



PLANNING COMMITTEE

31st October 2019

REPORT OF THE HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION – DEVELOPMENT MANAGEMENT

APPLICATION TO FELL 1 WILLOW TREE AT LAND REAR OF 9 BASLOW ROAD, BLOXWICH.

1. PURPOSE OF REPORT

Reason for bringing to committee: The Committee is to consider the removal of a protected Willow tree where significant community interest is contrary to the Officer's recommendation.

2. COMMITTEE UPDATE

The planning committee deferred the application on 17th June 2019 for the following reasons:

"The application to fell 1 willow tree at land rear of 9 Baslow Road, Bloxwich be deferred in order for a bat survey to be carried out."

Following this, advice was sought from the Council's Legal section on whether the Council had powers to request this information. A summary of their response is as follows:

"The Conservation of Habitats and Species Regulations 2017 ("Habitat Regulations") impacts on planning decisions The 2017 Regulations makes it a criminal offence for any person to deliberately disturb, capture, injure or kill protected species, to take or destroy their eggs or to damage or destroy breeding sites or resting places of such animals.

The NPPF places an obligation on the Local Planning Authority to give consideration to protected species as part of the decision making process as follows - Applicants, agents and authorities must have regard to statutory obligations concerning protected species. Where there is evidence that protected species such as bats may be present and might be affected by the proposed work the applicant, their agent and the authority should have regard to the relevant legislation and guidance.

So in certain circumstances it would be appropriate for members of the Planning Committee to ... request that the applicant provide a bat survey. Accordingly, an Officer's Report to committee with a recommendation that consent be granted by Planning Committee to undertake work to a protected tree should contain an

ecological assessment of whether protected species are present in order to discharge this duty. If no protected species are present then the Report to Planning Committee should say so."

The applicant was sent a letter on 4th September 2019 requesting that a bat survey be provided, giving 21 days to do so. To date no report has been received and a telephone conversation with the applicant indicated that he would not be commissioning one.

Since the previous committee decision, a further representation has been received from Natural England following receipt of video evidence of bats at the application site. The Council have not had the benefit of viewing the video so cannot determine if it has a significant bearing on the decision making process or not.

Whilst Natural England do not state if they object to the proposals or not, the suggestion is that a bat survey should be undertaken "*... where there is a reasonable likelihood of protected species being present on a proposed development site.*" Their standing advice does not discriminate between applications for development and applications to undertake tree work.

However, in fully considering the issue of protected species, it is my professional opinion that the risk of the tree falling and causing damage to third party property or persons should take precedence over the possible presence of a protected species, and that the recommendation to grant consent for the felling of the Willow tree remain unchanged, as do the reasons for this recommendation (see section 11 – Conclusions and Reasons for Decision).

The Local Authority do not have any powers to enforce contraventions of the Wildlife and Countryside Act and in granting consent, would add an Informative that all 18 species of bat and all wild birds/nests/eggs are fully protected under the Wildlife and Countryside Act 1981 (as amended by National and European legislation). The onus would then be on the applicant to inspect the trees for the presence of protected species, and if discovered during inspection or subsequent work, all work must cease immediately and Natural England informed.

3. RECOMMENDATIONS

Grant Consent

4. PROPOSAL

T24 Willow tree – Fell.

5. SITE AND SURROUNDING

The land is located on the west side of Baslow Road and is landlocked between the rear gardens of 5-23 Baslow Road, 1-11 Stoney Lane, and 88-112a Stafford Road. It is roughly rectangular in shape being approximately 127m at its longest and 28m at its widest. It is almost divided into 2 equal halves lengthways as the rear garden of 104 Stafford Road protrudes approximately two-thirds of the site width. It consists of well-maintained grass through the majority of the site with mature tree cover around the periphery.

6. RELEVANT PLANNING HISTORY

18/0383 – Variation of Condition 4 of 17/0310 to alter the plans list to retain 7 Baslow Road – Refused Consent and Dismissed at Appeal.
17/0310 – Outline application for 3 dwellings – Grant Consent.
14/0893/OL – Outline application for 4 dwellings – Refuse Consent.
13/1675/OL – Outline application for 5 dwellings – Refuse Consent.
12/0435/TR – Fell Willow tree – Refuse Consent.
11/1552/FL – Erection of detached house – Refuse Consent.

7. RELEVANT POLICIES

National guidance explaining the regulations governing Tree Preservation Orders can be found in the National Planning Policy Framework, Planning Practice Guidance -Tree Preservation Orders and Trees in Conservation Areas (updated 06 March 2014).

Saved UDP Policy: ENV18: Existing woodlands, trees and hedgerows, states:

‘The Council will ensure the protection, positive management and enhancement of existing woodlands, trees and hedgerows’.

