



DEVELOPMENT CONTROL COMMITTEE: –

27 January 2009

REPORT OF HEAD OF REGENERATION - DELIVERY AND DEVELOPMENT

APPLICATION TO FELL 36 TREES AND PRUNE TWO OTHERS AT SITE OF THE FORMER 44 PARK ROAD, WALSALL WS5 3JU.

1. **PURPOSE OF REPORT**

To seek the determination of the application 08/1885/TR to fell 36 trees and prune two others protected by Tree Preservation Order 23 of 2007 at the site of 44 Park Road, Walsall. This application has been brought to the Development Control Committee because there is significant public interest.

2. **RECOMMENDATIONS**

The Committee is recommended to:

- To refuse consent for the removal of 29 trees and the pruning of one other for the reasons set out in this report.
- To grant consent for the removal of seven trees and the pruning of one other subject to the conditions proposed in this report.

3. **FINANCIAL IMPLICATIONS**

In certain restricted cases compensation may be payable for loss to the applicant as a result of the Council refusing an application.

In the event of a successful appeal against the refusal of an application or the imposition of conditions, the appellant may be able to claim costs against the Council.

4. **POLICY IMPLICATIONS**

There are no policy implications arising from this application.

5. **LEGAL IMPLICATIONS**

Applications have to be determined by the council in compliance with legislation and official guidance.

Failure by an applicant to comply with the terms of a decision notice renders them liable to criminal proceedings.

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 Paddock Ward.

9. **CONSULTEES**

Ward councillors and near neighbours were consulted on this application.

10. **CONTACT OFFICER**

Andrew Cook - Extension: 2447

11. **BACKGROUND PAPERS**

Application file reference 08/1885/TR

Tree Preservation Order file reference PDI/17/791

Simon Tranter

HEAD OF DELIVERY AND DEVELOPMENT

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REPORT DETAIL

Application number: 08/1885/TR

Applicant: Banner Homes, Redditch, Worcestershire.

Date received: 10 December 2008

Expiry date: 04 February 2009

Reason for bringing to committee: Community interest in the application.

Application and Site Details

This is an application to fell 36 trees and to prune two others at 44 Park Road, Walsall WS5 3JU. The trees which are the subject of this application are currently protected by Tree Preservation Order 23 of 2007. Park Road is a residential street characterised by detached houses on large mature plots. The application site was formerly the site of 44 Park Road where a large bungalow was recently demolished and is in the process of being replaced with 5 detached houses in accordance with planning permission 08/0871/FL.

Frontage with Park Road.

The application proposes to remove thirteen protected trees and to crown raise a further tree on the frontage of Park Road. These trees fall within Groups G1 and G2 of the Tree Preservation Order. The trees are as follows:

- 1 Beech tree (tag number T13) to be crown raised to give 5.5m ground clearance.
- 4 Birch trees (tag numbers T16, T17, T18 and T24) to be felled. Trees growing in a row along the boundary with 42a Park Road.
- 1 Rowan (tag number T25) to be felled. (Growing within central bed on frontage with Park Road.) This tree is not protected by the Order.
- 1 Cherry (tag number T29) to be felled. (Growing within central bed on frontage with Park Road.)
- 7 Spruce trees (tag numbers T19, T23, T40, T41, T42, T43 and T44. (Growing within central bed on frontage with Park Road.)

It appears the applicant proposes to replace these trees with 2 Beech and 3 Birch.

All trees are in their early maturity.

Rear of application site.

The application also proposes to fell 22 trees and carry out pruning to a further tree at the rear of the application site. All trees are contained within Area A1 of the Tree Preservation Order. The trees are as follows:

- 16 Fir trees (labelled 'TG10') to be felled. (Growing in south-west corner of development site.)
- 6 Spruce trees (tag numbers T54, T55, T56, T57, T58 and T59) to be felled. (Growing in close proximity adjacent the southern boundary of the site).
- 1 Weeping willow (tag number T76) to crown reduce by 30% and to crown raise to give 3.5m clearance from ground level. (Growing adjacent to the western boundary of the site close to the boundary with 42a Park Road.)

All trees are in their early maturity.

The applicant proposes to replace these trees with 3 Scots pines and 2 Birch.

The applicant relies on a tree report previously submitted with the planning application for the 5 houses to explain and justify the proposed work. In general, the works are required because the trees in the application have a limited life expectancy and will need to be replaced in the longer term. The tree report provides more detail on some of the individual trees. However, the tree report proposes no work to any of the trees in this application except to remove dead and dying Fir trees in the rear garden and the removal of one birch in the front.

In the front garden. One of the Birch trees adjacent to 42a Park Road is proposed for removal because it is of poor form and has a significant lean which will limit its life expectancy. The rest of the trees in the front garden are proposed to be felled because they are densely planted and have limited room to develop thus limiting their life expectancy. There is no reason given for the need to crown raise the Beech.

