

## PLANNING COMMITTEE – 22 February 2022

**REFERENCE NUMBER:** 21/01216/TPO Application Expiry Date: 05 December 2021

Application Type: Full Planning Permission

Proposal Description: Application to fell 1no Alder and 1no Hawthorn, prune 4no Alders and crown raise and prune 1no Ash, 1no Crack Willow, 1no Goat Willow, 1no Hawthorn and 1no Alder covered by NEDDC TPO 276 area A1 (amended plans)

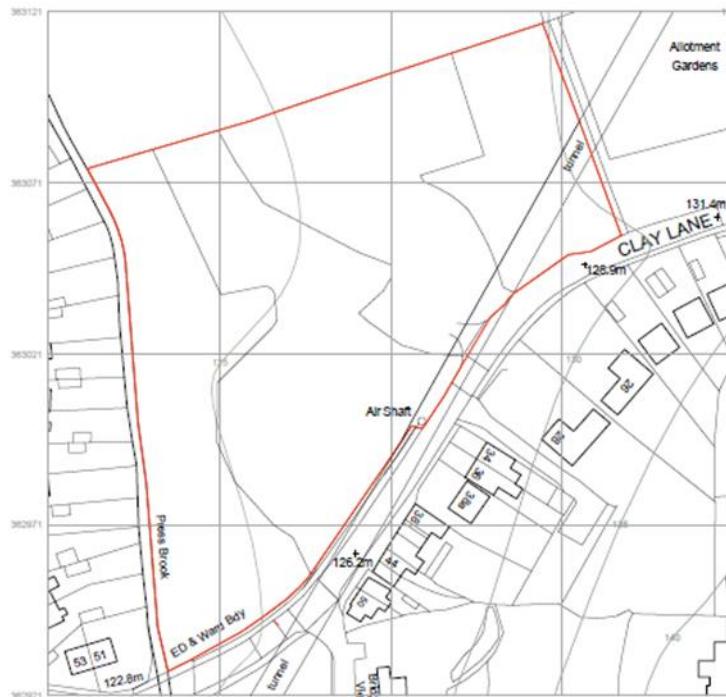
At: Land Opposite 24 To 44, Clay Lane, Clay Cross

For: Mr George Cole, FPCR

Third Party Reps: 5 Parish: Clay Cross Parish Council  
Ward Name: Clay Cross North Ward

Author of Report: Case Officer Phil Slater Date of Report: 7 February 2022

### MAIN RECOMMENDATION: GRANT



## **1.0 Reason for Report**

- 1.1 Councillor Shipman has requested that the application be determined at Planning Committee due to concerns raised over the adjoining brook flooding and weakening the natural defences in that area is going to have a detrimental impact to neighbouring properties.
- 1.2 The Planning Committee is required to determine the application.

## **2.0 Proposal and Background**

- 2.1 This is an application to fell two trees and undertake pruning works to trees covered by Tree Preservation Order 276. The application comprises the following:

**Felling of T1 – Alder and T2 – Hawthorn** to facilitate the installation of a drainage pipe and associated headwall approved as part of the residential development.

**T3 – Alder** – Single branch circa 80mm in diameter at 4m on eastern aspect has been damaged and snapped during recent construction work leaving 3m stub with hanging branch material. This damaged branch to be pruned back to the main stem.

**T4 – Alder** – Single branch circa 60mm in diameter at 5m on eastern aspect has been damaged during recent construction work leaving 200mm stub with hanging branch material. This damaged branch to be pruned back to the main stem.

**T5 – Alder** – Two branches circa 80mm in diameter at 5m and 6m on eastern aspect have been damaged during recent construction work leaving 200mm stubs with hanging branch material. These damaged branches to be pruned back to the main stem.

**T6 – Alder** – Three branches circa 80mm in diameter at 3m, 4m and 5m on eastern aspect have been damaged during recent construction work leaving hanging branch material. These damaged branches to be pruned back to the main stem.

