

TREES PARK AVENUE PETITION

Meeting	17th December 2020
Report Author	Iain Livingstone
Portfolio Holder	Cllr Rick Everitt, Leader of the Council
Status	For Decision
Classification:	Unrestricted
Key Decision	No
Reasons for Key	N/A.
Previously Considered by	Full Council - 10th September 2020
Ward:	Viking

Executive Summary:

The report outlines the response to the petition concerning the felling of trees on a site in Viking Ward, Broadstairs, which was reported to Full Council in September 2020. It outlines the independent planning enforcement work and action which has been ongoing through the year and provides an overview of the planning context for the open space in question.

It also considers how open space and green infrastructure can be reviewed as part of the Local Plan review process. It recommends that Cabinet agree to consider open space as part of the Local Plan Review process, in particular to ensure a robust policy relationship between woodland protection/planting and green infrastructure.

Recommendation:

Cabinet are asked to:

1. Note the on-going enforcement action when considering the petition in relation to the felling of trees on a site in Viking Ward, Broadstairs.
2. Agree to include the consideration of open space and green infrastructure in the district within the Local Plan review, in accordance with the recommendations of the separate Cabinet report, also on this agenda, relating to the scope of the Local Plan Update.

Corporate Implications

Financial and Value for Money

No costs directly associated with this report or recommendation.

Legal

There are no legal implications arising directly from this report, however as members will be aware, any formal enforcement action in relation to the served tree replacement notice is subject to the provision of an appeal process, and therefore this process is still ongoing.

Corporate

The report covers factors which form part of the Council's corporate statement around the Environment, which includes an enforcement approach where necessary. In particular, to maintain strong enforcement action in planning, protecting open spaces to the benefit of current and future residents, and support for the Thanet Local Plan.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

In the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this decision.

CORPORATE PRIORITIES

This report relates to the following corporate priorities:

- Environment

1.0 Introduction and Background

- 1.1 This report follows the submission of a petition to the Council regarding a site within the Viking ward in Broadstairs, where a number of trees were felled in February/March 2020. The petition was referred by Full Council at its meeting on 10th September 2020 to cabinet for decision.
- 1.2 The petition stated "We the undersigned petition Thanet District Council to require the owner of the area of woodland off Park Avenue - East of Park Wood Close-, Broadstairs (Land Registry Ref K61934), to replant that area with trees following the recent heavy felling, and to re-affirm its view that the area should remain as open space with a guarantee that there will be no development allowed on this site."

- 1.3 The land in question is covered by two Tree Preservation Order (TPO) designations, TH/TPO/1/1956 and TH/TPO/1/1985. These TPOs were Area Orders which protect those trees present on the site when the orders were made and any trees planted as replacements for trees permitted to be felled or removed in relation to those orders.

2.0 The Current Situation in relation to Planning Enforcement

- 2.1 Since the work took place on the site in question at the end of February and the beginning of March this year, the Planning Enforcement team has conducted an investigation into the enforcement complaints received. The Council's Planning Enforcement protocol outlines that on receiving a complaint, the Council will establish whether a breach of planning control has taken place, and seek to resolve the matter without formal action where possible. Following the conclusion of investigations, the Enforcement team will decide whether or not to take formal action. In all cases, the Council will seek to use the most effective power available to remedy a breach of planning control. In this instance, the reported breach was considered a high priority case, as it related to the loss of protected trees.
- 2.2 The Council has conducted its enforcement investigation into the work that has occurred on site. This has included but not been limited to:
- Visiting the site on a number of occasions to assess the trees removed including an assessment of whether the trees felled were covered by the TPOs.
 - Reviewing the correspondence received from residents surrounding the site.
 - Engagement with the owner of the site to ascertain the rationale behind removal and seeking to resolve the matter without formal action in line with the Enforcement protocol, including receipt of tree surveys carried out prior and subsequent to the work carried out to ascertain whether the trees felled on site were protected.
 - Researching the history of the site and information on the TPOs and the relationship with neighbouring residential development, including checking the confirmation of the TPO in historical records.
 - Seeking legal advice on the action to be taken regarding any breach of the regulations which may have occurred.
- 2.3 Officers have determined that of the trees felled that on the balance of probabilities when considering the information available, 12 trees have been removed which were protected by virtue of the 1956 and 1985 orders. This is due to the age of the trees felled, as evidenced by the tree stumps on site, and with specific regard to the planning history of the neighbouring Parkwood Close development and the subsequent requirement for protected trees to be replanted which were felled from that development (with the same protection under the 1956 order) in 1985. Both tree preservation orders are considered to be confirmed and in force.
- 2.4 In this instance, officers have been unable to resolve the matter without formal action and the trees felled under the TPO order have not been replanted at the earliest opportunity. Therefore the Council has served a Tree replacement notice on the owner of the site requiring 12 trees of specific species to be replanted on the site by