In the rear garden. The group of 16 Fir trees is assessed as being in poor health with some trees dead or dying. The tree report proposes only removing the dead and dying trees.

The group of 6 Spruce is considered to have a limited life expectancy due to the dense planting.

The Weeping willow is considered to be a tree of good form and in reasonable condition and no reason is given for either crown reduction or raising.

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 September 2008).

Relevant Planning History

Previously: Planning application 08/0871/FL for the demolition of one bungalow and construction of five detached houses was granted on 06/08/2008.

Representations

Eight representations were received from the owners/ occupiers of 25 and 25A Beacon Road, 29, 31, 35 and 56A Park Road and from Councillors Rose Martin and Barry Sanders. A further representation was received on behalf of a group of residents. The issues raised were as follows:

A response from the owners/ occupiers of 25 Beacon Road states that it was their belief that the determination of the planning application for the five dwellings fully considered the retention of the existing trees. It also states that some of the trees have grown very tall and are in a poor condition and that any trees which are not detrimental to the development and are in good condition should be retained (especially along the rear boundary fence) and any trees that are in a poor condition should be replaced with new mature trees.

A response from the owners/ occupiers of 25A Beacon Road objects to the application because of the major impact it will have on the local environment, the aesthetic appeal of the area and the loss of privacy for the houses in the vicinity. They refer to the Council refusing permission for their own tree application and are concerned that the Council applies different rules for developers.

A response from the owners/ occupiers of 29 Park Road objects to the application and states that the permitted three storey houses will overlook their property and destroy privacy previously enjoyed. At a consultation meeting with the developers they were promised that trees to the front would be retained to retain privacy.

A response from the owners/ occupiers of 31 Park Road objects to the application and states that the area is a green belt zone and they understand that this protects the trees and should not make available land for development by demolishing one house, removing an additional 36 trees and constructing five houses in a small area. The response states that the site was over-developed and that the material planning considerations are as follows:

- Local, strategic, regional and national planning policy. It is understood that a 'green belt zone policy' is in force. Erecting new buildings should be in keeping with the surrounding area (the houses in the surrounding area do not look like a block of flats).
- Overlooking and loss of privacy. The removal of the 36 trees would remove a screen between the five new properties and 31 Park Road.
- Loss of trees. One of the material planning considerations is the felling of trees.
- Nature conservation. The area being a green belt zone would have a detrimental effect on wildlife. While a tree survey has been carried out it is doubted that an endangered species survey was done.
- Layout and density of buildings. The complainant questions whether the developers now realise the site is over-developed and therefore want to make more room by removing the trees. The complainant therefore suggests that two of the five new houses should be demolished to enable the remaining three houses to have a garden.
- Design, visual appearance and materials. The view of the five houses after the removal of 36 trees is not aesthetically appealing and would also have a detrimental affect on the value of surrounding properties.
- Landscaping. It is the complainant's opinion that the landscaping proposed is not acceptable for the area. Replacing the felled trees with small saplings or shrubs is not acceptable compensation for the mature trees lost.
- The council has already rejected the felling of the remaining trees in the first planning application and should not give way to developers continually applying until they get their way.

A response from the owners/ occupiers 35 Park Road objects to the application and states that planning permission was granted with the proviso that the trees would remain to grant some degree of privacy and to retain the character of the neighbourhood. It further states that this was not the application approved by planning committee and the trees have not deteriorated since the application was granted. In conclusion the response asks whether it would be possible for the council to have an independent survey done of the trees by local professionals whose conclusions may differ from those of the survey undertaken by Banner Homes.

A further objection from the owners/ occupiers of 35 Park Road refers to a meeting between 12 near neighbours to the application site who collectively agree to object to the application on environmental and hydrological grounds as well as because of changes to original planning consent and breach of the tree preservation order. The objection also refers to concerns regarding the maintenance of the boundary trees on the site as well as the lack of parking for 5 large families now the properties have been erected 2-3 metres closer than shown on the approved plans in contravention of the planning permission.

A response from the owners/ occupiers of 56A Park Road states that it is hoped that an 'unsightly bush' between 44 and 45, Park Road will be included in any works as it is encroaching onto the pavement causing a hazard. The letter concludes by stating that the grass verges outside of the property have been wrecked by lorries and vans driving on them and that it is hoped some plan will be put in place prior to completion that will determine responsibility for the refurbishment of the verges.

A response from Councillor Rose Martin objecting to the application states that complaints have been received from residents that water has been running off the development site since development commenced and apparently a crane has been hired to avoid the problems of working in mud. Councillor Martin raises several concerns about flooding and land drainage in the area and is concerned that the removal of such a large number of trees may have an effect on lands drainage and flooding in the area. She also questions whether trees already felled on the site may explain the flooding. The objection concludes by asking why a hydrology report has not been done.