**T7 – Crack willow** – Single branch circa 150mm in diameter at 6m on eastern aspect has been broken, likely the result of past storm damage, leaving 100mm stub with hanging branch material. This damaged branch to be pruned back to the main stem.

**Group G1 – Ash, Crack Willow, Goat Willow, Hawthorn, Alder** – Boundary group situated along the eastern bank of Smithy Brook. Several specimens have low crowns which overhang the site to less than 2m. Crowns should be raised to a height of 3m, within the areas identified on the tree works plan (9610-T-03\_B) pruning branches less than 100mm in diameter only, back to the main stem.



*Figure 1: proposed tree works*

- 2.2 The trees are situated on the east bank of the Press Brook and form the boundary to the site for 34 homes currently being built.

### **3.0 Relevant Planning History**

- 3.1 NED/20/00221/FL - Residential Development of 34 dwellings with associated infrastructure (Major Development/Departure from Development

Plan) (Amended Title/Amended Plans) at land opposite 24 to 44 Clay Lane. Conditionally approved subject to a S106 agreement.

- 3.2 NED/21/00659/DISCON - Discharge of Conditions 3, 5, 7, 10, 13, 14, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31, 32, 34, 36, 37, 39 and 42 Pursuant to Planning Application 20/00221/FL. Conditions approved.
- 3.3 NED/21/00829/DISCON - Application to discharge Condition 23 (Remediation Strategy) and Condition 29 (Mining Survey/ Phase 2 Report) pursuant to planning application 20/00221/FL. Conditions approved.
- 3.4 NED/21/00627/FL - Variation of condition 2 (approved plans) of NED/20/00221/FL to allow for changes to the road alignment and plot positions (Major Development). Conditionally approved.

#### **4.0 Consultation Responses**

- 4.1 **Clay Cross Parish Council** has the commented on the application:

- The Parish Council fully support the comments already submitted by the Clay Cross Parish Tree Warden
- Members of the Parish Council have visited the site on a regular basis following complaints/concerns raised by residents noting the destruction of trees and wildlife habitat also the setting fire to hedgerows on this site
- Any conditions made with regard to this planning application should be strictly monitored by the Case Officer/Planning Enforcement.

- 4.2 **Clay Cross Tree Warden** has commented:

- Trees designated as T1 and T2 are suggested for removal and are situated at the rear of the road hammerhead where proposed pipe work will commence leading to ground water run off into Smithy Brook. If these trees are to be felled then they should be replaced by new, suitably mature species in a position that enhances the TPO area.
- Trees designated as T3, T4, T5 and T6 have been damaged by the developers and require remediation work as detailed within the survey report.
- Trees designated G1 cover a multitude of species – all with differing requirements to be able to thrive. Both *Fraxinus excelsior* and *Alnus glutinosa* have the ability to withstand a certain degree of crown lifting although *Salix fragilis* and *Salix caprea* are not conducive to severe crown lifting as both are domed and have weak arching branches
- There is an opportunity to enhance the present TPO 276 by re planting the gap which is situated north of T6 with a selection of robust suitable species which will add value and help to alleviate flooding

issues. [Officer note: *this area is proposed to be planted as part of the extant planning permission*]

- Could the permanently damp and low piece of land north of the development site which borders Smithy Brook to the east between No.30 to No.44 Windermere Road and the point where Clay Cross FP13 intersects as it turns at the field boundary to the north towards FP1 be enhanced by new tree planting in an attempt to combat flood risk subject to the site owners approval [Officer Note: *this lies outside of the application site and scope of the application*]

4.3 **NEDDC Parks Officers** have raised no objections to the proposals as set out in the revised tree work schedule received 21 December 2021; and have commented that the works to T7 and the reduction of tree works to exclude plot 20 are in line with recommendations.

