



NORTHAMPTON
BOROUGH COUNCIL
Planning Committee

PLANNING COMMITTEE: 7th July 2020
DEPARTMENT: Planning Service
DIRECTOR OF PLANNING: Peter Baguley

APPLICATION REF: N/2020/0514

LOCATION: 1a Billing Road

DESCRIPTION: Proposed removal of Horse Chestnut tree (under Tree Preservation Order 069)

WARD: Castle Ward

APPLICANT: Abington Dental Practice
AGENT: MPL Tree Consultancy Ltd

REFERRED BY: Director of Planning and Sustainability
REASON: Public interest

DEPARTURE: No

1 RECOMMENDATION

1.1 **APPROVAL** subject to the condition as set out at paragraph 11 of the report.

2 THE PROPOSAL

2.1 The application seeks consent to fell a very prominent horse chestnut tree in the grounds of the Abington Dental Practice, and to replace it with a tree of similar ultimate stature.

3 SITE DESCRIPTION

3.1 The application site is on the north west corner of the junction of Alexandra Road and Billing Road. It is occupied by the Abington Dental Practice and the associated private car park accessed from Alexandra Road. Pedestrian access to the site is obtained from Billing Road by mounting a flight of steps from footpath level, as well as from Alexandra Road.

3.2 The tree is located to the south-east of the site. The canopy of the tree spreads over the car park for the dental practice and the neighbouring office premises, Cottons Chartered Accountants, as well as the public highway.

4 PLANNING HISTORY

4.1 Tree Preservation Order (TPO) 069 was served on 7 December 1990 to protect the horse chestnut tree.

4.2 In October 2001, an application was received from the owner for consent to remove the tree on the grounds that it was diseased, and it was putting pressure on the retaining wall and on the footpath.

It was considered that it was not necessary for the tree to be removed at that time and that the situation be monitored. The application was refused on 21st March 2002.

4.3 On 15 October 2007, an application to lift the tree's canopy and remove any dead wood was granted consent.

4.4 The current application N/2020/0514, was validated on 11 May 2020, and seeks consent to fell the tree. It is supported by an arboricultural report from MPL Tree Consultancy.

5 PLANNING POLICY

5.1 In the determination of this application, consideration must be given to the relevant planning policy as well as applicable legislation and case law.

5.2 Statutory Duty

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan for the purposes of this application comprises the adopted West Northamptonshire Joint Core Strategy (2014), Northampton Central Area Action Plan (2013).

Part VIII of the Town and Country Planning Act 1980 (as amended); the Town and Country Planning (Tree Preservation) (England) Regulations 2012; Section 192 of the Planning Act 2008 and Part 6 of the Localism Act 2011 also apply.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Planning Authorities when considering development to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

6 NATIONAL POLICIES

6.1 **National Planning Policy Framework (NPPF)** sets out the current aims and objectives for the planning system and how these should be applied. In delivering sustainable development, decisions should have regard to the mutually dependent social, economic and environmental roles of the planning system. The NPPF should be read as one complete document. However, the following sections are of particular relevance to this application:

Paragraph 170. Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils;
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.

6.2 West Northamptonshire Joint Core Strategy (2014)

The West Northamptonshire Joint Core Strategy (JCS) provides an up to date evidence base and considers the current Government requirements for plan making as it has been prepared in full conformity with the NPPF. Policies of particular relevance are:

Policy BN1 - Green Infrastructure Connections
Policy BN2 - Biodiversity
Policy BN3 - Woodland Enhancement and Creation

6.3 Northampton Central Area Action Plan 2013

The Central Area Action Plan (CAAP) provides specific planning policy and guidance for the town centre and adjoining areas where significant regeneration and investment is proposed in the period up to 2026 and is in conformity with the objectives of the NPPF. Relevant policies include:

