

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 22 October 2008

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APPLICATION REF. NO:	08/00057/TF
STATUTORY DECISION DATE:	01/04/08
WARD/PARISH:	Middleton St George
LOCATION:	St.Laurence's Church, Church Lane, Middleton St George.
DESCRIPTION:	Felling of two Sycamore trees (T1&T2) protected under Tree Preservation Order (No3) 1981
APPLICANT:	Reverend Paul Neville

APPLICATION AND SITE DESCRIPTION

This application seeks consent for the felling of two mature Sycamore trees within St Laurence's Churchyard. The trees are located near the western boundary of the Churchyard. St Laurence's Church is a Grade II listed building. It is detached, constructed of stone and is situated within the Middleton St George Conservation Area. Residential properties are situated to the north and west of the church yard.

The trees in question are located some 6 metres from the west end of the vestry building which forms an extension to the western gable elevation of the main Church building. The Church itself has cracks in the south and west walls. The vestry extension has been subject to significant structural cracking.

A letter has been submitted by the applicant, Reverend Neville seeking to explain why the works are proposed. His explanation is summarised below:-

- The trees across the site have been a concern of the church council, diocese and quinquennial architect for some 25 years. The development of serious structural cracking first became apparent in 2003.
- Following an insurance assessment, the church was asked to monitor the building and take appropriate safety precautions in order to protect the public.
- English Heritage determined that the vestry was irreparable and would not attract grant to enable repair. The Church employed Charles Blackett Ord, a structural engineer specialising in historic buildings who concluded that the two trees in question should be removed before any attempt to repair the church could begin.

- The structural problems have become progressively worse. Doors no longer close; the vestry floor is subject to movement; the only internal access to the vestry has been rendered unavailable due to concrete lintel breaking.
- A ground condition report undertaken in 2004 concluded that that clay soil had become dessicated to a depth level with that of the tree roots. At Christmas that year the Church's insurers declared that they would continue with public liability cover 'for now' but would reassess the situation regularly.
- There have recently been two falls of plaster, from the south-west corner of the building where the subsidence is at its worst and from the roof. An insurance visit is due and there is anxiety over being able to present a convincing case that the building is being made good.
- It is accepted that it would be wrong to remove the preserved trees without good reason but is believed the action is necessary to save this historic building.

The Church's Insurer's recently advised that the Church must be closed to the public for the time being on grounds of its structural condition.

PLANNING HISTORY

82/185/TF - Consent was granted in May 1982 for the pruning of the two sycamore trees which are the subject of the present application.

95/417/TF - In August 1995 consent was granted for the pruning of a pine tree.

01/216/TF - Consent was granted in May 2001 for pruning works to 10 trees (including the trees subject of the current proposal).

01/216/TF - Consent was granted in September 2001 for the felling of a Sycamore tree.

02/410/TFC - In May 2002 prior notification was served on the Council for the felling of two conifer trees.

04/556/TFC – Prior notification was served on the Council in May 2004 to carry out tree works.

PLANNING POLICY BACKGROUND

The following national policy guidance is relevant:-

PPG15 – Planning and the Historic Environment
Tree Preservation Orders: A Guide to the Law and Good Practice (2000)

The following policies of the Borough of Darlington Local Plan are relevant although in determination of tree applications there is no such requirement as applies to planning applications to determine 'in accordance with the development plan unless material considerations indicate otherwise' .: -

E11 - Conservation of Trees, Woodlands and Hedgerows
E13 – Tree Preservation Orders
R26 – Protection of Community Facilities

RESULTS OF CONSULTATION AND PUBLICITY

Ten letters have been received from local residents including one from the local ward Member objecting to the proposal on the following grounds: -

