

The Committee Officer advised the Panel that Mr Cook had contacted the office by email that morning to ask the Panel to carefully view tree T6 as work had recently been undertaken to raise the crown of this tree and the contractors had expressed concerns about the health of the tree, stating that it had a number of cavities / pockets of decay in the main trunk which were clearly visible and the tree overall was in poor condition. Members viewed the trees from various points along St Faiths Road, noting the relationship of all the trees. They paid particular attention to trees T6 and T7 in respect of which objections had been received to their inclusion in the Order. Members viewed T6 and noted the appearance and features of the tree and noted the extent of the crown lifting work undertaken. The Conservation Officer commented that the cavities would have formed as a result of wounds created by the removal of large branches in the past. He pointed out the location of one Oak tree which was already protected (nearest the mini roundabout) and he pointed out that 2 trees on plot 10 had been removed with agreement as one was a category "C" tree and one a category "U". Trees T6 and T7 were category "A" trees. (Categories as defined in the Oakfield Arboriculture Services "Arboricultural Implications Assessment and Preliminary Method Statement prepared in respect of Plot 9 – later referred to as the "Oakfield Assessment".)

The Panel then convened at 10.30am to consider the objections to the TPO. Those listed above were present. The Chairman invited those present to introduce themselves and then outlined the procedure to be followed.

The Panel noted that the Council made the decision to safeguard the trees, following the approval of full planning consent for twelve self-build plots on the site. The Council decided to make the TPO to protect the Oaks, which were considered to have significant visual amenity, for the reasons stated within the Regulation 5 Notice:

The trees in question contribute to the visual amenity of the immediate and surrounding land and are significant landscape features to the street scene of St Faiths Road.

One objection to the Order had been received on 15 August 2017 from Mr S Cook, the owner of plot 10; a further objection had been received on 17 December 2017 from Mr A & Mrs B Clarke, the owners of plot 9. Although this objection was received after the 28 day deadline, it was agreed it could be considered, having regard to the fact that the plot owner's agents (A Squared Architects) who had been notified of the Order had not forwarded the TPO documents to their clients. Mr Cook was not able to attend the Hearing.

The Panel then heard from Mr Clarke who made reference to the recent works carried out to T6 to lift the crown of the tree. The contractors had commented that the tree had rot fungus and cavities and pockets of decay. He went on to state that, prior to purchasing the plot, he had spoken to

Mr Ben Burgess who confirmed that there were no TPOs on the trees apart from the first Oak Tree, and there would be no objection to the removal of the trees and their replacement with alternative native species. On that basis he had proceeded to purchase Plot 9. If this had not been the case he would have had a preference for plot 11 or 12 which did not have any tree constraints as the trees in this area had been protected by way of their inclusion in a corridor outside the development plots. Mr Burgess was the planning case officer dealing with the planning permission for the site and was fully aware of the proposals which was why Mr Clarke had contacted him. As matters progressed, Mr Clarke had continued to communicate with the Council. He stated that initially the advice from the Highway Authority was that T6 and T7 should be removed to facilitate access to plot 9 from the highway. This advice had however changed having regard to traffic flows. The Oakfield Assessment had raised the issue that T7 would be adversely affected by work to the adjoining plots but, despite this, the Council had recommended that the tree be retained. Mr Clarke pointed out that plot 9 was the only plot which had 2 trees, whilst other plots had no impact from trees. The 2 trees adversely affected entry to the plot and he felt regard should have been given to this when considering the planning application and the plots designed in such a way as to avoid the trees. Mr Clarke stated that he had given due diligence to the proposed purchase of his plot and, on at least 2 occasions, had sought advice on the situation regarding the TPO. He refuted the statement by the Conservation Officer that he should have been aware of the position and the intention to protect the trees by virtue of the conditions attached to the planning permission which sought to protect the trees. He had taken advice and acted on advice from the planning case officer. He also refuted the claim of the Conservation Officer that the trees were not unsafe as the Oakfield Assessment referred to the works having a detrimental effect on the condition of the trees even if the recommended measures were taken to protect the trees during construction works. On this basis, he felt the Order had not been served in a just and appropriate manner as required by the legislation. The TPO should have been served in 2014 when the planning permission had been granted and steps taken to separate the trees by creation of a buffer / corridor for the trees to protect them. Mr Clarke stressed that he liked trees and was happy to provide replacements. He commented that, as supported by his contractors, T6 was not a good specimen and should not be included in the Order. T7 was a better tree but still not superb. The owners of plot 10 had also raised objections to the inclusion of T6 and T7 in the Order having regard to the poor condition of the trees. They were of the opinion that the 2 trees removed with consent were better specimens than T6 and T7. He invited the Panel to remove T6 and T7 from the Order. As an alternative, having regard to the fact that T7 was situated to the edge of his plot but T6 was in the centre of the front boundary, he asked for T6 to be removed and T7 to be retained to allow him to plant a replacement for T6 nearer the edge of the plot.

