

Decision Maker: Plans Sub Committee

Date: 5th June 2014

Decision Type: Non-Urgent Non-Executive Non-Key

Title: Tree Works Application to a Tree Protected by a Tree Preservation Order Application Number 14/00578/TPO

Contact Officer: Kevin Munnely, Town Centre Development Manager
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Chief Officer: Jim Kehoe – Chief Planner

Ward: Copers Cope

1. Reason for report

To consider the tree works application (No. 14/00578/TPO) to fell one London plane (*Platanus x hispanica*) on the land adjacent (grass verge) to 76B The Avenue which is protected within tree preservation order (TPO) numbered 2505A.

2. **RECOMMENDATION(S)**

To grant consent to the application on condition on one replacement tree being planted in accordance to the Councils specifications.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment:
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Financial

1. Cost of proposal: Estimated Cost: up to £74 267.75
 2. Ongoing costs: Non-Recurring Cost:
 3. Budget head/performance centre: Planning Division Budget
 4. Total current budget for this head: £3.3 million
 5. Source of funding: Existing revenue budget
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Staff

1. Number of staff (current and additional): 103.89 FTE's
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): One
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1 Conservation Area:	None
Type of tree preservation order (TPO):	Individual Order T1 London plane
Date the TPO was severed:	09/04/2013
Date the TPO was confirmed:	19/09/2013

3.2 Reason(s) or summary of reason(s) given for the tree works:

Vegetation induced clay shrinkage subsidence damage to 76B The Avenue caused by the London plane.

3.3 Any Potential Financial Risks to the Councils Decision under

Yes if the Council refused the application for tree works to a tree protected by a tree preservation order (TPO) the Council could be held liable for all cost associated with the refusal to fell the London plane. This liability is within sections 203, 204 and 205 of the Town and Country Planning Act 1990 (as amended) and within section 202E of the Planning Act 2008. On this occasion the Council would be held liable for the difference in the cost of repairing the insured property with tree removal and without the removal of the London plane. On this occasion the Lost Adjuster has estimated the following cost of repairs to the insured property as £10 732.25 with tree removal and between £63 000 to £85 000 without tree removal. Therefore on this occasion if the Council refused the tree works application to fell the London plane the Council would be held liable for between £52 267.75 to £74 267.75.

3.4 A site visit was undertaken by Linda Henderson (Acting Senior Tree Officer Planning) on 25/04/2014; on this occasion full access was gained to all parts of the tree given it is located with the footpath of the private unadopted road The Avenue. The public visual amenity value of the London plane is limited due to the lack of public access to this private road however the road could be used as a through road given it is not gated. The London plane provides a significant amount of private amenity, historical and cultural value given it is a historical remnant of the original avenue of trees that gives its name to the road. The London plane is a significant member of the remaining mature and veteran trees that form the historic landscape character of the area therefore it is an important arboricultural asset.

3.5 The arboriculturist (Linda Henderson) assessed the London plane using the principles of visual tree assessment (VTA) as in accordance Mattheck and Breloer 1994 their observations are as follows:

London plane: age class mature, structural condition good, form good (old lapsed pollard), physiological condition good, and sustainability within its planting position poor

3.6 The sustainability within it is planting is poor given the structural engineers report dated 20th December 2013 states the following:

- Vegetation induced clay shrinkage subsidence damage to 76B The Avenue caused by the London plane noted on 18th August 2011
- Historical clay shrinkage subsidence damage to the property in or around 1987
- Current mechanism of movement is a downwards movement of the front bay (towards the London plane) and front left-hand corner

