

Report to: Planning Applications Committee

Date: 20 November 2019

Title: Tree Preservation Order (No.2) 2019 – Caxton Court, Park Street, Falmer [file ref: 3825:0598]

Report of: Specialist Advisor (Arboriculture)

Ward(s): Kingston

Purpose of report: To report to committee the objections and/or representations made in respect of the provisional Tree Preservation Order (No.2) 2019

Officer recommendation(s): To confirm without modification Tree Preservation Order (No.2) 2019

Reasons for recommendations: It is considered that the Sycamore tree (T1 of the Order) is a defining feature of this part of Falmer Village and a key component of the character of this part of Falmer Conservation Area and the South Downs National Park. The Council is under a duty to protect important trees where appropriate under Section 198 of the Town & Country Planning Act 1990.

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1 Introduction and background Information

- 1.2 Falmer village is located with the South Downs National Park (SDNP) which is administered by the SDNP Authority via its agents, which in this case is Lewes District Council. Please note the SDNP can decide to 'call in' or recover the case at any time and determine it themselves.
- 1.3 The site its self is located within Falmer Conservation Area. If a tree is located within a Conservation Area anyone who wishes to undertake works to trees that meet the size threshold must give this Authority six weeks' notice in writing (called a section 211 notification). Such a Notice to remove the tree in question was received on 16 July 2019 (reference SDNP/19/03580/TCA). Section 211 of the Town and Country Planning Act 1990 provides that anyone proposing to cut down or carry out work on a tree in a conservation area that is not protected by a Tree Preservation Order ("TPO") must give the local planning authority (LPA) six weeks' prior notice (a section 211 notice). This enables the LPA to decide whether it would be expedient to impose a TPO to protect the tree(s).

- 1.4 The tree is considered to be a feature of this part of Falmer Village and a key component of the character of this part of Falmer Conservation Area. As well as being visually prominent it is also considered that it provides ornament and beauty to the local area. It is considered that its loss would have a significant detrimental impact on the local environment and its enjoyment by the wider public.
- 1.5 It is also considered that the protection of the tree meets the first of the SDNP's twin purposes which is:
- *“To conserve and enhance the natural beauty, wildlife and cultural heritage of the area.”*
- 1.6 Likewise section 40 of the Natural Environment & Rural Communities Act 2006 places a duty on the Council to preserve and/or enhance biodiversity, which will include trees and the flora and fauna they support:
- *Section 40: “Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those function, to the purpose of conserving biodiversity “*
- 1.7 For the above reasons a provisional Tree Preservation Order was imposed to preserve the tree in the wider public interest. The term provisional means that the initial Order came into effect on a temporary basis on **20 August 2019**, and will remain in force for six months until **20 January 2020** after which it will expire and cease to provide legal protection for the tree.
- 1.8 The Scheme of Delegations provide that The Director of Regeneration and Planning has delegated powers to deal with tree preservation orders except when objections to the making of the Order have been received then confirmation with or without modifications of the Order shall be referred to the Planning Applications Committee for determination

