

Planning, Taxi Licensing and Rights of Way Committee Report

Application No:	TREE/2017/0025	Grid Ref:	317182.44 237423.11
Community Council:	Gwernyfed	Valid Date:	Officer: 17/07/2017 Thomas Goodman
Applicant:	Powys County Council, Cambrian Way, Neuadd Brycheiniog, Brecon, LD3 7HR		
Location:	Land at Ysgol Uwchradd Gwernyfed, Three Cocks, Brecon, LD3 0SG		
Proposal:	Application for works to a tree subject to a tree preservation order		
Application Type:	Works to trees subject to a TPO and/or Notification of proposed works to trees in conservation areas		

The reason for Committee determination

The applicant is Powys County Council and therefore, in accordance with the planning protocol, the application is required to be determined by the Planning, Taxi Licensing and Rights of Way Committee.

Site Location and Description

The proposed development is not located within a settlement development boundary and therefore for the purposes of this application is considered as development within the open countryside as defined by the Powys Unitary Development Plan (2010). To the south east and south west are residential properties, to the north is public open space and the grounds of Gwernyfed School. Tree Preservation Orders bound the entire field and are secured under the TPO known as Gwernyfed School/Park, Three Cocks.

Consent is sought to carry out works to a tree that is subject to a Tree Preservation Order. The works include the removal of the tree stump from the centre of the watercourse and some minor clearance to trees.

Consultee Response

Gwernywed CC

The Community Council were grateful that the works to remedy the collapsing path were progressing and have no objection to this application.

Representations

No representations have been received at the time of writing this report.

Planning History

None as per GIS

Principal Planning Constraints

Flood Zone
Historic Landscapes Register Outstanding
TPO: Gwernyfed School/Parks, Three Cocks

Principal Planning Policies

National planning policy

Planning Policy Wales (Edition 9, November 2016)

Technical Advice Note 10 – Tree Preservation Orders (1997)

Tree Preservation Orders: A Guide to Law and Good Practice

Local planning policies

Powys Unitary Development Plan (2010)

SP3 – Natural, Historic and Built Heritage
ENV2 – Safeguarding the Landscape
ENV3 – Safeguarding Biodiversity and Natural Habitats
ENV8 – Tree Preservation Orders

RDG=Powys Residential Design Guide NAW=National Assembly for Wales TAN= Technical Advice Note
UDP=Powys Unitary Development Plan, MIPPS=Ministerial Interim Planning Policy Statement

Officer Appraisal

Members are advised to consider this application in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Principle of Development

Government guidance advises that in considering applications for proposed tree works the planning authority are advised:

- (1) to assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and
- (2) in the light of the assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

They are advised to consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions. In general terms it follows that the higher the

amenity value of the tree or woodland the greater the impact of the application on the amenity of the area, the stronger the reasons needed before consent is granted.

In order to justify the works, a method statement has been provided outlining the hazards identified should no work progress. The hazards include the tree falling into the watercourse, the tree in its current state is forcing the watercourse into the righthand bank and is eroding the bank and causing damage. The tree is located within close proximity of a footpath which is utilised by students during term time. Therefore in this instance there is a risk to public safety. The proposed works will alleviate the risks to public safety.

The proposed works are to completely remove the tree as it is noted of being at risk of falling and potentially causing damage to pathways.

Under Section 206 of the Town and Country Planning Act 1990 the landowner is under a duty to replace a tree:

“(1) If any tree in respect of which a tree preservation order is for the time being in force-
(a) Is removed, uprooted or destroyed in contravention of the order, or
(b) Except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of section 198(6)(a),

It shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.”

“The same place” means the position defined in the TPO by reference to the description in the 1st Schedule and the map. It is noted that the TPO “Gwernyfed School/Park, Three Cocks” covers a large area and comprises a large range of trees. It is considered that in this instance that the loss of a single tree covered in a large area of a TPO would not cause a detrimental impact upon the amenity of the area, therefore in this instance it is considered that it would be acceptable for no re-planting to take place.

As the proposals are for maintenance and health and safety purposes due to the close proximity of the trees to properties, footpaths and public highways, it is acknowledged that the works appear to be justified in this instance.

Other Legislative Considerations

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that there would be no unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

Planning (Wales) Act 2015 (Welsh language)

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material unacceptable effect upon the use of the Welsh language in Powys as a result of the proposed decision.

Wellbeing of Future Generations (Wales) Act 2015

Section 3 of the Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that the proposed development is in accordance with the sustainable development principle through its contribution towards the well-being objectives.

Recommendation

It is recommended that the proposed works shall be allowed to go ahead subject to the following conditions as set out.

1. The works hereby approved shall be carried out within two years from the date of this decision

Informative Notes

Birds - Wildlife and Countryside Act 1981 (as amended)

All nesting birds, their nests, eggs and young are protected by law and it is an offence to:

- *intentionally kill, injure or take any wild bird*

- *intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built*
- *intentionally take or destroy the egg of any wild bird*
- *intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird.*

The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built, (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist.

Bats - Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended)

It is an offence for any person to:

- *Intentionally kill, injure or take any bats.*
- *Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.*

Under the Habitats Regulations it is an offence to:

- *Damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved.*

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended) that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural Resources Wales. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural Resources Wales and the Council's Ecologist. You can also call the National Bat helpline on 0845 1300 228 or email enquiries@bats.org.uk

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