

Development Control
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Report

Report subject: Tree Preservation Order 351 - 105 Bouverie Avenue South, Salisbury.

Report to: City Area Committee

Date: 1st September 2005

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Purpose of Report:

This item is before members because objections have been received to the imposition of Tree Preservation Order 351.

Background:

105 Bouverie Avenue South is a property on a large plot of land which contains six semi mature beech trees within the frontage of the property.

Bouverie Avenue South is fairly unique in that it contains an Avenue of beech trees. Those trees located within the verge on the western side of the avenue are in the ownership of Wiltshire Highways Authority whilst those located on the eastern side of the Avenue are situated in the ownership of various properties.

Between the 23rd March and the 4th April 2005 the Council received correspondence from five local residents. The letters expressing concern that the owners of 105 Bouverie Avenue South intended to remove the beech trees from the front of their garden and asked that the Council look into the possibility of issuing a tree preservation order. The Councils Arboricultural Officer attended the site and from his car undertook an evaluation to assess whether the trees were suitable for a Preservation Order. The evaluation scored sufficiently to warrant a TPO and due to the potentially imminent threat to the trees an emergency TPO was hand served on the property and adjoining properties on the 4th April 2005. Since the 4th April the Council has received a further four letters of support for the TPO have been received.



Awarded in:
Housing Services
Waste and Recycling Services



Objection:

An objection has been received from the owner of 105 Bouverie Avenue South on the following grounds:-

1. Salisbury District Council has not demonstrated that any valid threat exists to the trees now under jurisdiction of TPO No.351. The Council have stated that these trees are under threat but have failed to show what from, or, from whom. There is no planning application that may threaten them and, currently, we are not intending to sell the property. There is not one shred of evidence that these trees are under threat, only an uncorroborated statement that "many letters of concern" have been received from neighbours claiming that all the trees are to be felled. There is no indication as to how many such letters have been received and, Council officers have refused to inform us of the number.

The Council must prove that such claims are correct.

Who made such statements? When, and where, were such statements made?

The burden of proof rests with the Council.

We know positively that such proof does not exist.

2. No council official, not even the officer who inspected the trees (without our knowledge), has made any attempt to determine whether there was any truth or substance behind these "rumours". It appears that the decision to issue the Order was a matter of blindly accepting gossip, nothing else.
3. the fact that the council has accepted neighbourhood gossip, and only gossip as evidence, suggests to us that the Council does not have a structured or consistent method of assessing a tree for its suitability for protection, as recommended in the government guidance (Tree Preservation Orders – A Guide to the Law and Good Practice). As far as we can see it was purely a subjective decision. The Council have ignored basic guidelines.
4. the government guidance also mentions that "although a tree may merit protection on amenity grounds it may not be expedient to do so if the tree is under good arboricultural management". Since we bought the property just over three years ago, all of our trees have received regular attention from Mr A Yeoman, a widely respected and acknowledged competent tree surgeon, who, we understand has carried out works for the council in the past. Therefore, the trees are, and have been, clearly under good management. We have invoices to support this statement.
5. the letter from the Council dated 4th April and reference JF/AB/3757 states that:- "the road is important locally in the fact that it is the only road in Salisbury with such an avenue of trees"

We consider this to be a gross exaggeration. It is not a statement of fact. There are other streets lined with trees in Salisbury e.g. Roman Road and the lower half of Queen Alexandra Road, plus a number of tree lined main roads into the city. We believe there are others but, with only 3 years as residents of Salisbury we cannot be totally sure.

6. In addition we contend that Bouverie Avenue South is not an avenue in the sense being applied by the Council. An avenue is defined by the Concise Oxford Dictionary as:
A broad road or street, often with trees at regular intervals along its sides
A tree or lined approach to a country house, or, in the Collins Dictionary
A way bordered by two rows of trees

We feel that Bouverie Avenue South does not fit any of these descriptions. The trees on the eastern side of the road are the random remnants of the beech woodland that used to occupy the area before development. Everyone of these trees is situated on private land. The trees situated on the western side of the avenue, are coincidental survivors of the original woodland trees, and, are now situate on a regular basis, along the public roadside verge.

There is no "avenue" style planning to either sets of these trees and this renders the Council statement invalid.