- The trees are attractive, healthy and mature which enhances the surroundings and adds to the local diversity. Their loss will significantly detract from the pleasant outlook currently enjoyed. The action would detract from the attractiveness of the Conservation Area. They have stood for many years with no adverse effect on the nearby house or church buildings. Recent problems which may have affected the church vestry and the church itself may have been caused by the new housing development in the adjoining Ropner Gardens. I understand that the church will shortly be submitting plans for a large new building to replace the current vestry. These trees just happen to be in an inconvenient position, but their removal will detract from one of the few Conservation Areas in the Borough.
- There is a lack of evidence the trees are responsible for the building's structural problems. As such there is a need for further seasonal monitoring.
- If the trees are healthy specimens then they should not be felled. The Council has a responsibility to enforce tree preservation orders.
- Consent was refused for the felling of Sycamore tree close to 19A The Front (also a Grade II listed building), despite the need to rebuild a wall that the tree had knocked over. There is also movement in the house.
- If the trees are allowed to be felled it may set a precedent in relation to other protected trees.
- Regard must be had to the consequences for the adjoining properties of felling the trees.
- The Council has not paid sufficient attention to Government advice with regard to dealing with trees subject to preservation orders.
- Any decision to approve the application based on perceived fears of compensation and the applicant's view of the urgency of the situation whilst ignoring the clear inadequacies of the evidence base would be unreasonable.

Nine letters of support have also been submitted and the following comments made:-

- Having read the professional reports attached to the application, it seems to us that, over a period of at least twenty eight years, the two Sycamore trees have been the cause of substantial structural damage to the church; particularly the vestry which we understand has been condemned. In these circumstances, we are firmly of the opinion that the protection afforded by the legislation is inappropriate and should be withdrawn.
- The listed building status of the Church is more important than the trees which should not be allowed to prevent the conservation of this important landmark. The loss of the Church would represent a significant impact on the whole village whereas the loss of the trees would represent only a localised impact. The structural damage being caused to the church is a public liability. The Church's insurers have said urgent repairs need to be done to the building. This is the only church left in Middleton St. George and it would be absolutely disastrous if the facility were to become unavailable. The loss of the church would be a significant loss to the community.
- It makes sense to remove the trees, alleviate the drainage problems and facilitate the erection of the new building at the same time.

Middleton St George Parish Council has commented as follows: -

An arborist report must be obtained to confirm the trees are damaging the structure and that there is no feasible alternative solution to save the trees. The Council is concerned that this will set a precedent.

The Council's Structural Engineer has offered the following comments: -

A brief inspection of the church was carried out on 7 July 2008 to review the extent of cracking and movement to the fabric of the building. Copies of reports showing the history of cracking were presented to Darlington Borough Council by Rev Paul Neville.

During the inspection, cracking and movement of the structure was noted together with distortion of the door and window frames.

Areas of plaster to the west wall have either collapsed or been removed to expose the backing brickwork. Signs of significant cracking were noted in the brickwork running from the base of the rose window to the top of the lintel. The lintel has pulled away from the supporting wall and has been propped. The settlement of the west wall causes concern and any further movement could have health and safety implications due to possible injury from falling plaster or brickwork and could result in closure of the church.

The church considers the cause of the movement and cracking is due to the desiccation of the ground from the roots of the two sycamore trees.

A ground investigation report undertaken by Robinson Environmental states that the ground has suffered from desiccation within the upper 1.5 metres of strata.

A structural appraisal was carried out by Blackett-Ord Consulting Engineers in December 2005 concluded the cracking and movement throughout the building has been associated with the effects of tree roots from the mature trees that are growing in the south west of the church yard and at a distance that is normally regarded as being within the line of influence of tree roots.

However it is considered there are other reasons for the cracking and movement other than from the effects of the two sycamore trees.

The letter dated 30 June 08 received from Rev Paul Neville gives details of their limited quantitative information comprising a datum line with measurements taken 3 times over the last 2 years.

The initial reading in March 06 was 104 mm and the reading taken in September 06 was 106 mm indicating the crack was opening up over the summer period. However in June 08 the measurement was 102 mm indicating the crack had closed up beyond the initial reading taken in March 06.

This movement is opposite that normally associated with vegetation linked subsidence. If any readings were taken after the acrow prop was added they may not illustrate a true representation of the movement of the wall. The results of the monitoring taken to date do not clearly indicate the movement is due to seasonal changes in the clay.