Mr Clarke then responded to questions as follows:

The Conservation Officer asked Mr Clarke if he had a written statement on the current condition of T6 as the tree had been regarded as a category "A" tree with a life expectancy of a minimum of 40 years and if this situation had changed it would be helpful to see evidence of this. Mr Clarke stated he did not have written evidence as the comments about the condition of the tree had arisen as part of remedial works undertaken just the previous week. Mr Clarke stated that the Oakfields Assessment had been an overall visual assessment whilst the latest assessment had arisen from works carried out to the tree. The Conservation Officer added that, from the ground, the historic wounds of previous pruning were visible but it was not possible to see the extent of the decay and whether or not the integrity of the tree had been compromised. A degree of rot and decay was normal and enhanced the biodiversity and ecology value of the tree for wildlife but there was a need to verify the safety of the tree. He added that, if an application was made for works to a protected tree which was found to be unsound, the Council would not be opposed to its removal but the space occupied by the tree would remain protected for a replacement tree.

Mrs K Vincent referred to documents regarding outline planning for the site and asked Mr Clarke if he was surprised that the intention was to protect the trees. The planning permission referred to the need to ensure the row of mature trees along St Faiths Road was retained. Mr Clarke responded that there was no TPO on the trees at the time other than the one Oak tree near the mini roundabout. When he purchased the plot at auction, he could see that a measure of consideration had been given to protecting trees on plot 1 and on plot 12 where a corridor had been created to separate the trees from the adjoining plots. He had also spoken to Mr Burgess. No other information was obvious to him at the time and he would have assumed that Mr Burgess would have advised him appropriately. He believed if the Council wished to protect the trees they should have served the TPO at the earlier stage. Mrs Vincent asked Mr Clarke if the TPO would prevent him from undertaking work on his plot to which he responded that T6 would make it much harder as it was close to the road and central to the plot; it would be more difficult to achieve the visibility splays and access the plot. Mrs Vincent asked Mr Clarke, if when he brought the land, he had been aware of the various documents which referred to the protection and retention of trees associated with the development and suggested the onus was on him to be aware of the intention to protect the trees. Mr Clarke responded that he was aware of a requirement to fully consider the issue of the trees which was why he had contacted Mr Burgess. Mrs Vincent commented that Mr Burgess had no recollection of this conversation but Mr Clarke stated he had a definite recollection it had taken place and he had shown due diligence. Mrs Vincent asked Mr Clark if he was aware that the Oakfield Assessment stated that it was possible to create the access to the plot and retain the trees to which Mr Clarke responded he was aware.

In response to questions from Members, Mr Clarke confirmed that he would not have purchased plot 9 if a TPO had existed on the trees on the plot.

The Conservation Officer presented the case for making the Order. He advised that the outline planning permission for the site was subject to conditions to seek the preservation of the trees as the Council had a duty under the Town and Country Planning Act to ensure trees were protected as part of the planning process where appropriate. With regard to reference to the “position” of trees at the time, the Conservation Officer clarified that this referred to the location of the trees and not their status at the time and that Mr Clarke would have been aware of the geographical position of the trees when purchasing the plot. With regard to the visibility splays required, the starting point was always to achieve the best possible visibility splay but it was not uncommon for the requirements to be adjusted having regard to the constraints of the site and the predicted traffic flows. In this case the Highway Authority had adjusted the requirements having regard projected traffic flow and the ability to still achieve a practicable visibility splay and to the value of the trees. Removal of the trees could not be justified having regard to their significance. Negotiations had taken place with each plot owner as matters progressed with a view to finding the best solution for retaining appropriate trees whilst also achieving access to the plots. With regard to the trees on plot 10 and the claim that these had been removed but were better specimens than those on plot 9 which were proposed for protection, the Conservation Officer commented that one of the trees on plot 10 had been assessed as category “C” and one as “U”, in contrast to those on plot 9 which were category “A”. Agreement had therefore been reached for them to be removed. The Conservation Officer went on to refer to the proposals contained in the Oakfields Assessment about how trees T6 and T7 could be retained and protected during construction work. The work would be more difficult and more costly as it would involve specialist construction techniques but it could be done and the trees retained with minimal damage to them. It was felt there was adequate distance across the frontage to form an access to the plot and minimise disruption to the trees.