7 RELEVANT LEGISLATION

- 7.1 A tree owner owes a duty of care to all lawful visitors under Section 2 of the Occupiers' Liability Act 1957; Section 1 of Occupiers' Liability Act 1984 extended that duty to include trespassers.
- 7.2 Under the Health and Safety at Work etc. Act 1974, employers have a duty of care to ensure, so far as is reasonably practicable, the health, safety and welfare of employees (Section 2) and to others, such as the general public (Section 3) and to ensure that their premises are safe (Section 4).
- 7.3 Those broad duties are articulated in the Management of Health and Safety at Work Regulations 1999, which require a risk assessment to be carried out to identify the nature and level of risk. Regulation 3.1 states:

Every employer shall make a suitable and sufficient assessment of:

- a. the risks to the health and safety of his employees to which they are exposed whilst they are at work; and
 - b. the risks to the health and safety of persons not in his employment arising out or in connection with the conduct by him of his undertakings.
- 7.4 Section 187(b) of the Town and Country Planning Act 1990 places a duty on the local planning authority "to make such [Tree Preservation Orders] under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise."
- 7.5 The Town and Country Planning (Tree Preservation) (England) Regulations 2012 interpret that duty. Regulation 13 prohibits certain activities without the written consent of the local authority, regulation 16 stipulates how that consent is to be sought and regulation 17 describes how such applications are to be determined.

- 7.6 Regulation 24 states:

24. (1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of

- (a) the refusal of any consent required under these Regulations;
- (b) the grant of any such consent subject to conditions; or
- (c) the refusal of any consent, agreement or approval required under such a condition,

that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

- 7.7 Under the Highways Act 1980, trees within falling distance of the highway (including those outside the ownership and direct control of the Highway Authority) are classed as highway trees, and the highway authority is responsible for ensuring that those trees do not endanger the highway and its users.

8 CONSULTATIONS/ REPRESENTATIONS

Comments received are summarised as follows:

- 8.1 **Town Centre Conservation Area Advisory Committee** - Noted that this tree makes a strong and positive contribution to the character of the Conservation Area, and that trees are a particularly important feature of Billing Road highlighted in the conservation area appraisal. The tree is in a relatively good condition and the Committee members recommended that it should be retained. If it is damaged irretrievably during the repairs to the wall, it should certainly be replaced with a suitable tree to preserve the character of the conservation area.
- 8.2 Over 90 objections from a wide geographic area had been received. The objections can be summarised as follows:

- referred to this tree's significant presence in the locality, its major contribution to the public amenity of the Conservation Area, and its status as a protected tree.
- objections appeared to be concerned that an unknown and unspecified future development was driving the application.
- the repair of the retaining wall was the principal motivation and considered that such work should proceed with the tree in situ.
- the tree provides shelter to wildlife and help to fight climate change and air pollution.
- independent assessment of the health of the tree should be carried out.
- disease could be treated and sympathetic pruning would be appropriate.

9 APPRAISAL

Condition of Tree

- 9.1 During his site visit on 28 May to assess the application the **Arboricultural Officer** noted:
- the presence of one live fungal fruiting body of *Ganoderma australe*, and a fallen fruiting body at the base of the tree denoting a progressive infection;
 - decay pockets on the stem on the west side of the trunk at about 1.5m where the tree forked, and on the scaffold, or first-order, limbs at height;
 - the lower canopy was made up of expanded epicormic shoots, weakly attached in theory but they've emerged since (presumably) the tree was pruned in 1991;
 - the leaves were wilted suggesting drought stress.
- 9.2 The fungus was a localised white rot that would result in the full degradation of the lignin in the cells at ground level leaving the cells as a spongy mass. The fungal infection cannot be treated and when advanced the decay can result in a catastrophic brittle failure of the stem base. If this were to happen, the whole of the tree would therefore fail.
- 9.3 Horse chestnut trees are noted for a soft heartwood with poor resistance to fungal invasion. In a list of 33 genera ranked for the propensity of their forks to fail, horse chestnut was considered as almost the most likely to fail, ranked 31st out the 33 genera, and for the propensity to fail due to decay was ranked 30th.
- 9.4 In summary, the tree was in a poor and declining condition, host to a progressive and un-treatable pathogenic fungus that would destroy the tissues at the tree's base resulting in a total and catastrophic failure at ground level at some unknown future time.
- 9.5 If the tree were to fail, the consequences could be significant for any persons and property in the vicinity.