A more detailed method of monitoring using wall studs with vernier measurements or Vernier Tell Tales with measurements taken four times a year for a period of two years would be necessary to clearly show the range of movement to determine if the movement is due to seasonal changes in the clay soil.

After reviewing the details of the building movement detailed in the records received from Rev Paul Neville it is considered that the damage to the building is not solely due to vegetation linked subsidence. It is considered that the cracking and movement to the fabric of the building is also connected with one or a combination of the following:-

The site visit confirmed that the gable wall of the church is partly supported on the basement walls of the boiler house. This means the wall is supported on ground of varying nature that would suffer from variations in movement due to seasonal changes in moisture levels. Borehole records indicate the ground is variable comprising laminated sandy silty clay.

As discussed at the meeting held on 30 June 2008 the Church began to show signs of cracking in 2003. At the time of the site visit a considerable amount of ground water was noted to pass through the basement wall adjacent to the sump pit. The reports indicate a basement pump was installed prior to 2003 to alleviate flooding in the basement. The water is automatically discharged to the main drain once the sump fills up.

Prior to installation of the pump the water would seep into the ground to keep the moisture content of the clay at its original level. Once the pump started to extract ground water there would be a reduction in the moisture content of the ground, similar or possibly greater than that associated with vegetation linked subsidence.

Records indicate there was no reference to cracking of the west gable wall in the 1998 report. The 2003 Quinquennial report indicates "the sycamore trees on the west boundary are responsible for the loss of ground moisture and resulting instability". Since the cracking occurred at the time the pump was installed the most likely cause of the cracking is the shrinkage of the clay soil due to moisture extraction by the pump.

The reduction in moisture content may also have caused settlement of the ground over the footprint of the Vestry.

At the time of the visit a significant amount of water was seeping through the base of the wall adjacent to the pit. Any changes in the migration of ground water may have caused wash out of the sand or silt causing possible settlement of the soil.

The report makes reference to the cracks in the vestry being filled in with cement based mortar to monitor the cracking. If the cracks were left open they may have opened and closed and remained as "slight" cracks. Once the cracks were filled "ratcheting" of the wall would occur where further cracks are formed since the wall is prevented from returning to its original location due to the joint being filled with mortar. This mechanism would account for the horizontal displacement of the vestry relative to the gable wall of the church and also the stepped nature of the west wall of the vestry.

There are two houses located 7 metres and 14 metres away from the north and west gable wall of the church. It is assumed the house foundations are positioned at a suitable depth to prevent any damage to the property from ground heave if any trees within the churchyard are removed. The type and depth of foundations to both properties would need to be established and a firm of Consulting Engineers should be employed to assess if removal of the trees would have any effect on the house foundations.

Although there is no conclusive evidence that the two sycamore trees are the cause of the cracking and settlement on balance I consider it may be prudent to remove the two trees. If the trees are not removed and the walls continue to crack the church may seek to cover repair costs from Darlington Borough Council. However if the trees are removed and movement continues the Council could not be held responsible for repair costs.

Further comments were later received from the Council's structural engineer in response to the Church's own structural appraisal report. As a result of this the engineer accepted that there appeared to have been dessication of the ground, most likely due to tree roots.

The Council's Arboricultural Officer has advised that the church is within the zone of influence of the Sycamore trees but that there is no conclusive evidence to suggest that the trees are primarily responsible for the damage to the church. He considers it is possible that the trees are contributing to the problem during the summer months by removing water.

An independent arboricultural consultant was commissioned to examine the allegation of tree related damage to the building. He noted that the trees requested for felling and the other mature tree stock on site is located close enough to the building for the root-tissue to potentially contribute to moisture removal under and around the foundations. However he concluded that there had been a lack of adequate seasonal monitoring and that this and the contradictory nature of the monitoring undertaken cast significant doubt over the role of the trees within the current situation. He states that no real emphasis should be given to such inadequate and irregular sets of monitoring results. In view of this uncertainty he advocates further monitoring to confirm the seasonal nature of the damage and the trees potential to be contributory factors.