4.4 Parks Officers initially commented that:

- No objections are raised to the felling of the T1 and T2
- No objection to the proposed works to remove the recently damaged and hung branches, and would suggest these be attended to in the near future, to minimise the risk of further damage to said trees from the hung branches.
- Crown lifting of the group G1, the overhang at less than 2m has been exacerbated by the recent works to raise the ground levels in this area of the site. I understand from the visit to site there are plans to grade the banking particularly with regards the smaller section of G1, to the north-west corner of the site, which should take some of the height from this area, and reduce the extent of overhang at less than 2m, which should negate the need to undertake any crown lifting works on the west boundary of the site within this section of G1.
- larger section of G1, which runs down the west boundary of the site: no objection to the proposed crown lifting of the trees within area hatched yellow on the application rear of plots 17-19 and adjacent the hammerhead,
- note that the section immediately north of the hammerhead has significant overhang of the proposed plot 20, and crown lifting will have limited benefit to the development at this point given the proximity to the plot and angle of growth (eastward lean) of the stems of the many of the trees closer to the development boundary at this point. Recommends excluding the proposed crown lifting of G1 adjacent plot 20 from any consent, until such time as the extent of the works at this location can be clarified. [Officer note: *the plans have been amended to reflect this*]

## 5.0 Representations

5.1 4 letters of objection have been received which have raised the following points, in summary:-

- Object to the application to remove any trees whatsoever that form the border along Press brook. The trees were planted at the time of re-aligning the brook to help prevent flooding by the trees abstracting the water from the brook.
- The development has already increased the risk of flooding to the existing properties on Windermere road and removing any trees will further compound the matter. [*officer note: the removal of the trees are necessary to implement the approved housing development – see assessment below*]
- The trees stop the bankside from slipping into the brook and also drink considerable amounts of water which helps against flood risk.
- Residents have maintained these trees and the west bank over the last 55 years, and believe these trees are our property. [*Officer note: The application form states that the trees are owned by the developer.*]
- The removal and pruning will obviously impact ecologically
- By trimming the trees upwards from the ground also takes away our privacy allowing the new development houses to look straight into our gardens and houses from their higher elevation, it will also give access to the rear of our gardens, which could give potential criminal activity.
- The drawing also shows by doing these works, the development will encroach into the already set wildlife buffer. This was set for the safety of the Otters, but the water voles which are highly protected should be taken into account, because this is also their natural habitat and they use it daily. [*officer note: the tree works would enable the erection of the approved boundary fence*]
- The tree works will affect the trees structure causing damage and decay.
- Trees lies within the riparian area embankment of Press Brook watercourse, a flood zone 3 area.
- The approved otter mitigation strategy states that the wildlife buffer be retained and the western boundary forms part of this.

## 5.2 One letter of support has been received:-

- Regarding the trees, one of the planning conditions was for Woodhall to erect an Otter fence, to achieve this some elements of the over hanging trees will be required to be pruned, likewise for the area in which the drainage system will enter into the water course, without tree removal the draining system cannot be completed.
- Some of the trees are in very poor condition, particularly the trees which appear to be growing from inside the river and leaning at nearly a 45 degree angle, if these trees aren't crowned/pruned before construction is finished it will pose a danger to the persons occupying the new houses.
- Any trees which are in a poor condition or lean over the boundaries of the new dwellings should be pruned back before construction is finished.

- Due to the location of some of the trees concerned I don't feel they offer any stabilisation of the bank. As part of any felling or pruning I support the replanting of similar species trees in and around the bank area or off site if more appropriate. These new better condition trees will add to the natural habitat for local wildlife and bring stability to the bank.

## **6.0 Relevant Policy and Strategic Context**

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

SDC3 Landscape Character  
SDC2 Trees, Woodlands and Hedgerows

National Planning Policy Framework (NPPF)

- 6.2 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application.

