

Planning Committee 4 February 2015

Case No. ENF/14/00098/UWTPO

Grid Ref: 282270 100580

Address:

1 Springfield, Western Road, CREDITON, Devon

Alleged Breach:

Unauthorised work carried out to a tree protected by a Tree Preservation Order

Recommendation:

That the Legal Services Manager be authorised to consider a prosecution in line with the provisions of the Crown Prosecution Service criteria for such prosecutions, following unauthorised work being carried out to a tree protected by a Tree Preservation Order.

Site Description:

1 Springfield, Western Road, CREDITON, Devon

A semi-detached property set back off the road in Western Road with large gardens.

Site Plan:



Site History:

86/01778/OTHER	Change of use of part of dwelling to registered residential home	DELETE
87/00421/FULL	Change of use from dwelling to residential home	PERMIT
94/00249/FULL	Erection of a two storey extension	PERMIT
04/00009/FULL	Erection of 1 no. dwelling	DELETE
04/00982/OUT	Outline for the erection of a dwelling and formation of access	REFUSE
80/00974/OUT	Outline for the erection of a dwelling	REFUSE
80/01719/OUT	Outline for the erection of dwelling and garage	REFUSE
13/01275/FULL	Erection of extension and detached garage with annex over	PERMIT
14/02038/TPO	Application to fell 1 Black Pine tree protected by Tree Preservation Order 14/00005/TPO	PENDING CONSIDERATION

Development Plan Policies:

National Planning Policy Framework

Reasons/Material Considerations:

On 3rd July 2014, your Local Authority Tree Officer had cause to visit 1 Springfield, Western Road, Crediton in relation to a trench that had been dug close to the base of a pine tree at the address, protected by a provisional Tree Preservation Order (14/00005/TPO) issued on 28th May 2014. This order was later confirmed on 17th July 2014, without modification.

The owner of the property was in the process of carrying out development granted under planning permission 13/01275/FULL for the erection of an extension and a detached garage with annex over. In consultation with Western Power, it was arranged to take a new power supply for the property from Western Road. It was agreed with Western Power to move an electric pole from the outer edge of the pavement in Western Road to a point adjacent to and conjoined to the southern boundary of 1 Springfield. Plans for the work were drawn up and were due to be carried out. The positioning of the pole so that it conjoined with 1 Springfield meant that the cable for the power could be brought down the pole to a position approx. 300 mm below the ground level of 1 Springfield (approx. 1 metre above the pavement level and a shallow trench dug for the cable to be taken across the property to serve the buildings. Because of objections to the line of the overhead power cable, the pole was moved to a position at the outer edge of the pavement.

The cable to the development, therefore, had to be buried in the pavement and a much deeper trench dug close to the tree in order to feed the cable onto the property. Work had reached a point where the trench had been dug when the Tree Officer attended. It was quite apparent that the trench had cut through a number of roots to the protected tree down at a depth of about 1 metre.

On 4th September 2014, the owner of the property was formally interviewed under caution. During the interview, the owner stated that he believed the work that affected the tree was carried out as exempted work by a Statutory Undertaker (Western Power) and had been necessary to provide

power to the property. In addition, he stated that the change in location of the pole supplying the power was out of his hands and that had the pole been allowed to remain in its original position, there would have been much less impact on the tree.

At the time of this report, there is no visible sign that the tree has suffered any fatal damage, but it is likely that such visible evidence would not become apparent for some years. However, the owner has submitted an application to fell the tree based on information received. Members will be updated as to the result of that application before the date of the meeting. If permission is granted, it will be conditional on a replacement tree being planted.

Human Rights and Equality Issues:

The implications of any action taken have been duly considered with regards to the provisions of the Human Rights Act 1998, but as this is a Legal decision based on an alleged offence, Article 8 and Article 1 of the First Protocol will not be compromised.

Options for action or remedy:

The list of options available is as follows:

Take no action:

This is a decision Members could take based on mitigation offered by the land owner and on the fact that a new tree will be planted to replace the tree affected. If Members do not believe that a prosecution would be in the public interest, then again, this would be an appropriate course of action.

Prosecution:

If members resolve to support a prosecution, a file would be prepared and passed to the Legal Team who would then determine that the circumstances fall within the Crown Prosecution Service criteria for such a prosecution. Ultimately, it would be a Legal decision whether to pursue a prosecution or not.

Issue a Formal Caution:

Where there is evidence to show that an individual is responsible for the commission of an offence, but the circumstances of the offence do not meet the criteria for a prosecution, there exists an option to issue a formal caution. This would be regarded as a finding of guilt and could be taken into consideration in future should the same person be responsible for a similar offence and would weigh more heavily toward a prosecution.

