

MEETING:	PLANNING COMMITTEE
DATE:	16 JULY 2014
TITLE OF REPORT:	<p>P141369/F - PROPOSED REMOVAL OF CONDITIONS 6 AND 7 AND VARIATION OF CONDITION 8 OF PLANNING PERMISSION DMS/110566/F (DEMOLITION OF EXISTING BUNGALOW AND ERECTION OF NEW BUNGALOW AND GARAGE BLOCK, CONSTRUCTION OF DRIVE AREA AND LANDSCAPING) AND S/112561/F (MINOR MATERIAL AMENDMENT TO APPROVAL NUMBER DMS/110566/F. ENLARGE GARAGE BLOCK TO PROVIDE AREA FOR GROUND SOURCE HEAT PUMP EQUIPMENT) TO ALLOW REMOVAL OF YEW TREE AND TO FACILITATE EXCAVATION, CONSOLIDATION, SURFACING, TARMAC AREA AND DRAINAGE OF THE LODGE BUNGALOW, LUGWARDINE, HEREFORDSHIRE, HR1 4AE</p> <p>For: Mr & Mrs Mason Middle Court, Lugwardine, Hereford, Herefordshire HR1 4AE</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=141369

Date Received: 12 May 2014

Ward: Hagley

Grid Ref: 354826,240982

Expiry Date: 8 July 2014

Local Member: Councillor DW Greenow

1. Site Description and Proposal

- 1.1 Lodge Bungalow is located in a prominent and slightly elevated position on the south side of the A438 in Lugwardine. It lies opposite and adjacent to the junction with Cotts Lane and has a shared vehicular access with Lugwardine Court Orchard. The site is immediately adjacent but outside the Lugwardine Court Unregistered Park and Garden which runs along the western boundary of the site.
- 1.2 Planning permission was originally granted for the replacement of the former bungalow on the site pursuant to DMS/110566/F on 12 May 2011 and subsequently to a minor material amendment under reference S112561/F on 25 October 2011 to increase the size of the detached garage to house ground source heat equipment. Both permissions were granted subject to conditions and it is Conditions 6, 7 and 8 of these permissions to which this application refers. The applicant is applying to remove Conditions 6 and 7 and to vary condition 8 to enable the removal of a Yew tree in close proximity to the approved vehicular access to the property.

1.3 The conditions read as follows:

- 6 *The vehicular access hereby approved shall be constructed in strict accordance with the revised access details shown on drawing reference Lodge 14, with open grade porous tarmac being used within the root protection area of the yew tree shown on this drawing.*

Reason: To safeguard the yew tree so as to conform to Policy LA5 of the Herefordshire Unitary Development Plan.

- 7 *Prior to the commencement of development a scheme detailing works to be undertaken to the yew tree as shown on drawing Lodge 14 shall be submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing the work shall be limited to lifting the canopy to a uniform height not exceeding 2.5 metres above the adjoining ground level and shall be carried out in accordance with BS3998:2010 Tree Work - Recommendations. Any further works to the yew tree shall be the subject of an application for prior consent to the local planning authority.*

Reason: To ensure the proper care and maintenance of the tree and to conform to Policy LA5 of the Herefordshire Unitary Development Plan.

- 8 *In this condition 'retained tree/hedgerow' means an existing tree/hedgerow that is to be retained in accordance with the approved plans and particulars.*

No development, including demolition works shall be commenced on site or site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to those trees/hedgerows that are to be retained. Measures to protect those trees/hedgerows must include:

- b) *Root Protection Areas for each hedgerow/tree/group of trees must be defined in accordance with BS5837: 2005 - Trees in relation to construction, shown on the site layout drawing and approved by the Local Planning Authority.*
- c) *Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each hedgerow, tree or group of trees. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each hedgerow/tree/group of trees.*
- d) *No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any hedgerow/tree/group of trees without the prior written consent of the Local Planning Authority.*
- e) *No burning of any materials shall take place within 10 metres of the furthest extent of any hedgerow or the crown spread of any tree/group of trees to be retained.*
- f) *There shall be no alteration of soil levels within the Root Protection Areas of any hedgerow/tree/group of trees to be retained.*

Reason: To safeguard the amenity of the area and to ensure that the development conforms with Policies DR1 and LA5 of the Herefordshire Unitary Development Plan.

- 1.4 The Yew tree is the subject of a Tree Preservation Order which was served on 9 December 2011. This was the subject of a separate appeal which was dismissed on 20 February 2012.

- 1.5 The application seeks to revisit the terms of the original planning permissions in the light of the near completion of the replacement bungalow and the application is supported by additional information which is set out in more detail below in the Representations section.

2. Policies

- 2.1 National Planning Policy Framework (NPPF)
It is considered that the Chapters 7. Requiring good design and 11. Conserving and enhancing the natural environment are particularly relevant to the application

- 2.2 Herefordshire Unitary Development Plan (HUDP)

DR1	-	Design
LA4	-	Protection of Historic Parks and Gardens
LA5	-	Protection of Trees, Woodlands and Hedgerows

- 2.3 Herefordshire Local Plan – Draft Core Strategy

LD1	-	Landscape and Townscape
LD3	-	Green Infrastructure
LD4	-	Historic Environment and Heritage Assets

- 2.4 Planning Practice Guidance

Use of Conditions
Tree Preservation Orders and trees in conservation areas

- 2.5 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

3. Planning History

- 3.1 S121952/J - Fell 1 x Yew Tree. Refused 23 August 2012. Appeal dismissed 20 February 2013.

S112561/F - Minor material amendment to approval number DMS/110566/F. Enlarge garage block to provide area for ground source heat pump equipment. Approved 25 October 2011.

DMS/110566/F - Demolition of existing bungalow and erection of new bungalow and garage block, construction of drive area and landscaping. Approved 12 May 2011.

4. Consultation Summary

Statutory Consultees

- 4.1 None

Internal Council Advice

- 4.2 Conservation Manager objects:

"The site lies in the western part of Lugwardine and it is bounded to the north by the A438 and to the west by a cul-de-sac, Lugwardine Court Orchard. The Lodge Bungalow site is the former site of a thatched lodge at the entrance to the main driveway to Lugwardine Court. The associated historic parkland (unregistered) encompasses this driveway, which has been

Further information on the subject of this report is available from Mr S Withers on 01432 260612

subsumed within the modern cul-de-sac. The tree which is the subject of conditions of 6,7 and 8 is a mature Yew tree (*Taxus baccata*) with a height of approximately 12 metres and a crown radius of approximately 8 metres. It is located on the western site boundary.

Background

DMS/110566/F: Planning application for the demolition of existing bungalow and erection of new bungalow and garage block, construction of drive area and landscaping.

In the assessment of the above planning application, the amenity value of existing trees on the site was evaluated in accordance with standard practice. It was identified that the Yew tree was of high amenity value by virtue of its form, condition, existing and future contribution to the amenity of the area. Yew is a very long lived species; this specimen has a life expectancy in excess of one hundred years. It is considered that the tree is a feature of the vestigial parkland associated with Lugwardine Court and as such has historic landscape value. The tree is readily visible from public vantage points being visible from both from the A438 and from Lugwardine Orchard Court.

The above planning application proposed removing the Yew tree in order to widen the driveway. However, the council's Area Engineer identified that adequate visibility could be achieved without removing the yew tree. Officers were satisfied that the retention of this tree did not preclude re-development of the site, including all necessary construction operations.

The planning permission which was granted on 12th May 2011 reflected a key sustainable development policy principle: the retention of site features, in this case the yew tree, which contribute to the quality of the local environment. Conditions 6, 7 and 8 attached to the permission required the retention and protection of the Yew tree. Condition 7 permits the canopy of the yew tree to be lifted to 2.5 metres above ground level, to avoid any conflict between the tree canopy and vehicles accessing the site.

