



DEVELOPMENT CONTROL COMMITTEE: –

5 November 2009

REPORT OF THE HEAD OF DEVELOPMENT AND DELIVERY

APPLICATION TO FELL ONE PROTECTED BEECH TREE AT LICHFIELD COURT, WALSALL, WS4 2DH

1. PURPOSE OF REPORT

To seek the determination of the application to fell one Beech tree contained in application 09/0833/TR protected by Tree Preservation Order 21 of 1973. This application has been brought to Development Control Committee at the request of Councillor Arif because he was concerned about the impact of a refusal of this application on the residents of Lichfield Court.

The report was previously deferred by this committee on 13 August 2009 to allow the applicant more time to provide the necessary supporting information.

2. RECOMMENDATIONS

The Committee is recommended to refuse consent for the removal of the Beech tree at Lichfield Court.

3. FINANCIAL IMPLICATIONS

As with all Tree Preservation Order applications there is provision within The Town and Country Planning Act 1990 section 203 for the applicant to claim compensation from the local planning authority in respect of damage caused or incurred in consequence of the refusal of any consent required under the Order or of the grant of any such consent subject to conditions.

4. POLICY IMPLICATIONS

Applications to carry out works to protected trees are determined in accordance with legislation and government guidance. There are no council policy implications from this application.

5. **LEGAL IMPLICATIONS**

See paragraph 3. (There is provision within the legislation for the applicant to claim compensation from the local planning authority in respect of damage caused or incurred in consequence of the refusal of any consent. In the event of a refusal, the applicant has a right of appeal against the Council's decision.

6. **EQUAL OPPORTUNITY IMPLICATIONS**

None arising from this report.

7. **ENVIRONMENTAL IMPACT**

The management of Walsall's tree cover through the administration of the Tree Preservation Order system has positive implications in protecting trees for their visual and environmental benefits. Removal of protected trees is often necessary because trees have a finite lifespan and may also cause nuisance or damage. In these instances the Council has to decide whether the removal of protected trees is justified. In the event that felling a tree is permitted, the Council can secure replacement planting to maintain tree cover.

8. **WARD(S) AFFECTED**

This application relates to the St. Matthews ward.

9. **CONSULTEES**

Owners and near neighbours were consulted on this application.

10. **CONTACT OFFICER**

Andrew Cook - Extension: 2447

11. **BACKGROUND PAPERS**

File reference 09/0833/TR

Simon Tranter

HEAD OF DEVELOPMENT AND DELIVERY

DEVELOPMENT CONTROL COMMITTEE: –

5 November 2009

APPLICATION TO FELL ONE PROTECTED BEECH TREE AT LICHFIELD COURT, WALSALL, WS4 2DH

REPORT DETAIL

Application number: 09/0833/TR

Applicant: Fraser Wood (Midlands) Ltd, 16, Lichfield St.
Walsall, WS1 1TS

Date received: 24 June 2009

Expiry date: 19 August 2009

Reason for bringing to committee: At the request of Councillor Arif because he is concerned about the impact of a refusal of this application on the residents of Lichfield Court. The residents' insurance company refuses to carry out repairs until the tree is removed but officers are far from convinced that the tree is causing the damaged alleged.

Application and Site Details

This is an application to remove one Beech tree at the front of Lichfield Court, Walsall, WS4 2DH.

Policy Guidelines

National guidance relating to trees in Tree Preservation Orders and Conservation Areas is found in 'Tree Preservation Orders. A guide to the law and good practice' March 2000 (updated May 2009).

Relevant Planning History

Previously : Application 07/2576/TR to remove the same Beech tree was refused on 11/01/2008.

Representations

No representations have been received.

Determining Issues

The Council has to determine if the removal of this mature Beech tree is justifiable on the building damage grounds put forward by the applicant.

Observations

This application refers to the proposal to remove a significant mature Beech tree situated at the front of Lichfield Court which the applicant believes is causing damage to the property.

The Beech tree has a height and spread of approximately 17.0m and 14.0m and is widely visible from the surrounding street scene. It is estimated that the tree is between 80 to 100 years old. The main stem is thinly covered in ivy and there is minor deadwood evident in the crown which is normal for the species and no cause for concern. The tree has a slight lean towards the flats and an imbalanced crown which is possibly due to it once being in close proximity to a larger tree which has been removed in the past. From a ground inspection the tree appears to be in good condition exhibiting no signs of structural or physiological problems.

