



**Area Planning Committee
Thrapston**

Monday 21 February 2022

**Committee Update
Report**

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Committee Update Report

Area Planning Committee (Thrapston) – 21st February 2022

Index of Applications for Consideration

All plans and documents can be viewed using the link [here](#) using the Case Ref. No.

Case Ref. No. and Page No.	Location	Officers Rec.
NE/21/01545/FUL Page 11	88 Wharf Road, Higham Ferrers <u>Updates</u> None.	GRANT
NE/21/01708/FUL Page 19	Aldwincle Pre-School, Main Street, Aldwincle <u>Updates</u> None.	GRANT
NE/21/01344/REM Page 61	8 Lowick Lane, Aldwincle <u>Updates</u> None.	GRANT
NE/21/00966/REM Page 73	OP0038 TL0389, Cotterstock Road, Oundle <u>Updates</u>	GRANT

Agenda Item 9

A further representation has been received from a neighbour (uploaded onto Public Access) in relation to a protected species (bats) and the Ash tree located on the proposed St Peters Road access. In summary the representation states the following concerns:

- The applicant might require a European Protected Species Licence before removing the Ash tree on St Peters Road (identified as N24 on the Arboricultural Implications Assessment)
- It should be established whether a licence is needed prior to determination
- That the Council are intentionally misleading the reader in paragraphs 7.8.6, 7.8.7 and 7.8.8 of the Committee report
- Questions evidence of a 2020 survey – (Now uploaded onto the Public Access)
- Natural England will make a decision whether a licence is required and granted
- That the vehicular access from St Peters to the site is removed from the application to cause less harm to species and revert the scheme to a single entrance layout from Cotterstock Road which is preferred by the Town Council and 'Local Residents'
- The St Peters Road access appears to have been included at Outline Permission but the ecological impact survey failed to consider the felling of this tree meaning that the evidence considered by the Planning Authority was inaccurate/incomplete and its conclusions unreliable
- Full permission should not be granted until the European Protected Species Licence process has been concluded.

North Northamptonshire Principal Ecologist

Comments received 15th February 2022 (uploaded onto Public Access) and summarised as follows:

It should be noted that the presence of bats would not prevent the tree being felled, as the mitigation would be a condition of the licence if one is required.

The applicant has had the tree surveyed to the extent possible given the time of year and concluded that an activity survey is required. This should have been done pre-determination and the fact that it wasn't is an oversight. I'm mindful that this is a significant application on a site

which already has outline approval, and that the presence of protected species would represent only a delay to determination but would not materially alter the outcome.

Imposing the following licence condition from BS42020 will ensure that works to the tree are undertaken lawfully should it prove to be a bat roost:

Works to the ash tree NT24 as identified in 'Cotterstock Road, Oundle Arboricultural Implications Assessment' (Andrew Belson Arboricultural Consultant, October 2021) shall not in any circumstances commence unless the local planning authority has been provided with either:

- a) *A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2019 authorising the specified activity/development to go ahead; or*
- b) *Written confirmation from Natural England that the application site has been registered with the Bat Low Impact Class Licence scheme; or*
- c) *A statement in writing from a suitably qualified ecologist to the effect that they do not consider that the specified activity/development will require a licence.*

North Northamptonshire Senior Tree Officer

Consent for this tree to be removed has effectively been made under consent for planning application 19/01327/OUT.

I inspected this tree myself back in June 2020 as a result of an enquiry from a neighbour, before I was aware of the outline consent for the site. At that time I concluded that the tree was only a moderate tree with no special significance. I determined at the time that it was not worthy of a new tree preservation order as it was only a moderate sized tree in poor to fair condition, without the potential to become a long term landscape feature.

In the tree survey accompanying this application Andrew Belson has categorised the tree as C1, meaning that the tree is an unremarkable tree of very limited merit, of low quality with a remaining estimated life expectancy of at least 10 years. British Standard BS 5837:2012 advises that this tree is not suitable for retention in this development.

Officer Comment

The tree in question is identified as N24 in the submitted Arboricultural Implications Assessment (dated 6th October 2021) as part of the Reserved Matters application. The tree is surveyed to be of poor condition, of low vigour, covered in ivy with tracts of dead bark on the main stem. The recommendation is to fell and replace the tree. **The North Northamptonshire Senior Tree Officer is in full support of this approach.**

Notwithstanding the new updated and accurate assessment of the tree, it was approved to be removed under the Outline Planning Permission (Ref: 19/01327/OUT). This is an extant planning permission. The application is one of the Reserved Matters of which the tree removal does not form a consideration. The removal of the tree should therefore not be in question.

There are some inconsistencies with the tree assessment between the Outline Permission and the Reserved Matters application. However, the Local Planning Authority are satisfied that the updated Arboricultural Implications Assessment is correct in that the tree is in poor condition and requires felling and replacing.

For completeness a climbing survey of the Ash Tree was conducted which found no evidence of bats (Survey uploaded to Public Access). There was however a couple of features that could be of low to moderate suitability for bats to potentially roost in. The updated climbing survey (04.02.2022) stated the tree as having moderate suitability for roosting bats. An activity survey is therefore required to determine if the tree is used by roosting bats. This will then determine if a Licence is required or not to fell the tree. It will also determine what level of mitigation (if any) is required.