Government guidance is that if local planning authorities consider there is a need to safeguard trees in the long term, they should protect trees by serving tree preservation orders, not rely solely on planning conditions. Accordingly a tree preservation order (TPO) was served on the Yew tree. The TPO was confirmed on 19 June 2012.

S121952/J: Application for works to tree subject to a Tree Preservation Order

Following the grant of permission for re-development of the Lodge Bungalow site, an application was made to fell the yew tree. This was refused on 23rd August 2012. The reasons for refusal were: *'The Yew tree is a healthy specimen and the reasons submitted for its removal are insufficient to outweigh those for its retention. The reasons for placing the Tree Preservation Order on the tree are still relevant today. The Local Planning Authority considers that the Yew tree does not conflict with the redevelopment of the site granted under planning permission DMS/110566/F and this is reflected in conditions 6, 7 & 8 attached to this planning permission.'*

It is the opinion of the Local Planning Authority that the Yew tree in question is of historic landscape importance and of significant visual importance and its loss would have a detrimental effect on the amenity of the area.'

The appeal against the refusal of consent was dismissed. The Planning Inspector concluded that: *'The yew makes an important contribution to the amenity of the area and sufficient justification has not been demonstrated for its felling and replacement on the grounds of harm to living conditions and/or road safety. Its removal therefore would be contrary to saved UDP policy LA4'*.

Assessment of the reasons put forward for the removal of conditions 6 and 7 and variation of condition 8:

Reason 1: the retention of the yew tree is preventing the construction of the driveway: this issue will be addressed by the Planning Officer.

Reason 2: that the change in ownership of the tree and the land on which it stands has a bearing on the conditions. This issue will be addressed by the Planning Officer. In respect of the tree preservation order, the change in land ownership does not affect the legal status of the TPO.

Reason 3: The '*Planning Practice Guidance*' referred to:

<http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/>

is not relevant; this guidance relates to the varying or revoking of tree preservation orders, not to the removal and variation of planning conditions.

Reason 4: proposal to plant a replacement Yew tree.

It is proposed to plant a replacement Yew tree but a different variety - an Irish Yew/*Taxus baccata* 'Fastigiata Aurea'. The existing Yew is a Common Yew/*Taxus baccata*. The Irish Yew, when mature, has a height of approximately 3 metres and a canopy spread of 1 metre so this variety is significantly smaller than the Common Yew.

It is not considered that a replacement Yew tree would provide adequate mitigation. Even if a replacement Common Yew was planted, it would take several decades for a replacement tree to grow to the size of the existing tree with the consequent loss of amenity in the interim. This stance is consistent with the appeal decision, (ref: S121952/J) para 6, in which the Planning Inspector identified that '*a gap in the skyline*' would be created by the removal of the Yew tree which would be apparent from public vantage points and that it would be '*likely to take a considerable amount of time to fill the gap. In which case, the proposed tree felling would result in significant harm to the character and appearance of the area*'.

Should consent be granted for the removal of the protected Yew tree, then there should be a requirement to plant a replacement tree of the same species: Common Yew/*Taxus baccata*.

Conclusion

It is recommended that permission is refused for the removal of conditions 6 and 7 and variation of condition 8 for the same reasons that consent was refused for felling the Yew tree. The Yew tree does not conflict with the redevelopment of the site granted under planning permission DMS/110566/F hence conditions 6, 7 & 8 are appropriate as is the protected status of the tree. As stated in the appeal decision, the Yew tree is of historic landscape importance and of significant visual importance and its loss would have a detrimental effect on the amenity of the area."

4.3 Transportation Manager raises no objection:

"I do not consider there to be any highway safety implications for either the currently permitted or originally submitted access proposal. Dropped kerbing as already installed will accommodate either proposal and all works within highway are already in place."