## **7.0 Planning Issues**

- 7.1 The trees, the subject of this application, are protected by TPO 276 which is an Area TPO which covers the trees along the eastern bank of the Press Brook and which forms part of the housing development currently under construction.

- 7.2 The authority's consent is not formally required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted.

### **T1 and T2 (to be felled)**

- 7.3 The extant permission for development of the site, and the subsequent discharge of condition applications, have approved the details of a headwall and associated outfall to Press Brook which is a critical component of the overall drainage works to facilitate the development. The headwall in particular sits directly within group G1 (C) as detailed within the approved tree retention plan and therefore there can be no reasonable expectation that tree loss can be avoided in this location.
- 7.4 The removal of tree T1 and T2 as shown on drawing 9610-T-03 B) are a necessary part of implementing the original permission and as detailed above, were evidenced in the original permission and associated discharge of condition application(s) as a clear component of the proposed

development. Whilst included within this application the works do not require the formal consent of the council.

### **Works to other trees**

- 7.5 The proposed works include pruning back branches damaged by site contractors on trees marked T3, T4, T5, and T6. The work to T7 proposes remediation further to previous storm damage.
- 7.6 Both the Council's Parks Officer and the Clay Cross Tree Warden have raised no objections to these works, and Officers consider that they will not adversely impact the health of the trees or their wider amenity value and that the proposals are acceptable.
- 7.7 The works also propose the crown lifting to a height of 3m to the group marked G1 on the submitted plans. These trees overhang the site at less than 2 m in height. No objections have been raised to these works by either the Council's own Parks Officer (in respect of the larger G1 area identified) or the Tree Warden and would allow the necessary clearance to be achieved such that the implementation of the otter fencing can be undertaken in this area clearly and in a way that protects the long term integrity of the trees. It also avoids any doubt about what works can and can't be undertaken.
- 7.8 Parks Officers have concluded that no works of crown lifting are needed in the smaller G1 area in the north western corner of the site (the hatched area in which T7 is also situated) (see Fig 2 below). In view of this advice it is recommended that any permission granted specifically excludes this area from the approved works.

### **Amenity value**

- 7.9 As a group, the trees are considered to contribute to the amenity of the area. However, the proposed works are not considered of such a scale as to undermine the health or amenity value of the wider group.