7. No account appears to have been taken of the condition of our trees, particularly the fact that they were all topped some 20 to 30 years ago. This has resulted in significant areas of decay visible from the ground in the main stems adjacent to many of the larger branches, giving us major concerns for the safety of ourselves, our property, our neighbours, passing traffic, both vehicular and pedestrian. This is why we have carried out systematic arboricultural maintenance over the past three years.
8. it is therefore our view that this Tree Preservation Order is outside the scope of the regulations because:-
 - no threat exists to these six Beech trees
 - they are under good arboricultural management
 - Salisbury District Council has not demonstrated that any threat exists, other than "tittle-tattle."
 - Recommended government guidance has not been followed

Comments to objection:

1. The Council did feel that there was a threat to these trees due to the amount of correspondence received from local residents and due to the Council's statutory duty to protect trees, acting on the information received.
2. The Council assessed that there was a threat to the trees. The Council also carried out an evaluation of the trees to assess their suitability for protection. In this case it was deemed that the trees were suitable for protection.
3. The Council use "Tempo" an independent Tree Evaluation Method for assessing the need for preservation orders. This tool is recognised within the Arboricultural Industry and is used by approximately 150 Local Authorities for such this task. As such the Council does meet recommended Government Guidance.
4. The trees may have been maintained in the past, however in this instance the Council had to look at the specific threat of the trees being felled.
5. This is to the knowledge of the Council's Arboricultural Officer the only avenue of lime, sycamore and beech trees which have been allowed to grow so that they cover the entire road in the local area. Whilst there are other roads such as Roman road where there are street trees, most of these are managed as pollards, which does not have the same striking effect as this avenue in their current management.
6. It is accepted that the trees have not all been planted at regular intervals, however the road has been named as an "avenue." This is a broad road with wide grass verges and the road does contain numerous trees which due to their enclosure do in Arboricultural terms form a tree lined avenue.
7. The TPO does not stop works that are necessary being carried out; it does however require the applicants to make an application to carry out the works. The application is free and allows interested parties to make comments on the application. The Council would look to support work, which was necessary and had been justified and was also in the long term health and interest of the trees.

The Council's Arboricultural Officer attended 105 Bouverie Avenue South in the 19th August 2005 to assess whether there had been any major change in the trees since the TPO was originally served. Mr Willis refused to let the Officer inspect the trees from within his property, so the officer inspected the trees from the public pavement outside the property using binoculars to assess the upper crown. The Council accept that there is some decay in the tops of the trees due to past management, which has left some large wounds. In general the wounds are healing and most should callous over given time. The Council also accept that it would expect any reasonable owner, to wish to carry out sympathetic works to the trees in the future.

Other Representations Against:

The Council has also received seven identical letters from local residents objecting to the making of the TPO, however two of the objections also state that they think that up to three trees should be removed with the remaining three left in place.

Anon – That not all the tree subject to the order should continue, only those closest to the highway. There is a need to preserve all of the trees along both sides of the highway.

Anon – Object to the order on the basis that the owners are responsible.

Other Representations For:

There have been numerous comments asking for the protection of all the trees that contribute to the avenue effect in Bouverie Avenue South.

Mrs Salter, 117 Bouverie Avenue South - supports the order due to the threat to the trees at 105.

Mr & Mrs Jackson, 112 Bouverie Avenue South – support the order due to threat of felling as a result of tiresome work caused by autumn leaf-fall, possible damage to the owners driveway by falling beech nuts and also as the trees provide a screen of the house.

Mr Penfold – Thorneyburn, 103 Bouverie Avenue South – comments that in front of neighbours at his house they stated that they would fell trees although he also states that he is neutral on the order but feel the status of all the trees within private ownership is reviewed.

Jones – 133 Bouverie Avenue South – support the order because the felling would adversely affect the general appearance of the avenue.

Mr Hardcastle – 129 Bouverie Avenue South – support the order due to the beauty of the avenue when in leaf and would support an order to protect all trees lining the road.

Anon – (Names and address supplied) – supports the order because if the current threat at 105 is acted on they believe more owners would also to fell trees within the avenue.

Anon – (Names and address supplied) – supports the order because, trees down both trees are quintessential part of the nature of the street, no trees should be removed unless there is a proven danger.

Anon – (Names and address supplied) – supports the order because, this road is an avenue due to the trees, most residents value the definition, colour and visual enhancements that the trees give to the local environment.

Anon – (Names and address supplied) – supports the order because, the trees closest to the road form part of the ambience and their removal might detract from the good environment if felled.

Conclusion:

The trees are clearly visible from a public point of view, affords significant visual amenity and contributes to the leafy character of the area. There was a perceived imminent threat to the beech trees and they are therefore worthy of a tree preservation order.

Options for consideration:

Members should decide whether to confirm that order to make it permanent

Members therefore have the following options:

- a) **Confirm the order** Tree Preservation order 351
- b) **Not confirm the order** Tree Preservation order 351, with the effect that the trees will not be protected.

Costs None

Recommendations:

That tree Preservation Order 351 is confirmed without modification.

Background Papers:

None

Implications:

- **Financial:** None
- **Legal:** In Report
- **Human Rights**

Article 1 – Protocol – Protection of property – There is a minor interference but this is justified and proportionate in view of the public amenity value of the tree

- **Personnel:** None
- **Community Safety:** None
- **Environmental implications:** To seek to preserve and enhance the environment. The Council has a statutory duty to protect trees.
- **Council's Core Values:** Protecting the environment
- **Wards Affected:** Salisbury