8. CONSULTATION REPLIES

N/A

9. REPRESENTATIONS

Fifteen representations have been received from near neighbours. They all object to the proposed removal of the tree, summarised as follows (officer comments in italics):

- It is one of many protected trees in the area and for good reason.
- Its size and age are irreplaceable.
- The applicant has not submitted any details or reasons why the tree should be removed (*not necessary for validation purposes*).
- There is no reason to destroy a beautiful tree.
- The tree has good amenity value and is in good physiological and structural condition.
- The tree is important to wildlife and the loss of the tree will severely impact their habitat.
- The tree helps keep the land stable as the water table is high.
- If the tree is removed, the ground will sink causing damage to gardens and patios.
- The tree removal will open the land up for more development.
- The tree is only to be removed for financial gain (*not a material consideration*).
- The tree forms a wonderful background view from the rear of properties in Baslow Road. (*loss of a distant view is not a material consideration*)
- The applicant is trying to change his consent for 3 dwellings to show a new access which would have a detrimental effect on the tree (*not a material consideration*).
- A previous application to fell the tree was refused stating the tree has demonstrable amenity value and is in good physiological and structural condition.

- The tree presents an effective visual and noise barrier between already dense existing housing and the newly approved development.
- The reasons to protect the tree in 2017 should still stand as there have been no changes to where the tree is located.
- There is no Bat Report as required under the Bat Conservation Trust trigger list, point 4 (*not a material consideration*).

9 DETERMINING ISSUES

1. Whether the proposed works are in line with current best practice.
2. Whether the proposed works will be detrimental to the amenity, aesthetic and landscape value of the locality.

10 ASSESSMENT OF THE PROPOSAL

Site Visit(s): 1st May 2019 & 20th May 2019

Tree(s): 1 Willow.

The tree, the subject of the application, is listed in the First Schedule to Tree Preservation Order (TPO) No. 12/2017 as T1. The TPO protects a large number of trees mainly around the periphery of the site, both inside and outside the site.

Whilst the application does not cite any reasons for requesting the felling of the tree, discussions with the applicant at the initial site visit indicated that the applicant was concerned over the amount of loose bark at the base of the main stem.

The Council's comments on the tree and the issue raised by the applicant are as follows:

- The tree is a mature Willow of good shape and form. It is approximately 20m in height with a radial crown spread of approximately 6/7m although it is slightly asymmetrical to the north and northeast. It has a single stem to approximately 4m from where the crown breaks. The stem is leaning to the north east at an angle of approximately 30 degrees from vertical although this 'lean' is not recent and appears to have occurred many years ago with the tree assuming normal vertical growth from crown break.
- The tree was inspected on two occasions. The first visit was on 1st May 2019. It was noted that leaf formation appeared under developed although this could be attributed to the time of inspection, as some tree species are later than normal at flushing leaves this year. It also appeared as if there was a significant amount of dieback in the crown although again this may be attributed to late leaf formation. Therefore, a full assessment of the trees health was not undertaken as leaf colour, size and distribution throughout the crown are good indicators of general health.
- It was also noted at the initial inspection that the bark at the base of the stem on the west (upper) side of the tree was delaminating in large sections. A smaller area of delamination was also noted at the base of the stem on the east (under) side of the tree. Resonance testing with a nylon hammer revealed a large area of concern extending to approximately half of the circumference around the base

of the tree, up to a height of approximately 1m. The loose bark was removed to reveal significant fungal rhizomorphs (roots) called bootlaces and fan-shaped white mycelium, the main body of the fungus. Both these are highly consistent with Honey Fungus, an aggressive killer and decayer of woody material in many plant species. It spreads through contact between infected roots and healthy roots and is the most destructive fungal disease in UK gardens. The extent of the mycelium at the base indicates that the fungus is extensive with the apparent sparseness and dieback of the crown appearing to support this. However, a second site visit was undertaken at a later date so that a more complete assessment of the tree's health can be made.

- The second visit was undertaken on 20th May 2019. The case officer noted the extent of the delamination was similar to that of the previous site visit, as expected, as was the condition of the crown. The extent of leaf formation had not progressed significantly or enough to convince the case officer that the tree is healthy. All indications remain as first noted – the tree is in decline and being significantly affected by the presence of an aggressive fungus. There is no chemical treatment for the control of Honey Fungus, the only effective remedy is to excavate and destroy the entire infected root and stump material. This will destroy the food base on which the rhizomorphs feed as they are unable to grow in the soil when detached from infected material.
- It should also be noted at this time that whilst the above ground symptoms can be assessed, the effect that the fungus is having on the underground parts of the tree is unknown and cannot be ascertained with ease. However, any issues with the underground parts normally manifest themselves in the crown, as there is a direct relationship between the roots and the above ground parts (stem, limbs, branches, twigs, leaves, fruit etc). In the case of this tree, the crown is sparse with significant, sporadic areas of dieback, and major deadwood. The extent of these symptoms would indicate a significant effect on the root system that will get worse in subsequent years. This raises concerns over the ability of the root system to support and sustain a large amount of stem and crown weight above with the potential to cause damage to persons or property being considered likely.
- The tree as an individual specimen offers a useful amount of amenity value in the locality and provides valuable screening between the properties in Baslow Road, the application site, and the properties in Stafford Road. It has demonstrable amenity value and at the time the TPO was made in 2017, a full assessment of its condition had not been undertaken, as can be normal practice. However, if an assessment of its health had been undertaken, which is not necessary for the purposes of making a TPO, it may not have been included as, in the Secretary of State's opinion, a TPO should not be used to protect trees that are dead or dangerous, or their removal would be granted consent if an application was made to remove them.
- Whilst it is agreed that the tree offers a useful amount of amenity value, it must be noted that there are several larger and more mature trees in close proximity to the Willow, particularly on its south and west sides, that restrict the visual amenity it provides in these directions. Therefore, should the tree be removed, the impact on the properties to the south and west is reduced.
- A small cavity was noted on the south side of the tree at crown break (4m above ground level). It appeared 'in use' and it is noted that a greater spotted