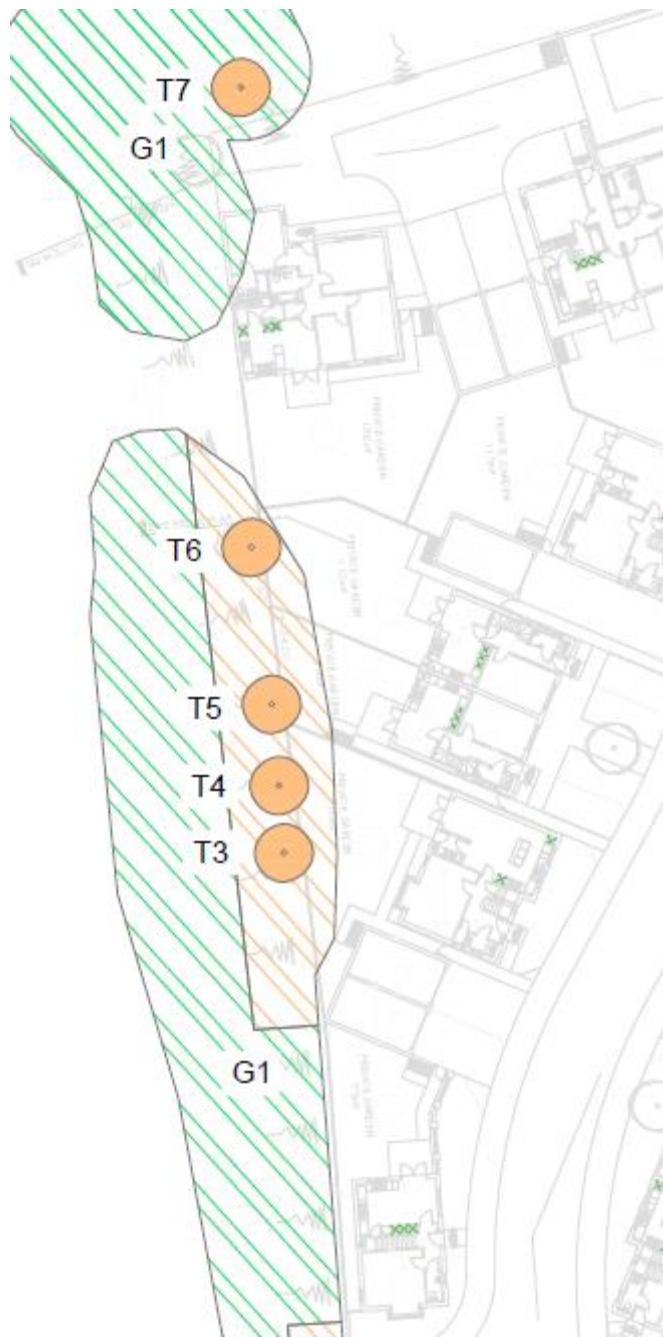


Figure 2: Tree works plan

#### Other matters

- 7.10 Concern has been raised with regards to the felling of trees which are protected by a TPO, and the impact this may have on ecology and flood risk. As set out at paragraph 7.4 the removal of the trees is necessary to

implement the approved drainage scheme and consent is not formally required as the works are necessary to implement the extant permission.

- 7.11 On the issue of the wildlife buffer, the works have been applied for to remediate earlier damage to the trees and to crown lift others in order for the boundary fencing to be installed in accordance with the planning approval and to avoid any doubt. The wildlife buffer will be unaffected once the works have been carried out.
- 7.12 On the issue of lack of privacy due to the trees being pruned, the housing development has planning permission and the impact on residents was assessed as part of this approval. The trees would be crown lifted by 3m and a 2m boundary fence erected as part of the permission. Therefore, any additional impact on privacy would be minimal.
- 7.13 Officers note the concern over the issue of potential crime as a result of the tree works. However, the Press Brook runs between the trees and the adjacent resident's gardens and the limited works proposed are not considered to meaningfully increase the potential for crime to take place.
- 7.14 Concerns have also been raised regarding the tree works and the impact on flooding. However, the tree works propose pruning and officers don't consider that these works would have any significant impact on the flooding issues raised.
- 7.15 Replacement trees have been suggested by the Tree Warden. The existing gap on the brook bank is proposed to be planted as part of the approved landscaping for the housing development along with other tree planting within the development site. It's therefore not considered that further replacement trees are necessary in this instance.

## **8.0 Summary and Conclusion**

- 8.1 The works to fell the two trees are necessary to implement the drainage works pursuant to the planning permission granted and therefore formal consent is not otherwise required for these works.
- 8.2 The proposed crown lifting of the trees to allow for the boundary fencing to be erected and the remediation work to the damaged trees to take place (as described above) would not adversely impact the health or amenity value of the trees as a group and are therefore considered acceptable.
- 8.3 Overall, the proposal is considered to be in the long term best interests of the trees remaining on the site and its wider amenity value whilst also providing clarity for all parties as to what can be properly be undertaken.

## **9.0 Recommendation**

- 9.1 **Approve** the application subject to the following conditions with the final wording delegated to The Planning Manager (Development Management):

### **Conditions**

1. The work hereby granted consent shall be completed within two years from the date of this decision notice.
2. The work hereby approved shall be in accordance with the submitted Tree Works Plan 9610-T-03 revision B; Tree Works Recommendations Revision A and Tree Works Schedule Revision A with the exception of the crown lifting proposed in the north west corner of the site (in the area outlined in red on the attached plan) where no works shall take place.
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.