

PLANNING COMMITTEE – 21 SEPTEMBER 2021

REFERENCE NUMBER: 21/00125/TPO **Application Expiry Date:** 30th March 2021
Application Type: TPO Application

Proposal Description: Application to remove 2no Beech, 1no Willow and the pruning of 1no Norway maple covered by TPO 280 (Amended title)

At: The Bourne, Moor Road, Ashover

For: Mr Robinson

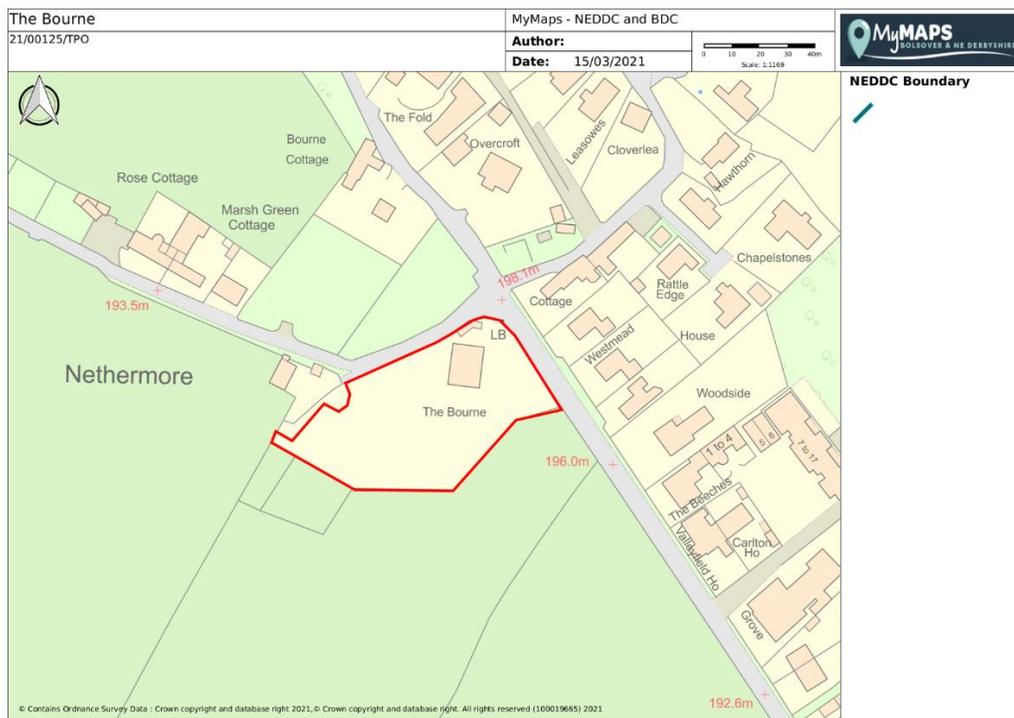
Third Party Reps: 11 from 8 properties
(4 support, 4 object)

Parish: Ashover Parish Council

Ward Name: Ashover Ward

Author of Report: Alice Lockett **Date of** 7th June 2021

MAIN RECOMMENDATION: Part Approval/Part Refusal



1.0 Reason for Report

- 1.1 This application has been called into committee by Councillor Armitage for the reasons that: “not all the trees need to be removed and as they are all covered by TPO the decision needs to be taken by Committee, the amenity value to the Parish has to be taken into account before any decision is taken”.

2.0 Proposal and Background

- 2.1 This application is a proposal to remove 2no Beech trees, 1no Willow tree and to prune a Norway Maple.
- 2.2 The application originally included the removal of a Horse Chestnut but as this is located outside of the boundary of the property the proposal has been removed from this application and has been subject to a separate planning application, reference NED/21/00303/TPO.
- 2.3 The submitted reasons for the work are the health of the trees and the impact the roots are having on the The Bourne which is reported to be suffering from damage caused by roots and subsidence. The applicant has submitted evidence to verify the application which includes a CCTV inspection report of the drains and a structural inspection report.
- 2.4 The applicant has confirmed that as well as carrying out work on or removing trees, the foundations of the property will have to be underpinned.
- 2.5 The Bourne is a detached mid-19th Century residence set within its own grounds, the trees that surround it appear to be of a similar age to the property suggesting that they were planted as part of its landscaping. The property does not have any protected status or designation but is included in the Derbyshire Historic Environment Record where it is described as: *“The Bourne is thought to be associated with the Bourne and Nodder families of Ashover, who had a history of being Rectors of the Parish. It was also used as the surgery in the Peak Practice television series”*.
- 2.6 The trees at The Bourne were covered by Ashover interim TPO1 which was drawn up in 1944. As a consequence of investigations by the Council it has become clear that Ashover TPO1 is no longer reliable and as a result 4 new TPOs have been issued to cover the trees formerly protected by interim TPO1. One of these covers the garden of The Bourne which is now covered by NED TPO280.