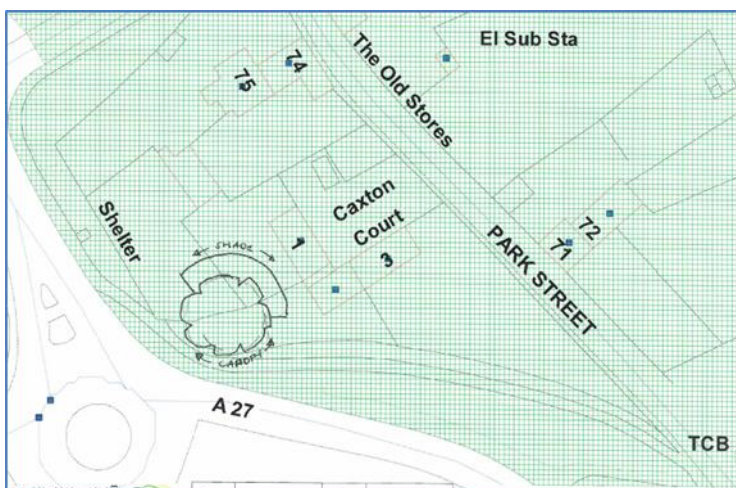
2 Written Representations

- 2.1 Letters have been received from the occupants of 1 and 2 Caxton Court, and the occupant of the Swan Public House, Park Street, Falmer each of which object to the confirmation of the Tree Preservation Order and by implication the refusal of the application to fell the tree in question.
- 2.2 The principle points made against the imposition of the Order are as follows:
- They disagree with the visual importance attributed to the tree
 - They consider a Sycamore tree to be an invasive weed species and not worthy of protection.
 - They consider its condition to be questionable particularly in relation to the pair of co-dominant stems which supports the canopy.
 - They consider it to be too large and too tall and that if it were to fall it would 'demolish' the surrounding dwelling houses. There is also a fear of damage to the building foundations from the tree's rooting system.

- They point out that the canopy causes loss of light to the house and garden and that shade has a detrimental impact on the ability to grow a vegetable garden.
- The tree sheds leaves, seeds and 'sap' which is a burden to clear up
- The tenants of the property state they are willing to replace it

3 Information

- 3.1 The Committee's principle consideration should relate to the 'amenity' value of the tree. In addition, special attention should be given to the desirability of preserving or enhancing the character or appearance of the conservation area and as agents acting on behalf of the SDNPA, to meeting the first of the twin purposes of the SDNP.
- 3.2 No evidence has been submitted to corroborate the claim that the tree is in a poor condition or at an elevated risk of failure or that it is causing localised differential soil shrinkage (subsidence damage) to nearby building structures. We will of course reconsider the situation in the light of any new information submitted in accordance with mandatory requirements of an application to undertake works to the tree.
- 3.3 The size and height of trees, or the fear of it falling is not sufficient reason in its self to allow the lopping, topping or removal of important trees. Research by the centre for decision analysis and risk management (DARM) demonstrates that the overall risk to the public from falling trees is extremely low and broadly well within the Tolerability of Risk Framework (ToR). ToR is recognised internationally and by the UK's Health & Safety Executive (HSE) as way of assessing, quantifying and managing risk.
- 3.4 The issue of loss of light is accepted and is a material consideration when determining whether to confirm the Order. The degree and extent of shade over a solar year, however, is not considered sufficient to have a significant detrimental impact on the reasonable use and enjoyment of the house and garden in this case. The approximate position of the tree and the approximate shade segment is shown on the following illustration which is orientated on a north/south axis.



- 3.5 The deposition of leaves, seeds and general tree dander is a natural consequence of nature and is not considered to be a material consideration in this case. Likewise, the deposition of 'sap', which in actual fact is called Honeydew, is a harmless sugary deposit from aphids which is generally easily cleaned from surfaces with soapy water. In both cases the clearance of fallen leaves, the removal of seedlings and the cleaning of garden furniture are all considered to be part of routine household and garden maintenance.
- 3.6 In deciding whether a tree in a conservation area merits a TPO, the LPA's main consideration should be the amenity value of the tree. In addition, the council must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Even if the tree's amenity value may merit a TPO the authority can still decide that it would not be expedient to make one. Likewise, in our capacity as agents acting on behalf of the SDNPA consideration should also be given to the first of the SDNP's twin purposes which is to "*..conserve and enhance the natural beauty, wildlife and cultural heritage of the area.*"

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm a TPO they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

4 Material Considerations

- 4.1 It is considered that the tree both merits and qualifies for a Tree Preservation Order.
- 4.2 It is considered that the protection of the tree meets the first of the SDNP's twin purposes to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
- 4.3 The relative risks to people and/or property is statistically so small as to be practicably negligible and as a consequence is not considered to be a material consideration in this case.
- 4.4 The shedding of leaves, seeds etc is not considered to be a material consideration and is instead is regarded as a consequence of the natural environment. The clearing of material such as fallen leaves is considered to be part of routine household maintenance.
- 4.5 With regards claims concerning potential harm or damage to property the Council can reconsider its position in the light of any evidence put forward that would support claims of this nature.

5 Summary

- 5.1 The relative visual amenity value of the tree is considered to outweigh the reasons given against the imposition of the Order and for this reason the imposition of the TPO is considered to be justified. .

6 Financial appraisal

- 6.1 There are no financial implications for the SDNPA or LDC at this time.