woodpecker has used it in the past, although it is not known when. However, whilst the issue of protected species is a consideration, more weight is given to the health and condition of the tree, and the associated impact on public safety. If the tree is granted consent to be removed, it would be the applicants responsibility to adhere to the protocols in the Wildlife and Countryside Act 1981 (as amended) to ensure that any protected species, and their nest, are not disturbed or destroyed without consultation with the relevant authoritative organisation. Any issue of non-compliance with this 'Act' is the responsibility of Natural England and not a matter for the Local Authority.

- It is also noted that flooding has been cited as a reasons for refusing the removal of the tree. Whilst it is agreed that the tree will be extracting moisture from the soil, it is not known how much a role in preventing further flooding this tree makes at present. However, this aspect alone would not be sufficient to outweigh any public safety issue the tree presented through ill-health or instability.

11 CONCLUSIONS AND REASONS FOR DECISION

1. It is recognised that the tree is fairly prominent in the locality and has demonstrable amenity value. Notwithstanding the issues of stability and health, there is no doubt that it is worthy of inclusion in a Tree Preservation Order.
2. However, the presence of a significant fungal pathogen that mainly affects the roots and base of a tree indicates that the stability of the tree has been compromised. There are currently no means available to ascertain to what extent the stability has been compromised although it can be stated with some certainty that the effects of the fungal colonisation will get worse, further increasing the likelihood of damage to person or property through failure of parts of the tree or the whole tree.
3. The loss of the tree, and the amenity value it provides is mitigated by the presence of several large trees around the site.
4. The loss of the amenity value can be mitigated by replacement planting in the same location as the original tree.

12 RECOMMENDATION

Grant Consent

13 CONDITIONS AND REASONS

1. This decision to allow the removal of the Willow is subject to replacement planting of one of the following; Sweet Gum (*Liquidambar styraciflua* 'Worplesdon'), Upright Hornbeam (*Carpinus betulus* 'Frans Fontaine'), Indian Bean Tree (*Catalpa bignonioides*), Cut-leaf Beech (*Fagus sylvatica* 'Asplenifolia'), Antarctic Beech (*Nothofagus antartica*), Chestnut-leaved Oak (*Quercus castaneifolia*). The replacement tree must be a nursery grown standard of 2.5m-3.0m in height with a stem girth of between 8-10cm at the time of planting and be container grown. It must be planted not more than 3m from the site of the original tree 2m of a boundary wall, fence, road or footpath. The tree must be planted in accordance with good horticultural practice,

maintained to ensure establishment and within 3 months of the removal of the original tree or by the end of March 2020, whichever comes first. Do not plant within 8m of a dwelling. You may contact me on the above telephone number for guidance on this matter. Please contact the Tree Section to let us know when you have planted the tree so we may come and inspect.

Reason: Pursuant to the requirements of Section 197 of the Town and Country Planning Act 1990 and to protect the amenity and landscape value of the area.

2. 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 tree in the event of works not being carried out.

3. All tree surgery work shall be in accordance with British Standard 3998: 2010 "Tree Work - Recommendations".

Reason: To ensure a satisfactory standard of work.

4. All tree surgery shall be carried out by a person who is appropriately insured and competent in such operations.

Reason: To ensure a satisfactory standard of work.

5. The applicant shall give at least 5 working days' notice prior to any works in order that a mutually convenient time can be arranged with the Borough Council to discuss the extent of the works and/or supervise the works with the contractor on site.

Reason: To ensure a satisfactory standard of work.

Notes for applicant

1. All 18 species of bat found in Britain are fully protected under the Wildlife and Countryside Act 1981 (as amended by National and European legislation). The applicant should inspect the trees for the presence of bat activity. If bats are discovered during inspection or subsequent work, all work must cease immediately and Natural England must be informed. They can be contacted on 0845 600 3078.
2. All wild birds, their nests and eggs are protected under the Wildlife and Countryside Act 1981. It is an offence to damage or destroy a nest of any wild bird. Birds are generally nesting between March and July, although exceptions to this do occur.
3. This consent to undertake work to the tree(s) does not give consent for any person to enter the land where the trees are situated for the purposes of undertaking the works without the formal consent of the landowner.

4. You may remove deadwood under Regulation 14(1)(b) of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 as this operation is exempt from the need to obtain formal planning permission.

14 **CONTACT OFFICER**

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HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION