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| REPORT FROM: | ASSISTANT DIRECTOR PLANNING, BUILDING CONTROL AND REGULATORY SERVICES |
| TO: | BARROWFORD AND WESTERN PARISHES COMMITTEE |
| DATE: | 6TH SEPTEMBER 2023 |

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| Report Author: | Roland Jones |
| Tel. No: | 01282 661729 |
| E-mail: | roland.jones@pendle.gov.uk |

TREE PRESERVATION ORDER APPLICATION FOR REMOVAL OF TREES AT 8 THE ORCHARD TPO/No2/2003 – RIBBLESDALE PLACE HIGHERFORD

PURPOSE OF REPORT

To consider an application for the removal of a group of trees subject to a Tree Preservation Order (No.2/2003).

RECOMMENDATION

Approve the removal of the trees G1 at the rear of the property.

REASON FOR RECOMMENDATION

One tree is in a potentially dangerous state and the removal of this will leave the rest vulnerable to windthrow and to require the trees to remain would result in an unacceptable risk to public safety.

ISSUE

An application has been submitted for the removal of a group of conifer trees (G1) that are part of the Tree Preservation Order No.2 2003.

The Council's decisions for applications of works to protected trees are normally undertaken by the Principal Environment Officer under the Council's system of delegation to the Assistant Director Planning, Building Control and Regulatory Services.

A previous application (23/0463/TPO) was refused as there was no arboricultural justification given with it. The current application has 3 reports with it.

The requirement to retain the trees through a planning condition is a separate matter not for consideration through the TPO process.

Due to the potential impact the proposals could have on the amenity of the area, it is considered on this occasion expedient and prudent to report this application to Members. The Council has also received objections to the proposals from four local residents citing “loss of amenity” and “impact upon wildlife” amongst other issues.

The application is accompanied by three different Consultant’s reports each stating that the trees should be removed, the last report is citing a split in one of the conifers meaning it is potentially dangerous and will leave the rest of the trees vulnerable to windthrow.

Committee will be aware that the trees are also the subject of a retention condition applied under a planning application.

The Principal Environment Officer inspected the trees in question and arranged a residents’ meeting where the immediate adjacent resident and the tree owner attended. The condition of the trees and the need to do the work was discussed with residents at the meeting.

The reports conclude that there is an arboricultural need to carry out the work as the condition of the trees is such that to refuse permission would lead to an unacceptable public safety risk. Having inspected the trees I concur that there is a need to allow the trees to be removed.

That will have a detrimental impact on the amenity of the area although the wildlife interest is limited.

The applicant has been advised of the need to carry out a suitable replacement planting scheme, this can be dealt with as a condition if the application is approved.

IMPLICATIONS

Policy: Paragraph 8.46 of the Pendle Local Plan Part 1: Core Strategy states: *‘The landscape character of the borough will be protected especially in the open countryside.’*

Financial: There is a general right to claim compensation in respect of loss or damage caused or incurred in consequence of works being refused. However, the law includes provisions, which are intended to limit the Council’s liability to a fair and reasonable extent, and so the general right to compensation is subject to the following exceptions:

1. No claim for compensation can be made if the loss or damage incurred amounts to less than £500;

2. No compensation is payable for loss of development value or other diminution in the value of land. 'Development value' means an increase in value attributed to the prospect of developing the land, including clearing it;
3. No compensation is payable for loss or damage which, bearing in mind the reasons given for the application for consent (and any documents submitted in support of those reasons), was not reasonably foreseeable when the application was decided;
4. No compensation is payable to a person for loss or damage which was (i) reasonably foreseeable by that person, and (ii) attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;
5. No compensation is payable for the costs incurred in bringing an appeal to the Secretary of State against the Council's decision to refuse consent or grant it subject to conditions. A claim for compensation must be made to the Council within 12 months from the date of the Council's decision or, if an appeal is made, within 12 months from the date of the Secretary of State's decision.
6. Members should note that if there were to be a successful claim for compensation as a result of an accident then this potentially could run into many thousands of pounds.
7. In dealing with an application for consent under a TPO the Council should consider whether any loss or damage is likely to arise in consequence of their decision during the following 12 months, having regard to the reasons given for the application and any reports or other documents submitted by the applicant in support of those reasons. If the Council believe that some loss or damage is likely it does not necessarily follow that it should grant consent; it should merely take this factor into account alongside other key considerations, such as the amenity value of the tree, before reaching its final decision.

Legal: The Council have powers to make a Tree Preservation Order under the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Authorities and Government departments to have regard to the purposes of conserving biodiversity in a manner that is consistent with the exercise of their normal functions such as policy and decision-making. Conserving biodiversity may include enhancing, restoring or protecting a population or habitat.

Risk Management: None.

Health and Safety: The central large tree in the group has a considerable split and is currently strapped up awaiting the outcome of the TPO application. This tree could be removed as an exemption due to it's condition but concern is the potential impact of the rest of the group. To retain the remaining trees would pose a health and safety risk to the occupants of nearby houses.

Sustainability: The trees contribute to sustainability in several ways these include:

- Supporting the biodiversity of the area.
- Remove carbon dioxide and particular matter from the air.
- Uptake large amounts of water from the ground.

Community Safety: None.

Equality and Diversity: None.

APPENDICES:

Appendix 1 – Bowland Tree Consultancy - Tree Risk Management Appraisal

Appendix 2 – Treeplan – BS5837 Pre Development Tree Works and Protection

Appendix 3 – Iain Tavendale – Survey Details for Trees at The Orchards

LIST OF BACKGROUND PAPERS: None