

Planning Committee – 20 April 2011

Report of the Development Manager

Tree Replacement Notice MC/R59/PD/22/833, issued 27 March 2009 in relation to land at Beauford Park, Norton Fitzwarren. (An earlier Tree Replacement Notice was served in 2007 but was not enforced due to a land-ownership dispute on the site.)

1. Site

Beauford Park, Norton Fitzwarren, TA2 6QJ. The area in question is at the southern end of the site, adjacent to the Norton Brook.

2. Owner and occupier of land in question

J and B Small Park Homes (also at Buckingham Orchard Park Home Estate, Plymouth Road, Chudleigh Knighton, Devon, TQ13 0EW).

3. Nature of Contravention

Failure to comply with Tree Replacement Notice (TRN). A copy of the notice is appended to this report.

4. Planning History

The area of land in question is Wood 1 (W1) of Tree Preservation Order (TPO) TD726 (Norton Fitzwarren No.2, 1997). W1 was an area of mixed willow and alder trees. All the trees in W1 have now gone.

Under section 206(1) of the Town and Country Planning Act the land-owner is under a duty to replace trees in woodlands that are removed in contravention of the TPO.

It was first noticed by this officer in June 2005 on a routine site check that not all the trees in W1 were present. It is suspected (but not known) that the previous owner of the site, Mr Pring, may have felled some of the trees. Tree surgeons began to fell some of the trees in 2007 without first gaining planning consent. They were stopped, but not before some trees had been severely cut.

Consent was granted in 2007 to fell two of the remaining trees because they were considered dangerous. It is thought that many of the trees in the area had gone into decline because of the large amounts of hardcore, broken tarmac and concrete that had been deposited in the area. Much of this material is still present. Other dangerous trees were subsequently removed (with consent) by tree surgeons acting for the company St. Modwen, who at the time owned the area of land in question.

In 2008, St. Modwen agreed the boundary line with Mr Small and agreed to allow him to have approximately half of the area of W1. In April 2008 a letter was sent to Mr Small reminding him of his duty to replace the lost trees in the area that was now his. (The area to the south of his boundary would now be re-planted as part of the development of the land to the west by Barratts, and the re-alignment of the Norton Brook).

The Tree Replacement Notice was re-issued in October 2009, but the planting was not carried out by Mr Small – various excuses were given for not doing the work. Several deadlines have come and gone; a final reminder was sent on 21 February this year.

Under section 209 of the Town and Country Planning Act, 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 the expenses incurred. 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.

5. Reasons for taking action

The trees were protected by a TPO. There is a duty to replace the trees – this duty transfers to a new owner if the land changes hands. It is clear that Mr Small does not intend to carry out the work himself.

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 land.

6. Recommendation

That the works are carried out by Taunton Deane's DLO and that the expenses are recovered from the owner. The works will involve removing all the hardcore, broken tarmac and concrete to prepare the ground for planting. The TRN states that 120 trees should be planted, 117 as bare-root whips and feathered trees, and 3 as standards.

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

CONTACT OFFICER: David Galley, 356493 (2423)

Appendix

TOWN AND COUNTRY PLANNING ACT 1990 Section 207

TREE REPLACEMENT NOTICE

Tree Preservation Order 1997: (Norton Fitzwarren No 2) (PD22A/027/TD726) ('the Order')

TAUNTON DEANE BOROUGH COUNCIL ('the Council')

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

1. **THIS IS A FORMAL NOTICE** which is served by the Council under section 207 of the Town and Country Planning Act 1990 (the Act) because it appears to them that you have not complied with a duty to plant trees under S106 of the Act

2. **THE LAND AFFECTED**

Land at Beauford Park, Norton Fitzwarren shown on the attached plan.

3. **REASONS FOR SERVING NOTICE**

On or around June 2005 an oak tree, a group of ash trees and some willow and alder trees protected by the Order were cut down. Under section 206 of the Act the owner of the land is under a duty to plant replacement trees. It appears to the Council that this duty has not been complied with. The Council wrote to the owner in June 2005 and in January 2006 advising the owner that the trees should be replaced. In its letters the Council also advised that if the replacement planting is not carried out then the Council has a duty to enforce it by serving a Tree Replacement Notice.

4. **WHAT YOU ARE REQUIRED TO DO**

You are required to plant a mixture of 20 common alder trees (*alnus glutinosa*), 20 goat willow trees (*salix caprea*), 20 hawthorn (*crataegus monogyna*), 20 hazel (*corylus avellana*), 20 dogwood (*cornus sanguinea*), 10 field maple (*acer campestre*), 5 guelder rose (*viburnum opulus*), 3 common ash (*fraxinus excelsior*) and 2 English oak (*quercus robur*) within the area shown edged green on the attached plan. These replacement trees are to be planted as whips or feathered trees except for the ash and oak trees which should be planted as standard trees, minimum girth 8-10 cm. The plants should be spaced at approximately 1.5 metres apart, grown in accordance with British Standard BS3936 and planted in accordance with British Standard BS4428. The larger species should be planted towards the southern part of the site.

Time for compliance: By 31 December 2009

5. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 28 November 2009 unless an appeal is made against it beforehand.

Dated: 27 October 2009

Signed:

Legal Services Manager on behalf of Taunton Deane Borough Council , The
Deane House, Belvedere Road, Taunton TA1 1HE

6. YOUR RIGHT OF APPEAL

You can appeal to the Secretary of State against this Notice by writing to The Planning Inspectorate, Environment Team, 4/04 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN. Your appeal must be received, or posted in time for it to be received, before 28 November 2009. You can appeal on any one or more of the following grounds:-

- (1) that the provisions of the duty to replace trees or, as the case may be, the conditions of consent requiring the replacement of trees, are not applicable or have been complied with;

- (2) that in all the circumstances of the case the duty to replace trees should be dispensed with in relation to any tree;
- (3) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
- (4) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
- (5) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

You must also state the facts on which your appeal is based.

FAILURE TO COMPLY

If you do not comply with this notice, the Council may enter the land, plant the trees and recover from you any reasonable expenses incurred.

ADVICE

If you have any questions about this notice or would like some advice on how to comply with it, please contact:-

David Galley at Landscape & Heritage, Taunton Deane Borough Council, The Deane House, Belvedere Road, Taunton (01823 356493).