

DELEGATED

AGENDA NO  
PLANNING COMMITTEE

15 JANUARY 2014

REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND NEIGHBOURHOOD  
SERVICES

13/2725/X  
20 Church Road, Egglecliffe, Stockton-on-Tees  
Application to fell 1.no Lime tree in rear garden

Expiry Date 23 December 2013

**SUMMARY**

This application for tree works is to fell 1.no Lime tree in the rear garden of 20 Church Road in Egglecliffe Village, which is located in Egglecliffe Village Conservation Area.

The main reason given by the applicant to fell the Lime tree is that he wishes to eliminate the risk of the tree falling in high winds and lightning strikes and causing damage to properties and people.

There has been 13 letters of support received for this application. The main concern of the neighbours is the tree falling and causing damage to property and residents.

The Principal Tree and Woodland Officer recommends the proposal to fell the Lime tree is refused on the grounds that there is a lack of supporting information to demonstrate the tree may fall and cause damage, the tree is considered to be in good health and condition and is not considered to be causing unreasonable interference with use or enjoyment of property or constitutes an unacceptable risk to those nearby.

The application is therefore recommended for refusal

**RECOMMENDATION**

***Planning application 13/2725/X be Refused for the following reason***

***01. In the opinion of the Local Planning Authority it is considered that there are no justifiable grounds to warrant the removal of the 1 no. Lime tree, the subject of this application as the tree is not considered to constitute an unacceptable risk to health and safety and preventative works can be undertaken to enhance its structural integrity and thereby reduce the associated risk and no supporting information to the contrary has been submitted. The tree provides a significant and prominent feature in the local landscape and therefore its proposed removal would have a notable visual impact on the area.***

**BACKGROUND**

1. The Lime tree is protected under Tree Preservation Order 374 (00.8.5.375) which was confirmed on 12<sup>th</sup> June 2001.

### **SITE AND SURROUNDINGS**

2. The application site is located in Eggescliffe Village which is within Eggescliffe Conservation Area. The Lime tree is located in the rear garden of 20 Church Road. The tree is highly visible from Church Road and also Butts Lane in the village.

### **PROPOSAL**

3. The applicant seeks permission to fell 1.no Lime tree in the rear garden of 20 Church Road, Eggescliffe. The applicant wishes to fell the tree because it is unsuitable for a small back garden and also to eliminate the risk of the tree falling in high winds and lightning strikes and causing damage to properties and people. Additional concerns are nuisance factors such as leaf litter, debris and shade.

### **CONSULTATIONS**

The following Consultees were notified and comments received are set out below:-

#### **Principal Tree and Woodland Officer**

I have inspected the tree at 20 Church Road in connection with the current application to undertake works, ref 13/2525/x.

I understand it is proposed to fell 1no. Lime tree due to concern about the safety of the tree - the reasons in support of the application have been stated in the applicant's accompanying letter and I also note additional support comments submitted by neighbours & others.

Prior to submission of the application, I met with the applicant and owner Mr & Mrs Street and also their adjoining neighbours Mr & Mrs Alexander. This was in response to a request for 'pre-application advice' regarding their intended proposal to fell the tree. At the time of our meeting I visually inspected the tree and gave general comments regarding its health and condition and also discussed their concerns and reasons regarding their proposal to fell it:

The concerns raised were primarily that the tree could fail in high winds and cause catastrophic damage and injury and that the tree was therefore an unacceptable risk to them. Additional concerns were highlighted including nuisance factors such as leaf litter, debris, shade etc. (Further detail is provided in the accompanying letters and I have addressed the main points raised below).

From my observations, the tree was found to be in good health and condition with no visible signs or symptoms of ill health, disease, decay or other possible structural defects that would render the tree hazardous in any way or that would be having any direct effect on its current health or future longevity. I also noted the tree to be a prominent specimen of significant amenity value that was integral to the mature tree cover in the surrounding Conservation Area. It was therefore considered worthy of protection via Tree Preservation Order in accord with the standard assessment criteria.