CONSIDERATION OF PLANNING ISSUES

The key issue for consideration in this case is whether there is sufficient reason to justify the removal of the two Sycamores. In the Government's publication Tree Preservation Orders: A Guide to the Law and Good Practice it states that in considering planning application the LPA is advised:

- i) to assess the amenity value of the tree and the likely impact of the proposal on the amenity of the area and
- ii) in light of this assessment to consider whether or not the proposal is justified having regard to the reasons put forward in support of it

Amenity value of trees

Policy E11 of the Local Plan seeks to encourage the conservation of trees for their landscape and habitat value. This would include the contribution of trees to the character of Conservation Areas. The trees have been inspected by the Council's Arboricultural Officer and were found to be in reasonable form and condition. They are tall, attractive mature specimens which can be viewed clearly from the Ropner Gardens area within the background to the south. The trees contribute significantly to the character of the Conservation Area from this perspective. The loss of the trees would be noticeable although this impact would be mitigated by the presence of other mature trees in the locality.

Several prominent mature trees would remain within the church grounds in particular those fronting onto Church Lane, which to a large degree obscure the subject trees from view from the Church Lane Area. Views of the subject trees would also be obscured by the presence of other mature trees along the main thoroughfare through the village. This would help to mitigate the loss of the Sycamores in visual terms.

On balance it is considered that the loss of the trees would not be detrimental to the preservation of the character or appearance of the Conservation Area or the visual amenity of the locality.

Whether the proposal is justified

If it could be determined that the trees are responsible for the structural damage, then this would provide Members with clear justification to approve the application.

The Council has a duty to ensure the preservation and enhancement of its heritage assets. The Government's PPG 15 – Planning and the Historic Environment states that there should be a general presumption in favour of the preservation of listed buildings. There is a statutory requirement placed on Local Planning Authorities to have special regard to the desirability of preserving a building or its setting or any features of special or historic interest which it possesses. If it cannot be said with certainty that the trees are responsible for the building's structural problems it is important for Member's to consider the degree of likelihood that they are responsible and the weight that should be attached to this.

The cause of the structural problems currently being experienced by the Church has been examined by a variety of arboricultural and structural experts. What is clear is that it cannot be said with certainty that the subject trees are solely responsible or are indeed a contributory factor in the structural deterioration of the building.

The Council's structural engineer has taken the view that the dessication of the ground is likely to have been caused by tree roots but that other factors such as the installation of a ground water pump may also have contributed. He has also further qualified this view stating that if tree roots have contributed to the dessication of the ground the extent to which the trees subject to this application as opposed to trees on the site in general have contributed is uncertain.

The Council's arboricultural consultant has suggested the need for further seasonal monitoring to determine the extent to which the subject trees are responsible before a decision is taken on whether they should be felled.

Taking these assessments in isolation the strongest case that could be made for the felling of the trees would be that it is possible that the subject trees are a contributory factor in the structural deterioration of the building albeit that the Council's structural engineer considers it likely that trees are a contributory factor. In keeping with the findings of the arboricultural consultant, it was suggested to the Church that a further period of seasonal monitoring ought to be undertaken to identify whether a stronger causal linkage can be established. The applicant has however rejected this as way forward, given the urgency of the current situation and requests a decision on the matter at the earliest possibility. The Church's solicitor has stated that this is a viable parish and that it is their intention to resume use of the building.

A structural appraisal by a consultant engineer specialising in conservation matters, together with a supporting letter from another engineering consultancy, and a ground investigation report were submitted with the application. Following an initial consideration of the supporting material by officers additional, more detailed information has been provided which includes quinquennial inspection reports by the church's conservation and historic building consultants extending over a period of twenty-five years.

