

PLANNING AND LICENSING COMMITTEE

12th July 2017

ADDITIONAL PAGES UPDATE

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Additional Representations on Schedule Items

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PLANNING AND LICENSING COMMITTEE

12th July 2017

ADDITIONAL PAGES ON SCHEDULE ITEMS

Item	Ref. No	Content
01	17/01568/TPO	<p>Additional information from the applicant:</p> <p>Please see letter attached from Blandy and Blandy Solicitors dated 10th July 2017</p>
03	17/01255/FUL	<p>Case Officer Update:</p> <ul style="list-style-type: none"> • The Malt House has been sub-divided to create two individual semi-detached properties called The Malt House and Malt House Cottage. The Malt House is not a single detached property as stated in the Officer's report. The outbuilding that was historically used in association with the Bear Inn but has since been converted into a holiday let is known as the Brew House. The Brew House lies within the curtilage of The Malt House and its use as a holiday let is ancillary to The Malt House, i.e. The Brew House is not a separate planning unit. • Bagendon Parish Council's objection was mistakenly recorded as a neighbour objection in error. In their response to the revision of the planning application the Parish Council stated that their objections remain the same. The initial Parish Council response is shown below: <p><i>At a recent meeting of Bagendon Parish Council, we discussed this application and object to it on the following grounds:</i></p> <ol style="list-style-type: none"> 1. <i>The access proposed is on a stretch of road where the lines of sight are poor. We would expect Gloucestershire Highways to have a view on this, but the current access is potentially dangerous. Bagendon PC is of the view that the sight lines must be improved.</i> 2. <i>The impact on the local environment is substantial given the proposed density and the height of the</i>

		<p><i>proposed houses is substantial. BPC consider both the height and density to be inappropriate. The neighbouring houses will be overlooked and the Parish Council has heard from several neighbours making their concerns known. We hope that the CDC will review all the height, density and proximity requirements as well as the window positioning for any new houses.</i></p> <p><i>3. The Planning Statement and Design and Access Statement make little mention of the AONB and its constraints and sensitivities at this location and in this area. The Parish Council think that these should be taken into account in particular in regard to housing that is out of character with its immediate locality, alterations to the lane boundaries and change of use from amenity land.</i></p> <p><i>4. With regard to the proposed materials used, we think that the Cotswold Design Code should be followed with all new build houses in this beautiful and sensitive area.</i></p> <p><i>5. Given the archaeological history of this area, particular care should be given to any excavations and full archaeological watching brief should be required.</i></p> <p>Two further objection comments received:</p> <p>Since the Schedule was published, two further objections have been received from neighbouring residents which reiterate concerns previously raised during the initial consultation period.</p>
04	17/01752/FUL	<p>Case Officer Update:</p> <p>The Ward Member Cllr Julian Beale emailed the case officer saying: <i>"Having seen the site and spoken to the Applicant, I am now content with your recommendation [to permit]. I'm sorry for the timing but I have been away and in addition, have only just received confirmation from the PC that they also are happy. If you still can, please withdraw this from next week's Meeting."</i></p>



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Via E-mail

Our Ref: KVI/HOL/284/1

Your Ref:

Date: 10 July 2017

Dear Sirs

**Sycamore Tree, Arlington House, Bibury: 17/01568/TPO
Planning Committee Meeting: 12 July 2017**

We are instructed by Mr Jason Holt. We understand that the Planning Committee are due to consider the matter of an application to fell a Sycamore tree (the "Tree") at Arlington House at their Committee meeting of 12 July 2017.

We have reviewed the report to Committee prepared by Mark Berry. We have a number of concerns on the appropriateness of the report for the purposes of the committees' decision making and would respectfully suggest the Committee should consider this matter in a holistic manner taking account of all the evidence and information before it. The Council's Officer does not accurately or impartially summarise the information available from three experts who have between them prepared five reports over a 3 year period. Those reports have been entirely consistent (from different professionals) and agree on the course of action that is inevitable in this situation. Despite the Officer recommendation to Committee to refuse this application the expert evidence supports a conclusion that in fact the Tree in question will inevitably be felled. The question for the Committee may be to ask themselves whether it is appropriate to delay felling of the Tree and if in such circumstances the Council is prepared to take the risk of the liability that may arise from such a decision to delay, which might result in serious injury or harm for which the Council would be held fully responsible.

