

PLANNING COMMITTEE – 21 SEPTEMBER 2021

REFERENCE NUMBER: 21/00606/TPO **Application Expiry Date:** 28 June 2021
Application Type: Tree protected by TPO application

Proposal Description: Application to fell 1 Ash tree covered by NEDDC Tree Preservation Order No 264 T1

At: Land Between Priory Cottage And The South East Side Of Ambervale Flats
Moor Road
Ashover

For: Mr D A Clapham - County Developments

Third Party Reps: 1 obj **Parish:** Ashover
Ward Name: Ashover Ward

Author of Report: Case Officer Alice Lockett **Date of Report:** 23/07/2021

MAIN RECOMMENDATION: CONDITIONALLY APPROVE



Figure 1: Site location plan

1.0 Reason for Report

- 1.1 There has been 1 objection, the application has been called in by Cllr Armitage for the following reason: *"I see that application 21/00606/TPO has gone in and I would like it to be dealt with by Committee, many of the ash trees in the Parish are suffering from die back and as such the ones that are left should be strongly protected and not felled on the whims of a developer."*

2.0 Proposal and Background

- 2.1 This application is to fell 1no Ash Tree (*Fraxinus excelsior*), covered by TPO 264.
- 2.2 The tree is located on the site know as Land Between Priory Cottage and The South East Side of Ambervale Flats which has planning permission for 9 dwellings. Once built the tree would be in the garden of plot 8.
- 2.3 The site is just outside the Special Landscape Area, which bounds the site, but located within the primary Area of Multiple Environmental Sensitivity (AMES).
- 2.4 The tree is suffering from Ash dieback and is missing a number of branches.
- 2.5 After discussions between the planning officer, tree officer and applicant, the applicant has agreed to replace the tree with a standard Beech tree.

3.0 Relevant Planning History

- 3.1 16/00071/OL | Outline application (all matters reserved) for 9 dwellings and new road access (departure from the development plan) (Amended plans) (Conditionally Approved)
- 3.2 18/00051/RM | Reserved matters application for Access, Appearance, Landscaping, Layout and Scale relating to outline approval 16/00071/OL for 9 Dwellings and new road access (Departure from Development Plan)(Amended Plans) (Conditionally Approved)
- 3.3 19/01119/DISCON | Discharge of conditions 2 (Samples), 3 (Windows and doors), 11 (Temporary access), 15 (Discharge of water) and 16 (Street Management and Maintenance) of previously approved 18/00051/RM (Conditions Discharged)

- 3.4 20/00124/DISCON | Discharge of conditions 5 (Levels), 10 (Site Compound), 13 (Bins), 14 (LEMP), 19, 20 and 21 (Contamination) relating to previously approved 16/00071/FL (Further Discharge Required)
- 3.5 20/01041/AEA | Application for Additional Environmental Approval pursuant to planning applications 16/00071/OL and 18/00051/RM (Approved)

4.0 Consultation Responses

4.1 Councils Tree Officer Comment:

The Tree is of very poor quality and doesn't look like it will have a long remaining life left. Looking at the ash tree to the ones in the back ground of the photo attached you can see the difference plus when the properties are built I believe the new residents will be concerned regarding the quality complain and want it removing Whereas if this poor quality ash tree was felled it is going to be replaced with a far more superior quality beech tree.

4.2 Ashover Parish Council:

Ashover Parish Council does not consider that a reasonable justification for removal of the tree has been produced in the application and requests the opinion of an independent arboriculturist is sought on the health of the tree.

5.0 Representations

- 5.1 1 Letter of objection has been received raising the following comments:

"I object to the felling of any trees within this land unless proper surveys regarding the health of the tree and documents presented by professionals have been done. There are many old trees bordering this land and it's an unhealthy precedent to cut them down and replace with a sapling 'suitable for a domestic garden' unless the tree is indeed completely dead or falling over. TPOs are applied for valid reasons and there are very few valid reasons to fell a tree rather than lop it or nurture it."

6.0 Relevant Policy and Strategic Context

North East Derbyshire Local Plan (Adopted November 2005)

- 6.1 The Development Plan comprises the North East Derbyshire Local Plan and the Ashover Neighbourhood Plan. The most relevant policies in determining this application are as follows:

NE2 Special Landscape Areas
NE7 Protection of trees and hedgerows

Emerging North East Derbyshire Local Plan (PDLP) (Under Examination)

- 6.2 The new emerging Local Plan (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.
- 6.3 The PDLP is therefore at an advanced stage and should be attributed appropriate weight in decision making.
- 6.4 The following emerging policies of the PDLP are material to the determination of this application:

SDC3 Landscape Character
SDC2 Trees, Woodlands and Hedgerows

Ashover Neighbourhood Plan

- 6.5 The relevant policies contained in the Ashover Neighbourhood Plan (ANP) are material to the determination of this application:

AP15 Important Trees and Hedgerows

National Planning Policy Framework (NPPF)

- 6.6 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 tree subject to this application is protected by TPO264. When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria as outlined in the government guidance:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the 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 accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their 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 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.