the 31st March 2021. The notice will be in effect on the 30th December 2020 and the owner is able to appeal the notice to the Planning Inspectorate if an appeal is submitted before this date.

- 2.5 Therefore, the Council has independently, through its delegated processes, required the replanting of those trees considered to be protected as the local planning authority. The Council does not hold any ability to require replanting of felled trees not covered by a TPO on private land. It is therefore recommended that the Cabinet note this ongoing enforcement action when considering the petition “to replant that area with trees following the recent heavy felling”.

3.0 The Current Situation in relation to Planning Policy for the Site

- 3.1 The petition requests that the Council “reaffirm its view that the area should remain as open space with a guarantee that there will be no development allowed on this site”. The site in question is not designated protected open space under Policy SP32 of the Thanet Local Plan 2020, nor is it Local Green Space under Policy SP33. Nor is it identified as such in the Broadstairs & St Peters Neighbourhood Plan. There is no planning permission for development on the site.
- 3.2 The designation of the site as open space, with development precluded, cannot be made by the Council’s Cabinet. It would have to occur through the Local Plan process. As part of the Local Plan review process (being considered under a separate item on this Cabinet agenda), the Cabinet Advisory Group has proposed to include ensuring a robust policy relationship between biodiversity “net gain”; woodland protection/planting; green infrastructure and the Council’s proposed Tree Strategy within the scope of the review. The Local Plan process is considered the most appropriate forum for consideration of the matter raised in the petition, with public consultation and engagement on these issues to occur next year.
- 3.3 In the event that a planning application is submitted for the site prior to or during the review, then the Council must consider any proposal on its own merits against the adopted development plan and associated relevant planning documents and guidance. The site forms part of the character of the area, previously being retained as open space in the construction of Parkwood Close in 1970s/1980s, and is considered to positively contribute to the quality and amenity of the area. Regard will be had to Policy BSP7 of the Broadstairs Neighbourhood Plan in considering any application, as the site lies within an Area of High Townscape Value. This means that the conservation or enhancement of the local character will be the primary planning aim, and development will only be supported where factors including separation between buildings and landscaping are complementary to the special character of the area. Any application would also be considered in the context of the TPOs present on the site, any required replacement TPO trees and the policy framework of the Thanet Local Plan and Broadstairs Neighbourhood Plan in relation to landscaping and green infrastructure.

- 3.4 The recommendation in regard to retaining the site as open space as outlined in the petition is therefore to refer the matter to the review of the Local Plan, specifically in relation to ensuring a robust policy relationship between woodland protection/planting and green infrastructure.

4.0 Options

- 4.1 Cabinet note the report and agree the recommendations set out above in relation to the felling of trees on a site in Viking Ward, Broadstairs and to the consideration of open space and green infrastructure in the district as part of the Local Plan review, in accordance with the recommendations of the separate Cabinet report, also on this agenda, relating to the scope of the Local Plan Update
- 4.2 Members propose an alternative motion.

5.0 Next Steps

- 5.1 The item will be reported to the full Council in due course.

Contact Officer: Iain Livingstone, Planning Applications Manager
Reporting to: Bob Porter, Director of Housing and Planning

Annex List

Annex 1: Planning Enforcement Protocol
Annex 2: Copy of Tree Replacement Notice

Background Papers

1. Thanet District Council Adopted Local Plan 2020: [Thanet Local Plan 2020](#)
2. Broadstairs and St Peter's Neighbourhood development plan 2018-2030: [Referendum Version](#)
3. National Planning Policy Framework: [NPPF 2019](#)
4. National Planning Practice Guidance: [Planning Practice Guidance](#)

Corporate Consultation

Finance: *Chris Blundell, Director Finance*

Legal: *Estelle Culligan (Director of Law and Democracy)*