

App.No: 051026	Decision Due Date: 21 July 2018	Ward: Upperton Ward
Officer: Daniel Wynn	Site visit date: Feb 2018	Type:
Raised Date: 21 February 2018 Expiry date: 21 July 2018		
Related Planning Application: Number 171376		
Location: Arundel Court, 20 Arundel Road, Eastbourne. BN21 2EL		
Proposal: To consider whether to confirm Tree Preservation Order No. 179 (2018)		
Applicant: N/A		
Recommendation: To confirm the Order		

Executive Summary: It is considered that the visual amenity that the tree provides is of sufficient significance to outweigh the problems it is said to be causing.

Planning Status: The Council is under a duty to protect trees and to impose Tree Preservation Orders where appropriate. Section 197 of the Town & Country Planning Act 1990 states:

'it shall be the duty of the local planning authority to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made by the imposition of conditions, for the preservation or planting of trees'

Section 197 of the Act also states that:

'..it shall be the duty of the local planning authority to make such Orders [Tree Preservation Orders] under section 198 of the Act as appears to the Authority to be necessary...'

The Order was raised in response to planning application for development which sought to remove this and the companion trees.

Relevant Planning Policies:

Section 11 of the National Planning Policy Framework (2012):
Conserving and Enhancing the Natural Environment.

Chapter 3 of the Estbourne Borough Plan :

Saved policy NE28: Environmental Amenity, development proposals should reuse of existing natural features on the site and that the removal of natural features will adversely affect the site.

Chapter 5 of the Eastbourne Borough Plan

Saved Policy UHT4 of the Borough Plan 2007 states that proposals that have an unacceptable detrimental impact on visual amenity will be refused including their effect from the loss of natural screening, erosion of local distinctiveness and the effect on an important vista.

Saved Policy UHT5 of the Borough Plan 2007 states that landscaping typical of the area shall be required to be retained unless it can be demonstrated that the feature is beyond its useful life.

Relevant Planning History:

Planning Application 171376 - outline Planning Permission (Access, Appearance, Layout and Scale) for proposed demolition of existing dwelling and erection of 19 flats together with parking spaces.

Consultations:

We notified the property occupiers immediately adjoining the site, occupiers and residents of the site, and the site owner.

Representations:

Objections have been received by the landowner which is reproduced verbatim and unedited as follows:

"Amenities suggest pleasure or usefulness. In this case it is visual amenity that is suggested. The tree is very tall and is in leaf only during the summer and autumn. It is bare in winter and spring. It has grown considerably over the 36 years of my occupation of the property and I have nurtured it, removing Ivy twice a year in order that it would not die.

How many residents of the area stroll along the pavement and look up during the summer to admire the crown is a matter of guesswork. To the applicant's knowledge only one resident, at the far, town end of Arundel Road, a tree enthusiast perhaps, has made written objection to the loss of the tree. I wonder how often this objector in fact does walk along the road admiring it.

Importantly such amenity as is perceived should be considered in context and balanced with other factors. The context and factors include:

a) The tree sheds many and often very large branches especially during the winter months and particularly when there are strong winds. The applicant is alert to this and regularly retrieves these. Most of them fall on the pavement and on the road. This evidently creates an on-going hazard to passers-by and motorists who park the length of the tree side of Arundel Road.

I, as occupier, and owner of the property am legally responsible for any accident caused by the tree. Liability insurance is of inadequate comfort to anyone with a cracked skull.

Indeed some years ago I received a written complaint from a resident in the flats opposite. She, an elderly lady thought the tree might be dying as it shed branches and she was worried about an accident to her or another. I called a tree surgeon to evaluate the situation. He advised that the trees shedding branches was a natural phenomenon and that this Beech tree was healthy. It will shed more and more as it grows.