Amenity

- 9.6 The land within the application site is more or less level but rises toward Billing Road, where it is retained by a substantial wall characteristic of the Conservation Area; the land outside the site falls to the south.
- 9.7 The base of the tree is raised above car park level and about 1.9m above the footpath outside the boundary wall which emphasises the tree's height and mass when viewed from the public realm.
- 9.8 The canopy of the tree spreads over the car park of the Abington Dental Practice and the neighbouring office premises, Cottons Chartered Accountants, as well as the public highway. The amenity value of the tree in terms of biodiversity and ability to combat air pollution, although in a small scale, is acknowledged.

- 9.9 The tree's location could be described as a target-rich environment, using target as defined in BS 3998: 2010 Tree work – Recommendations as follows:

“person or object, whether mobile or fixed, within the potential zone of impact of a tree or its branches, which might be harmed as a result of the partial or total failure of the tree.”

Note: The term can also refer to a pedestrian or vehicular route where harm might thus occur.

- 9.10 The tree is on one of the main arterial routes into and out of the town centre, at the junction with Alexandra Road, and opposite Northampton General Hospital. The junction with York Road some 50 metres to the west of the tree was traffic-light controlled, and vehicles would therefore regularly be stationary beneath the tree.
- 9.11 On this basis, the tree makes a significant contribution to the amenity of the area.

Impact on the Conservation Area

- 9.12 The site is at the extreme north-western end of the Billing Road Conservation Area, designated in 2011 and justified by the consistently high architectural quality of the buildings which line the north side of the Billing Road. The Conservation Area Appraisal noted that “Single mature trees [such as the one being considered here] ... punctuate the street scene with great presence and add to the genteel character of the road” These trees “contribute texture and colour to the streetscene ... and form a natural counterpoint to the setting” their soft organic form contrasting with the rigidity and rhythm of the local architecture.
- 9.13 Under the consideration of Trees and Green Spaces, the Appraisal stated “it is important that trees are retained, and where appropriate replaced, in order to preserve the long-term sustainability of tree cover”. The tree was not referred to specifically in the Appraisal, but its status as a TPO tree was noted under Management & protection of important trees.
- 9.14 The short to medium term impact of the removal of this tree would be a gap on the skyline on the edge of the Conservation Area; the impact of the loss of this organic form would lessen as the tree that will be planted to replace the removed horse chestnut attained stature, presence and mass as it matured. It is considered that the harm on the setting of the conservation area would be less than significant and would be outweighed by public safety in this instance.

Retaining Wall

- 9.15 Any consideration of the retaining wall was always subsidiary to the Arboricultural Officer's consideration of the merit of the application to fell the tree; however, the suggestion by some objectors that the wall could be repaired whilst the tree remained in situ were wholly impractical and would have increased the risk of the tree's collapse.
- 9.16 Independent Structural Engineers have, from time to time, offered generally negative opinions as to the structural integrity of the wall. However, a recent assessment by Building Control has suggested that the wall is not at risk of imminent failure, and whilst the render was in poor condition in some places, there was no immediate need to protect members of the public from the wall.

Impact Assessment

- 9.17 To remove the tree now would result in a dramatic short and medium term loss of public amenity. However, a well-planted and tended replacement should begin to make a positive contribution to the locality as soon as it became established because of its prominent location high above the footpath and highway. The replacement tree, of a species to be decided, should be an extra heavy standard as defined by BS 8545 2014: Tree: from nursery to independence in the landscape – Recommendations, i.e. have a girth of 14 – 16cm at 1m, be at least 3.5m tall overall and have a clear stem of 1.75 – 2m.
- 9.18 If removal were to be deferred, notwithstanding the risk of complete failure, the condition of the tree will degrade and the amenity that it provided will diminish as it begins to deteriorate.
- 9.19 **Other matters**

9.20 Whilst not material to the determination of this application, any other works to the site, including works to the building and car park would require separate grants of planning permission. The impact of any such proposal on a protected tree would be a material consideration in the determination of an application.