The activity surveys can only be conducted between May and September. If no evidence of bats is found, the tree will be soft felled with the tree being cut down in sections and each section left on site overnight. If a bat roost is confirmed, a derogation licence will be applied for from Natural England.

It is acknowledged that the tree cannot be removed before the activity surveys are carried and the European Protected Species Licence process is carried out. This is considered to fall out of realms of planning for this proposal as the possible protected species are protected by other law and legislation outside of the planning process.

The North Northamptonshire Principal Ecologist has recommended an additional condition be added to any decision that essentially requires no works to the Ash tree until the applicant provides either...

- a) *A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2019 authorising the specified activity/development to go ahead*
- b) *Written confirmation from Natural England that the application site has been registered with the Bat Low Impact Class Licence scheme*
- c) *A statement in writing from a suitably qualified ecologist to the effect that they do not consider that the specified activity/development will require a licence.*

The proposal is for 126 dwellings and it is considered that given the availability of another site access (Cotterstock Road) the site preparation works could take place before such time as the removal of the identified Ash tree. It is considered that the imposition of the recommended condition specifying that no works or disturbance to the tree shall take place until the council has been provided with a, b or c – would satisfy the requirements of the Habitats Regulations and allow development to commence whilst separate legislation and legal protection would ensure that any possible bats are protected and mitigated if necessary.

It is questionable as to whether this condition is entirely necessary given the separate legislative and legal protection that protected species are afforded, however it does provide a belts and braces approach.

It must be noted that this Reserved Matters application is not a planning permission. The planning permission is the Outline Approval (19/01327/OUT) which approved the removal of the Ash tree. It therefore is not a matter to be considered at the Reserved Matters stage. Any possible protected species are protected by law and the applicant will have to adhere to this process (outside of the planning system).

Further Comments from North Northamptonshire Senior Tree Officer

There are very few trees that need protecting due to the openness of the site. Those that do need protecting are located on the borders of the site. The tree officer has requested the following condition:

Suggested amended tree protection condition.

No works or development shall take place until a detailed scheme for the protection of the retained trees (5.5, BS5837:2012, the Tree Protection Plan) has been agreed in writing with the LPA. This scheme shall include:

- a. *a plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area (para. 4.6 of BS 5837:2012) of every retained tree on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan.*
- b. *a schedule of tree works for all the retained trees in paragraphs (a) and (b) above, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with BS3998, 2010, Tree work -Recommendations.*
- c. *the details and positions (shown on the plan at paragraph (a) above) of the Tree Protection Barriers (section 6.2 of BS 5837:2012), identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The drawing will show the dimensions from the protected trees or hedges to the barriers. The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.*

- d. *the details and positions (shown on the plan at paragraph (a) above) of the underground service runs (section 7.7 of BS 5837:2012).*
- e. *the details of the working methods to be employed with regard to site logistics including , the proposed access and delivery of materials to the site; space for storing materials spoil and fuel, and the mixing of cement; contractor car parking; site huts, temporary latrines (including their drainage), and any other temporary structures (section 8 of BS 5837:2012).*

The erection of tree protection barriers or ground protection for the protection of any retained tree or hedge shall be carried out in complete accordance with BS5837:2012, before any equipment, machinery, or materials are brought on to the site for the purposes of development or other operations. The tree protection barriers or ground protection shall be retained intact for the full duration of the development until all equipment, materials and surplus materials have been removed from the site. If the tree protection barriers or ground protection is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any tree protection area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made without the written approval of the Local Planning Authority.

Councillor clarification following site visit:

- Odour – The scheme has been designed to be fully compliant with the required odour standoff distance from the nearby be sewerage treatment plant.
- Tandem parking – The proposal has been designed to limit tandem parking although its inevitable that it still exists on the site. It allows for more landscaping and usability of the site. Tandem Parking is not a reason to refuse a planning application as recent appeal decisions have confirmed.
- Removal of permitted development rights – It is not necessary to remove permitted development rights.
- Junction of Cotterstock Road – The work falls outside of the reserved matters application and is subject to a condition discharge application in relation to the outline approval.
- Open Space – As identified in the S106 on the outline approval, the open space will be managed by a management company

- Electric vehicle charging – Every house will have its own individual electric vehicle charging point
- Construction – A sign will be placed on the fence of the site to advise people who to contact if they have any issues. This is a requirement of the CEMP (Construction Environmental Management Plan) under the outline permission
- Roads – All roads will be built to adoptable standard and offered up for adoption to the Highway Authority

S106 contributions – The applicant is committed to paying full S106 contributions. These include:

- 40% Affordable housing provision
- Education - £1.3 million
- Public Transport Contribution - £130k
- Cycle Path Contribution - £86k
- Healthcare - £49.2k
- Libraries - £29k
- Bus Pass (28 day mega rider) - £110 offered to each dwelling on occupation

Conclusion:

Recommendation is to amend the decision to include the tree protection condition as requested by the Senior Tree Officer. Members are to decide whether they feel the Ecology condition is required for inclusion on the decision given the already existing protection afforded by the separate legislation.