I have attached photographs of the tree for your reference:

As a result of my observations and on site discussion, I advised Messrs Street & Alexander at our recent meeting (17th October 2013) that I did not accept it was appropriate or

necessary to remove the tree and therefore not likely the Council would grant consent for the reasons stated. e.g. if the tree is in good health and condition the risk of tree failure is considered to be extremely remote therefore its proposed removal on the grounds of safety is not justified, ie it is not considered reasonable that the tree constitutes an unacceptable risk to persons or property. I gave further advice regarding the requirements to provide supporting information and also procedures for making an application and also an appeal should they still wish to proceed.

Prior to the current application, previous tree works applications have been made and approved (see letter 2008) and there have also been previous enquiries relating to the same concerns (see letter 2003). I have met both property owners on site one more than one occasion and given both verbal and written advice regarding the same issues. Please see attached response letter from SBC which addresses many of the same concerns being raised now regarding this same tree.

With regards the current application and in direct response to information submitted I can comment and advise as follows:

'Statement of reasons for felling the Lime tree (TPO 374)' - submitted by applicant, Mr Street.

With general reference to comments made therein I do not agree the tree is unsuitably located in its current environment - e.g. the tree is sufficiently clear of surrounding buildings and is integral to the mature tree cover which defines the landscape character within the surrounding Conservation Area. The tree is otherwise considered suitable for continued long term retention.

I do not agree there is an increased risk of failure due to 'increased incidence of freak weather' - e.g. actively growing trees adapt to the average wind loads they are exposed to over many years, which includes typical storm conditions, and put down more wood where mechanical loads are greatest such as main branch junctions. This process is on-going with all trees and normally sufficient to withstand higher than average loads by a substantial safety margin. The absence of any significant damage to the tree (and most other healthy trees) following storms in recent years is further evidence of this plus the tree was noted to be in good health and condition with no indication of structural weakness. For example, I highlighted to Mr Street during my site visit in October 2013, the tree appeared to have substantial buttress roots indicating good root anchorage, good stem taper indicating good overall strength of the main trunk, plus good branch unions between major branches and the main trunk indicating good structural support within the tree canopy. I therefore advised based on my observations that the overall mechanical configuration of the tree was good and not compromised by any visible defects, which in turn would make the risk of tree failure extremely remote.

Furthermore in light of the current application, there has been no professional arboricultural report submitted that provides information to the contrary therefore any claim the tree is an unacceptable risk is not supported. It was also highlighted to Mr Street if he was concerned about the risk of tree failure, it was his legal duty as the owner to ensure the tree was regularly inspected and maintained as appropriate, irrespective of the TPO - I emphasised the Council will always grant consent for work that is appropriate or necessary and in line with good arboricultural practice, however it was not the Council's duty to inspect and recommend maintenance on the tree, only regulate permissions to undertake work.

Mr Street highlighted the previous removal of a mature protected Beech tree from the front of his property that had a serious root disease - the removal of this tree was permitted under 'exemption' at the time due to it being hazardous. This tree is not however relevant to

this application other than its removal was permitted due clear evidence of internal decay and the resultant need to remove it on safety grounds. This is not the case with the Lime tree and does not infer it is similarly at risk from the same disease, ie many diseases are specific to certain species and do not affect other nearby trees of different species.

The tree is not considered to cause an unreasonable nuisance to persons or property that would in turn justify its removal ( - see attached letter dated 2003 which previously addressed many of the same issues, e.g. leaf litter, shade, honeydew etc.). Many of these issues are regarded as 'property maintenance' issues which may cause some inconvenience, but not enough to warrant major tree works or removal. I did not consider the tree in its current location was causing unreasonable nuisance that could not be alleviated to some extent by minor maintenance, as previously undertaken in 2008.  
Support comments

From my observations none of the support comments provide any further qualified supporting information to warrant the felling of the tree for the reasons stated (ie. tree safety) and the majority provide no supporting reason at all.

I also do not consider comments regarding lack of amenity are substantiated e.g. the tree is a prominent specimen and although there is limited viewing by the public it makes a contribution to the 'wider impact' as referred to in the DETR Guide to Law and Good Practice (TPO's). As above it is a mature specimen that is integral to the mature tree cover and contributes to the local landscape character and also local heritage of the Conservation Area. I would also highlight that the 2012 regulations state it is no longer accepted to challenge the validity of a TPO when making an appeal or applying to remove a tree.