A response was received from Councillor Barry Sanders who objects to the application and states that he values every tree and to remove them all would be beyond belief.

Determining Issues

The Council has to decide if the works proposed are justified having regard for the reasons put forward in support of them. The application has to be judged on its merits.

The Council also has to assess the amenity value of the trees and the likely impact on the amenity of the area from the proposals. It has to consider whether any loss or damage is likely to arise if consent is refused.

Observations

The representations received between them raise all the issues relevant to the determination of this application.

- Condition of the trees.
- Loss of privacy.
- Aesthetic value of the trees.
- Impact on protected species.
- Effect of tree loss on land drainage.
- Replacement of any trees necessarily lost.

Each of these issues is discussed in further detail below.

Concerns were also expressed about the application process itself and the justification for the application.

A number of responses raised issues which relate to the planning application for the erection of the five houses or to unrelated matters such as the condition of grass verges in Park Road and are not relevant to the determination of this application.

Condition of the trees.

The site was inspected by council officers on 6 January 2009. All trees proposed for felling or pruning works were inspected.

None of the trees to the front of the application site was considered to be dead, dying or dangerous.

To the rear of the site the condition of the trees was more variable. The group of 16 Fir trees in the south-west corner of the site are about 15m tall but have grown up close together so have a limited canopy spread. Four of the trees are dead or dying and one has fallen and is hung up in an adjacent tree. These five trees need to be removed for safety reasons. Indeed it is doubtful whether the applicant needed to apply to the council to carry out these works. All trees removed will need to be replaced. From a brief ground inspection the remaining eleven trees in the group appeared to be in fair to good condition.

Further to the east of the previously described group of Fir trees is a group of six Spruce trees tagged T54, T55, T56, T57, T58 and T59. These trees are growing in close proximity to each other. Two of them (trees T58 and T59) are growing less than 0.5m from the stem of an adjacent mature Willow (T53) and growing up through its canopy. The Willow is also protected by the Tree Preservation Order but no works are proposed to it. To resolve the conflict between these two Spruce trees and the Willow it is considered acceptable for the two Spruce to be removed providing replacement trees are planted. From a ground inspection the remaining four trees are in a fair condition.

The single Weeping willow (T76) is approximately 17m high with a spread of about 7 m in each direction is growing close to the western boundary of the site. It has received poor quality pruning work in the past and has numerous broken branches and deadwood throughout the crown. However; this is not uncommon for this species and is no cause for concern. From a ground inspection the tree appears to be in good condition and the tree is of reasonable form. The proposal to crown reduce the tree by 30% and to crown raise to 3.5m is excessive but lesser pruning works would be acceptable. It is therefore proposed to allow a crown clean of this tree by the removal of dead, dying or broken branches and to crown raise to give 2.5m clearance from ground level. This would ensure the health of the tree and give the future owners of the tree no reason to seek additional works.

The single Beech (T13) is approximately 18m high with a spread of about 5m in every direction and growing in the semi-circular shrub bed set well back from Park Road and overhanging the driveway giving access to the new houses. It is proposed to crown-raise this tree to a height of 5.5m. This work was presumably intended to give access to vehicles using the driveway and pruning works have already been carried out to a few lower branches. It is not

considered that any further works are required. Officers do not believe that any enforcement action is necessary in respect of this minor pruning because the work is clearly necessary to implement the planning permission for the erection of the houses. In any case the work carried out is minimal and the cuts are clean and the pruning is barely visible from outside the application site.

Loss of privacy.

There is no doubt that the existing trees and shrubs within the site provide a screen to the new development from adjacent properties.

To the front of the site the dense group of trees and shrubs is an effective screen of the new development from the houses opposite. The shrub layer is as important as the trees in the screening of the development but the majority of the shrubs are too small to be protected by the Tree Preservation Order. It is likely that the proposed loss of the 9 trees from this area will have some adverse impact on the effectiveness of the tree screen. The developer proposes to retain significant screening in accordance with the landscape scheme submitted as part of the planning permission for the erection of the 5 houses.

The line of four birch trees adjacent to 42a Park Road provides more limited screening of the new development from Park Road.

To the rear of the application site the trees in the Tree Preservation Order provide screening between the application site and the adjacent houses in Beacon Road. The rear gardens of the application site is at a higher level than the properties to the rear and therefore the protected trees provide some screening of the new development. The screening is not continuous because the protected trees are in two groups. Garden hedges and other trees and shrubs outside the application site also provide important screening. The removal of all the trees proposed in this application would have some adverse effect on the vegetation separating the application site from the houses to the rear. However, the trees proposed for removal generally have long stems and small crowns which reduces their screening effectiveness.

It is not considered that the very limited number of trees which officers consider could usefully be removed will make a discernible difference to the screening. By securing replacement planting the tree screen will be maintained in the longer term.