7 Legal implications

- 7.1 Once a TPO is confirmed there is no right of appeal to the Secretary of State. However it is possible to apply to the High Court for a TPO to be quashed (section 284 and section 288, TCPA 1990). An application must be made within six weeks from the date of confirmation of the TPO. The challenge can only be made on a point of law, not on the merits of the decision.

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8 Risk management implications

- 8.1 There are no identifiable risks to the South Downs National Park Authority or Lewes District Council at this time.

9 Equality analysis

- 9.1 An Equality Analysis is not constructive in this instance.

10 Sustainability implications

- 10.1 It is considered that there are no relevant sustainability implications in accordance with LDC Sustainability Policy (Dec 2018).

11 Appendices

- Appendix 1 – Photographs of the principle views of the Sycamore tree (T1 of the Order)
- Appendix 2 – Copy of TPO plan
- Appendix 3 – Plan of Falmer Conservation Area.

12 Background papers

The background papers used in compiling this report were as follows:
(please provide a URL link to each paper – remove this text from final version)

- Tree Work Application SDNP/19/03580/TCA
<https://planningpublicaccess.southdowns.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

- Tree Preservation Order (No.2) 2019 – Caxton Court, Park Street, Falmer [file ref: 3825:0598]
- Amenity Assessment (file 3825:0598)
- Common Sense Risk Management of Trees: Tree Safety Group (Forestry Commission –Forest Research)
<https://www.forestresearch.gov.uk/research/common-sense-risk-management-of-trees/>

Appendix 1 – View from public footpath and national cycle route



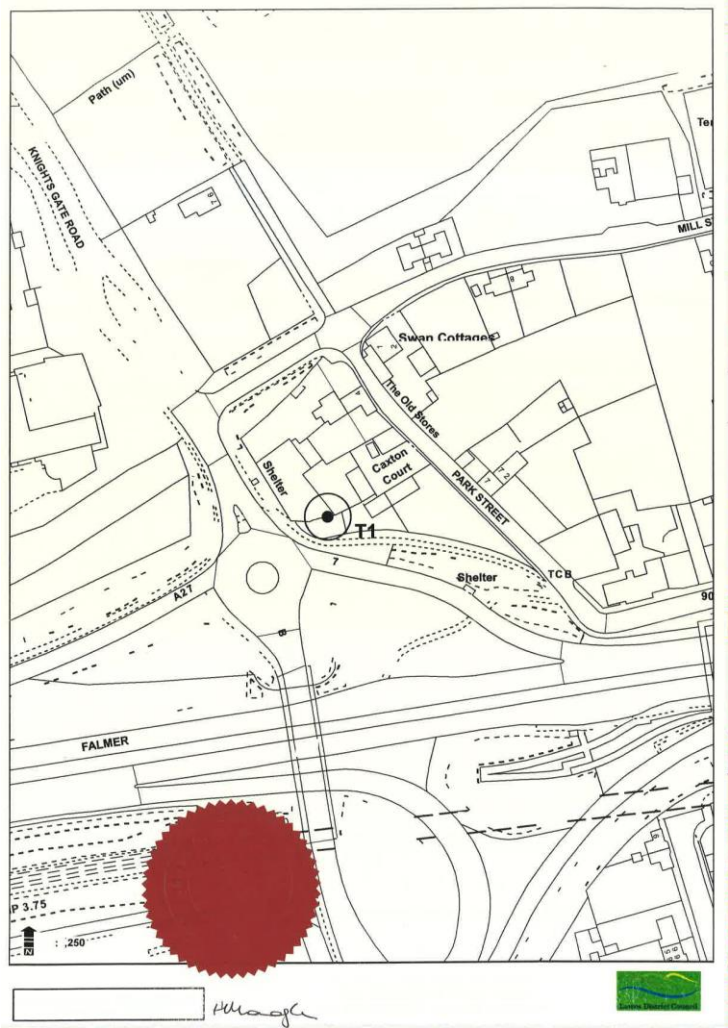
Below: View from A27 Falmer slip road and B2128 Knights Gate Road (which access Sussex University).



Below: View from Park Street at rear and from Falmer Conservation Area



Appendix 2 – Copy of the Tree Preservation Order plan



Appendix 3 – Plan of Falmer Conservation Area (shaded green)