The Conservation Officer stated that the reason the Order had not been served when the planning permission had been granted was because there was no intention to seek to protect all the trees at that stage but instead to work with each plot owner to find the best fit solution for each plot. In conclusion, he stated that the proposals had sought to protect the most significant trees for the future. Should the situation change regarding the condition of any of the protected trees, an application for works would be considered. He added that although offers had been made to plant new trees, these would not replace a 100+ year old tree and would take a whole generation to do so; they also did not have the same biodiversity and ecological value. He concluded that he felt the Order had been served in a just and appropriate manner.

The Conservation Officer then answered questions.

Mr Clarke commented that he refuted the claim that he should have been aware of the proposals to protect the trees. He had sought clarification from Mr Burgess who had agreed the trees could be removed as there was no

TPO attached to them. His was the only plot affected by 2 trees and the costs to him of building work to accommodate the trees were very pertinent. He asked about measures used elsewhere to accommodate the trees – for example the protected corridor of trees next to plot 12. The Conservation Officer commented that the trees associated with the corridor were not in a linear form and it would not have been practical to include a building plot at this point. He understood the corridor might form a pedestrian link to the land at the rear of the self-build plots. Mr Clarke asked the Conservation Officer if he agreed that the 11m space between the trees at the frontage of his plot was not all useable space because of the impact of the trees. The Conservation Officer responded that he believed the access could be constructed within the space available using the techniques referred to within the Arboricultural Method Statement (AMS) to protect the trees.

The Panel then heard from the Clerk to Old Catton Parish Council who spoke in support of the TPO. The Parish Council had been seeking the creation of the TPO to protect the trees since March last year. The Old Catton Neighbourhood Plan sought to ensure that any development in the parish should be sensitive to the character of the area and the protection of the trees would seek to achieve that objective and help to enhance the character of Old Catton. The trees were an important visual feature in the area. She believed the serving of the Order was justified and timely – the trees were significant and needed to be retained.

The Panel then heard from Mrs K Vincent, the Local Member for Old Catton who explained that she had been approached by local residents concerned about the potential loss of the trees as they understood the trees were to be retained as part of the self-build development. Having contacted the Conservation Officer and Mr Burgess, she was assured the intention was to protect the trees and the outline planning consent stated the trees would be retained as they had significant value. The Old Catton Neighbourhood Plan which covered the period 2015 – 2035 sought to secure high quality new development which respected and helped to preserve the local character of the area. The Plan reflected the wishes of the community to protect the natural assets and character of the area. The row of Oak trees on St Faiths Road had significant visual amenity, were prominent and could be seen from some distance and there was a need to secure protection of the trees to retain the natural asset and character of the area. She did not feel that the TPO would prevent development of the plot and understood the Highway Authority had no objections to the 2 trees on plot 9 being retained. She urged the Panel to support the making of the TPO.

The Chairman then invited all present to make their closing statements.

Mr Clarke stated that T6 and T7 should not be included in the Order for the reasons outlined in his presentation. He had exercised due diligence and as a lover of trees had offered to plant replacement trees. If this was not possible, as a compromise, he asked the Panel to consider retaining T7 but

removing T6 from the Order and a replacement tree be provided nearer the boundary.

The Conservation Officer stated that, based on evidence available at the current time, the protection of the trees was justified. If the structure of tree T6 was compromised, the matter could be reconsidered and, if necessary, consent given for its removal. The development of plot 9 was achievable but not straight forward due to the constraints of the site. The trees should be protected.

The supporters reaffirmed the importance of protecting the trees to preserve the existing natural character of the area and this reflected the views of the local community as set out in the Neighbourhood Plan. These were mature Oak trees which were important visually and were significant in terms of the local landscape. There had always been a clear intention to retain the trees.

The Conservation Officer and the Senior Planning Officer, together with the objector and the supporters then left the room whilst the Panel considered the objections and made its decision. They subsequently re-joined the meeting and were advised that, having listed carefully to all the evidence put before it and having regard to the criteria for making the Order, the Panel had agreed that the Order should be confirmed in respect of trees T1, T2, T3, T4, T5 and T7 but with a modification to remove tree T6 from the Order.

The reasons for the decision were that the criteria for making the Order had been met in so far as trees T1, T2, T3, T4, T5, and T7 were concerned, the trees added significantly to both the biodiversity and visual amenity value of the local area; they were not considered to be in an unsafe condition at this time and would not cause an increase in nuisance which would be considered unreasonable or impractical to abate in the future. However, the Panel felt that the criteria had not been met in relation to T6; the tree did not make a significant contribution in terms of its visual amenity in its present condition, there was reason to fear the tree may be dangerous and the tree, in its present location, did cause a nuisance which was unacceptable and impractical.

Accordingly, it was

RESOLVED:

to confirm the Broadland District Tree Preservation Order 2017 (No: 18)
Ref: 1276 with the modification to remove T6.

The meeting closed at 11:45am