3.0 Relevant Planning History

- 3.1 21/00303/TPO - Application to fell 1no Horse Chestnut covered by NED TPO 280 (Amended Title). Refused.

4.0 Consultation Responses

- 4.1 The **Ashover Tree Warden** supports the proposal:

I wish to register my support for the proposed works at The Bourne. I understand that the Horse Chestnut is no longer included in this application.

NO1 Beech is a tree that is past its best and has been of concern to some householders for some time, it has been pushing the wall over for the last 20 years and its root structure will be bound to be affected by the road. NO8 Norway Maple is in need of judicious pruning and has been badly pruned in the past. NO34 Willow is covered in ivy, it was probably not intended to be there in the first place and a more appropriate tree could be planted in this position, NO32 Beech is a very tall slender tree which has a divided trunk low down which could be problematic.

It is difficult to make an assessment of trees in a garden, but there comes a time to replace and change planting, Beech NO1 has given great pleasure to us for many years but has passed the mark and it is time to grow something else.

- 4.2 **NEDDC Parks** have submitted partial support for the work:

After inspecting all the trees from ground level I would comment as follows

Tree number 1 - Beech: I would have no objections to this being felled although this does have amenity value it is as stated in the application causing structural issues with the boundary garden wall and drainage to the property. The beech tree also has a lean over the highway and towards the houses on the other side. I also noted that there are various cavities on the higher part of the trunk which could hold potential problems and hazards. If this is to be felled I would expect this to be replaced with another beech tree

Tree number 8 - Norway Maple: I would have no objections to a maximum 20% pruning works and removal of any dead or dying branches

Tree number 32 - Beech: I would object to the felling, although this can't be seen from the surrounding area I do feel this does hold some amenity

from the paved area from the house I would however recommend some pruning works and a reduction of 25%.

Tree number 34 - Willow: This is a poor specimen heavily covered in ivy and with some dead wood in the canopy I would have no objections to this being felled I would expect this to be replaced with a more suitable tree for the location

- 4.3 **Ashover Parish Council** requests that an inspection and assessment is undertaken on the proposal by a qualified Arboriculturist. (*Officer Comment: The survey has been provided by Anderson Tree Care who are an Arboricultural Association Approved Contractor. The trees have also been surveyed by the council's own tree specialist who has made the comments above.*)

5.0 Representations

- 5.1 11 Representation Letters have been received from 8 different households. 4 support the application and 4 Object.

- 5.2 A summary of the objections is as follows:

- Tree 1 is a significant tree which contributes positively to the amenity value of the area, what is the point of protecting trees if they end up being removed. (*Officer Comment: The TPO regulations allow for the removal of protected trees under certain circumstances, the suitability of removal has to be assessed as part of a TPO application.*)
- The amenity value of the trees is £20,000 this should be paid to the parish if the trees are removed or spent on the footings of the house if they are not: (*Officer Comment: There is no mechanism within the TPO application process which allows for compensation to be claimed for the loss of trees to the community.*)
- The boundary wall and therefore the trees close to it are not part of the curtilage of the building and are therefore part of the highway and not part of the curtilage of the building. (*Officer Comment: The applicant has provided a plan from DCC Highways which shows the extent of the highway and that it does not include his boundary or trees. (see appendix A attached to this document)*)
- No evidence has been provided to support the impact of the roots on the foundations of the house: (*Officer Comment: A structural inspection report and drainage inspection report has be submitted as evidence to support the application.*)
- The Environmental Bill 2020 places importance on trees in attempts to meet the net zero target: (*Officer Comment: The Environment Bill is not yet law*)