5. Representations

5.1 Bartestree and Lugwardine Parish Council fully support the application

5.2 A total of 31 letters of support have been received from local residents and interested parties. The comments received can be summarised as follows:

- Building site is an eyesore and support the removal of the yew tree to enable completion of the development in accordance with the original plans.
- TPO placed after planning permission granted and now stopping completion of bungalow
- Unreasonable to serve TPO retrospectively.
- Approved entrance cannot accommodate vans, furniture lorries or emergency vehicles.
- Original plans included removal of yew tree and was supported by residents of Lugwardine Court Orchard.
- Yew trees not appropriate to domestic setting or close to schools due to their toxic nature.
- As an elderly resident of Lugwardine Court Orchard I am constantly struggling to remove the fine wood debris which regularly covers my drive, patio, car and soakaway drain.
- Yew tree spoils amenity of Lugwardine Court Orchard and its loss would have no impact on parkland.

5.3 The applicant has provided the following supporting comments:

- The building of the property subject of the planning permission is now complete, and we are unable to carry out the excavation, consolidation, surfacing and drainage of the driveway, with these conditions in place. Additionally we are unable to gain access to the site for the plant and machinery necessary to carry out this work.
- The conditions were imposed when there was a question over the ownership of the yew tree and the land on which it stands.
- Under the Planning Practice Guidance for varying or removing tree protection, reasons for such action include
 - a) The land has been developed and;
 - b) The map included in the original Tree Preservation Order is now unreliable.Clearly both these reasons are valid.
- We have always been willing to plant a replacement yew tree, and this remains our position.

5.4 The consultation responses can be viewed on the Council's website by using the following link:-

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-

www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage

6. Officer's Appraisal

6.1 The key consideration in the determination of this application is essentially whether there are material considerations that warrant the felling of the protected Yew tree and specifically whether the 3 conditions attached to the planning permissions are necessary, relevant and reasonable in all other respects.

6.2 The chronology of events leading to the granting of planning permission and the subsequent serving of the Tree Preservation Order, whilst not specifically material to the consideration of the planning merits of this case, are nevertheless worthy of reporting since the applicants and indeed a number of the comments received from local residents raise such matters. In broad summary, prior to any planning submission, it had been the intention to fell the Yew tree and indeed the Council's contractor at the time was on site to carry out the works, when it was established that the land in question was not part of the highway. Work to fell the Yew tree was aborted and the applicants went about securing the ownership, which they ultimately did in the expectation that they would then fell the tree. However the timing of events was such that at that time, the Council was determining the first application (DMS/110566/F) for the

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replacement of the bungalow, and through this process the amenity value of the Yew tree was formally recognised. The original layout plan submitted with this application showed a wide bell mouth access (approximately 9 metres wide) into the site which would have necessitated the felling of the Yew tree. However through negotiation, a scheme to secure the retention of the Yew tree was developed and this became the subject to the conditions that are at issue with the current application. The revised access point is just over 4 metres wide with the distance from the rear boundary of the site to the trunk of the Yew tree measured at 5.4 metres.

6.3 Subsequently, a revised proposal was approved (S112561/F) with identical conditions attached.

6.4 In addition to the conditions, the Council also served a Tree Preservation Order in December 2011. This Order was the subject of an appeal, which was dismissed. This appeal decision is a material consideration in the determination of this application, since the arguments put forward by the applicant are similar.

6.5 Having regard to the events that preceded the determination of the first application when controls were put in place to protect the Yew tree, officers acknowledge the sense of frustration expressed by the applicant and the views of local residents who are aware that, but for the questioning of the ownership of the land upon which the Yew tree is located, it would have been felled before any planning applications were submitted. However the current application must be determined on its planning merits and the fact that the visual amenity value of the Yew tree has been considered in detail through an appeal process that supported the Council's decision to serve the Tree Preservation Order and concluded that '*The Yew makes an important contribution to the amenity of the area and sufficient justification has not been demonstrated for its felling and replacement on the grounds of harm to living conditions and/or road safety. Its removal therefore would be contrary to saved UDP policy LA4*'. is fundamental to this recommendation.