I have noted the comments from the immediate neighbour Mr Alexander and consider the issues he raises are addressed here and also in previous correspondence.

With regards the above and all relevant factors concerning the current application, I recommend the proposal to fell the Lime tree is refused on the grounds there is lack of supporting information to demonstrate this necessary or appropriate – ie. the tree was considered to be in good health and condition and was not considered to be causing unreasonable interference with use or enjoyment of property or to constitute and unacceptable risk to those nearby. The tree will also continue to provide long term amenity and environmental benefits to the surrounding area.

**Councillor Phillip Dennis**

No comments received.

**Councillor A L Lewis**

No comments received.

**Councillor Mrs M Rigg**

I have viewed this tree from the rear garden of 20 Church Rd, the rear garden of 18 Church Rd and from Church Rd itself. The height of the tree is significantly more than that of the surrounding properties. However, the general public only sees it from Church Rd which is not a through road and is used solely to access properties along that road or as a route from parts of the Village to the church. The only part of the tree which can be seen from the road is the top few metres and therefore I don't consider it to be of high amenity value in the village.

The tree was probably planted in the grounds of the Rectory (now The Old Rectory) some time before the land on which numbers 18 and 20 now stand was sold for building. In its original position it was probably a suitable tree to plant. However, standing as it now does

at the boundary of two much smaller gardens; it is much less suitable in its present surroundings. Its canopy almost completely overhangs both gardens. In the case of number 18 Church Rd the canopy also overhangs a significant part of the roof of the rear single storey element of the house.

Although I am reluctant to see any tree removed I do believe that this tree has outgrown its position by a substantial amount. For the peace of mind of neighbours and applicant I would like to see it removed before larger branches become vulnerable to the wind and snow, and to see a more suitable species of native tree planted to give pleasure to future generations.

I support the application.

## **PUBLICITY**

Neighbours were notified and comments received are set out below:-

Susan Metcalfe Beechcroft Butts Lane

I have no objection to the tree being felled as it is obviously a concern for the owners and it seems it may be a danger to others if it was to fall of its own accord.

John Timothy Stokeld Nelson House The Old Rectory

I write to support the application. The tree has grown substantially over the last five years and whilst healthy would cause considerable damage to my and other houses if it were to fall. Many thanks Tim Stokeld

Mrs J Sillick Rectory View Butts Lane

I fully support the application to fell the above lime tree.

Robert Alexander 18 Church Road Eggescliffe

We have lived in the shadow of the tree for 13 years and during that time have reluctantly accepted the assurances given by Mr Hibbert, the Principal Tree and Woodland Officer at SBC, that the tree did not present a threat to persons or property. We strongly disagree with this view and wish to support the application by our neighbour.

Over this long period of time we have made a number of attempts to gain permission to considerably reduce the tree. These have been refused on the grounds that the health of the tree would be affected. We have been allowed to carry out minimal work to some of those branches, having a diameter of less than 3 inches, which extended over the lower parts of our property. Any work carried out was not allowed to exceed an overall reduction of 10% crown volume.

However within the passing years the tree has increased in size and it now dominates our house and extends well across our small rear garden. The danger posed to life and property in the event of the collapse of the tree, or any of its major branches, is obvious. Because of the growth of the tree the danger it poses has also extended to affect a number of other adjacent properties.

Adding to the concerns is increased incidence of major storms and lightning strikes. Strong winds and storms, such as those recently witnessed in other parts of the country could certainly result in a major incident. Many of the uprooted and damaged trees, which caused much devastation to life and property, had also been classified as being 'safe'.

We have been advised that the tree is a community asset. However the tree is visible only above the roof tops of the properties adjacent to it and the vast majority of local residents are unaware of its location or the danger it presents. We certainly do not receive any

benefit from the tree and, being keen gardeners, are being denied the reasonable expectation to gain employment from our small rear garden.

Through July and August we are bombarded by small hard fruit berries and droplets of sugar rich honeydew, which is exuded by aphids. This sticky substance forms a coating on roofs, walls, gates and pathways, which are then attacked by a fungus turning affected areas black.

In September, October and into November we are inundated with oblong bracts and mountains of leaves, which disperse widely on the wind.

