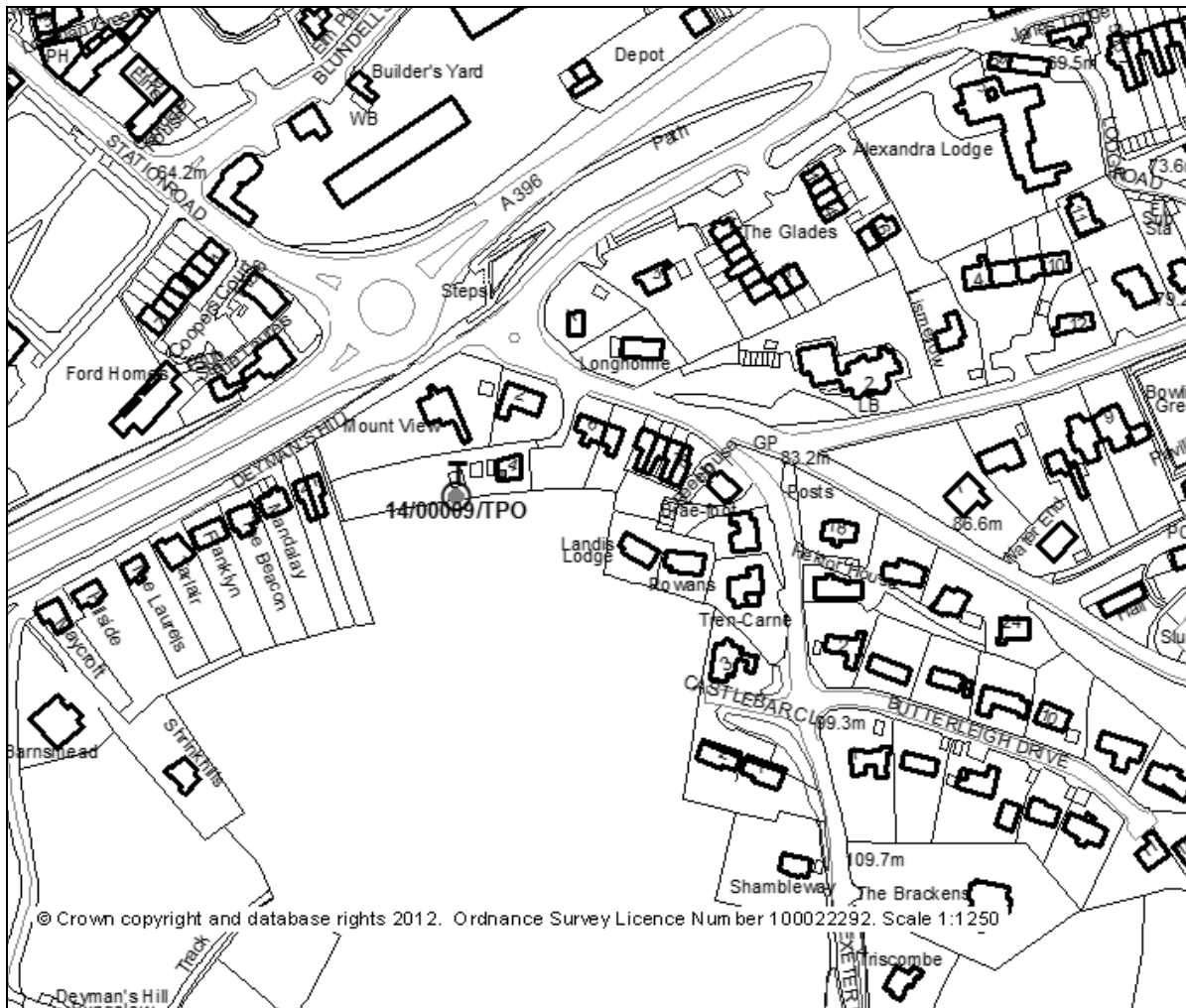


Grid Ref: 112425 : 296002

Location: Land Adjacent to 4
Canal Hill Tiverton
Devon EX16 4JJ



REPORT OF THE HEAD OF PLANNING AND REGENERATION

**APPLICATION 14/00009/TPO – LAND ADJACENT TO 4 CANAL HILL,
TIVERTON**

Reason for Report:

To consider whether a Tree Preservation Order should be confirmed in light of the objections that have been received.