6.6 The applicants have put forward a case with four essential points under which your officers' comments are provided:

That they are unable to implement the permission in its current form because the Tree Preservation Order prevents them from excavating, consolidating, surfacing and draining the driveway

6.7 The approved plans for this development incorporated the provision of a porous surface within the canopy of the yew tree. This is controlled by Condition 6 of the permissions and the Conservation Manager has reiterated that there is no technical reason why this approach would not safeguard the long term health of the Yew tree. The application does not include any evidence from a suitably qualified consultant to substantiate the impact of construction of the access and driveway and in these circumstances, significant weight should be afforded to the advice provided by the Conservation Manager.

That the planning conditions were imposed when there was uncertainty about the ownership of the land

6.8 Guidance clearly advises that local planning authorities should not attach conditions to planning permissions where they do not relate to land within the control of the applicant. Such conditions would be regarded as unenforceable and would not pass the test set out in Planning Practice Guidance. In this case, the part of the site upon which the Yew tree stands was, through negotiation incorporated into the site and the applicant has acquired this land. As such it is considered that the conditions remain enforceable in this instance. It is also advised that the ownership status of the land does not affect the Tree Preservation Order that is in place.

Planning Practice Guidance for varying or removing tree protection suggests that where land has been developed or where the map included with the original Order are unreliable, there could be reasons for doing so

- 6.9 The guidance referred to here relates to the local planning authority's consideration of revoking or varying a Tree Preservation Order and not to planning conditions. Accordingly, it is not relevant to this particular application. That said it is not unreasonable to have regard to whether there are any grounds for reviewing the acceptability of conditions 6, 7 and 8. In this respect, your officers attach significant weight to the dismissed appeal, which clearly supports the Council's approach to serving the Tree Preservation Order and by extension that the conditions attached to the planning permissions are necessary, relevant and reasonable in all other respects. Having reviewed all of the responses to this particular application, your officers do not consider that any new or different material considerations have arisen that warrant the removal and variation of the conditions in question.

A replacement Yew tree would be planted

- 6.10 The advice from the Conservation Manager is clear that the selected species for replacing the existing yew is not appropriate and that it should be a "like for like" replacement. Whilst this matter could quite easily be resolved, the overlying factor is that it is not considered that a replacement plant would provide adequate mitigation since it would take several decades for it to provide equivalent amenity value and moreover the Inspector in dismissing the appeal against the removal of the Tree Preservation Order considered that the loss of the Yew tree in its current position would result in a harmful gap in the skyline.

Conclusion

- 6.11 The applicants frustration in relation to the chronology of events leading up to the submission of the planning applications is acknowledged and considerable regard has been given to the unusually high level of local support for the removal of the Yew tree. However having regard to material planning considerations it is not considered that there are any technical reasons or insurmountable constraints in this case to warrant the removal of Conditions 6 and 7 and the variation of Condition 8 of DMS/110566/F and S112561/F. Accordingly your officers recommend refusal of this planning application in order for the approved development of this site to continue to comply with policies DR1, LA4 and LA5 of the HUDP and the associated guidance in the NPPF and to underpin the Tree Preservation Order that has been defended on appeal.

RECOMMENDATION

That planning permission be refused for the following reason:

- 1 Conditions 6,7 and 8 of planning permission DMS/110566/F and S112561/F are considered to be necessary, relevant, reasonable and in all other respects to meet the requirements of the tests set out in Planning Practice Guidance. No evidence has been provided that would suggest that the implementation of the planning permissions would necessitate the felling of the Yew tree. The removal and/or variation of the conditions in order to achieve this would cause harm to the character and appearance of the locality and the setting of the Lugwardine Court Unregistered Park and Garden resulting in an adverse impacts that would significantly and demonstrably outweigh any benefits. As such the proposal is contrary policies DR1, LA4 and LA5 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

Informative:

Further information on the subject of this report is available from Mr S Withers on 01432 260612

- 1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason for the refusal, approval has not been possible.**

