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|-------------------------|---|---------------------------------|---------------------|
| <b>Meeting:</b>         | <b>Planning Committee</b>   | <b>Date:</b>                    | <b>7 March 2017</b> |
| <b>Subject:</b>         | <b>17/00037/TPO - Application to remove a protected perry pear tree at 37 Kestrel Gardens, Quedgeley, GL2 4NR</b>   |                                 |                     |
| <b>Report Of:</b>       | <b>Cabinet Member for Housing and Planning</b>  |                                 |                     |
| <b>Wards Affected:</b>  |   |                                 |                     |
| <b>Key Decision:</b>    | <b>No</b>   | <b>Budget/Policy Framework:</b> | <b>No</b>           |
| <b>Contact Officer:</b> | <b>Justin Hobbs, Tree Officer</b>   |                                 |                     |
|                         | <b>Email: justin.hobbs@gloucester.gov.uk</b>  | <b>Tel: 396987</b>              |                     |
| <b>Appendices:</b>      | <b>1. Application form<br/>2. Site plan<br/>3. Photograph of the tree (summer)<br/>4. Photograph of tree (winter)<br/>5 – 7 – Responses in support of (1) and objecting to (2) the application.</b> |                                 |                     |

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

1.1 To consider an application to fell a protected pear tree at 37 Kestrel Gardens.

### 2.0 Recommendations

2.1 Planning Committee is asked to **RESOLVE** that

(1) The application to fell the protected pear tree is **REFUSED**.

### 3.0 Background and Key Issues

3.1 An application to fell a mature perry pear tree, protected by a Tree Preservation Order (TPO) at 37 Kestrel Gardens was received 18 January 2017 (refer to appendix 1). Refer to appendix 2 for a site location plan. Refer to appendices 3 & 4 for photographs of the tree.

3.2 The tree subject to this application is protected by Tree Preservation Order (TPO) No 71 (Green Farm, Quedgeley), made 1995. The tree is listed as T10 on the schedule of the TPO.

3.3 The reasoning for the works were stated on the application for as:

*“A very large Perry Pear tree is situated in our front lawn directly in front of our property. The tree over the past 10 years has been losing quite a few substantial size branches due to dead wood and shear weight of fruit that is produced every October. I have 2 small children that play regularly outside, and there are lots of other children that also play outside and under the tree. I feel that the tree poses some danger, particularly when it's bearing fruit. It also causes considerable light loss to our lounge and bedroom. As fruit is falling, it falls onto the main road which runs in front of our house. This causes the surface to become very slippery, we have an elderly couple living 2 doors from us that need access on foot and I'm worried that someone could slip and injure themselves.*

*I would like to propose that this tree should be removed, I am happy to plant a much smaller tree that can be managed and maintained, unlike the current tree.”*

3.4 Public consultation has resulted in three written responses: one in favour of removal and two objecting to removal. Refer to appendices 5 – 7 for responses.

3.5 Your tree officer inspected the tree in light of the application and the reasoning put forward in the application on 22 February 2017.

3.6 The tree is a mature perry pear in overall reasonable to good physiological and structural condition. No significant defects such as large amounts of dead wood, large cavities, fungal fruiting bodies, exposed roots, damaged or decayed branches, or major dieback was evident. The growth vigour on the tree is low but this is to be expected of a tree of this type and age. Whilst no tree can be deemed 100% 'safe' it is your tree officers opinion that the tree does not presently pose a serious health and safety risk.

3.7 The tree is approximately 10m high with a canopy spread of 4 to 6 metres all round. The tree has a fairly open canopy which, at its closest, is approximately 4 metres from the house. The tree is deciduous. The tree has reached its fully mature size and spread. It is your officers' opinion therefore that light loss to the house is not considerable.

3.8 The tree will drop fruit in the autumn. The canopy does not extend over the quiet cul de sac road to any significant degree thus fruit fall here will be minimal. Fruit fall can perhaps be seen as a seasonal inconvenience but it is your officer's opinion that this does not pose a serious health and safety hazard justifying the removal of this tree.

3.9 The tree once formed part of an orchard on land known as Green Farm prior to housing development in the late 1990's. Many of the trees were protected and retained in the adjacent open space (now known as Green Farm Orchard), with at least three trees being retained and incorporated into the housing development. The tree is therefore a link to the past land use in the area, it is an uncommon tree, it will have conservation value, and judging from the responses in favour of retaining the tree, it has public amenity value.