- Tree 1 is in good health and the boundary wall should be rebuilt, Tree 32 is so far from the house it is improbable that its roots are causing structural harm,
- Tree 34 should stand or fall on the balance between its amenity value and the cost of otherwise addressing any evidence that its roots are harmful to the property,
- The report does not say the trees are dangerous,
- If trees are removed replacements should be planted,
- The trees are healthy,
- Trees are important for health and wellbeing
- The Drainage report does not explicitly state which trees are causing damage and does not provide sufficient evidence to the causation of the structural effects on The Bourne of the roots from the trees
- The Drainage report does not offer solutions which could remove the tree root influence on the property
- Protected trees should be removed as a last resort
- Ashover Neighbourhood Plan seeks to retain the character and features of trees and hedgerows within the parish

6.0 Relevant Policy and Strategic Context

6.1 The Development Plan comprises the North East Derbyshire Local Plan and the Ashover Neighbourhood Plan.

6.2 North East Derbyshire Local Plan (Adopted November 2005) (LP)

The most relevant policies in determining this application are as follows:

NE2 Special Landscape Areas
NE7 Protection of trees and hedgerows

6.3 Ashover Neighbourhood Plan (ANP)

The relevant policy material to the determination of this application is:

AP15 Important Trees and Hedgerows

6.4 North East Derbyshire Local Plan (2014-2034) Publication Draft (PDLP):

The PDLP was submitted for examination in May 2018, with public hearings taking place in November/December 2018 and March 2019. The Inspector issued her interim findings in letters dated 18 February and 21 March, 2019. Consultation on the Main Modifications was undertaken in 2020 ending on 31st January 2021. All comments/representations

received have now been forwarded to the Inspector and it is expected that the plan will be adopted in summer 2021.

6.5 The PDLP is therefore at an advanced stage and should be attributed appropriate weight in decision making.

6.6 The following policies are material to the determination of this application:

SDC3 Landscape Character

SDC2 Trees, Woodlands and Hedgerows

SDC9 Non-designated Local Heritage Assets

6.7 **National Planning Policy Framework (NPPF)**

The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application. The main sections are covered in the assessment below.

7.0 **Planning Issues**

7.1 The trees, the subject of this application, are protected by provisional TPO 280. When considering whether trees should be protected by a TPO, authorities are advised to assess the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform whether their impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or be accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The importance of an individual tree, of groups of trees or of woodlands should be assessed against certain characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and contribution to the character or appearance of a conservation area

When considering an application under a TPO the authority is advised to:

- assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;
- 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;
- consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
- consider whether any requirements apply in regard to protected species;
- consider other material considerations, including development plan policies where relevant; and
- ensure that appropriate expertise informs its decision.

The Council should also bear in mind that it may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. However, if the Council believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.

Policy Considerations

- 7.2 The Bourne is located within the countryside and the Special Landscape Area LP Policy NE2 allows development which would not materially detract from the surrounding landscape or adversely affect the setting of any heritage or wildlife resource. PDLP Policy SDC3 permits development which would not cause significant harm to the character, distinctiveness or sensitivity of the landscape. The Bourne is a non-designated heritage asset and PDLP policy SDC9 supports proposals which positively sustain or enhance the significance of any local heritage asset and its setting.
- 7.3 The landscape in this locality is characterized by open fields surrounded by hedgerows with large trees set within them. The buildings in this area are mostly Victorian, built of sandstone and located within large plots. The boundary of The Bourne is characterized by a tall stone wall along the edge of the roads that bound the northern and eastern sides of the plot.
- 7.4 The site is also located within a primary Area of Multiple Environmental Sensitivity (AMES) wherein PDLP Policy SDC3 requires that Development proposals should be informed by, and be sympathetic to, the distinctive landscape areas identified in the Derbyshire Landscape Character Assessment and the Areas of Multiple Environmental Sensitivity (AMES), and contribute, where appropriate, to the conservation and enhancement, or restoration and re-creation of the local landscape taking into account its wider landscape character type.