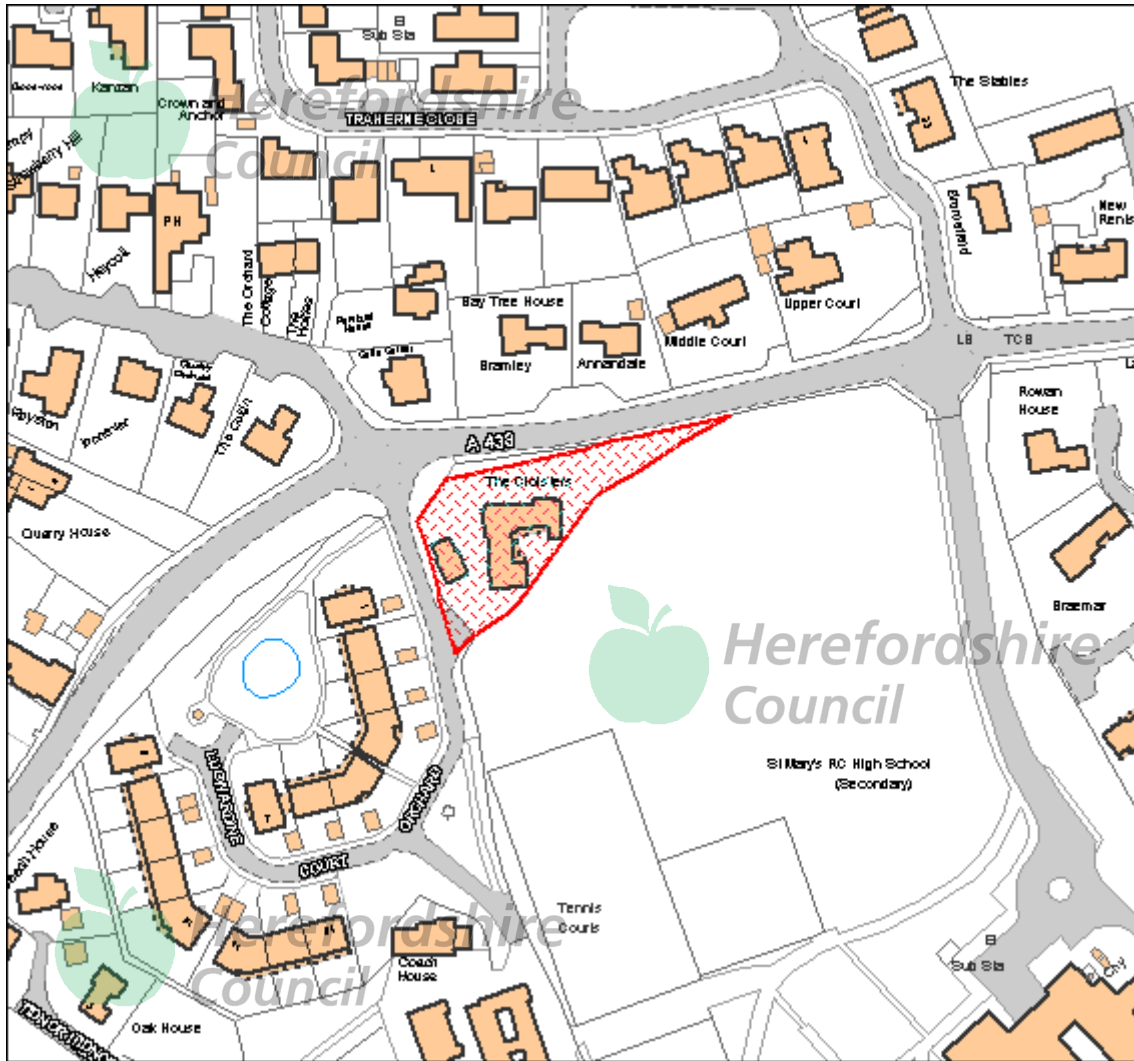
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 141369/F

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