In any event it is Mr Holts view (on advice from his professional advisors') that the felling of this Tree falls within the Exception Test under Regulation 14 (1)(c) of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 ("Tree Preservation Regulations"). It is accepted that the matter is a question of fact (*Smith v Oliver*) [1989] 2 PLR, and that the burden is on the Defendant to show that works are necessary to satisfy the requirement in the regulations. (*R v Alath Construction Lrd, R v Brightman* [1990] 1 WLR.

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23. ITEM. 01.
17/01568/TPO

In this instance three separate independent experts have concluded that the Tree presents an immediate risk of serious harm. This is the correct legal test, not whether the wall constitutes a dangerous structure within the meaning of S77 of the Building Act 1984. The officer's report has applied an incorrect test and whether or not it is appropriate to take emergency action under that Act is not the relevant and proper consideration for the Council.

Mr Holt wishes to resolve this matter with the support of the Council and does not wish to carry out an action to fell under the exception in Regulation 14 (c) of the Tree Preservation Regulations which would be justified to ensure highway safety and prevent possible injury, loss and damage, without the acquiescence of the Council to ensure transparency of decision making is safeguarded. Mr Holt has worked constructively with the Council to ensure the correct information has been available to the Council's Officers (and now to Council members) for consideration in the decision making process. Mr Holt has worked with the Parish Council which accepts the expert advice and agrees the balance is for removal of the Tree and similarly, the MP for the area, Geoffrey Clifton-Brown, who has also assessed this information and reached the same conclusion. The overall objective of Mr Holt is to be seen to be acting properly and for this reason he has delayed exercise of the rights available to him under Regulation 14 (1) of the Tree Preservation Regulations. These comments are made without prejudice to such action being taken if the position of the wall becomes so unstable as to justify in his view the removal of the Tree.

In making any decision it is imperative that the Council follows the correct decision making process. Taking into account the relevant factors required by the Planning Practice Guidance regime for an application to remove a tree, the Council are required to:-

- Assess amenity value and the likely impact of the removal on the amenity of the area. The impact of crown works means that there has been a "significant reduction in amenity value of the tree". The amenity value must in any event be weighed in the balance with other factors including the presence of the listed wall, the possibility of causing danger by falling of both the wall and the Tree and the evidence of immediate risk of serious harm.
- Consider in the light of this assessment whether or not the proposal is justified having regard to the reasons and additional information put forward in support of it. The Council's expert Officer has asserted consistently that the roots of this Tree will withstand the forces exerted on it but has not provided any justification within this assertion or the reasons for refusal of taking issue with the findings of five expert reports from three different independent experts. It is also of note that the local MP who is by discipline a chartered building surveyor agrees with the engineering evidence submitted. It is not sufficient for the Officer to just dismiss this evidence on the basis that certain of the reports were prepared before works to reduce the crown were undertaken. It is clear from the reports that all the options are

considered. The overarching conclusion of FLAC after the interim suggestion of crown reduction works is that ultimately removal of the Tree will be required. This remains the position of the expert evidence which is not accepted by the Council's Officer but the reasons for non-acceptance of it are not articulated or properly justified within the Officer report. The progressive nature of the structural distress has been addressed in updated opinions which should be put before Members as they directly deal with previous issues raised by the Officer which he repeats within this report without addressing the answers already provided to deal with them. Clashes of evidence must always be subject to testing and the Officer has failed to demonstrate any reasons of sufficient detail and quality to throw doubt on the particularised evidence commissioned by Mr Holt. This expert evidence appears to adopt a more balanced, honest and overreaching approach and specifically addresses points raised by the Council purporting to justify refusal.

- The report before the Committee refers to the Council's potential liability to pay compensation where any loss/damage is likely to arise if consent is refused. It is a finding of Mr Holt's professional advisors that serious injury to the public and damage to the highway is a real and distinct possibility in this case. It is clear that his engineering expert is in a better position to comment on stability of the wall than any alternative views expressed by the Council's Officer. The Council's Officer has no apparent engineering qualifications and it is not obvious in what capacity he is qualified to comment on engineering matters or make assessments in respect of an engineer's findings. It is patently clear according to Mr Holt's arboricultural expert that the Tree is destabilising the wall. It is accepted that loss/damage being foreseeable is not reason to grant consent automatically, but nevertheless it should be a factor in the decision making process. It is respectfully submitted that the Council's Officer has underplayed the potential risk of damage and serious injury to the public. It is noted that the Officer falls short of stating that the situation as it exists does not constitute a danger. That position should be explored before the Committee with reference to the specific findings of the reports.
- It is always the case that the Committee should take account of other material considerations-
 - The presence of the listed wall as an asset of community value is also a consideration. The integrity of the wall as a historic feature would be likely to be undermined if it is rebuilt to any extent or reduced in height. It is factually incorrect to suggest that a reduction in height would not require listed building consent. Why does the retention of the Tree which has been expertly assessed as of limited amenity value after pruning works trump removal of the listed wall as is suggested by Officer. The report of David Smith Associates dated 24 October 2014 states "rebuilding the wall after this next collapse will not be possible close to the tree using the same