#### **4.0 Asset Based Community Development (ABCD) Considerations**

4.1 N/A

#### **5.0 Alternative Options Considered.**

5.1 Other than the application to remove the tree, no other options such as pruning, appear to have been considered. It is your officers' opinion that an application to undertake limited pruning would be looked upon favourably.

#### **6.0 Reasons for Recommendations**

6.1 As discussed in paras 3.6 – 3.9, inspection indicates the tree is not presently dangerous, it does not block light out to the property by a considerable amount, falling fruit is not a serious health and safety hazard, and the tree is of historic, conservation and public amenity value.

#### **7.0 Future Work and Conclusions**

7.1 If the Committee refuse the application, the applicant can appeal to the Planning Inspectorate. This process can take up to 4 months.

#### **8.0 Financial Implications**

8.1 There are no Financial Implications.

#### **9.0 Legal Implications**

9.1 The Tree Preservation Order makes provision for applications to be made for consent to carry out work to or fell any of the trees protected by the Order.

9.2 If the Council decides to grant consent it may, where it considers appropriate, impose conditions.

9.3 If the Council decides to refuse consent it must give clear reason why it has done so.

9.4 The applicant has a right of appeal (to the planning Inspectorate) against any refusal of consent or imposition of conditions.

9.5 In considering applications the LPA are advised:

- (1) To assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and

(2) In light of their assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

(One Legal have been consulted in the preparation this report.)

## **10.0 Risk & Opportunity Management Implications**

10.1 N/A

## **11.0 People Impact Assessment (PIA):**

11.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

## **12.0 Other Corporate Implications**

### Community Safety

12.1

### Sustainability

12.2

### Staffing & Trade Union

| 12.3 N/  
A

**Background Documents:** None



Application for tree works: works to trees subject to a tree preservation order (TPO) and/or notification of proposed works to trees in a conservation area.  
Town and Country Planning Act 1990

**Publication of applications on planning authority websites.**

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website.

If you require any further clarification, please contact the Authority's planning department.

**1. Applicant Name, Address and Contact Details**

Title:  First Name:  Surname:

Company name:

Street address:

Town/City:

Country:

Postcode:

Telephone number:

Mobile number:

Fax number:

Email address:

Are you an agent acting on behalf of the applicant?  Yes  No

**2. Agent Name, Address and Contact Details**

No Agent details were submitted for this application

**3. Trees Location**

Please provide the address of the site where the tree(s) stands (full address if possible):

House:  Suffix:

House name:

Street address:

Town/City:

Postcode:

Description:

If the location is unclear or there is not a full postal address, either describe as clearly as possible where it is (for example, 'Land to rear of 12 to 18 High Street' or 'Woodland adjoining Elm Road') or provide an Ordnance Survey grid reference:

Easting:

Northing:

#### 4. Trees Ownership

Is the applicant the owner of the tree(s)?

Yes  No

#### 5. What Are You Applying For?

Are you seeking consent for works to a tree(s) subject to a TPO?

Yes  No

Are you wishing to carry out works to tree(s) in a conservation area?

Yes  No

#### 6. Tree Preservation Order Details

If you know which TPO protects the tree(s) enter its title or number below

#### 7. Identification Of Tree(s) And Description Of Works

Please identify the tree(s) and provide a full and clear specification of the works you want to carry out. Continue on a separate sheet if necessary. You might find it useful to contact an arborist (tree surgeon) for help with defining appropriate work. Where trees are protected by a TPO, please number them as shown in the First Schedule to the TPO where this is available. Use the same numbers on your sketch plan (see guidance notes).

Please provide the following information below : tree species (and the number used on the sketch plan) and description of works. Where trees are protected by a TPO you must also provide reasons for the work and, where trees are being felled, please give your proposals for planting replacement trees (including quantity, species, position and size) or reasons for not wanting to replant.

*E.g. Oak (T3) - fell because of excessive shading and low amenity value. Replant with 1 standard ash in the same place.*

A very large Perry Pear tree is situated in our front lawn directly in front of our property. The tree over the past 10 years has been losing quite a few substantial size branches due to dead wood and shear weight of fruit that is produced every October. I have 2 small children that play regularly outside, and there are lots of other children that also play outside and under the tree. I feel that the tree poses some danger, particularly when it's bearing fruit. It also causes considerable light loss to our lounge and bedroom. As fruit is falling, it falls onto the main road which runs in front of our house. This causes the surface to become very slippery, we have an elderly couple living 2 doors from us that need access on foot and I'm worried that someone could slip and injure themselves.

