



Planning, Taxi Licensing and Rights of Way Committee Report

Application Number: 20/2074/TRE

Grid Ref: E: 322482
N: 297021

Community Council: Montgomery Community

Valid Date: 16.12.2020

Case Officer: Gwyn Humphreys

Applicant: S M Hayes

Location: Mulberry Place, Arthurs Gate, Montgomery, Powys, SY15 6QU

Proposal: Application to fell two trees within a conservation area

Application Type: Works to trees in Conservation Area

The reason for Committee determination

As the application has been submitted by Cllr. Stephen Hayes.

Consultee Responses

Consultee

Received

Town Council

No comments received at the time of writing this report.

Representations

Due to the type of application, consultation with members of the public is not statutorily required, and was therefore not carried out. As a consequence, no public representations have been received at the time of writing this report.

Planning History

App Ref	Description	Decision	Date
TREE/2008/0023	Removal of Tulip tree and Fir tree (TPO)		12th Dec 2008
TREE/2016/0025	Works to trees subject to TPO's and a tree within a conservation area	Approve	12th Aug 2016

Principal Planning Constraints

Montgomery Conservation Area

Principal Planning Policies

Policy	Policy Description	Year	Local Plan
PPW	Planning Policy Wales (Edition 10, December 2018)		National Policy
TAN5	Nature Conservation and Planning		National Policy
TAN10	Tree Preservation Orders		National Policy
TAN24	The Historic Environment		National Policy
SP5	Settlement Hierarchy		Local Development Plan 2011-2026
SP7	Safeguarding of Strategic Resources and Assets		Local Development Plan 2011-2026
DM2	The Natural Environment		Local Development Plan 2011-2026
DM13	Design and Resources		Local Development Plan 2011-2026
SPGBIO	Biodiversity and Geodiversity SPG		Local Development Plan 2011-2026
SPGCON	Conservation Areas SPG		Local Development Plan 2011-2026

Other Legislative Considerations

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

Marine and Coastal Access Act 2009

Officer Appraisal

Site Location & Description of Development

The application site is located within the Town Council area and settlement development boundary for Montgomery, which is identified as a 'Town' by Policy SP5 of the adopted Powys Local Development Plan (2011-2026). The site relates to Mulberry Place, a detached residential dwelling house which benefits from a relatively large garden. The site is accessed via Arthur's Gate (U4809) and is surrounded by neighbouring residential properties in all directions. The site is located wholly within the Montgomery Conservation Area.

This application seeks consent for the felling/removal of two semi-mature trees within the garden of Mulberry Place; T1 (Oak) and T2 (Birch). Both trees are located in close proximity to the boundary with neighbouring properties along Mortimer Road, to the north-east of the site.

Principle of Development

On receipt of the notice of the intention to carry out works to trees within a conservation area, the Local Planning Authority may, (1) allow the six-week determination period to expire, (2) inform the applicant that the works can go ahead, or (3) make a Tree Preservation Order (TPO).

Local Planning Authorities are able to make TPOs in the interests of public amenity, however the key issues in considering the creation of a new TPO relate to: visibility, individual impact, wider impact and expediency.

TAN 10 sets out the general requirements applied to all proposals relating to works to trees within a Conservation Area and trees with Tree Preservation Orders (TPO's) placed upon them. Trees, groups of trees and woodlands of amenity value that make a particular contribution to the landscape or that are noted for their beauty or local rarity will be protected. Proposals for development that unacceptably adversely affects trees

that are the subject of a TPO or within a Conservation Area will be refused. Applications to fell or carry out works on trees which are the subject of a TPO or within a Conservation Area will be approved if the work is necessary for public safety or to secure the future of the trees themselves by appropriate management measures.

Officers note the reason behind the proposed felling of the semi-mature trees is due to their location in close proximity to the boundary with neighbouring properties along Mortimer Road. Indeed, it is acknowledged that the trees do abut the fence separating the garden at the application site and the rear gardens of these neighbouring properties, and it is understood that the trees are currently causing issues such as overshadowing and they are resulting in a loss of daylight towards the rear of these neighbouring properties. Given their position against an existing timber boundary fence, it is also acknowledged by officers that the trees do not have the required space to grow to maturity in a healthy manner.

Due to the siting of the trees and the fact the application site is surrounded by neighbouring residential properties, it should be noted that the trees are not particularly visible from nearby public vantage points. As a result, officers consider they do not currently positively contribute towards the character and setting of the wider Montgomery Conservation Area. As a consequence, officers do not consider the trees would warrant the creation of a new Tree Preservation Order.

In light of the above assessment, in this instance the proposed works to remove the two semi-mature trees are considered to be acceptable by officers. The trees are not currently particularly visible within the wider Montgomery Conservation Area, and their removal would increase the levels of light at the rear of neighbouring residential properties.

RECOMMENDATION – Approve

Upon consideration of the notification, it is recommended that the proposed works to the trees shall be allowed to proceed as specified below:

Removal of T1 (Oak) and T2 (Birch) within the garden at Mulberry Place.

The works shall be carried out within 2 years from the date of the application.

Informative Notes

PCC - Ecology

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 0345 1300 228 or email enquiries@bats.org.uk

Birds - Wildlife and Countryside Act 1981 (as amended)

The site of the proposed tree works is considered to have potential to support nesting birds during the breeding season. All nesting birds, their nests, eggs and young are protected under the Wildlife and Countryside Act 1981 (as amended).

It is therefore 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, 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 should be sought from Natural Resources Wales and the Council's Ecologist.

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