10 CONCLUSION

10.1 The information submitted with the application is robust. A balance needs to be struck between general amenity and public safety.

10.2 The recommendation is that consent for the removal of the horse chestnut tree and its replacement be granted primarily for technical, health and safety and liability reasons:

- the MPL report noted the presence of a basal rot, and horse chestnut is noted for a soft heartwood with rather poor resistance to fungal invasion;
- where substantial limbs had been removed there are open and slowly occluding wounds on the main stem beneath the fork, as well as on the scaffold limb at height over the car park; in all likelihood columns of decay had developed;
- the owner has a duty of care under the Occupiers' Liability Act 1957 and the Occupiers' Liability Act 1984;
- the owner has a duty of care under the Health and Safety at Work etc. Act 1974;
- the Highway Authority has a duty of care under the Highways Act 1980 to ensure no tree within falling distance of the highway endangers the highway or its users;
- the owner has come to the judgement, based upon MPL's report and his own tolerance of risk, that he was not comfortable with the risk posed by the tree;
- if consent were refused, the authority would frustrate the owner's ability to discharge his duty of care to protect the public from a foreseeable risk of catastrophic failure and the likelihood of harm to persons or damage to property;
- if consent were refused, the authority would be open to a claim for compensation for damage from the owner if damage were to occur within twelve months of the date of our decision to refuse consent;

10.3 The newly planted tree would be protected by the serving of a new TPO.

10.4 The authority should not countenance agreeing to lesser works, such as a crown reduction, for the following reasons:

- such pruning activity would deplete the tree's stored energy reserves and hasten its decline,
- it would disfigure the tree and so remove any public amenity it may have, and
- it would reduce the tree's defences against the locally prevalent bacteria canker, leaf miner and fungal leaf infection whose combined assault would also hasten the tree's decline.

11 CONDITIONS

11.1 A replacement tree, of a species of variety to be approved in writing by the Local Planning Authority, shall be planted in the same location, or as close to the location as possible, as the tree hereby permitted to be felled within the first planting season (1 November – 31 March) following the removal of the tree. The Local Planning Authority shall give their prior written consent for the chosen species and or variety. The minimum size shall be an "Extra Heavy Standard" in accordance with British Standard BS8545 2014 – Trees: from nursery to independence in the landscape – Recommendations: the girth at 1m shall be 14 to 16 cm, the tree shall be greater than or equal to 3.5m tall with a clear stem of 1.75 to 2.0m. The tree shall be planted in accordance with industry good practice. If within a period of five years from the date of planting the tree (or any other tree planted in replacement for it) is removed, uprooted, destroyed or dies another tree of the same size and species as that originally planted shall be planted at the same place, or in accordance with any variation for which the Local Planning Authority gave their written consent.

Reason: To protect and enhance the amenity of the area in accordance with the requirements of Policy BN3 of the West Northamptonshire Joint Core Strategy.