All of this requires a considerable amount of time being spent in clearing pathways, terracing, roofs, gutters, garden furniture and drains. Jet washing and redecoration of all affected areas is an on-going necessity.

However, despite the considerable inconvenience these tasks cause, it is little compared with the on-going anxieties we have regarding the danger that the tree poses. When the tree is in leaf it is impossible to ascertain any damage caused by storms simply by a visual examination from ground level. This also applies to a lesser extent when the leaves have fallen from the tree.

The only sensible solution is to remove the tree and replace it with more suitable to this location.

William Metcalfe Beech Croft Butts Lane

I support the application to fell the above lime tree. It is obvious the owner of the tree is not asking for its removal on a whim. He has genuine, reasonable concerns. Property and life would be at risk if the tree was left and subsequently fell without warning.

Jean Alexander 18 Church Road Eggescliffe

I strongly support the application to have the lime tree felled. During high winds and storms I am concerned that the tree or parts of it will fall on our property and cause damage and injury to persons.

J A Plumb 4 Church Road Eggescliffe

I strongly support this application on the grounds of safety and risk of damage to surrounding properties

I support this application to fell the tree on the grounds of safety to the surrounding buildings

B Plumb 4 Church Road Eggescliffe

I support this application on the grounds due to the risk of damage to surrounding properties in the event of the loss of boughs and extreme damage if the tree is felled by wind or storm

Mark Ellis Kirklands Church Road

I support the planning application to fell the lime tree as I believe that the risk of damage to persons and/or property is becoming too great.

Arlene Ellis Kirklands Church Road

I can see the lime tree from my kitchen window across the road. It towers above the houses it is behind. In windy weather I fear that the tree or branches from it may fall and cause terrible damage to the houses and homeowners for this I support the application to fell the tree.

Mike Lakinski 16 Church Road Eggescliffe  
Fully support this application

Denise Lakinski 16 Church Road Eggescliffe  
Fully support this application

D Smith The Village Farm Church Road

The tree in question is in rather a perilous position. Should it be brought down without due care and attention it could cause great damage to the surrounding properties. Consequently it should be professionally dealt with before this could happen.

### **PLANNING POLICY**

Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plan is the Core Strategy Development Plan Document and saved policies of the Stockton on Tees Local Plan

Section 143 of the Localism Act came into force on the 15 Jan 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an application [planning application] the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations

The following planning policies are considered to be relevant to the consideration of this application:-

National Planning Policy Framework

Paragraph 14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking;

For decision-taking this means:

approving development proposals that accord with the development without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

-any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or-  
-specific policies in this Framework indicate development should be restricted.

### **MATERIAL PLANNING CONSIDERATIONS**

4. The material planning considerations relating to this application to fell a Lime Tree protected by a Tree Preservation Order are the effect on the character and appearance of the local area if the Lime Tree is felled and whether the reasons given for felling the Lime Tree are sufficient to justify that course of action.

**The effect on the character and appearance of the local area if the Lime Tree is felled**

5. The Principal Tree and Woodland Officer has inspected the Lime tree on several occasions and considers that the Lime tree is suitably located in its current environment and provides visual amenity. The tree is sufficiently clear of surrounding buildings and is integral to the mature tree cover which defines the landscape character within the surrounding Conservation Area. As indicated by the Principal Tree and Woodland Officer with the introduction of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 it is no longer accepted to challenge the validity of a Tree Preservation Order when making an appeal or applying to remove a tree. A requirement of any application for works on a protected tree is that it should now be accompanied by appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.

