



BROMSGROVE DISTRICT COUNCIL

MEETING OF THE PLANNING COMMITTEE

MONDAY 8TH MAY 2017
AT 6.00 P.M.

PARKSIDE SUITE, PARKSIDE, MARKET STREET, BROMSGROVE, B61 8DA

:

SUPPLEMENTARY DOCUMENTATION

4. Updates to planning applications reported at the meeting (to be circulated prior to the start of the meeting) (Pages 1 - 8)

Parkside
Market Street
BROMSGROVE
Worcestershire
B61 8DA

K DICKS
Chief Executive

Bromsgrove District Council

Planning Committee Meeting 8 May 2017

Update Report:

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Tree Preservation Order (No. 19 of 2016) – Trees on land at Plymouth Drive, Barnt Green

Paragraph 3.2 of the report should be replaced with the following:

- 3.2 'Amenity' is not defined in law, and is a matter of judgment for the planning authority. However, Government guidance states that trees should be protected if removal would have a significant negative impact on the local environment and its enjoyment by the public. An important factor is the degree of public benefit or enjoyment by the trees including visibility of the trees by the public. Another relevant factor is the impact and importance of the trees in relation to their characteristics. Expediency is usually demonstrated if there is a risk that the trees will be managed in a way that is significantly adverse to the amenity of the area. Members have the power to modify the tree preservation order but only by removing trees or lessening the effect of the provisional order.

Officers have received the following late submission from one of the objectors:

Dear Jan,

As promised please find few photos attached. To summarise:

1) Following a letter I received from the Council's legal officer, Ms Rasma Sultana informing me that the tree next to my house has been put under a temporary TPO I wrote an email to her on 6th December 2016 expressing my surprise at how the Council could do this without carrying out an impact assessment and without looking at the damage this tree is doing to the house and the health & well being of my family, particularly, my two children.

The tree has caused massive damage, cracks and upheaval to the drive & walkway where my children can't play anymore and keep falling and hurting themselves severely particularly, when it's dark (and especially during the winter season when it gets dark early). We can't use the garage door as we can't open it because of the upheaval and we fear that the roots have come through to our lounge as there are

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now lumps beginning to appear on the floor. The tree has affected our lives, our health and well being and has caused misery. We fear we will not be able to live peacefully in this house because of the tree and we will also not be able to sell it.

2) Ms Sultana replied back assuring me that this was a just a temporary measure and requested her relevant colleagues to get back to me.

3) On 21st April 2017 I received a brief email from Mr Gavin Boyes stating that he intends to recommend to the committee that the Order be made permanent. I was shocked as I thought someone will get in touch, carry out an impact assessment, have a look at the damage etc before making any recommendations.

3) I was due to fly abroad for a week, however, I searched for the right people to speak to and managed to speak to Ms. Jan Smyth at the Council on 28th April who directed me to the papers of the meeting. I was disappointed and shocked to see a recommendation report from Mr Boyes to the Committee in which he refers that he made appointments with all those affected, gained permission to access the sites affected etc. This is not true. Mr Boyes or anyone else from the Council did not contact me, nor sought permission to visit my property or spoken to me to assess the impact on our health & well being. Mr Boyes returned my call on 28th April and I challenged him on this point and he apologised to me in our telephone conversation for not having contacted me.

I am deeply upset that this report to the committee has been prepared in this context and has not made a site assessment or an impact assessment.









Response to legal issues

In relation to the issue of property damage caused by the trees, this does not in itself prevent the confirmation of a tree preservation order. The Council has to carry out sufficient investigation and make a judgment on the appropriateness of the order, balancing the value of the tree to the harm caused by the tree. Officers have made that assessment in the report. The tree preservation does not prevent works to the tree for the abatement of the damage (or give the landowner an excuse to ignore the damage) but provides a structure under which the tree is managed. The general aim would be to deal with the property damage while preserving the tree as much as

possible. The objector has the right to apply for compensation if the refusal of the consent results in damage to his property.

Regulation 13 of the Town and Country Planning (Tree Preservation)(England) Regulations 2012/605 prevents the following without written consent of the local planning authority:

- a) cut down;
- (b) top;
- (c) lop;
- (d) uproot;
- (e) wilfully damage; or
- (f) wilfully destroy,

of a tree protected by a tree preservation order.

However there are exceptions to this prohibition in that some work can be carried out, without consent in certain circumstances including (1) the necessary works for the prevention or abatement of a nuisance (which would include a consideration of whether there are any alternative works that could achieve the same result) or (2) works that are urgently necessary to remove the risk of serious harm, provided certain procedures are followed.

Dr Azmi has expressed concerns about potential danger to his children. His children are assumed to be minors although he has not stated this expressly. This raises the question whether the confirmation engages article ECHR (right to private and family life). Where the article 8 rights are those of children, they must be seen in the context of article 3 of the UNCRC (United Nations Convention on the Rights of the Child) , which requires a child's best interests to be a primary material consideration.

Officers are of the view that Dr Azmi has not provided specific information to enable the Council to decide whether the rights of the child are engaged in the above context. However for the avoidance of doubt, where this issue is engaged, the law is as follows: The decision maker is required to identify what the child's best interests are. In a planning context, they are likely to be consistent with those of his parent or other carer who is involved in the planning decision-making process.

Once identified, although a primary consideration, the best interests of the child are not determinative of the planning issue. The decision is not merely a case of assessing whether the public interest in planning controls outweighs the best interests of the child.

However, the children's best interest must be given foremost importance and must be at the front of the decision maker's mind as they examine all other considerations. The decision maker needs to assess whether the adverse impact of a decision on the interests of the child is proportionate.

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As stated, officers are not of the view that Dr Azmi has provided any specific information to demonstrate that his children are affected by the damage to the tree over and above any other member of the family. Therefore the interests of his children, identified as avoiding injury and other harm because of the damage to the property, align with the interests of the rest of the family and no other additional interests have been identified.. In the circumstances, particularly the ability to apply for any necessary works to address the problems, officers are of the view that confirming the order is proportionate in the circumstances.