages in Cow Lane had originally notified the Council of his intention to fell the tree and subsequently objected to the TPO. The neighbour raised various concerns, including:-
- The ownership of the tree is unknown, the small land parcel on which it stands has been excluded from registration within surrounding land parcels;

- At its closest point the tree is less than 3m away from the Cow Lane cottages; and
- The tree's proximity and size are extremely intimidating to occupiers.

1.9 The neighbour has stated that he is prepared to spend whatever is necessary to take the tree down but not to trim the tree as this would be only a temporary comfort. He considers that if the tree warrants retention on grounds of public amenity it should be maintained at public expense.



**View of Lime tree from Cow Lane to front of cottages**

## **2. Consideration by the Central Planning Committee**

- 2.1 In reporting the matter to the Planning Committee, officers expressed the view that the tree adds significantly to appearance of the locality, softening the impact of surrounding built development.
- 2.2 The tree is situated about 3m off the south west corner of the nearest cottage in Cow Lane, in what appears visually to be the far corner of the Brook House Car Park. The base of the tree is approximately 1m above the adjacent dwelling's ground level. The crown of the tree overhangs the adjacent property's roof and its size dominates the property.
- 2.3 From a ground level visual tree assessment the tree has been found to be of fair form and condition. It is in excess of 25m high and has a diameter at breast height of circa 1m. It is estimated that the tree is between 100 and 150 years old.

- 2.4 The tree has a relatively high crown clearance of circa 6m. It is evident that it has in the past been pruned to reduce its overall crown volume (height and spread) and to maintain a high crown clearance above ground level to avoid branch contact with the adjacent terrace of houses in Cow Lane. The Council has no record of works to prune the tree having been undertaken in the past 20 years.
- 2.5 This is an unusual case, given that the tree in question sits on a small area of unregistered land. The immediate neighbour who objects to the TPO being confirmed is prepared to pay for the removal of the tree, but not to have it trimmed. In the absence of known landowner there is no indication that there is anyone else who would take on the responsibility of carrying out pruning works to maintain the tree.
- 2.6 The objection to retaining the tree includes nuisance issues associated with retaining large trees in the urban environment. These issues, in themselves, may not be overriding factors in relation to the retention of trees of high public amenity value, unless they have an unreasonable impact. However, the Council's approved Tree Guidelines 2012 acknowledge that there may be cases where tree removal could be justified if the tree owner or neighbour's right to the reasonable enjoyment of their property is significantly affected.
- 2.7 In this case officers recognise the value of undertaking some pruning works in terms of improving the relationship with the neighbour. The tree has been subject to pruning works in the past and a commensurate crown reduction of height and lateral spread combined with pruning to lift the crown to the main crown break (above 8m from ground level), and severance of ivy is recommended. This work would retain a reasonable crown form, reduce the tree's dominance and allow light beneath the branch framework to the adjacent property. It is not anticipated that further pruning works would be required for 10+ years.
- 2.9 However, as explained above, the neighbour does not want to carry out these works and there is no other party that has indicated that it will apply to carry out these works either. In the absence of the pruning works going ahead, the case for retaining the tree becomes more balanced. This was recognised by officers in the report to the Planning Committee.
- 2.10 The Central Planning Committee discussed the matter at some length. Members resolved to confirm the TPO. However, this was on the understanding that the Executive be asked to consider the expediency of the Council assuming responsibility for the management and maintenance of the tree. In the event that the Executive resolves that the Council will not carry out the works, the Planning Committee resolved that the TPO would be revoked.
- 2.11 If the Council were to take responsibility for the tree then there would be an initial cost for pruning and maintenance works, together with potential on-going liability for works in the future. It would also be necessary to secure rights to access the tree via third party land. Having regard to all the

circumstances, including the amenity value of the tree and the objections from the neighbour, it is not considered that the Council should take responsibility for the current and future maintenance of the tree. If this is the decision of the Executive then it is recognised that the decision of the Planning Committee was that in those circumstances the TPO would be revoked, clearing the way for the tree to be removed.

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### **Recommendation**

That the Executive agrees that the Council should not take over the responsibility for the maintenance and management of the Lime tree on unregistered conservation area land in Mint Street, Godalming.

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### **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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