**Whether the reasons given for felling the Lime Tree are sufficient to justify that course of action.**

6. There have been 13 letters of support to this application from neighbouring properties. The main concern of the neighbours is the tree falling and causing damage to property and residents.
7. The applicant has highlighted the previous removal of a mature protected Beech tree from the front of his property that had a serious root disease, the removal of this tree was permitted under 'exemption' at the time due to it being hazardous.
8. The Principal Tree and Woodland Officer assessed the tree using the professional tree risk assessment methodology, visual tree assessment method (VTA) and applied the principles of best practice with regard to assessing obvious signs or symptoms of ill health or structural defects. However the onus is on the owner of the tree to inspect and maintain it not the Council, nevertheless if they wish to undertake work they need to provide adequate supporting information. The Local Planning Authority (LPA) can only act on the available information and unless the supporting information demonstrates a clear need to remove the tree the LPA are not obliged to grant consent or be found liable for any subsequent loss or damage. Nonetheless a tree is inspected by the Council's qualified arborist and in the event structural defects or health problems are found the arborist would evaluate their significance, the possible need for further investigation and recommend management options. Any defects or problems are considered in the light of the proposal before making a final recommendation or provide further guidance on what is required.
9. As part of the Principal Tree and Woodland Officer's assessment the tree condition is visually assessed and relevant factors plus supporting information taken into account. The Principal Tree and Woodland Officer is fully aware of the Planning and Compensation Act when making decisions and is fully aware of the implications of this, e.g. damage or loss would normally have to be foreseeable, however consent will always be recommended for tree management that ensures an acceptable level of risk is attained. There is no such thing as zero risk, but in this case whole tree removal is not considered appropriate.
10. The Principal Tree and Woodland Officer considers that the Lime tree to be in good health and condition, therefore there is not an increased risk of failure due to weather conditions such as high winds and lightning strikes. It is considered that actively growing trees adapt to the average wind loads they are exposed to over many years, which includes typical storm conditions, and put down more wood where mechanical loads are greatest such as main branch junctions. This process is on-going with all trees and normally sufficient to withstand higher than average loads by a substantial safety margin. The absence of any significant damage to the tree following storms in recent years is further evidence of this and there is also no indication of structural weakness.



11. The tree appears to have substantial buttress roots indicating good root anchorage; good stem taper indicating good overall strength of the main trunk, plus good branch unions between major branches and the main trunk indicating good structural support within the tree canopy. Furthermore, there has been no professional arboricultural report submitted that provides information to the contrary therefore any claim the tree is an unacceptable risk is not supported. Therefore the overall mechanical configuration of the tree was good and not compromised by any visible defects, which in turn would make the risk of tree failure extremely remote.

### **Residual Matters**

12. Support by neighbours for the removal of the Tree refer to it causes significant nuisance in terms of leaves, debris. The Lime tree is not considered by the Principal tree and Woodland Officer to cause an unreasonable nuisance to persons or property that would in turn justify its removal. Many of these issues are regarded as 'property maintenance' issues which may cause some inconvenience, but not significant to warrant major tree works or removal. The Principal Tree and Woodland Officer does not consider the tree in its current location is causing unreasonable nuisance that could not be alleviated to some extent by minor maintenance and general on-going maintenance of the tree.
13. With regard to the earlier removal of the mature protected Beech tree from the application site, its removal was permitted due clear evidence of internal decay and the resultant need to remove it on safety grounds. This is not the case with the Lime tree and does not infer it is similarly at risk from the same disease, i.e. many diseases are specific to certain species and do not affect other nearby trees of different species.

### **CONCLUSION**

14. Therefore it is clear that there is a lack of supporting information to demonstrate the tree may fall and cause damage. The tree is considered to be in good health and condition and is not considered to be causing unreasonable interference with use or enjoyment of property or constitutes an unacceptable risk to those nearby. The tree will also continue to provide long term amenity and environmental benefits to the surrounding area and it is considered that there is no justification to allow the protected tree to be felled.
15. The genuine concerns of the applicant regarding health and safety are recognised but the felling of the tree at this stage is considered to be a disproportionate response to the likely risks.
16. It is recommended that the application be Refused for the reason specified above.

**Corporate Director of Development and Neighbourhood Services**  
**Contact Officer Miss Joanne Hutchcraft Telephone No 01642 526197**

### **WARD AND WARD COUNCILLORS**

**Ward Eaglescliffe**  
**Ward Councillor Councillor A L Lewis**

**Ward Eaglescliffe**  
**Ward Councillor Councillor Mrs M. Rigg**

**Ward Eaglescliffe**  
**Ward Councillor Councillor Phillip Dennis**

## **IMPLICATIONS**

**Financial Implications:** As report

**Environmental Implications:** As report

**Human Rights Implications:**

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report

**Community Safety Implications:**

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report