RECOMMENDATION:

Subject to the outcome of a review of the recommendation following the receipt of an independent arboricultural report, that the Tree Preservation Order is confirmed.

Relationship to Corporate Plan:

The proposal impacts upon the Corporate Plan Priority 'Caring for our Environment'.

Financial Implications:

See legal implications and risk assessment below.

Legal Implications:

On 21st August 2015 a Tree Preservation Order was made under s201 of the Town and Country Planning Act 1990 and took effect immediately and will last for six months unless it is confirmed. Objections to the TPO have been received and include an engineer's report that recommends that the tree be felling for health and safety reasons in connection with the condition of the bank upon which it is located.

See also risk assessment below. Advice from Legal has been sought on whether there is any potential financial liability for the Council if the tree falls. An update will be given to Committee in respect of this.

Risk Assessment:

The tree in question is located on a steep bank and a chartered engineer's report has been received that recommends that it be felled for health and safety reasons due to the condition of that bank. Objections received on behalf of the property owner include correspondence from their insurers indicating that the risk should be mitigated by way of removing the tree. The objector believes that insurance cover has been withdrawn in relation to any claims arising as a result of the tree falling and indicates that they will hold the Council responsible for any claims if it continues to prevent the removal of the tree.

Consultation carried out with:

Consultation with the Mid Devon District Council Tree Officer informs the following report. A further assessment has been sought from an independent consultant arboriculturalist. At the time of writing this report, this has not yet been received.

1.0 DESCRIPTION/HISTORY

- 1.1 The Tree Preservation Order was made in response to an enquiry to fell the associated sycamore tree. The sycamore was not protected by a Tree Preservation Order or restrictive planning condition upon the time of enquiry, however due to the trees prominence within the surrounding landscape a Tree Preservation Order was created.

The sycamore tree is approximately 70 – 90 years old and adds to the tree lined landscape surrounding of Canal Hill. The tree is a significant size and well established. The tree is situated in the garden of 4 Canal Hill, approximately 20metres from the dwelling, and neighbouring dwelling. The tree is visible from various locations surrounding Tiverton town centre including Tesco's car park, and it is apparent that the tree is a significant landscape feature.

2.0 AMENITY EVALUATION

- 2.1 The tree adds a significant amenity/landscape value to the surrounding area. Following an amenity evaluation of the trees, it was deemed necessary to place further protection on them, in the form of a Tree Preservation Order.

3.0 REPRESENTATIONS

- 3.1 Several letters, emails and a chartered engineer's report have been received on behalf of the property owner which raise objection to the Tree Preservation Order on safety grounds. The contents of the engineer's report are summarised as follows:

1. The tree is located on a steep bank of approximately 55 degrees from the horizontal. Erosion and slippage of the bank is exposing the tree roots, leaving it vulnerable to movement in high winds and a rocking motion.
2. The grass surface of the bank is being undercut by movement and aggravated by water run -off from the higher ground above the tree. The bank is slowly collapsing. The undercutting by erosion follows the line of the rootball. The drive is frequently cleared of soil washed down from around the tree.
3. The tree is prone to strong westerly winds, with concern regarding its stability in windy weather.
4. To the lower / north side of the tree are a number of garages and private access raising concern regarding damage to property and injury to person. There is a high risk in high winds of the tree falling towards the land and garages to the north. There is significant concern for the health and safety for people using the garages, driveway plus risk of severe damage to property.

5. Due to its size, it would be impractical to attempt to stabilise the tree. There is no way that the soil around the base of the tree can be strengthened without destroying roots and killing it. The tree is dangerous and should be removed for health and safety reasons.

