
REPORT TO:	DEVELOPMENT CONTROL COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	18 September 2007	CATEGORY: DELEGATED
REPORT FROM:	DEPUTY CHIEF EXECUTIVE	OPEN
MEMBERS' CONTACT POINT:	TERESA TURNER	DOC:
SUBJECT:	TREE PRESERVATION ORDER 281 5 Alice Gardens, Overseal	REF:
WARD AFFECTED:	SEALES	TERMS OF REFERENCE: DC01

1.0 Recommendations

- 1.1 That this Tree Preservation Order be confirmed.

2.0 Purpose of Report

- 2.1 To consider confirmation of this Tree Preservation Order.

3.0 Detail

- 3.1 This Tree Preservation Order was made on 5 June 2007 in respect of one ash, one sycamore, one red hawthorn, two pear trees and ten Lawson cypress located at 5 Alice Gardens, Overseal.

The Order was made for the following reason:

'An application has been received to erect a detached garage on the site of the above-mentioned trees. The group of trees is visible from the public footpath that runs along the north-east edge of the site and is considered to be of good amenity value contributing to the character and appearance of the new development of 5 dwellings, approved in 2002, and the street scene in general. In view of the amenity value the Council consider it expedient that this Tree Preservation Order is made'.

- 3.2 Two objections have been received, one from the owner of the site and one from a neighbour directly opposite the site, commenting:

- The trees listed in the order are incorrect, the 2 pear trees and the red hawthorn were not in existence at the time the order was made and only 6 of the Lawson Cypress trees are on land owned by 5 Alice Gardens.
- The Lawson Cypress trees do not add amenity value and could be classed as a nuisance hedge as they comply with the legal test described in Part 8 of the Anti-Social Behaviour Act 2003.
- Having observed the trees for a considerable amount of time, there is no evidence that the trees are used by songbirds, however they are being used by pigeons and wasps, both of which cause a nuisance.

- The Lawson Cypress trees are visually unpleasant and block out early evening sunlight that would normally shine onto our property (3 Woodlands Road).
- The trees have been disturbed by the developers when the site was being built and they appear unsafe and sway considerably during high winds and are therefore considered dangerous.
- The fruit trees appear rotten and attract wasps which are a danger to young children who play in the area.
- There was no TPO in place when the application for the garage was submitted. Other site around the area have been cleared of trees upon the granting of permission to develop them and none of these trees had tree preservation orders placed on them.

3.3 In answer to the comments made, the Council's Landscape Architect has the following comments:

- At the time of the tree preservation order survey the 2 pear trees had not been cut down. Although they have been 'coppiced' to a metre in height above ground level, which is a typical forestry practise, they will regrow into new trees as they still have vigorous and untouched root systems. The same is true for the red hawthorn, which has also been coppiced, and this species is also very tolerant to severe pruning. Rapid re-growth is likely on all 3 trees and coppiced trees can still be included in a tree preservation order.
- All the Lawson Cypress have been protected in the tree preservation order including the 3 on the land in front of 4 Alice Gardens. The Lawson Cypress trees would not be classed as a nuisance hedge unless a complaint, that complies with the legal test as set out in Part 8 of the Anti-Social Behaviour Act 2003, was received by a neighbour affected by the trees. However, a tree preservation order would take precedence over the 2003 Act.
- Birds, such as thrushes and blackbirds, will certainly use the conifers as nesting sites, however the recent tree fellings will have deterred them this year as they do not tolerate disturbance during the nesting season. The trees will be used by birds, including pigeons, as roosting habitats and they therefore form good wildlife amenity.
- The Lawson Cypress is a typical North American conifer and, if used as a specimen, forms an attractive bold conifer as can be seen at Elvaston Country Park. This species is regularly seen as a feature tree and is typical of many gardens in the UK. It is also considered that there is enough light available to the surrounding properties with the trees in situ.
- The trees were inspected when the tree survey for the tree preservation order was carried out and they are not considered to be dangerous.
- The coppiced pear trees do not appear to be rotten and sound regenerating pollarding stumps can be clearly seen on site.
- Wasps play an important and value part in the food chain and will prevent population explosions of harmful garden pests such as grubs.
- Each site is individually inspected and assessed on their own merits. On this particular site a tree preservation order was thought to be necessary.
- The tree felling took place during the tree preservation order formation illustrating that it was necessary to protect the remaining trees.
- The tree preservation order can be modified and certain trees can be removed and replaced with other trees, but these should be planted in the same position as the ones removed. There is no particular objection to the replacement of certain of the conifers with native trees in principle, under the 'tree replacement' condition of the consent form, but it requires careful planning and arboricultural consideration. Not all conifers are bad trees and the high hedge legislation was primarily inspired by Leylandi Cypress not Lawson Cypress.

- It is felt that this is a valid tree preservation order, although modifications can be considered, and the Planning Department has always maintained a strong interest in retaining the tree cover on this recently developed site. The trees do have amenity value, which is the prime consideration in forming a tree preservation order.

4.0 Planning Assessment

- 4.1 The Council was forced to come to a view about the amenity value of the trees when it received an application for a detached garage on the site that would have involved the felling of 4 of the trees. Since the trees were surveyed for the tree preservation order, the 2 pear trees and the red hawthorn have been cut down and the Council's Landscape Architect has advised that the roots systems of the remaining trees could be irretrievably damaged during construction due to their vicinity to the proposed structure. With the advice of the Council's Consultant Landscape Architect it was considered expedient in the interests of amenity to make the trees the subject of a tree preservation order. The trees are a prominent feature in Woodlands Road and are visible from Woodville Road, a main road through the village. The trees are of good amenity value and are considered to contribute to the appearance of the residential development and the street scene in general.

5.0 Conclusions

- 5.1 It is expedient in the interests of amenity to preserve the trees.

6.0 Financial Implications

- 6.1 None.

7.0 Corporate Implications

- 7.1 None

8.0 Community Implications

- 8.1 None

9.0 Background Implications

- 9.1 05 June 2007
9.2 Letter of objection – 5 Alice Gardens, Overseal, 12 July 2007
9.3 Letter of objection – 3 Woodlands Road, Overseal, 23 July 2007