construction method because the tree trunk is now too large". Listed building consent would need to be obtained. There has been no consultation or consideration of the impact that the Tree is having on a listed building. No expert advice from a Listed Building and Conservation Officer has been sought or considered which is a serious omission from the Council's report. The Council's building engineers accept the wall needs repairs but there is no evidence that they have considered the engineering evidence submitted and on what basis, if any, they challenge it.

- It is also material that the Officer report notes that the engineers report from David Smith Associates dated 24 October 2014 reference the general life expectancy of the wall but fails to bring to the Council members attention the material facts in context namely that the report goes on to state "in some cases, as in this one, trees close to the wall cause premature failure and it is probable that ...the length by the tree having collapsed and been rebuilt many more times". A wall collapsing due to tree encroachment is demonstrated by the recent collapse and subsequent immediate felling of trees at Dower House Barnsley only 3 miles away. If such a collapse occurred here the consequences are unlikely to be as benign.
- The Trees position next to a very busy road increases the significance of the expert engineering advice and its weight as against the tree preservation evidence. The position of the wall increases the chances of danger and this is coupled with the difficulty and inconvenience of closing the road as referred to in the letter from David Smith Associates dated 28 June 2017.
- Any approval can be subject to conditions and a condition to replant in a more appropriate location, where it is practical and safe for a tree to mature, would be wholly accepted. This would mean that the loss of amenity is limited especially given the context of the significance of the amenity of the wall. The Officer fails to consider this in the report to Committee.
- There is no basis or justification within the Committee report for the summary dismissal by the report of other experts' opinions concluding that there is limited root anchorage. This point is addressed in the David Smith Associates report dated 28 June 2017 "the author of the report is clearly unaware that the Tree is close to another wall within the garden of Arlington House which effectively limits the stabilising root growth to a quarter of what is normally provided". This fact is reflected in FLAC appraisal dated 26 August 2016 "and to the east near to the stem, is a retaining wall" and again at paragraph 15 of the report.

- It is also pertinent for the Committee to consider if there are any alternative measures that can be taken to preserve the Tree and prevent the danger that it poses: experts have commented on this- both FLAC and the David Smith Associate reports have confirmed it would not be possible now to rebuild the wall with the Tree in situ (para 17 of FLAC report dated 26 August 2016). The Officers report to the Committee should properly be updated to reflect this in order to ensure that the Council are not failing in their duty.

The Council needs to understand that they have been in receipt of expert evidence which details the potential danger that the Tree poses and that this could extend to serious injury to the public. The loss is therefore foreseeable and consequences of being liable for loss or damage are not addressed within the officer's report. By refusing this application and forcing an appeal, should the Tree cause serious injury to the public, loss or damage to property it would be the Council that is liable for any claim as outlined in Part 6 Tree Preservation Regulations 2012.

The Appeal route is open to the Applicant and will be followed if necessary. The Council are urged to address this matter in a proper process at this stage. With respect to their advisors there does not seem to be any reasonable legal justification properly articulated in the Committee report as to why the Council considers that the Tree does not pose a danger to the public in the light of the considerable weight of expert opinion submitted. This has not been properly assessed or countered and although the Council's objective to retain trees of merit for the benefit of the community because of their impact on local amenity is appreciated and understood, the objective applied here is misguided and legally suspect. It leaves the Council exposed to a potential liability it need not be responsible for as independent respected expert evidence has concluded that the inevitable outcome for this Tree will be that it will need to be felled at some stage. To delay that decision is irresponsible given the potential imminent danger the combination of Tree and wall present.

The Committee are urged to reject the advice of their Officer which is not sufficiently balanced to be sound and which is predicated on judgements on matters outside of his expertise and to behave as any responsible authority would in these circumstances to allow the felling of this Tree.

Yours faithfully,

Karen Jones (LARTPI)

Partner

For and on behalf of Blandy & Blandy LLP

This letter was dispatched electronically and therefore does not bear a signature.

CC:

Philippa Lowe : Head of Planning and Strategic Housing

Dr Christine Gore: Strategic Director

Mark Berry: Case Officer

Planning Committee Members.