3.2 The contents of other objections on behalf of the property owner are summarised as follows:

1. The Tree Officer has given no proof or evidence to support her opinion that the tree is not in imminent danger of falling.
2. We are not now insured should the tree fall and cause damage to property, injury or death to persons. We expect the Council to provide the necessary insurance that we no longer have.
3. Inform the Council that unless I am informed otherwise, for health and safety reasons I will have the tree felled.
4. The civil and structural engineer cannot say when the tree will fall, but advises that it should be felled. We need to do this to protect our and our neighbour's property and to avoid injury / death to those living adjoining and accessing the drive and garages. The Tree Officer is setting herself above an experienced engineer.
5. We question whether a second opinion will contradict those received and therefore take on liability. We cannot fence off the area to the full extent – this would close all the garages and possibly require 1 or 2 dwellings to be vacated. We cannot continue with the risk hanging over us.
6. The engineer has worked in Mid Devon for many years and knows the type of soils and structures. The Act allows us to fell a dangerous tree. Further delay increases risk. We hold MDDC and relevant officers liable for any delay that could result in the tree causing damage or injury. We have no option but to arrange to fell it at the earliest opportunity.
7. The tree is 23.6m high (77 ft). As such if it fell without rotation (most trees are lifted by their immediate roots) it would hit No. 4 to an increasing extent. If it rotated across the site, it could fall and hit Mountview.
8. Most trees that fell in the high winds of 1988 and subsequently are shallow rooted. Shallow foundations are more prone to being turned over than those deeply founded. The Tree Officer has a lack of understanding of structures and the effects of strong winds. Her assertion that the tree has a significant root system to the rear is unproven and even if this were the case, this cannot guarantee that it would not blow over.
9. My experience over 40 years of practice with Engineers, Land Drainage consultants etc., etc., proved that reliance on trees and plant roots to stabilise erosion can only be deemed effective where that encompasses new planting specifically designed for the site/area in question with appropriate species. I was often involved with development sites in producing with consultants

detailed planting schemes. We never relied on existing planting (especially trees) as their position and root structure was always uncertain and undefinable. That this tree will prevent further erosion is challenged as we repeatedly have to dig out the erosion around the garages (to prevent water entering), to the turning head and where it is washed across and builds up adjacent to Mountview (to prevent flooding in Mountview). Erosion is continuous and ongoing. The Tree Officer is ignoring this.

10. We have never said that the tree is in imminent danger of falling only that the ground conditions are such that it could fall at any time and especially in high winds (now more frequent). Surely it is better to control that fall by felling the tree rather than experiencing a disastrous collapse that will cause serious damage and place adjoining property and people at risk?
11. Architects and Engineers work on sites with trees of varying ages and sizes all the time. Over 40 years of practice my experience has resulted in many trees being saved, retained where possible or when deemed at risk replaced with suitable species in better positions. Engineers have to work to the same standards and it is my experience that many have the knowledge to assess and determine the condition and stability of any tree. It is not right to suggest that any other Professional than an Arboriculturalist has no knowledge of Arboriculture. To suggest that the Engineer has no Arboricultural experience is conjecture and not based on fact.

3.3 Email from the property owner's insurance company states that whilst they cannot pass any comment on the engineer's report, it is in the best interests of their client for its guidance to be followed. From an insurance perspective, the client should mitigate any risk and if this involves removing the tree, this option is supported. The tree should be removed.

4.0 **MATERIAL CONSIDERATIONS AND RESPONSE TO THE OBJECTION**

4.1 This application proposes a new Tree Preservation Order 14/00009/TPO, to a well-established sycamore tree situated on land adjacent to 4 Canal Hill, Tiverton. The tree is situated in a prominent location due to its siting on the hill and is visible from various locations surrounding Tiverton town centre. The Tree Officer does not consider the tree to be within falling distance of any dwellings but it is immediately adjacent to garages and a private access. This is disputed by the objector, who considers the tree to be within falling distance of the dwelling at no 4 Canal Hill and potentially Mountview. There are no obvious visible structural concerns to the tree itself. The tree is an early mature sycamore, in good health. It is a very prominent landscape tree.

Objections were concerned regarding the dangers the tree may pose, and the erosion of the bank/hill the tree is situated upon. A report has been submitted on behalf of the property owner to support their case for the felling of the tree. The report is by a qualified chartered engineer and addresses the condition of the bank on which the tree is located. It does not address the health and condition of the tree

itself. The author of the report has no listed arboricultural qualifications and no evidence has been supplied either within or accompanying the report to demonstrate particular knowledge of arboriculture.