- This is with seasonal variations (indicative of vegetation induced clay shrinkage subsidence given the London plane is deciduous)
 - Clay subsoil below the foundations of the property
 - Alive London plane roots under the foundations of the insured property at a depth of 1.5-3.5 metres.
 - No damage to the drains at the property
 - Level and cracking monitoring provide evidence of movement of the front left-hand corner consistent with soil shrinkage in summer and swelling in winter
- 3.7 The above evidence and all the other evidence within the structural engineers report dated 20th December 2013 provides the Council with sufficient evidence to prove on the correct evidential test (the balance of probability). That the London plane is the causation of vegetation induced clay shrinkage subsidence to 76B The Avenue. Furthermore given the results from HortLINK at East Malling Research (Hipps, 2004) it is known that pruning of trees is not sustainable method of mitigation for vegetation induced clay shrinkage subsidence. Given according to HortLink 70% to 90% crown reduction only has a minimal impact of reducing the amount of soil moisture that tree roots will remove from the soil profile. However a 70% to 90% crown reduction is excessive tree works that are not in accordance with the British Standard 3998:2012 Tree Works. In all probability such a large crown reduction of 70% to 90% will induce failure within the London plane and remove the entire private visual amenity that the tree provides to the surrounding area and have a detrimental impact on the landscape character of the area.
- 3.8 The arboriculturist assessed the London plane as in accordance to Table 1 within the British Standard 5837:2013 Trees in relation to design, demolition and construction. Recommendations:
- London plane: A1, A2 & A3
- 3.9 The proposed tree works to fell one London plane will have a detrimental impact upon the private visual amenity and historical landscape character of the surrounding area. However the private visual amenity and historical value of the tree is no longer sustainable given that on the balance of probability the London plane is the causation of vegetation induced clay shrinkage subsidence damage at 76B The Avenue. Therefore were the Council to refuse the tree works application within 14/00578/TPO the Council will be held liable for all costs associated with the refusal. These costs are currently estimated at between £52 267.75 to £74 267.75 for the repair of the insured property were the London plane to remain in situ. However these are the current estimated costs which are likely to increase given that the London plane is currently still *in situ* and the canopy is in full leaf therefore it is still removing water for the clay subsoil under the foundations. Therefore the damage to the insured property is currently ongoing until the London plane is removed.
- 3.10 For the current estimated cost of the liability the Council could purchase several hectares of woodland within the South East of England. On 22nd May 2014 at John Clegg & Co Chartered Surveyors and Chartered Foresters web page the following two woodlands were for sale one had been divided into Lots these were as follows:
- Owl Wood, 3.78 Hectares / 9.34 Acres, Guide Price £65,000
 - The Knelle Woodlands, 13.6 Hectares / 33.6 Acres, Guide Price £245,000
 - Knelle Deep Wood, 3.51 Hectares / 8.68 Acres, Guide Price £65,000

- Knelle North Wood, 3.74 Hectares / 9.25 Acres, Guide Price £65,000
- Knelle Big Wood, 6.34 Hectares / 15.66 Acres, Guide Price £110,000

3.11 Given that the potential cost of retaining the one London plane tree within tree works application 14/00578/TPO is between £52 267.75 to £74 267.75 in comparison to purchasing 3.5 to 3.75 hectares of woodland for £65 000 on the open market. It is my considered professional opinion that the Council should grant consent to the tree works within 14/00578/TPO given it is not within the public interest to retain one privately controlled tree at the cost similar to purchasing several hectares of woodland on the open market.

3.12 The loss of London plane can be partial compensated by requiring one replacement tree to be planted as condition of the Council issuing consent to the tree works application 14/00578/TPO. This replacement tree should be a nursery grown containerised stock of an extra heavy standard girth at 1 metre above ground 14-16cm and height 4.0-4.5 metres.

3.13 Recommended Conditions

B06 – Replacement One Tree where TPO consent

B07 – Tree surgery to British Standard 3998:2010 Tree work. Recommendations

B09 – Commencement

3.14 Additional Information and References:

[https://www.bre.co.uk/filelibrary/pdf/projects/HortLink_Project_Final_Report_\(2004\).pdf](https://www.bre.co.uk/filelibrary/pdf/projects/HortLink_Project_Final_Report_(2004).pdf)

<http://www.johnclegg.co.uk/>

4. POLICY IMPLICATIONS

None.

5. FINANCIAL IMPLICATIONS

Lost Adjuster has estimated the following cost of repairs to the insured property as £10 732.25 with tree removal and between £63 000 to £85 000 without tree removal. Therefore on this occasion if the Council refused the tree works application to fell the London plane the Council would be held liable for between £52 267.75 to £74 267.75. However these estimated costs are likely to have increases given that the London plane is still *in situ* removing water for the clay subsoil thus the damage is currently ongoing.

6. LEGAL IMPLICATIONS

The Council is liable for all cost associated with a refusal of an application for tree works to a tree protected within TPO this is within sections 203, 204 and 205 of the Town and Country Planning Act 1990 (as amended) and within section 202E of the Planning Act 2008.

7. PERSONNEL IMPLICATIONS

None

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date]