

Planning Committee – 14 December 2011

Report of the Head of Legal and Democratic Services

Enforcement Item

1. **File/Complaint Number:** PD/22/833
2. **Location of Site:** Beauford Park (Mobile Home Park), Norton Fitzwarren, TA2 6QJ. The area in question is at the southern end of the site, adjacent to the Norton Brook
3. **Name of Owner:** J and B Small Park Homes (also at Buckingham Orchard Park Home Estate, Plymouth Road, Chudleigh Knighton, Devon, TQ13 0EW) – a partnership between the Small family.
4. **Nature of Contravention:** Failure to comply with a Tree Replacement Notice dated 27 October 2009.
5. **Planning History:**

The Site is subject to the provisions of a Tree Preservation Order (TPO) TD726 (Norton Fitzwarren No.2, 1997) dated 26 February 1997

The area of land in question is Wood 1 (W1) referred to in the TPO. W1 was an area of predominantly mixed willow and alder trees. All the trees are no longer in existence.

The northern section of W1 is owned by J and B Small Park Homes. The southern section of W1 is jointly owned by developers, BDW Trading Ltd, Bellway Homes Ltd and Strongvox Ltd. This southern section is included in a current development proposal and is due to be re-planted by the developers in line with approved landscape drawings.

Under section 206(1) of the Town and Country Planning Act 1990 a land-owner is under a duty to replace trees in woodlands that are removed, uprooted or destroyed in contravention of a Tree Preservation Order.

During a routine inspection of the Site by a Council officer in June 2005 it was noticed that not all the trees in W1 were present.

During 2005 and 2006 correspondence was sent to Mr Small by the Council asking that the trees be replaced but this was not complied with.

During December 2006 the Council were informed by the public that trees at the Site had been felled. Site visits were carried out as a result of this information and it was noted that trees had been felled that were the subject of the TPO

Planning consent was granted in 2007 to fell 2 of the remaining trees [within the W1 area because they were considered dangerous. It is thought that many of the trees in the area had gone into decline because there were large amounts of hardcore,

broken tarmac and concrete deposited in the area. (Much of this material is still present). Other dangerous trees were subsequently removed from within the W1 area (with consent) by tree surgeons acting for the St. Modwen Developments Ltd, who at the time owned the area of land in question.

In 2008, following a land-ownership dispute, St. Modwen Developments Ltd agreed with Mr Small that he owned half of the area of W1.

In April 2008 a letter was sent by the Council to Mr Small reminding him of his duty to replace the trees in the area of W1 in his ownership.

The trees were not replaced and a Tree Replacement Notice (TRN) was issued in October 2009. (A previous Tree Replacement Notice issued in January 2007 had been rescinded due to the land-ownership dispute between Mr Small and St. Modwen). The requirements of the TRN were to replace trees within the W1 area shown edged green on the plan attached to the TRN by 31 December 2009 however the deadline for compliance was extended to 26 February 2010. The requirements of the TRN have not been complied with.

Under section 209 of the Town and Country Planning Act 1990, failure to comply with the Tree Replacement Notice means that the Council may enter the land, plant the trees and recover from the land owner any expenses reasonably incurred by the Council in respect of planting the trees. Anyone who wilfully obstructs the Council from using these powers is guilty of an offence and is liable, if convicted in the Magistrate's Court, to a fine of up to £1000.

Reasons for taking action

The trees in W1 were subject to the Tree Preservation Order and had amenity value, being close to a number of homes and visible from the railway and public footpath. The proposed new planting will have amenity value and be appreciated by the residents living near to the Site. The proposed planting is aimed to be carried out in conjunction with the new planting due to be carried out by the developers owning the land on the southern part of W1. .

It should be noted that Mr Small has allowed some additional park homes to be erected so that they are encroaching on the area of W1. There is also now an electricity sub-station on the Site and several underground electricity cables, the locations of which have been supplied by Western Power.

Recommendation

The replacement tree works be carried out by Taunton Deane's DLO, and the expenses recovered from the owner.

The Tree Replacement Notice requires 120 trees to be planted. However, due to various factors such as the poor ground conditions (caused by the dumping of hardcore, concrete and other materials), the presence of the electricity substation, the underground cables and the proximity of adjacent homes, the proposal is for the Council to plant just 30-35 trees and shrubs giving adequate clearance from the

substation, the underground services and park homes. The plants would be a mixture of native trees and shrubs, such as birch, willow (goat or grey), alder, field maple, hazel, dogwood, hawthorn and blackthorn, planted as bare-root whips and feathered trees.

The estimated cost of carrying out the works is approximately £600. The works would take approximately one day to complete. The planting should be carried out during the current planting season, as soon as possible but with regard to the weather conditions.

In preparing this report the Officer has considered fully the implications and requirements of the Human Rights Act 1998.

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