I would like to propose that this tree should be removed, I am happy to plant a much smaller tree that can be managed and maintained, unlike the current tree.

#### 8. Trees - Additional Information

##### For all trees

A sketch plan clearly showing the position of trees listed in Question 7 must be provided when applying for works to trees covered by a TPO. A sketch plan is also advised when notifying the LPA of works to trees in a conservation area (see guidance notes). It would also be helpful if you provided details of any advice given on site by an LPA officer.

##### For works to trees covered by a TPO

Please indicate whether the reasons for carrying out the proposed works include any of the following. If so, your application must be accompanied by the necessary evidence to support your proposals. (See guidance notes for further details)

1. **Condition of the tree(s)** - e.g. it is diseased or you have fears that it might break or fall:

If YES, you are required to provide written arboricultural advice or other diagnostic information from an appropriate expert.

Yes  No

2. **Alleged damage to property** - e.g. subsidence or damage to drains or drives.

If YES, you are required to provide for:

Yes  No

*Subsidence*

A report by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots and repair proposals. Also a report from an arboriculturist to support the tree work proposals.

*Other structural damage* (e.g. drains, walls and hard surfaces)

Written technical evidence from an appropriate expert, including description of damage and possible solutions.

##### Documents and plans (for any tree)

Are you providing additional information in support of your application?

Yes  No

If Yes, please provide the reference numbers of plans, documents, professional reports, photographs etc in support of your application:

### 9. Authority Employee/Member

With respect to the Authority, I am:

- (a) a member of staff
- (b) an elected member
- (c) related to a member of staff
- (d) related to an elected member

Do any of these statements apply to you?

Yes  No

### 10. Trees - Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.



Date

12/01/2017

17/00037/TPO

Planning Committee March 2017

Appendix 2 – Site Location Plan











Gloucester City Council  
Development Control  
Herbert Warehouse  
The Docks  
GL1 2EQ

John Bigland  
39 Kestrel Gardens  
Quedgeley  
Gloucester  
GL2 4NR

26<sup>th</sup> January 2017

Fruit Tree Outside 37 Kestrel Gardens and mine.

*Your ref: 17/00037/TPo*

Dear Sirs

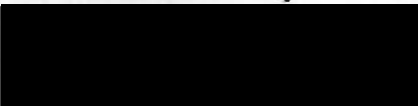
The tree in question is not in it's correct setting. The part of the estate surrounding the tree has been built in a historic orchard. The tree is out place. I know that numerous other trees were removed when Wimpey built the estate, why not this one? The tree produces a lot of growth in the form of leaves and fruit which gets thrown away during the seasons. A large percentage falls onto my garden and I have to spend hours in total clearing it up. It's dirty!

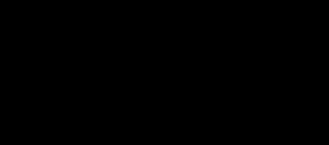
*Can I invoice the Council for the inconvenience and the time as it is belongs to the Council and time is time? I will!*

The tree is lovely but I will not support the work involved in clearing up any more.

Another concern I have is that the roots seem to be causing eruptions on the road and might be too close to my properties foundation.

Yours sincerely

  
John Bigland.



12 February 2017

>>

>> Dear Sirs,

>>

>> Your ref: 17/0003/TPO

>>

>> We are writing to object to the felling of the Perry pear tree in our neighbours front garden. Although we did not receive notice of this application from yourselves, we have been made aware of it. We are extremely disappointed that notice was not sent to ourselves as we directly overlook the tree.

>> The reasons for our objection are numerous. There is a similar tree in our immediate neighbours back garden (at number 23) and I understand that several years ago a similar application was made for the removal of this, which was refused. The trees on the original Wimpey Hedgerows estate are all protected by Tree Preservation Order, and are part of the reason we bought this house. I have personally lived in my property for 17 years and feel the tree is an important part of the history of the estate, retaining the integrity of what was the old Green Farm. The tree also forms part of the nearby Perry pear orchard which we understand is the oldest surviving orchard in Gloucestershire, and possibly the UK. The tree provides shelter and food for numerous kinds of protected wildlife, and provides endless enjoyment watching the birds, squirrels, foxes and other creatures that habit near to, or in it.

>> Mr Howe states the tree is next to a main road. This is not true. The roadway immediately adjacent is privately owned by the properties bordering it. The elderly neighbours he refers to now rarely leave their home, as they are both in their 90's, and well known to us. They certainly have not walked past the tree recently, and only pass in a car.