Aesthetic value of the trees

Perhaps the main value of the protected trees on the site is their aesthetic value. The trees to both front and rear of the application site are substantial and visually significant and contribute to the pleasant character of the neighbourhood. While individually many are not fine specimens, collectively they are visually important. Officers consider that the application to fell the majority of protected trees on the site is visually unacceptable.

Again it is not considered that the very limited number of trees which officers consider could usefully be removed will have a discernible visual impact. By securing replacement planting the tree cover will be maintained in the longer term.

Impact on protected species.

The issue of the impact of the tree loss on protected species was fully considered in the planning application for the erection of the houses. No bat roosts were found in the trees on the site. The loss of tree groups would probably have a relatively minor adverse impact on habitat for foraging bats.

Effect of tree loss on land drainage.

It has not been possible to ascertain the reasons for the wet conditions on the site other than the underlying soils are clay and do not readily drain. An examination of council records and old maps of the neighbourhood has found no record of water courses, ditches or drains in the immediate neighbourhood. It is recommended that only two relatively insignificant living trees are removed. (The 5 dead or dying Fir trees also recommended for removal are unlikely to be affecting the hydrology). Therefore if the officer's recommendation is accepted, there will be negligible impact on the hydrology. The replacement planting required would, in time, take up water from the soil.

Replacement of any trees felled.

It is recommended that replacements for the few trees recommended for removal are secured. At present the trees on this site are of a similar age and it is likely that many will reach the end of their safe useful lives at the same time. Allowing limited felling and replacements will introduce a more diverse age structure ensuring the long-term continuity of trees on the site. Further thinning works may be desirable in the future but this will need to be the subject of further applications.

Other matters.

It is unlikely that any loss or damage to site owner will be caused by any refusal to grant this permission. The applicant's own tree expert sees no need to remove many of the trees proposed for removal. The foundations of the new houses will have been designed to withstand damage from trees. No reasons have been submitted by the applicant to suggest that loss or damage might result if the trees on the site remain.

Recommendation

The Committee is recommended to part approve and part refuse the application as set out below:

Conditions and Reasons (or reasons for refusal)

Walsall Metropolitan Borough Council hereby **refuses consent** for the following works as proposed in this application:

(At the front of the site)

- The removal of seven Spruce trees tagged T19, T23, T40, T41, T42, T43 and T44.
- The removal of one Cherry tree tagged T29.
- The removal of four Birch trees tagged T16, T17, T18, and T24.
- The crown raising of one Beech tree tagged T13 to give 5.5m ground clearance.

(At the rear of the site)

- The removal of eleven of the trees contained within group tagged TG10.
- The removal of four Norway Spruce tagged T54, T55, T56 and T57.
- The crown reduction by 30% and crown raising to give 3.5m clearance from ground level to one Weeping Willow tagged T76.

For the following reasons:

- The trees proposed for removal are in a fair to good condition and are an important landscape feature contributing significantly to the amenity and visual diversity of the local area and there is no justification for their removal.
- To crown reduce the Weeping Willow by 30% and crown raise to 3.5m is excessive and would be detrimental to the long term health and amenity value of the tree.
- To crown raise the Beech to 5.5m is unnecessary and would be detrimental to the long term health and amenity value of the tree. (Limited pruning works have already been undertaken to give clearance to vehicles visiting the site.)

Walsall Metropolitan Borough Council hereby **grants consent** for the following works as shown in this application:

- To remove five Fir trees contained within the group TG10, all of which are dead and dying and one which has been windblown and is hung up in an adjacent tree.
- To remove two Spruce tagged T58 and T59 which are closest to and within the crown of the adjacent Willow tagged T53.

- To crown clean one Weeping Willow tagged T76 by the removal of dead, dying or broken branches and to crown raise to give a maximum of 2.5m clearance from ground level.

Subject to the following conditions:

The date of felling shall be notified to the Local Planning Authority within one week of felling. Each tree felled shall be replaced within 12 months of notification with a standard size tree. The species and location of each replacement tree shall be agreed in writing by the Local Planning Authority. All planting shall be carried out in accordance with the agreed details. The Local Planning Authority shall be notified in writing when the replacement trees have been planted.

Reason: Pursuant to the requirements of Section 197 of the Town and Country Planning Act 1990.

All tree surgery shall be carried out by a contractor approved by the Head of Regeneration, Development and Delivery, or a person who is appropriately insured and competent in such operations.

Reason: To ensure a satisfactory standard of work.

This permission expires 2 years from the date of the decision and any works not undertaken by the date of expiry shall be the subject of a further application.

Reason: In order to give the Local Planning Authority an opportunity of reassessing the condition of the trees in the event of the works not being carried out.

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SITE OF THE FORMER 44 PARK ROAD, WALSALL WS5 3JU.**