7.5 LP Policy NE7 and policy SDC2 of the PDLP seeks to protect trees which make a significant contribution to the character and amenity of an area. It also requires that where trees, woodland or hedgerows are lost to development, and this is considered to be acceptable, suitable replacement planting on site where it is practicable to do so, or off-site where not, will be required.

7.6 Each tree forming part of this application is considered below.

Tree 1 - Beech Tree



7.7 This Beech tree is located close to the access point from Moor Road. The tree is situated immediately behind the boundary wall which is being pushed out of line. This tree has been estimated to be around 120-150 years old suggesting that it was planted as part of the original landscaping of The Bourne when it was built. The proposal is to remove this tree for the reasons set out below.

7.8 **Amenity Value (including, visual impact, value, to the community, value to wildlife, value to health, value for mitigating climate change.)**

The tree is located in a prominent location on Moor Road visible from both directions and Chapel Lane. It is considered that this tree contributes strongly to the amenity of the area both visually and as a habitat for wildlife.

It is commonly agreed that trees of this size do contribute to air quality and can help to mitigate against climate change, however there is no legal mechanism by which a tree can be protected solely for this reason.

7.9 **Impact on the boundary wall**

As the tree has grown it has begun to lean out pushing the wall towards the highway. As a result there is now a large crack in the wall which has become unstable and will potentially fall into the road (see photo above). The applicant has discussed the possibility of rebuilding the wall around the tree with the DCC Highways department who have indicated they would be unlikely to support such a solution due to the impact on narrowing the road at this point.



7.10 **Impact on the foundations, etc**

The applicant has argued that the roots for this tree are damaging the main sewer which runs close to it. The survey report submitted supports this argument.

7.11 **Suitability of work and Recommendation**

The applicant wishes to fell and replace this tree. The Council's tree officer spotted some evidence of disease in the upper part of this tree which has lead him to conclude that the work proposed is acceptable.

7.12 Officers consider that the tree does make an important contribution to the amenity of the area and to the wider special landscape area. It also contributes positively to the setting of the non-designate heritage asset, The Bourne.

7.13 However, in Officers opinion, the damage it is causing to the wall, drains and structural integrity of The Bourne alongside the potential for damage to the highway (and associated risks to personal safety) coupled with the overall poor health of the tree outweigh the amenity value offered and it is recommended that the tree is removed, subject to a condition requiring a suitable replacement.

Tree 8 - Norway Maple



7.14 This tree in question is a mature Norway Maple located next to the boundary wall with Marsh Green Road. It is proposed to reduce the crown of this tree by 3m.

7.15 Amenity Value

As a mature tree located close to a boundary this tree makes a positive contribution to the character of this part of Ashover. It is a healthy tree of a good shape.

7.16 Suitability of work

The work proposed is regarded as good practice for management of trees of this age and species. The work will result in a smaller crown but will allow the tree space to grow.

7.17 Recommendation

The tree makes a positive contribution to the area and the amenity of its surroundings. The work proposed to the tree is in keeping with good tree management and is supported by the Council's tree officer. Therefore it is considered that the work is acceptable and the proposal should be approved.

Tree 32 - Beech



7.18 This beech tree is a younger specimen located within the garden of The Bourne, positioned on the boundary of the site with agricultural fields to

the south. The tree is approximately 16m away from the house and located at a lower level. This tree has not be specifically mentioned in the structural surveyors report as causing a problem to the house. It is proposed to fell this tree.

7.19 Amenity Value

As the tree is set back from the road and is of a smaller size and younger age than the trees discussed above this tree has a lesser impact on the amenity of the area. However the tree is still an attractive specimen which is visible from Moor Road and so contributes to the character of the area where a large number of mature and semi-mature trees are planted along property and field boundaries.

7.20 Suitability of work

The tree is located some 16m away from the house and at a lower level. No evidence has been provided suggesting that this tree is causing a direct problem to the foundations of the property. The Council's tree officer disagrees with the tree surgeon that this tree cannot be pruned and has suggested that work to reduce the crown of this tree by 25% would be more appropriate than removing it.