>> In the 17 years of living here I can only ever remember the tree losing one branch, in extremely high winds. Perhaps if Mr Howe took steps to have the tree professionally maintained, which we believe he never has, he could manage his expectations better.

>> I agree the falling pears can be an issue, but as stated above we have similar issues with our neighbours tree and manage to collect and dispose of any waste, for the approximate 3-4 weeks of the year this happens, without any issues.

>> Felling of the tree would cause ground heave of all nearby properties, also including the adopted highway at the front of our home, and the above mentioned private road, and to underground services. I doubt Mr Howe will be happy to incur the cost of repair or remedial work caused by the felling of the tree in his property.

>> Finally, the tree was here before Mr Howe bought his house, and before he had his children, and he would have been aware of any issues, as I was when I purchased our property in 2000. Any decision made by yourselves will set a precedent for future applications, and could be devastating for our local environment.

Yours faithfully,

Susannah Smith and Sean Butler.

>>

>> Sent from my iPad

Your Ref: 17/00037/TPO

I would like to raise an objection to the request to remove the tree situated on the above property. My reasons are many which I will outline below.

Unlike the applicants, I have lived in the property since it was built from new in 1997. One of the main factors in me choosing to buy my house, was the location in which it was situated and the outlook provided, the tree in question, being very much an important part of this. I also took reassurance in that the tree was protected, so that it could continue to provide a lovely outlook and enjoyment for those living in the area.

We were made aware when buying the house that various trees had been cut down in building the estate and that the area held an historic importance, being the oldest surviving orchard in Gloucester. I feel strongly then to remove any more trees in this area would be at a great detriment to this history, which should be protected.

The tree was in place prior to any building works and the developers would have taken this into their consideration when building all the local houses. The developers gave me this assurance, prior to me deciding to purchase my home.

The tree was also in place prior to the applicants buying the property, and has not grown greatly since this date. The applicants would have been made fully aware at the time of their purchase of the tree's status and I feel it was their choice to proceed to buy the property. They still decided to go ahead with their purchase knowing the tree was there & had to stay. I feel this is an extremely important part in the consideration of this request.

I did not feel it would be fair to chop down such a lovely testament to the area, just because the fruit & leaves cause extra work for the occupants. I too am also right by other trees in the orchard & regularly have to do the same. I feel this is a small price to pay for living in such a beautiful part of Quedegely. Any property comes with its fair share of maintenance which we all do, to keep the area in which we live in a pleasure to be around.

Saying the tree has lost quite a few substantial branches is just not true. In the whole time I have lived here I have ever only known one branch to fall down and that was during a heavy storm period, in which many fences, trees and roofs suffered storm damage. I actually lost some roof tiles personally during this storm.

Another piece of inaccurate information is regards the elderly neighbours that live in our close. I am very good friends with the people in question, and do a lot to help support them, so they can continue to live in their home. It's true that many years ago they would go for an afternoon walk after their lunch but due to their health they have not done this for some considerable years. Mr is housebound & Mrs only ever goes out by car - either with me or another relative & occasionally drives herself. I can categorically state this tree poses no risk to them whatsoever.

The tree is not on a main road but at the junction leading into a cul de sac where 7 properties are situated. It is not a through road, does not have a heavy volume of traffic, and poses no risk to any of the houses in that area.

While children play in our area, other than the applicants children, I have rarely seen other children playing under the tree, as it is situated on the applicants property & children do not venture there, unless invited. Again, I also in the entire time I have lived in the property, have never known any child to have been injured as a result of this tree being there.

The tree is in good health, as is apparent by the amount of fruit it can produce. We have various protected wildlife in our area & the tree provides them with a valuable food source, which needs to be maintained.

As the builders took into account the tree and its roots when building the property and its foundations, I would also be concerned about the risk of Heave, should the tree be removed. I feel this a very real risk & would not hesitate in taking further action, if my property were then to suffer this damage, if the tree was removed. If so, I would then also strongly consider if the council had been negligent in letting the tree be removed in the first place.

Any decision made here i feel could also have a bearing on any other applications made in the local area & as this has the potential to bring about a devastating result for the area & wildlife, feel consideration also has to be given to this important aspect.

Finally, I have also not known the applicants ever make a request or any attempt to maintain the tree, which based on everything in my e-mail, I would suggest would be a much better way forward.

Regards

Tracey Pitcher