The owner(s)/occupier(s) of any development and indeed I as the current owner might well be justified in seeking reimbursement from the Council if there is a claim while the TPO remains.

b) The roots swell each summer and of course are growing along with the tree. This is another danger for pedestrians. Periodically the pavement is broken up as a result and the Council recently resurfaced the pavement to make it safe for pedestrian. This will be an ongoing hazard and a cost to the Council.

c) The tree has grown to such a degree that it has burst through the flint wall to the property a few years ago. The metal bats (sic) put in as a substitute and now also pushed out by the tree. I do not suppose that the Council will be troubled by the damage to my wall but it does demonstrate this is a dynamic situation. Further the resulting appearance of the wall and surrounds of the tree certainly do not add to the visual amenity of the area: far from it!

d) The Beech tree may grow to 40 metres in height with a huge crown. The dangers expressed above can only (sic) worsen with time.

The tree is not in a Conservation Area or even one approaching natural beauty, a factor that presumably has been recognised by the Council in the past, hence the absence of a TPO until now.

I find it difficult to believe that when all the factors are weighed up that the evident physical dangers to the community as a whole in the immediate area are thought to be of less importance than any perceived visual amenity.

I trust that the Council, now being aware of these factors, will reconsider its position on the Beech tree. I respectfully request the Revocation of the Tree Preservation Order on this Beech tree.

Appraisal:

The tree is a maturing Common Beech and is positioned at the front elevation and south west of the corner of the building. It is considered to be an arboricultural feature in its own right and also provides a significant visual amenity to the area.

It forms part of the wider local tree-scape of mature trees fronting properties in Arundel Road which collectively provide significant ornament and beauty to the area. The loss of the Beech tree would have a significant detrimental impact on the local environment and its enjoyment by the public.

The tree was originally identified for removal as part of Planning Application 171376 - outline Planning Permission (Access, Appearance, Layout and Scale) for proposed demolition of existing dwelling and erection of 19 flats together with parking spaces. This application was refused on various grounds but the part which specifically relates to the tree is as follows:

"4. The development would have a significant detrimental impact on the long-term health of the protected beech tree; the loss of the protected tree and the general loss of trees and soft landscaping to the site is detrimental to the character and appearance of the area contrary to Section 7 of the National Planning Policy Framework 2012, D10a of the Core Strategy Local Plan and saved policy UHT4 and UHT5 of the Borough Plan 2007."

The responsibility for trees and those protected by a Tree Preservation Order remains with the tree owner. The person responsible for any tree(s) has a duty known in law as a 'duty of care'. A duty of care applies to anyone visiting or living at the property and to persons and property on neighbouring land. The duty of care is for the tree owner, or their agents, to take reasonable care to avoid acts or omissions which any reasonable person could reasonably foresee would be likely to cause harm. Where one fails to take any necessary action or undertake any action which results in harm to people, animals or property, and if that harm is foreseeable, then they may be found to be negligent.

In certain circumstances which are set out in the legislation, compensation may be sought from the Council for loss or damage which results from the Council refusing consent for works to the tree. There is an array of strict criteria and limits which must be met but there is no liability on the Council at this time. Any future applications for works made on the grounds of alleged damage to property or for safety reasons will to be assessed at that time.

Human Rights Implications:

The impacts of the proposal have been assessed as part of the application process. Consultation with the community has been undertaken and the impact on local people is set out above. The human rights considerations have been taken into account fully in balancing the planning issues; and furthermore the proposals will not result in any breach of the Equalities Act 2010.

Conclusion: It is considered that the reasons given in objection to the imposition to the Order are considered to fall short of overcoming the importance of the tree to the area and that the Order is justified

Recommendation: To Confirm the Order (or make permanent)

Conditions: None required

Informatives: None

Appeal: There is no right of Appeal at this stage.

In the event the Committee confirms the Order and if the applicant disagrees with our decision they can challenge it by applying to the High Court under sections 284 and 288 of the Town & Country Planning Act 1990 within six weeks of the date of the Council's decision. They can apply to the High Court if they believe:

1. The Order is not within the powers of the Town & Country Planning Act 1990;or
2. The requirements of the 1990 Act or Town & Country Planning (Tree Preservation)(England) Regulations 2012 have not been met.

APPENDIX 1

Copy of the Tree Preservation Order plan showing location of the Beech (T1 of the Order).