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.



Figure 2: Ash tree forming this application as seen on site

- 7.2 The Ash tree, seen above in Figure 2, is located to the north of the site, close to the boundary fence. It is slightly separated from the other trees on the site. The tree is publicly visible from Moor road which is about 65m away. It is also visible from Malthouse Lane approximately 60m to the east.
- 7.3 The applicant has suggested that the tree is suffering from Ash die back although this has not been confirmed by a formal tree survey. However it is clear from viewing the tree that it is in a poor condition. Many of the branches on the main stem are dead or dying.
- 7.4 Study of street view images from 2011 show that the tree was once part of a pair but it appears that its twin had been removed before the TPO was made in 2018. As a consequence of spending most of its life as part of a pair the tree has grown to be lopsided. It is also likely that the loss of its twin has had an impact on the health of the tree.

- 7.5 As a consequence of its decline, the trees contribution to the amenity of the area has been reduced particularly since it is located away from the road thus reducing its visibility from public viewpoints.
- 7.6 The applicant has applied to fell the tree due to its condition. The poor condition of the tree is of added concern as the site has approval for housing and the tree would be in the garden of plot number 8. The tree will inevitably become a danger to the users of that garden and once dead will be subject to removal without approval from the LPA.
- 7.7 After discussion between the applicant, planning officer and tree officer it has been agreed that a Beech tree would be a suitable replacement. Officers consider that as a minimum a heavy standard tree (12-14cm girth minimum) should be considered an appropriate replacement to ensure a suitable mitigating landscape impact. Such a tree would eventually grow to be a good quality specimen which, as it is not an Ash would be resistant to Ash Dieback.
- 7.8 Human Rights have been considered through the course of this application.

8.0 Summary and Conclusion

- 8.1 The tree subject to this application is a large Ash tree which is visibly suffering from ash die back and old age. The tree was once one of a pair, its twin having died and been removed before the TPO was applied.
- 8.2 As a consequence of its condition and its position away from public vantage points its impact on the amenity of the area has been significantly reduced.
- 8.3 The applicant has applied to fell the tree due to its condition. He has agreed to replace it with a Beech tree. Officers consider that as a minimum a heavy standard (12-14cm girth minimum) tree should be considered an appropriate replacement to ensure a suitable mitigating landscape impact.
- 8.4 It is considered that due to the condition of the tree and its location in what will be the garden of a new property which has been granted planning permission that the application be approved. Subject to a condition that a Beech tree is planted as a replacement tree.

9.0 Recommendation

- 9.1 **GRANT** permission subject to the following conditions:

TPO completion of work

1. The work hereby granted consent shall be completed within two years from the date of this decision notice.

Reason – For clarity and the avoidance of doubt.

TPO Scheme for Replacement

2. Prior to the felling of the tree hereby approved, details of the position, size and species of the replacement trees shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the replacement tree shall be planted in accordance with the approved scheme in the next planting season following the felling works.

Reason - In the interest of the appearance of the area and in accordance with Policy NE7 of the North East Derbyshire Local Plan, policies SDC2 and SDC3 of the Publication Draft Local Plan and AP15 of the Ashover Neighbourhood Plan.

Tree Protection

3. The replacement tree hereby approved shall be subject to the same protections afforded to existing trees as laid out in the landscaping details submitted to discharge condition 6 pursuant of 16/00071/OL. The means of protection shall be installed in accordance with the approved scheme before any other works commence on site and retained in position until all the building works, as approved, have been completed. The area within the relevant fenced/protected areas shall not be used for storage or the parking of machinery or vehicles and the ground levels shall not be altered.

Reason - In the interest of the amenity of the area and in accordance with Policies NE7 of the North East Derbyshire Local Plan, policies SDC2 and SDC3 of the Publication Draft Local Plan and AP15 of the Ashover Neighbourhood Plan.

General TPO Conditions

4. The work shall be carried out in accordance with the appropriate recommendations contained in BS 3998:2010 (Tree Works).

Reason - In the interest of the appearance of the area and the health of the tree and in accordance with policy NE7 of the North East Derbyshire Local Plan, policies SDC2 and SDC3 of the Publication Draft Local Plan and AP15 of the Ashover Neighbourhood Plan.

5. Upon completion of the works hereby approved, all branches shall be removed and the site left in a clean and tidy condition.

Reason - In the interest of the appearance of the area and in accordance with policy NE7 of the North East Derbyshire Local Plan, policies SDC2 and SDC3 of the Publication Draft Local Plan and AP15 of the Ashover Neighbourhood Plan.