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REPORT

For Head of Development Services

TREE PRESERVATION ORDER 309 Mack's Lane, West Grimstead.

Background:

Written objections to the order having been received the decision whether to confirm [with or without modification] the Order or not, was placed before the committee for their consideration on the 30th September 2004 (see report at appendix). During that meeting, it was brought to the committee's attention by Mr G. Read [who spoke against the order] that he had been denied access to the tree preservation order file before the committee meeting, contrary to council policy. Concerns were also raised about the ownership of the Macks Lane. The committee resolved to confirm the order with modification changing the designation from an area order to that of a woodland order as recommended in the previous report dated 14th September 2004 (see report at appendix), subject to a review being carried out by officers to ensure that correct procedures have been followed and that the file on this matter is correct and no new substantive issues arise before the next normal Southern Area Committee (28th October).

Report:

Investigations by officers revealed that there had been a defect in procedures. An oversight in placing the TPO file with all the other files to be made available for public viewing led to Mr Read being denied access to the background papers to the committee report. A written apology was made to Mr Read explaining the reasons and confirming that the file would be available before the next committee meeting when this matter would be reconsidered. He subsequently viewed the file and at the last committee meeting on the 28th October 2004 raised certain matters at public question time and written response has subsequently been given. Mr Read has also been informed in writing that the matter will be reconsidered by the committee at its meeting on 25^h November and that he will have the opportunity to make representations in the usual way.

Internal procedures have been revised to ensure that this sort of occurrence does not happen again.

A request from the committee that further and additional investigations to attempt to discover the ownership of the Macks Lane was made at the meeting on the 30th September. A review of the file has been carried out.

To make an Order the Local Planning Authority must consider that it is expedient in the interest of amenity. A structured and consistent method for assessing the amenity value of the trees taking account of key criteria including visibility, individual impact and wider impact must be undertaken. Having assessed amenity value the Arboricultural Officer is satisfied that it is expedient to make an order because:

1. The trees within this area provide a valued and significant amenity to the locality and
2. There is a foreseeable threat to this amenity in that significant and irreversible damage is likely to occur should motor vehicles use the land. The damage will consist of soil erosion leading to the possibility of structural de-stabilisation of trees, direct damage to exposed roots and the crushing of other parts of the root system due to compaction of the soil. The compaction may also lead to additional physiological problems for trees as this can affect rooting, moisture and nutrient availability and change to drainage characteristics of the soils affected.

Procedures provide:

1. Ward members be given 7 days notification of the action to be taken
2. All land owners and occupiers and adjoining land owners and occupiers be served with notice of the order, a complete and full copy of the order, including details of their rights and obligations.
3. A notice may be served on the landowners and occupiers requiring details of their interest in the land.
4. Where an owner of land cannot be identified, service of the notice of the order and a copy of the order may be effected by posting copies of the documents on the land.
5. Where objections are received, the decision to confirm has to be made by a Council Committee and cannot be dealt with by the delegated powers.

In order to comply with the above the Council has

1. Given ward members 7 days notice
2. All known land owners and occupiers and adjoining land owners and occupiers were served as required
3. The following investigation of the Ownership was carried out:
 - 3.1 Land Registry Searches provided details of the ownership of two parcels of land adjoining Macks Lane but did not provide any information as to the ownership of Macks Lane
 - 2.2 All the adjoining land owners of which no information had been received from the Land Registry were served with a notice referred to at 3 above. The replies confirmed that no one with land adjoining Macks Lane also owned Macks Lane
 - 2.3 Enquiries with Wiltshire County Council have confirmed that although Macks Lane is defined as a public footpath of unspecified width it does not own the Lane.
 - 2.4 As a precaution enquiries have also been made of the Clarendon Estate which has confirmed that it has no interest in Macks Lane.
4.
 - 4.1 In the absence of an identified owner of the land, on which the trees are situated, details of the order and contact telephone numbers for the Arboricultural Officer were displayed at either end of Macks Lane
 - 4.2 Although notice of details of the order had been displayed at either end of Macks Lane, in order to comply with the technicalities of the Town and Country Planning Act 1990 full copies of both the notice and the order addressed to the 'owner' and separately to the 'occupier' were affixed to the land (i.e. at either end of Macks Lane) on 3 November 2004. The time limit for anyone claiming to be an owner or occupier of the Lane who receives notice of the order for the first time by means of these documents affixed to the land, is 2nd December.
5. An objection to the order having been received the decision to confirm the order, or not, is being placed before the Southern Area Committee and not dealt with under delegated powers.

There is no right of appeal to the Secretary of State against a TPO, However a TPO can be challenged by an application to the High Court, on the following grounds:

1. that the TPO is not within the powers of the Act, or
2. that the requirements of the Act or Regulations have not been complied with in relation to the TPO.