The information submitted with the application suggests the trees to the south and west of the church are near enough to the building for their roots to affect the moisture content of the clay beneath the foundations. The structural engineer's report of December 2005 states that the cracking and movement throughout the building has been associated with the effects of tree roots from the mature trees that are growing in the south and west of the church. The structural engineer advocates tree removal as the only long term solution. However he also stated in his 2005 report that structural movement of the church is to be prevented by installing Cintec ties into the walls at the southwest corner and in the south wall. This point has been explored further by officers and clarification sought from the structural engineer. He has stated, that if the vestry were to be demolished and structural ties put in place to help 'stitch' the main church building this would not overcome the risk of subsequent structural damage to the main body of the church. He considers that the installation of ties would not amount to a permanent solution. He states that the cracking and movement throughout the building has been associated with the effects of tree roots from the mature trees growing in the south and west of the church. These trees are near enough to the building for their roots to affect the moisture content of the clay beneath the foundations. The only long term solution would be to remove the trees affecting the foundations. In his opinion the trees to the west of the Church are those most likely to be responsible but this does not preclude some contribution from other trees. He states that if the trees to the west are not removed the ground conditions will continue to affect the foundations of the Church.

Several alternative options have been explored to address the damage to the church, other than the removal of the trees but have been ruled out for a number of reasons. These include underpinning of the damaged area of the main church but due to the ground conditions, this could in time result in separation of the underpinned section from the main body of the church. Total underpinning of the church is considered to be a very expensive exercise due to the construction and depth of foundations required. A root barrier between the church and the trees is also an option to provide a physical barrier to prevent tree roots reaching the church. However this may not be successful as root barriers can affect natural drainage patterns in the ground and also there is the possibility that roots could find a way through any drainage, which passes through the barrier.

It is evident from the comments of the Council's Structural Engineer, the Arboricultural consultant and the Arboricultural Officer that the structural damage to the church may not be wholly attributable to the protected trees subject to this application but it is at least possible that they may have contributed to this although this cannot be quantified. The consultant structural engineer considers the subject trees to be the most likely cause of affects on the building's foundations.

The rationale for the scope of the current application is that these are the nearest sizeable trees to the part of the building experiencing the most serious structural problems. Members should bear in mind that if consent is granted to remove the two Sycamores and the structural deterioration of the building fails to cease as a result it is possible that further applications for tree removal on the

site will be lodged in the future. It is the view of officers that this issue should be addressed on its merits if and when it arises and should not be material to the outcome of this application.

It could be argued that further monitoring work should be undertaken to establish a stronger link between the damage to the building and the proximity of the trees. However in this instance there are other considerations, which need to be taken into account, namely the deteriorating fabric of a Grade II listed church and the desire to secure the long term viability of an important community facility which might otherwise face long term closure. The closure of the building would result in the loss not only of an important heritage asset, which contributes to the character of the Conservation Area but of a valued and widely used resource for the local community. The loss of this building would conflict with the Council's policy objective of protecting its listed buildings and community facilities.

Other issues

Previous refusal

One of the objectors has made reference to a refusal of consent in August 2004 (Ref: 04/606) to fell a Sycamore tree at 19A The Front, where it was claimed the Grade II Listed property was suffering damage as a consequence of the proximity of the tree. No supporting evidence by way of structural report was provided with the application to substantiate this simply a letter from the applicant stating that there were visual signs of damage. The application was therefore refused on the lack of evidence to link this damage to the nearby tree.

Precedent

Any application to remove protected trees should be examined on its own merits taking into account all relevant material considerations at the time. It is not considered that a precedent would be created in this case.

Zone of influence

The Council's Arboricultural consultant has indicated that adjacent residential properties are located within the potential zone of influence of the subject trees. He states that if the trees are removed it may cause the ground to heave leading to potential damage being caused to both properties. He advises that this possibility should be investigated by suitably qualified structural engineers prior to any tree removal.

The Government's guidance note on Tree Preservation Orders referred to earlier in this report, advises LPAs to consider whether any loss or damage is likely to arise in consequence of their decision during the following 12 months having regard to the reasons given for the application and any reports or other documents submitted by the applicant in support of those reasons. The implication of this advice is that LPAs should focus on the applicant's position.