The applicant believes the Beech tree has been implicated in subsidence damage to the adjacent Lichfield Court flats. A 'Site Investigation Report' dated 8 November 2007 was submitted in support of the application. This report is identical to one submitted with the previous application 07/2576/TR which was refused on 11 January 2008. This latest application also contains a new covering report entitled 'Addendum Technical Report' dated 15 November 2007 which claims to contain details of further investigations but does not indicate whether further survey work has been done.

Guidance on the administration of Tree Preservation Orders by local authorities is set out in 'Tree Preservation Orders: a Guide to the Law and Good Practice' by DETR dated March 2000. Paragraph 6.40C of a recent addendum to the guidance dated May 2009 issued by the DCLG gives detailed requirements for the information required by applicants to demonstrate that alleged subsidence damage is caused by trees.

Detailed observations of the engineer's report and the addendum which accompanied the application were made by the Council's Structures & Geotechnics team. They concluded that the structural report ignored other possible causes for the cracking and the structural evidence produced did not stand up to scrutiny or support a case for the removal of the Beech tree.

The application was first brought before this committee on 13 August 2009 where, due to the inadequate evidence supplied in support of the application, the committee resolved to give the applicant the opportunity to submit additional evidence in support of the Beech trees removal in accordance with advice provided by the Council's structural engineers and the official guidance contained in 'Tree Preservation Orders. A Guide to the Law and Good Practice'.

In response to the committee's resolution, the applicant was invited to submit further information based on the advice provided by the Council's Structures & Geotechnics team and the requirements of the official guidance. The applicants were advised to consider the official guidance and the following additional information was requested:

- Accurate location of cracking including elevations showing the degree and/or orientation of the tapering.
- Further level monitoring details beyond the last reading on 26 September 2007. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree.
- The sub-soil characteristics (particularly that on which the foundations rest) including liquid limit, plastic limit and plasticity index.
- Details of previous underpinning or building work. Proposals and estimated costs of options to repair the damage.

The applicant has now provided an additional structural survey report for Lichfield Court dated 30 September 2009. Advice by the Council's Structures & Geotechnics team indicates that the recent report contains no further evidence to support the claims that the tree root system is the cause of the cracking. In addition, it does not address the following key points previously raised with the applicant.

1. This report describes cracking, but does not give any accurate locations on a plan or link them to the series of general, small sized photographs at the back of the report.
2. There are still no elevations showing the extent of the cracking or the degree and/or orientation of any tapering.
3. There has been no extension or revisiting of the level monitoring exercise to indicate that a) the movement is still ongoing and b) the nature of the movement i.e. progressive or cyclic.
4. There has been no further technical explanation of the claims made for the presence of shrinkable clays contained within the site investigation and subsequent soil testing.

The report also refers to 'damp staining'. Officers do not believe this is relevant to any cracking caused by the tree but in two of the positions highlighted it could indicate other problems such as a leaking drain. No other causes have been considered in this latest report for the cracking at Lichfield Court. There has been no information submitted of previous underpinning or building work or proposals and estimated costs of options to repair the damage.

Despite the advice given to the applicant by officers, this new report offers no new evidence to demonstrate that the Beech tree is responsible for the damage to Lichfield Court. Indeed no other possible causes are either identified or discussed.

Any decision to refuse the application would allow the applicant to consider an appeal against refusal to the planning inspectorate. It is also possible that a claim for compensation could be made and the advice of the Council's Planning Solicitor has been received during the preparation of this report.

I have some sympathy for the residents who are caught up in this matter. Their insurers will not carry out repairs until the tree is removed but the investigations carried out are wholly inadequate and fall short of the standards required in the official guidance. The Council has advised the applicants of this standard necessary but the necessary evidence has not been forthcoming.

This is a fine and prominent tree and should not be felled without adequate evidence that it is responsible for the damage reported by the residents. It is therefore recommended that the application is refused until such time that evidence is received that the tree is the cause of damage to the building. The Council has no interest in retaining a tree which is causing damage but does not want to lose a prominent tree without reasonable evidence to the standards set out in official guidance.