Concern has been expressed in the report with regard to the erosion of the bank on which the tree stands. The stony subsoil is believed to leave the soil vulnerable to erosion in heavy rainfall. Section 2.1.6 of the report states that if the tree was located on level or gently sloping ground then, in the opinion of the surveyor the tree would be in a reasonably stable condition. However, when rooted into a steeply sloping embankment there is the risk that in high winds the tree may fall towards property or land. There is therefore significant concern expressed in the report for the health and safety for people using the garages, driveway plus a risk of severe damage to property.

The Tree Officer noted that the surveyor's comments are limited to the condition of the bank and not the tree itself or its root system. She is of the view that tree roots are generally found in the top 1m of soil and can spread a considerable distance from the tree. Tree roots will grow in a way that suits its environment for optimum anchorage and feeding. Tree roots systems may be compromised by disease or mechanical damage. There has been some element of ground works carried out at the site in close proximity to the tree but this was some time in the past. The tree is likely to have a significant root system to the land at the rear of the tree, running along the length of the bank and as is visible where roots have been exposed by excavation works, at the front of the tree.

2.1.7 of the report states that the tree is so large that it would be impractical to attempt to stabilise it in any way and there is no way that the soil around the base of the tree can be strengthened without destroying roots and killing the tree. It recommends that the tree is removed for health and safety reasons.

The Tree Officer acknowledges that there are problems with soil erosion at this site. The very steep cutting at the rear of the garages is clearly dropping but this is not because of the tree. There is no adequate retaining wall between the earth and the garages.

There are a few tree roots to the garage side of the tree, which are exposed and have been done so by mechanical means to create a turning point/cutting into the adjacent land. This does not appear to have rendered the tree unstable in anyway but there may have been some root damage at the time of the excavation works.

The likelihood of soil erosion is not questioned, but it is not felt that there is justification for the removal of this prominent tree. It is the view of the Tree Officer that the tree's root system may be reducing the erosion of the bank. It is well known that tree and plant roots can act as stabilising factors against erosion.

The tree appears to be in good health. The property owner (objector to this TPO) recently wrote to the Council giving, 5 days' notice of their intention to fell the tree under the 'dangerous' exemption to its preservation. Following a further site visit, the

Tree Officer has formally advised that based on the information received, the engineer's report and her observations she does not consider that there is justification for the tree to be felled under this exemption.

The Tree Officer recommends that the TPO is confirmed. The objectors have a right of appeal should they apply to have the tree felled and in the event that such an application is refused.

This case raises issues in relation to safety and degree of risk posed by the tree as a result of the condition of the bank. In light of this, the services of an independent arboricultural consultant have been secured in order to give the Council the benefit of a second opinion and to receive his conclusions over whether there is justification for the tree to be removed, particularly whether it is justified in relation to imminent danger. This report will not be received before the agenda for the 5th November 2014 Planning Committee meeting is published. Instead an update incorporating this additional information will be provided at the Committee meeting.

5.0 CONCLUSION

- 5.1 It is the view of the Council's Tree Officer that the sycamore tree included in this Tree Preservation Order is worthy of this protection. The difficulty is the perceived danger arising from the erosion of the bank upon which the tree is located as referenced in the engineer's report submitted in support of the objection.

It is considered that the tree is unlikely to have caused erosion of the bank. The construction of a garage without an appropriate retaining wall, including more recent cutting away at the bank are more likely to have resulted in erosion of the bank. Furthermore, the trees siting is likely to be reducing the erosion of the bank.

The tree roots are likely to be predominantly in land associated with the field above the bank and the tree is unlikely to become unstable. The tree appears to be in good health and it is concluded that there is insufficient justification for the removal of the tree as an imminent dangerous exemption. Due to the tree's prominence within the landscape and the amenity value it provides, it is recommended that the Tree Preservation Order be Confirmed.

Once the independent arboricultural report has been received, a review of the recommendation on whether to confirm the TPO will be undertaken. This is reflected in the current recommendation above. Members will be updated with a revised recommendation following this internal review.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.

Contact for any more information

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Background Papers

None

File Reference

14/00009/TPO

Circulation of the Report

Cllrs Richard Chesterton
Members of the Planning Committee