

PLANNING DEVELOPMENT CONTROL COMMITTEE

29 January 2009

PROVISIONAL TREE PRESERVATION ORDER 1937 – FIELDINGS, SPARKFORD ROAD, WINCHESTER

REPORT OF HEAD OF LEGAL SERVICES

Contact Officer: Sharon-Louise Evans Tel No: 01962 848444

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report informs the Committee of the issues that have arisen in relation to provisional Tree Preservation Order 1937 at Fieldings, Sparkford Road, Winchester.

RECOMMENDATIONS:

1. That the report be noted.
2. That Tree Preservation Order 1937 be not confirmed.
3. That the Head of Legal Services be given delegated authority to revoke the Order if he considers it necessary.

PLANNING DEVELOPMENT CONTROL COMMITTEE

29 January 2009

PROVISIONAL TREE PRESERVATION ORDER 1937 – FIELDINGS, SPARKFORD ROAD, WINCHESTER

Report of Head of Legal Services

DETAIL:

1 Introduction

1.1 On 29 October 2008 the Legal Services Division was instructed to make a provisional Tree Preservation Order (TPO) on a beech tree situated on land at Fieldings, Sparkford Road, Winchester. The reason given was that this is a significant tree that contributes to the visual amenity of the area. The TPO was made on 30 October 2008.

1.2 The Local Authority, on making a TPO, is required to serve on the owner/occupier of the land, and any adjoining neighbours, a copy of the Order and a formal notice explaining the consequence of making the Order. Electoral Services are asked to provide the names of any registered residents. No one was registered on the Electoral Roll for Fieldings and so the Order was sent addressed to "The Owner/Occupier" in accordance with the service procedure set out in the Town and Country Planning Act 1990. Copies of the Order for the Fieldings and the six adjoining properties were sent out by recorded delivery post on 31 October 2008. A copy of TPO 1937 was put on deposit at Customer Services for public inspection.

1.3 Since no one appeared on the Electoral Roll for Fieldings, a Land Registry search was carried out on 3 November 2008 and details of the owner were provided by the Land Registry on 12 November. Subsequently a further separate copy of TPO 1937 was sent by first class post to the owner at the address given by the Land Registry.

2 Officer comments on Tree Works Carried Out

2.1 On 20 November, Officers from the Council's Landscape Team visited the site as it had been brought to their attention that the protected tree had been girdled (ring barked) with a chainsaw. This involves making a v-shaped cut near the base of the tree around the circumference of its trunk. In the view of the Arboricultural Officer, this was very likely to have severed the primary phloem of the tree, effectively killing it. The Officer was clear that this is not the ordinary preparatory work for the felling and removal of a tree and would only have been done with the intention of killing or seriously harming the tree. A local resident reported that the work was carried out on the morning of 18 November 2008.

3 Service of the Order

- 3.1 Following the information received concerning the girdling of the tree, internal investigations started regarding the making and serving of the Order. These included, in particular, enquiries of Royal Mail regarding the delivery of the Order. None of the letters had been returned to the Council and so at this time there was no reason to believe that they had not been delivered. One of the adjoining owners had also acknowledged receipt of their copy of the Order. On checking, the Royal Mail recorded delivery tracking system showed all copies of TPO 1937 that were sent out on 31 October 2008 to be untraceable. A full investigation was commenced by Royal Mail.

4 Correspondence with Land Owner

- 4.1 On 20 November an email and scanned letter were received from the owner of Fieldings indicating that they had received the Order on 19 November.
- 4.2 The letter went on to say that they had made enquiries at the Council Offices in October 2008 as to the status of the tree at the property. Attached to the letter was a map supplied by Council staff when the owner had visited the offices. This map is dated 14 October 2008, and at that date, no TPO had been made on the tree in question. The only protected trees on the map were those shown as part of a group along the Sparkford Road frontage. It would seem that this visit took place before the TPO had been made.
- 4.3 The letter went on to say that in consultation with the University of Winchester, the owner proposed a redevelopment of the three houses fronting Sparkford Road to provide student accommodation which it was hoped would be available for the next academic year, 2009-10. It also referred to a meeting between the owner and a Planning Officer on 10 November 2008 at the Council's offices. The owner believed that the Planning Officer was unaware of the provisional TPO made on the beech tree but indicated the requirement for rear access and servicing to the proposed accommodation.
- 4.4 The owner's own arboriculturalist had advised that the beech tree would require a root protection zone of approximately 20 metre diameter. This zone would prevent digging of any kind and the installation of hard surfaces within the root protection zone and thus eliminate the possibility of rear servicing of the proposed building. The letter then went on to say that, 'with the Council's advice, that the beech tree was not covered by a TPO, they took the first step for its removal on 18 November 2008, in advance of instructing a tree surgeon to complete the felling of the tree'. The letter concludes with an objection to the Order and the stated belief that the Order is invalid.
- 4.5 Although the letter says "with the Council's advice, that the beech tree was not covered by a TPO", it should be pointed out that the only occasion that any indication as to the status of this tree was given to the owner was in October, when they visited the Council Offices. As it is understood that the visit was before the date the TPO was made, this information (as shown on the map dated 14 October) was correct. As set out below, when the owner

met the Planning Officer, the tree was not mentioned, and therefore no advice as to the status of the tree was given at this meeting. It would seem that when the owner instructed the work to be done on the tree, they relied on the information they had been given over a month previously.