As explained in the appended report under "Additional Comments" it is recommended that the Order be modified changing the designation from an area order to that of a woodland for the reasons set out. This recommendation has not changed.

Conclusion:

1. Procedural defects in respect of Mr Read have been rectified in that the Committee are reconsidering whether the Order should be confirmed
2. That the council have complied with and discharged its duties and obligations under the Town & Country legislation in respect of this order
3. That there are grounds for confirming the order and that the order should be modified as recommended in the appended report

Recommendation:

That subject to no material objections being received by 2nd December the order be confirmed With modification changing the designation from an area order to that of a woodland order.

Appended Papers:

Committee report on TREE PRESERVATION ORDER 309 Mack's Lane, West Grimstead dated 30th September 2004.

Southern Area Committee

30th September 2004

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REPORT

TREE PRESERVATION ORDER 309, Macks Lane, West Grimstead, Salisbury.

Purpose of Report:

Written objections to the order having been received. The decision whether to confirm [with or without modification] the Order or not, is placed before the committee for their consideration.

Background:

Macks Lane is shown on the current Ordnance Survey Maps as a footpath of approximately 350m in length within the village of West Grimstead, extending in a northerly direction from Grimstead Road in the south to Crockford Road in the north, where it emerges approximately 10m to the west of the junction with Chapel Hill.

Approximately 270m, from north to south, of the lane is bordered by a large variety of woody species that include Oak, Ash, Sycamore, Poplar, Willow (2 species), Hawthorn, Blackthorn, Holly, Hazel, Elm regeneration and a number of others that give a total in excess of 19 woody species. Two of the large Oak trees within this area are in all probability in excess of 250 years of age, and would be considered significant (veteran) trees in their own right.

Concerns were raised by a number of local residents in mid 2003 about the effects to this lane should a proposed plan to have the footpath re-designated as a highway be successful, and consequently asked the council to consider the use of a Tree Preservation Order in order to protect the trees from any future damage that may occur.

As a result of a number of site visits and discussions with the County Council Rights of Way Officer, to determine if there was a valid application to change the status of the footpath which could affect the site, a provisional order was made on the 1st June 2004.

Objection:

A written objection to this Order was received on the 23rd June 2004 from Mr & Mrs Graham Read who own land that has an adjoining boundary with Macks Lane.

The objection is based upon the following.

- No discussion or consultation took place before the order was made.
- The order is a blanket order, and does not take account of the condition, age or type of trees.
- That the order was an abuse of the correct and proper purpose of a TPO.

Comments on the Objections:

Discussions and consultations have been taking place since the order was made; Mr & Mrs Read's comments are a part of that process as are the five written and three verbal [telephone] letters/comments in support of the order.

This order does take account of the age and species on this site, which is quite diverse. The purpose of the tree preservation order system is not just to preserve specimen trees but any tree[s] that are worthy of protection because of their contribution to the locality or area by virtue of their presence and the contribution they make, and which may be threatened.

Evidence to support the comments that this order is an abuse of the TPO system has not been provided. To date, the correct processes and procedures have been followed.

Additional Comments:

A woodland designation had been considered but to justify that designation the ground flora would need to reflect that type of habitat. [W.C.C.'s ecological officer has carried out a survey, however no results were available at the time the order was made].

Several of the trees could be identified and protected as individuals, however they would require reasonably accurate surveying to pinpoint their location, which could be both costly and time consuming. The same can be said for the group designation.

With an area the size of the lane, only the area or woodland designations are suitable and they were designed for these situations. An area designation covers only those trees present on the date the order was made and does not cover any trees that grow naturally, or are planted after, that date. A woodland designation covers all those trees present at the time the order was made and any that may subsequently be planted or regenerate naturally, until the order is revoked.

A recent telephone conversation with the W.C.C. ecologist confirm that the ground flora survey shows that the lane contains a number of species that would indicate that this is a remnant of ancient semi-natural woodland [indicator species found include; both soft-shield and harts-trough fern, dogs mercury, bluebell & wood millet]. A copy of that report will be placed in the TPO file once it has been received from W.C.C.

Planning History:

None

Background Papers:

Part VIII of the Town & Country Planning Act 1990.
Town & Country Planning (Trees) Regulations 1999.
Salisbury District Local Plan.
TPO 309 correspondence.

Options for Members Consideration:

The provisional order expires on the 31st November 2004 and members have the following options.

1. Confirm the Order without modification.
2. Confirm the Order with modification.
3. Not to confirm the Order.

Recommendations:

Option 2 - Confirm the Order with modification, changing the designation from an area order to that of a woodland. [This recommendation is in accordance with SDC Local Plan [June 2003] Policy G1 and CN17].

Implications

Financial - None

Legal - None

Human Rights – None

Personnel - None

Community Safety - None

Environmental Implications - Maintaining and enhancing the built and natural environments.

Council's Core Values – Being environmentally conscientious.