There is no suggestion within this guidance that the potential impact on ground conditions in relation to the properties of third parties as a result of tree removal should be taken into account or given any significant weight. Indeed if the trees did not have protected status they could be removed without recourse to the LPA and there would be no question of the LPA having to consider loss or damage to third parties. It is considered that the impact of tree felling on ground conditions relating to third party properties should be given little weight by the local planning authority when making determination in respect of a protected tree.

This matter may of course constitute a private legal matter between the Church and the owners of the properties in question.

Compensation

Compensation can be claimed from a local planning authority for loss or damage incurred after refusal of permission to carry out works to a protected tree. Compensation can also be claimed for the costs incurred by compliance with conditions attached to such a permission which are held to be unreasonably onerous. No compensation can be claimed from the local planning authority by third parties because of the effects of implementing a permission, e.g. the incidence of heave. However, if heave were to occur as a consequence of implementation those affected may have a claim against the landowner who carried out the works.

Trees would affect the ability to re-develop the vestry area.

One of the objectors has suggested that the real motivation behind this application is the desire to demolish the existing vestry and to re-develop this part of the site with a more suitable building and without the trees as a hindrance. Whether such a proposal comes to fruition would need to be treated on its own merits at the time and should not have a bearing on the merits of the current application.

Slope Stability issues experienced in Middleton One Row

Following evidence of cracking, a study of slope stability at two locations to the south of the highway passing through Middleton One Row was undertaken. It has been suggested that the cause of subsidence in these areas, which include geology and water related issues might also be responsible for the problems on the church site rather than the subject trees. The locations subject to the study are considered to be too far away from the application site for this to be a material planning consideration in this case.

CONCLUSION

The trees which are the subject of this application are in a sound and healthy condition and contribute to the character and appearance of the Middleton St George Conservation Area within which they are situated and the locality in general. However several prominent mature trees would remain within the church grounds and the wider area, which would help to mitigate the loss of the Sycamores in visual terms. In addition a condition can be imposed to require the planting of replacement trees.

There are also further issues in this case which need to be taken into account, namely the deteriorating fabric of a Grade II listed church and the desire to secure the long term viability of an important community facility which might otherwise face long term closure.

It could be argued that their removal should be resisted until stronger causal evidence had been accumulated however it is considered that in this instance there are mitigating factors that would justify the felling of the trees, namely that:-

- i) on the balance of professional opinion given, including the strength of views of the consultant structural engineer, whilst there is uncertainty it is considered likely that

- the subject trees are a contributory factor in the structural damage caused to the Grade II listed church, albeit that the information provided with the application does not confirm this or that the trees are the main source of the damage and
- ii) several prominent, mature trees would remain within the church grounds and the wider locality which would help to reduce the visual impact of the loss of the subject trees. It is considered that the loss of the trees would not be detrimental to the preservation of the character or appearance of the Conservation Area.

This is a very complex case with finely balanced issues and consequently does not lend itself to a straightforward recommendation. However taking into account all of the above it is considered, on balance there are justifiable reasons to allow the felling of the trees.

RECOMMENDATION

THAT CONSENT BE GRANTED SUBJECT TO THE FOLLOWING CONDITION: -

- 1) Not later than the next planting season immediately following this consent, two trees of a species and in positions to be agreed by the Local Planning Authority, shall be planted by or under the supervision of a competent forester, to the like satisfaction, and such trees shall be deemed to be included in the preservation order under which this consent is given, as though they had originally been specified therein.

REASON – In the interests of visual amenity.

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

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- ii) several prominent, mature trees would remain within the church grounds and the wider locality which would help to reduce the visual impact of the loss of the subject trees. It is considered that the loss of the trees would not be detrimental to the preservation of the character or appearance of the Conservation Area.

The proposal is therefore acceptable in light of Policies E11 (Conservation of Trees, Woodlands and Hedgerows), E13 (Tree Preservation Orders) and R26 (Protection of Community Facilities) of the Borough of Darlington Local Plan 1997, national planning policy guidance PPG15 – Planning and the Historic Environment and the policy guidance document Tree Preservation Orders: A Guide to the Law and Good Practice (2000)