5 Conclusions

- 5.1 After investigation, it has been discovered that, at the time of this incident, the Intranet GIS system for TPOs used by Customer Services and some Divisions was not a live system and relied on manual updates. The mapping did not therefore reflect the most up to date information entered by the Tree Officers and others on to the CAPS/Uniform system. Thus TPO 1937 was not shown on the Intranet mapping which was referred to when the Planning Officer met with the developer. The Council's intranet does state that the GIS map should not be relied upon as definitive, as it is not a fully live system, and that officers should refer to CAPs/UNIFORM. The GIS system has since been modified into a live system, which will reflect changes in CAPS/Uniform as and when they happen.
- 5.2 The Planning Officer concerned has said, in response to the owner's letter, that he did not discuss the beech tree at the meeting referred to and the purpose of the meeting was to discuss potential redevelopment at the site. They discussed the trees fronting Sparkford Road and he made it clear that so far as he was concerned they could not be compromised, that they were protected by a TPO and that they must be retained for their contribution to the character of Sparkford Road. He also said that had he discussed the beech tree in question, he would have expressed exactly the same view. As the meeting was not on site, and there was no current planning application at the time, he could not have been expected to have known about the presence of the tree.
- 5.3 Following an investigation by the Area Investigation Manager, Royal Mail has informed the Council that all of the items of Recorded Delivery mail for the relevant addresses have disappeared without trace. The Delivery Manager asked the postman who delivered to these addresses at the time and he does not recall any Recorded Delivery items to those addresses. The person who collected the post from the Council Offices that day does not recall the items either. The Security Manager has also conducted several enquiries (some ongoing) but has not been able to locate the items. At this time there is no way of checking whether the TPO sent to Fieldings on 31 October marked for the 'Owner/Occupier' was ever delivered to that address. There is no evidence that the owner was aware of the TPO at the time that the work was carried out on the tree. One might conclude that the owner's actions indicate knowledge or suspicion that a TPO was imminent. Whilst that may well be the case, if an owner intentionally damages a tree that is not in a Conservation Area, a criminal offence is only committed where the tree is subject of a TPO that has been properly made and served. That appears not to be the case here.

- 5.4 The Council's arboriculturalists have considered whether any first aid to the tree is possible. The balance of opinion is that first aid is probably not worthwhile in this instance. It is unlikely to be successful given the severity of the wound to the tree and even if it was successful in keeping the tree alive in the short term, the tree has been badly wounded so there is a much greater risk of infection. This is likely to result in premature structural failure of the tree at some point in the future. If the tree were to fall causing damage or injury it could not be argued that there was no knowledge of that likelihood. Given the location of the tree and the high risk of damage to property or injury if the tree were to fail, the risks outweigh the potential benefits. Furthermore, the owner is unlikely to agree to remedial works and the Council does not have any power to require such works to be carried out.

6 Procedural changes

- 6.1 TPOs have routinely been served by Recorded Delivery with no significant problems. Site Notices have only been used where a site is vacant and there is no obvious postal address for the owner/occupier. Hitherto this has not been a problem: nonetheless, because of the serious issues that have arisen in this instance, various changes have been implemented which should prevent a recurrence.
- 6.2 Arboricultural Officers now hand deliver site notices and owner notifications for all emergency TPOs. In addition, all notifications to absentee owners for emergency TPOs are sent by recorded delivery. Planning Officers have been reminded that any queries from developers regarding trees should be passed on to an Arboricultural Officer.
- 6.3 As explained, the GIS mapping system is now a live system that accurately records TPOs as they are recorded on the Caps/Uniform system. In respect of this particular tree, officers will seek to negotiate, within the context of the planning application for redevelopment of the site, replacement of this tree with a semi-mature standard.

OTHER CONSIDERATIONS:

7 CORPORATE STRATEGY (RELEVANCE TO):

- 7.1 The TPO process relates to the objectives within the "High Quality Environment" aims of the Strategy.

8 RESOURCE IMPLICATIONS:

- 8.1 None except time that will be spent by arboricultural officers hand delivering all TPOs.

BACKGROUND DOCUMENTS:

Provisional TPO 1937 Beech Tree at Sparkford Road.

APPENDICES:

Appendix 1 – Copy of Plan from TPO