7.21 Recommendation

The tree makes a positive contribution to the amenity of the area. Furthermore it contributes to the setting of The Bourne itself. The evidence to support its felling is not overwhelming so it is considered that the advice of the tree officer should be followed and that permission should be approved to reduce its crown by 25% rather than allow its removal.

Tree 34 - Willow



7.22 This tree is located to the east of the The Bourne. Willow trees are a short lived species which respond well to management when young but less so with age. Willow trees usually live in damp or wet conditions and require a large amount of water. The proposal is to remove this tree.

7.23 **Amenity Value**

It is considered this tree does make a positive contribution to the amenity of the area. However it is a poorer quality specimen which has been allowed to be overtaken by ivy in recent years. As such, its attractiveness and amenity value as an individual tree are reduced.

7.24 **Impact on the foundations**

This tree has been singled out by the structural engineer as causing direct problems to the foundations of The Bourne and the submitted report suggests that this tree should be removed.

7.25 **Suitability of work**

The proposed work is to fell this tree and the Council's tree officer is in support of this recommendation.

7.26 **Recommendation**

This tree makes a positive contribution to the area as part of a wider grouping of trees but offers limited amenity value on its own. Officers are of the opinion that the evidence of damage caused to the house by this

tree and its poor condition outweigh the benefits of its retention and, as such, it is considered appropriate to recommend its removal.

Other Material Considerations

- 7.27 Government Guidance suggests that Local Authorities should bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. However, if the authority believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.
- 7.28 Human Rights have been considered through the course of this application.

8.0 Summary and Conclusion

- 8.1 This application is for work to four trees land includes the felling of three trees (2x Beech and 1 Willow) and pruning work to a fourth (Norway Maple).
- 8.2 The justification for the work is the impact the roots are having on the stability of The Bourne, which is included in the Derbyshire Historic Record and is considered to be a non-designated heritage asset.
- 8.3 Evidence has been submitted which show that two of the trees (Tree 1 Beech and Tree 34 Willow) are causing damage to the property.
- 8.4 The extent of the work proposed would have an impact on the amenity of the area, however it is considered that the applicant has shown that Trees 1 and 34 (referred to above) are having an adverse impact on the stability of the dwelling and in the case of Tree 1 (Beech) it has grown too large for its position close to the highway. Work to Tree 8 (Maple) is considered to constitute appropriate tree management. As such, the evidence submitted, in the opinion of Officers, justifies the proposed works to trees 1, 8 and 34.
- 8.5 However the evidence of damage being caused by tree 32, a Beech tree, is less conclusive, and as such it is considered appropriate that work to tree 32 should be restricted to its pruning only in line with the Council's Parks Officers comments.

9.0 Recommendation

9.1 **Approve** the application subject to the following conditions and reason for refusal.

Conditions:

1. The work hereby granted consent shall be completed within two years from the date of this decision notice.
2. Notwithstanding the submitted details, the work hereby approved shall be restricted to the following:
 - i. The Felling of tree(s) T1 & T34
 - ii. The Crown Reduction of tree T8 by a maximum of 1/3
 - iii. The pruning of Tree T8 to reduce the height and spread by approximately 20%
 - iv. The Pruning of Tree T32 to reduce the height and spread by approximately 25%
3. The work shall be carried out in accordance with the appropriate recommendations contained in BS 3998:1989 (Tree Works) and in general shall in no way prejudice the health, balance and natural appearance of the tree.
4. Prior to the felling of the trees (T1 and T34) hereby approved, details of the position, size and species of two replacement trees shall be submitted to and be approved in writing by the Local Planning Authority. Thereafter, the replacement trees shall be planted in accordance with the approved scheme in the next planting season following the felling works.

Appendix A - Plan of highway/boundary

DERBYSHIRE COUNTY COUNCIL'S HIGHWAY LAND BOUNDARY PLAN

The Highways boundary is confirmed as the outside of the surrounding property wall.



 <p>DERBYSHIRE County Council Improving life for local people</p>	Text 1	 PUBLICLY	 <p>Scale 1 : 1250</p>
	Text 2	MAINTAINABLE HIGHWAY.	
	Date:	09/09/2015	Project: Project xxxx
			Drawn By: The Operator
			Reference: Ref
			Sheet Ref: SK3463NE
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