

## Agenda Item 10

Development Services  
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# Report

**Report subject:** Tree Preservation Order 382, Manor Cottage, Cholderton

**Report to:** Northern Area Committee

**Date:** 1 February 2007

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### Purpose of Report:

This item is before Members to consider Tree Preservation Order (TPO) 382 which has been the subject of an objection.

### Background:

TPO 382 was made on 18 September 2006 after the Northern Area Committee decided that an earlier order (TPO 369) should not be confirmed.

TPO 369 was an area order, which included all the trees within the grounds of Manor Cottage. Some of these trees were in the vicinity of overhead power lines and others were not worthy of protection. As a result, this order was not confirmed but the Committee voted in favour of protecting the three most mature trees on site to preserve the character of the area.

TPO 383 was instigated to cover two Ash trees and a Horse Chestnut, situated close to the southern boundary of Manor Cottage, near to the Crown Inn.

### Objections:

The owner of Manor Cottage has objected to the TPO making the following points:

1. The trees at Manor Cottage are already protected because of their Conservation Area status and there is no specific threat that warrants the need for a TPO.



Awarded in:  
Housing Services  
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2. There is no evidence, in the form of a planning application, to sufficiently justify a threat to the trees. The TPO, therefore, fails the test of expediency. This point refers to a Court Case (Gilman v Rutland District Council, 25/11/2004) and suggests that an imminent threat must be present before a TPO can be applied.

3. This order has been made against the advice of the Councils Tree Officer.

4. The Council is inconsistent in its approach to protecting trees and fails to comply with its 'Statutory Duty' under section 197 of the Town and Country Planning act. Three recent planning applications are referred to and the differences in the treatment of the trees on each site are highlighted.

5. The Council regularly use conditions to protect trees, which are recognised to be a material constraint, when approving planning applications.

#### **Comments on objection:**

In response to the points raised:

1. The trees at Manor Cottage are situated within a Conservation Area, and are therefore covered by the protection that provides. However, two trees at the property have previously been physically damaged, in such a way as to present a risk to their wellbeing. Furthermore, two applications have been received to fell and remove trees at this address. The reason given in one instance was to clear the trees away from overhead power lines. No explanation was provided with the second application.

2. A planning application has not yet been submitted but this does not prevent the Local Authority from applying a TPO as a precautionary measure in response to verbal assertions that development is imminent. The issues already raised in the response to Question 1 reinforce the need for a TPO.

The key point in the Court Case referred to seems to relate to the misleading information provided to the committee rather than the expediency issue.

3. The Tree Officer has not previously recommended against the application of a TPO. He merely suggested that the trees were already protected by their position within a Conservation Area. The Committee were entitled to request a TPO if they considered it necessary.

4&5. These questions relate to other planning applications, which are each judged on their own merits. The owner of Manor Cottage has already highlighted the point that no planning application has been made in respect of the development of her property and as such these questions are irrelevant.

#### **Conclusion:**

The Horse Chestnut and two Ash trees, included in TPO 382, are worthy of protection. The trees make a significant contribution to the leafy nature of the village and their removal, or any damage to them would seriously detract from the leafy nature of the Conservation Area.

In view of the assertion that the site is to be developed and the recent application to fell further trees in the grounds of Manor Cottage (S/06/2494), including three within the canopy area of the protected trees, it is reasonable to believe that specific protection, in the form of a Preservation Order, is necessary.

#### **Options for consideration:**

Members should decide whether to confirm the order to make it permanent.

Members therefore have the following options:

- a) **Confirm Tree Preservation Order 382 (providing no further objection is received before 12<sup>th</sup> March 2007)**
- b) **Not confirm Tree Preservation Order 382**

#### **Recommendations:**

That Tree Preservation Order 382 should be confirmed so the trees can be protected against any perceived threat.