12 BACKGROUND PAPERS

12.1 N/2020/0514

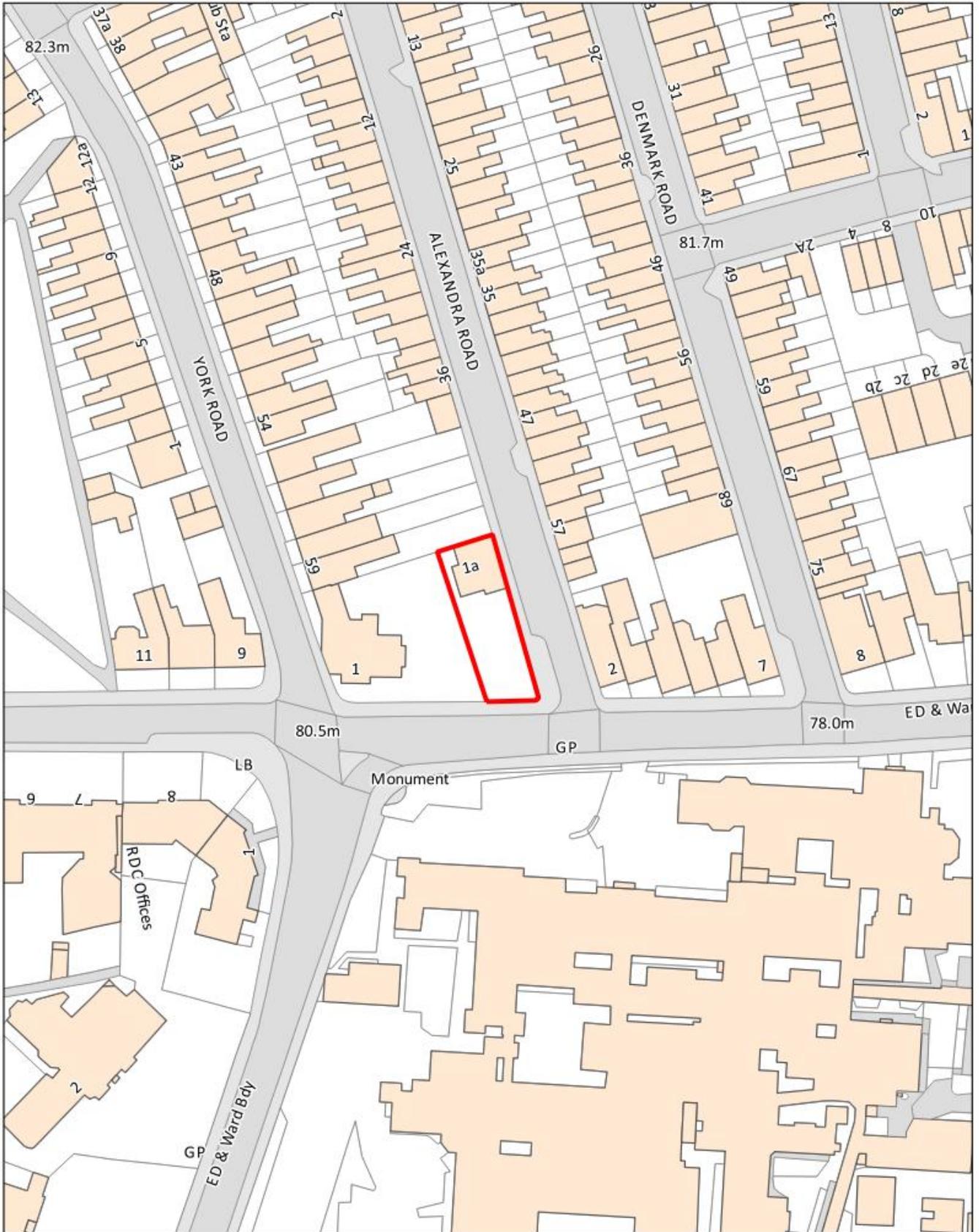
13 LEGAL IMPLICATIONS

13.1 If consent were granted, then there are no obvious legal implications associated with that decision.

13.2 If consent were refused, or if only lesser works were granted, and the tree were to fail in whole or in part within 12 months of that decision it would be impossible for the authority to refute a claim for damage under the tort of negligence.

14 SUMMARY AND LINKS TO CORPORATE PLAN

14.1 In reaching the attached recommendations regard has been given to securing the objectives, visions and priorities outlined in the Corporate Plan together with those of associated Frameworks and Strategies.



Title: **1a Billing Road**

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Date: 25-06-2020

Scale: 1:1,000

Drawn by: -----