Recommendation

The Committee is therefore recommended to refuse the application.

Reason for refusal

Walsall Metropolitan Borough Council, as a Local Planning Authority, hereby **refuses** consent for the following works as shown in this application;

- To remove the mature Beech tree at the front of Lichfield Court.

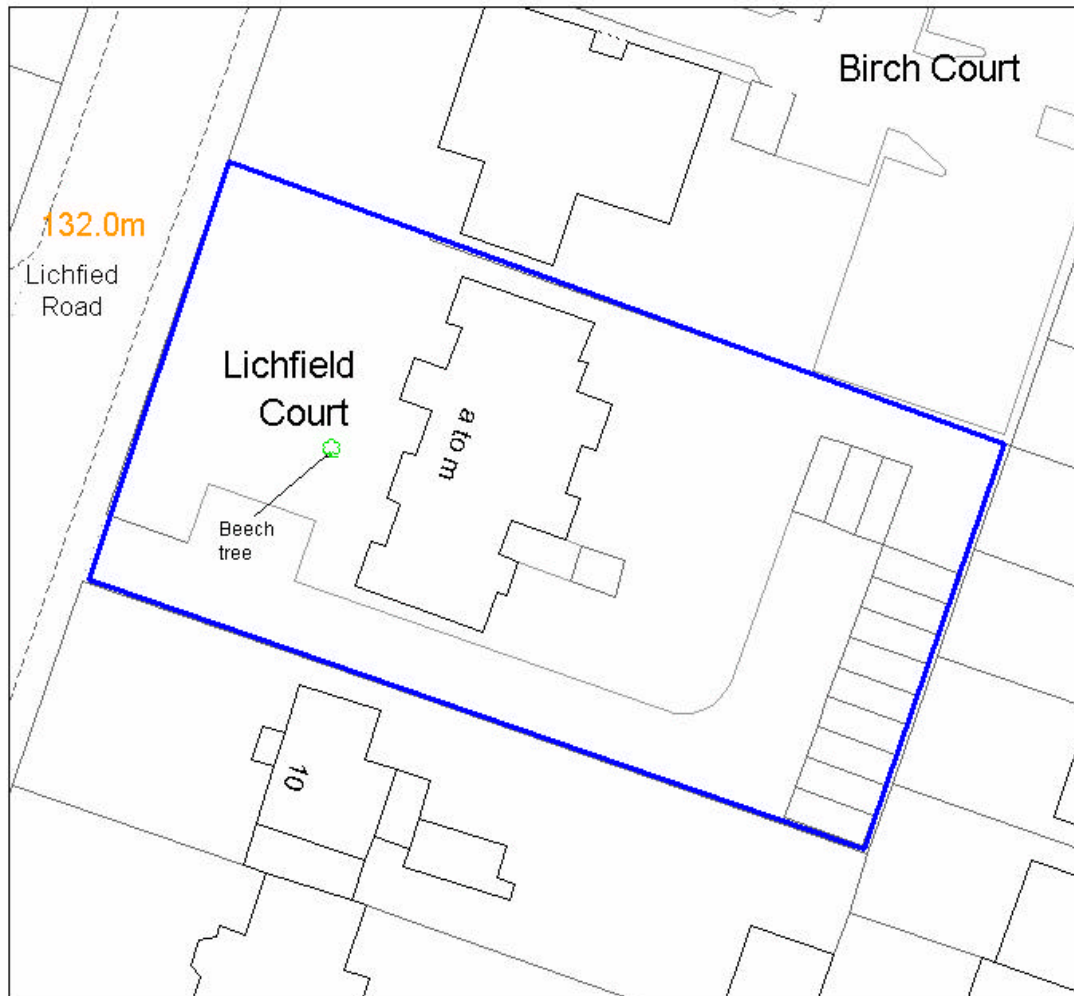
For the following reason;

- The council considers that insufficient evidence has been supplied to demonstrate that the Beech tree is responsible for the damage caused to the building.

SITE PLAN

APPLICATION TO FELL ONE PROTECTED BEECH TREE AT LICHFIELD COURT, WALSALL, WS4 2DH

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Photograph of the Beech tree taken from the south.



Photograph of the Beech tree taken from the north.

