

16. The SSDC (Kingsbury Episcopi No. 1) Tree Preservation Order 2009

Strategic Director: Rina Singh, Place and Performance
Assistant Director: Simon Gale, (Economy
Service Manager: David Norris (Development Manager)
Lead Officer: Phillip Poulton – Tree Officer (Conservation)
Contact Details: phil.poulton@southsomerset.gov.uk (01935) 462670

Location Plan of the Traditional Orchard



Purpose of the Report

To seek confirmation of the above Tree Preservation Order, relating to 264 traditional orchard trees, on land opposite Kingsbury Episcopi School, Stembridge, Kingsbury Episcopi.

Public Interest

This report seeks confirmation of the above Tree Preservation Order, relating to 264 traditional orchard trees in Stembridge, on land opposite Kingsbury Episcopi Primary School.

Recommendation

To confirm the Order.

Background

Planning Authorities have a statutory duty to protect trees by the serving of Tree Preservation Orders where it is appropriate to do so.

Orchards are a significant part of the cultural landscape of South Somerset, contributing considerably to the local distinctiveness of the district and to its biodiversity. This orchard lies within *the core area of South Somerset apple country* identified in the council's adopted 'The Landscape of South Somerset'. (SSDC 1993)

The orchard came to the Council's attention as a result of an application for three dwellings [09/03070/OUT]. The following are extracts of the Landscape Architect's (Robert Archer) advice to the Case Officer, which specifically refers to those trees visible from the local primary school:

"Such a footprint would require the removal of many orchard trees, which would negatively impact upon both the integrity of the orchard area as a visual feature (particularly as seen from the village street) and as a distinctive landscape component characterizing the locality, not just at this local level, but also as a feature of the wider landscape and culture of Somerset. Consequently, given these impacts upon landscape character there are clear landscape grounds with which to resist this application".

Furthermore, it is not uncommon for construction activities within small development sites to spill over onto neighbouring land (thereby negatively impacting upon the health of adjoining trees), particularly where that land is within the control of the applicant.

A Tree Preservation Order was served upon the orchard and the planning application was refused; a decision which was contrary to the view of the Parish Council although accepted by the Ward Member. Objections opposing the Order were received from the landowners. Those objections were considered by the Tree Officer and discussed with the landowners by telephone and site visit. Unfortunately, these discussions failed to lead to the withdrawal of the objections.

Within the same Ward a Tree Preservation Order was recently served upon a similar orchard but one considered to be of somewhat lesser value (only 92 trees in a less prominent location) located upon land adjacent to Owl Street, East Lambrook [SSDC (Kingsbury Episcopi No. 2) TPO 2009]. This is uncontested.

The Ward Member has not agreed to overturn the objection and has requested that the matter be considered by the Committee

Discussion

The perception that Tree Preservation Orders cannot apply to orchards situated upon agricultural land or otherwise is incorrect and originates from the wording within pre-1999 Model Orders.

The primary guidance that Local Authorities refer to, is 'Tree Preservation Orders – A Guide to the Law and Good Practice; March 2000', published by the Department of the Environment, Transport and the Regions: London.

Specifically referring to fruit trees, it states within:

"A fruit tree may be protected by a TPO provided, of course, the LPA believe it to be in the interests of amenity to do so", (Para 6.17, pp 40).

“If a fruit tree is protected by a TPO and cultivated in the course of a business, the LPA’s consent is not required for cutting it down or carrying out work on it, as long as the tree work is in the interest of that business”, (Para 6.18, pp 40).

“If a fruit tree protected by a TPO is not cultivated on a commercial basis, it is necessary to obtain the LPA’s consent before cutting it down. However, the LPA’s consent is not needed before pruning any tree cultivated for the production of fruit, as long as the work is carried out in accordance with good horticultural practice”, (Para 6.19, pp 40).

The exemptions ‘tightened-up’ within the 1999 Model Order state that consent is not required for:

“(b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;

(c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit” (Mynors C. 2002).

The first of the two provisions clearly applies only to commercial fruit growers. If it is claimed by the landowners that they cultivate the trees for the production of fruit in the course of a business or trade, it is difficult to comprehend how removing apple trees would benefit that business, unless it was undertaken with the intention of replacement planting with more productive trees.

The second exemption only allows ‘pruning in accordance with good horticultural practice’, not lopping, topping, felling or uprooting.

This puts the matter beyond doubt in that it makes clear that tree work of any consequence does need consent.

The objection to the Order includes concerns regarding a possible adverse affect upon the resale value of the property. This is a subjective matter and claims for loss of development value or any other diminution in the value of the land are excluded by the Model Order

Traditional orchards have been designated as a ‘Priority Habitat’ of the UK’s Bio-Diversity Action Plan as well as adding to the local distinctiveness of South Somerset. The Council has records demonstrating that the site has been an orchard since at least 1888. Traditional orchard trees typically have a productive life of 80 -140 years.

The reason behind serving the Order is not to prevent or obstruct development, rather it is intended to preserve the ecological, historical and visual amenity values that the trees provide to the wider community.

Financial Implications

If the Council receive an application to fell the trees which they then refuse, the Appellant is entitled to appeal to the Planning Inspectorate (within 28 days) which has some implications upon Officer time but none for appeals costs.

Entitlements to compensation are limited, a specific exclusion exists for any loss of development value or any other diminution in the value of the land.

Corporate Priority Implications

The retention of traditional orchards epitomises the objectives within South Somerset Corporate Plan to provide a balanced built and natural environment [national average tree cover equates to 9%, South Somerset's is just 4%].

Carbon Emissions & Adapting to Climate Change Implications (NI188)

The benefits of trees converting Carbon and alleviating localised flooding are well established.

Equality and Diversity Implications

None.

Background Papers: *Tree Preservation Orders – A Guide to the Law and Good Practice*; March 2000, The Department of the Environment, Transport and the Regions: London.

The Law of Trees, Forests and Hedgerows, Mynors C. 2002; Sweet & Maxwell: London.
