



## DEVELOPMENT CONTROL COMMITTEE: –

24 June 2008

### REPORT OF HEAD OF REGENERATION - DELIVERY AND DEVELOPMENT

### **APPLICATION TO FELL ONE PROTECTED ASH TREE AT 18, BELL ROAD, WALSALL, WS5 3JW.**

#### **1. PURPOSE OF REPORT**

To seek the determination of the application to fell one Ash tree contained in application 08/0733/TR protected by Tree Preservation Order 3 of 2004. This application has been brought to Development Control Committee because there is significant public interest.

#### **2. RECOMMENDATIONS**

The Committee is recommended to:

- To refuse consent for the removal of the Ash tree at 18, Bell Road.

#### **3. FINANCIAL IMPLICATIONS**

None arising from this report.

#### **4. POLICY IMPLICATIONS**

Policy ENV18 of the Council's UDP (Existing Woodlands, Trees and Hedgerows) commits the Council to ensuring the protection, positive management and enhancement of existing trees and to resisting development where it would damage or destroy trees protected by a Tree Preservation Order. In cases where development is permitted involving the loss of trees, developers are required to minimise the loss and to provide appropriate planting of commensurate value.

#### **5. LEGAL IMPLICATIONS**

Failure to comply with a Tree Preservation Order renders anyone carrying out unauthorised works to trees 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 the Paddock ward.

9. **CONSULTEES**

Owners and near neighbours were consulted on this application.

10. **CONTACT OFFICER**

Andrew Cook - Extension: 2447

11. **BACKGROUND PAPERS**

File reference 08/0733/TR

**Steve Lewis**

HEAD OF REGENERATION DELIVERY AND DEVELOPMENT

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#### **REPORT DETAIL**

**Application number:** 08/0733/TR

**Applicant:** Mr. Singh 18, Bell Road, Walsall, WS5 3JW.

**Date received:** 1 May 2008

**Expiry date:** 26 June 2008

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

#### **Application and Site Details**

This is an application to remove one Ash tree in the front garden of 18, Bell Road, Walsall, WS5 3JW.

#### **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

**Adopted UDP:** Policy ENV19: Existing woodlands, trees and hedgerows, states:

- (a) 'The Council will ensure the protection, positive management and enhancement of existing woodlands, trees and hedgerows'.

## Relevant Planning History

**Previously:** 04/2311/TR/T3 to prune the Ash tree, consent was given with the condition that the works were overseen by a council representative.

## Representations

Eight representations were received in objection to the application. Responses were received from 'Thorn Trees' Scott Road, 6 and 10 Scott Road, 32, 50, 54, Bell Road and a Park Hall resident and Lodge Road resident.

A response by email from the Lodge Road resident and the Park Hall resident are virtually identical and both state that the tree is not near to the property and they cannot think of a good reason for its destruction and that the council should take immediate action to stop the tree being removed as a matter of urgency. The email further states that the tree does not look diseased and that the council should supervise any pruning operations.

A response by letter from the owner/ occupier of 32, Bell Road states that urgent action should be taken to prevent the removal of mature trees as Walsall can ill afford such losses.

A response by letter from 50, Bell Road states that it is strange that the tree should become diseased only three and a half years after the first application for works, the letter also states that the council should protect the older trees from further destruction.

A response by letter from 54, Bell Road states that assuming the Tree Preservation Order (TPO) is in force the application for the trees removal should be turned down without consideration or expense by whoever makes the decision, should this not be the case a full investigation should be carried out as to the reason why the tree may be cut down to make way for possible car parking.

A response by email from 6, Scott Road states that the tree has been a local amenity enjoyed by many in excess of forty years and that its removal will detract from the neighbourhood and damage the environment. The email further states that the tree is healthy and does not obstruct the rights of light or cause any nuisance.

A response by email from 10, Scott Road states that the tree is a fine mature example and its loss would be a major loss to the area. The email further states that the existence of the tree should have been taken into consideration when the property was acquired and developed and that despite the development the tree is still some way away from the property. Finally the email states that the character of Bell Road depends on its tree lined character and that unless the tree

is diseased in which case presumably the council would require an independent report, then it would be wrong for the tree to be felled.

A response from 'Thorn Trees' Scott Road states that if the tree is diseased then let it be removed and if the tree is not diseased then let it stay.

The Council understands the significance of the Ash tree and its value to the local landscape and community. Its loss will not be permitted without strong justification. For example, if it was proven that the tree should be removed for health and safety reasons due to its poor physiological and / or structural condition or causing or likely to cause unacceptable nuisance or damage.

In accordance with Section 206 of The Town and Country Planning Act 1990 any trees that are removed as a result of this application would be subject to a requirement for replacement planting within twelve months of their removal.

### **Determining Issues**

The Council has to determine if the removal of the Ash tree is justifiable on the grounds put forward by the applicant.

### **Observations**

In support of the application to have the Ash tree removed the applicant has submitted an independent consultant arboriculturist's report the conclusions of which are as follows;

The Ash tree should be removed as it is considered to be in a poor structural condition and has limited rooting capacity as a result of the construction of a retaining wall in accordance with planning consent.

There is a large cavity associated with the trunk at 4.0m where the trunk forks into two to form the structural canopy. Associated with the cavity there is a decay column extending to the shear crack on the main stem.

The tree has a limited structural life remaining and partial failure of the trunk has previously occurred. It is likely that due to the limited rooting capacity, the leaning tendency of the tree, the shear cracking, the cavity and decay column at 4.0m that there is an increased risk of failure.

The report also refers to the presence of the decay fungi '*Daldinia concentrica*' on a branch in the lower crown; however, this is commonly associated with dead or dying branches and is often a secondary external sign of a primary problem which in this case is the dying back of the branch. The presence of the fungi is noteworthy but not the reason for the proposed removal of the tree.

Due to the location of the tree near to built structures and highways it is considered that the most appropriate solution is to fell the Ash tree and replant.

The response by the council is as follows;

As instructed by the client the arboricultural consultant has prepared a preliminary health and safety report regarding the Ash tree, however, it is not a detailed assessment of the trees condition.

The report also refers to a decay column which extends from the cavity on the trunk at a height of 4.0m to the shear crack, however, this is largely supposition and no evidence has been supplied to prove the existence of the decay.

A qualified arboricultural officer from Walsall council attended site on a regular basis to ensure the protection of the Ash tree during the construction of the retaining wall in 2004. This included ensuring that the stability and long term health of the tree would not be compromised due to excessive root severance during any construction.

The fact that the tree has a slight lean is not a reason to condemn it and there is no evidence to suggest this has been a recent occurrence, it is more likely that it is a growth lean possibly as the result of once being part of a group and the tree would have laid down sufficient reaction wood to compensate.

The council considers that insufficient evidence has been supplied to justify the removal of the tree based on the contents of the report.

### **Recommendation**

The Committee is recommended to refuse the application.

### **Conditions and Reasons (or reasons 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 Ash tree in the front garden of 18, Bell Road.

For the following reason;

- The council considers that insufficient evidence has been supplied to justify the removal of the Ash tree.
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**APPLICATION TO FELL ONE PROTECTED ASH TREE AT 18, BELL ROAD, WALSALL, WS5 3JW.**

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