

TWC/2017/0122

Land between 1 - 2 Newtown & 66 Shrewsbury Road, Edgmond, Newport, Shropshire
Felling of 1no. Ash tree

APPLICANT

Angela Francis

RECEIVED

13/02/2017

PARISH

Edgmond

WARD

Edgmond and Ercall Magna

OFFICER Tom Carruthers

THIS APPLICATION WAS DEFERRED AT PLANNING COMMITTEE ON 17TH MAY 2017 TO CONSIDER ISSUES RELATING TO INSURANCE AND TREE REPORTS WITH THE APPLICANT

In addition, the following matters have been updated since the last committee.

1.0 INSURANCE ISSUES AND TREE REPORT

- 1.1 This Tree Preservation Order Application for the felling of 1no. Ash tree was deferred at Planning Committee on 17th May 2017 to allow the applicant additional time to commission a new tree report from Ian Murat, in order to satisfy his insurers to allow him to obtain liability insurance for the site. Ian Murat has already carried out an independent report for the Council concluding that the tree could be retained on site.
- 1.2 Prior to the previous Planning Committee, the applicant informed the Council that his insurers require an unequivocal report declaring that the tree concerned is safe in its environment before they will incept a liability insurance policy for him because of the previously submitted reports contesting that the tree is unsafe. The applicant made contact with Ian Murat on 18th April 2017, asking him what his fee would be to supply him with a report in his name clearly stating the tree is safe for a development site so that he can get liability insurance on the site.
- 1.3 Mr Murat contacted the applicant on 2nd May 2017, following advice by the Council's Legal Department regarding him producing a report for the applicant.
- 1.4 Following the deferment of the application at the last committee, the applicant e-mailed Mr Murat on 19th May 2017 confirming that his insurers would consider providing him with public liability cover subject to the following:
 1. Mr Murat must be able to provide an indication of the tree's approximate life span or time limit the report to a specified period.
 2. For the approximate life span of the tree, or the period of time over which the report is limited to, Mr Murat must hold professional indemnity insurance with a minimum level of indemnity of £2 million. For the period of the reports validity, Mr Murat must provide the applicants insurers with a copy of his policy.

The applicant claims that he followed up this e-mail to Mr Murat with a phone call to his office on the 26th May 2017. As of the 8th June 2017, the applicant claims not to have had a response from Mr Murat.

- 1.5 Officers contacted Mr Murat on 12th June 2017 to ask for clarification regarding the status of the applicant's request. Mr Murat confirmed that the applicant had contacted him but that, before he responded to the applicant he needed to know whether the Council had any objections to him providing a report for the applicant and he e-mailed one of the Council's arboriculturists. On 12th June Mr Murat confirmed that he had yet to receive a response from the Council.
- 1.6 On 12th June 2017, Matthew Seabrook sent a response to Mr Murat apologising for the delay but confirming that there was no objection to Mr Murat providing an independent report to the applicant.
- 1.7 If any further progress is made regarding the insurance position, it will be reported to members at the meeting.

2.0 DEVELOPMENT OF THE SITE.

- 2.1 Since the deferment of this application, the applicant has since submitted a planning application (our reference TWC/2017/0425) for the erection of 1no. detached house.
- 2.2 The dwelling application shows the retention of the Ash tree (the subject of this TPO felling application) and the dwelling located in the vicinity of the indicative layout previously submitted with the original outline planning application for a pair of semi-detached properties (our reference TWC/2016/0539).
- 2.3 This application is still within the consultation period and therefore no decision has yet been made.

3.0 CONCLUSIONS AND RECOMMENDATION

- 3.1 Even though the applicant has yet to obtain a report from Mr Murat to satisfy his insurers, the applicant may be able to get liability insurance on the site. In addition, the applicant's recent full planning application demonstrates that the tree can be retained and the site developed. The Planning considerations referred to in the original report still apply and in considering this application to fell, the local authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard for the reasons and additional information put forward in support of it. In all the circumstances, the Local Planning Authority's recommendation to planning committee remains unchanged.

- 3.2 It is recommended that the committee **REFUSE TREE PRESERVATION ORDER CONSENT** for the following reason:

In all the circumstances and having regard for the amenity value of the tree and taking into account the various submissions received, the Local Planning Authority considers that consent for the proposed felling of the Ash tree should not be granted. This is a veteran tree which has the potential to be retained and managed within the landscape. Accordingly, the proposal is contrary to policy CS12 of the LDF core strategy and 'saved' policy OL11 of the Wrekin Local Plan and guidance within the NPPF.

*****ORIGINAL REPORT BELOW*****

OBJECTIONS: Yes

1. THE PROPOSAL

- 1.1 This is a Tree Preservation Order application for the felling of 1no. Ash tree
- 1.2 The tree is on a currently vacant piece of land between 1-2 Newtown & 66 Shrewsbury Road, Edgmond.
- 1.3 The site has a current outline planning consent for the erection of a pair of semi-detached dwellings and garages with associated access (our reference TWC/2016/0539).
- 1.4 The applicant has submitted several tree reports to justify the proposed felling of this Ash tree.
 - Report A – Sylvan Resources Dated March 2016 (this report was prepared for the previous landowner to support the outline planning application for 2no. dwellings)
 - Report B – Jim Waterson Submitted 13 February 2017
 - Report C – Rob Keyzor Tree Surgeons & Arboricultural Consultants Ltd Submitted 13 February 2017
 - Report D – Jerry Dicker Submitted 28 February 2017
- 1.5 The Council's Arboriculturists have been involved in this matter and the Council have also had an independent report commissioned.
 - Report E – ACS Consulting – Ian Murat Dated April 2017
 - All of these reports can be found on the Council's Planning Website <https://secure.telford.gov.uk/planning/pa-applicationssummary.aspx?applicationnumber=TWC/2017/0122>

2. SITE AND SURROUNDINGS

- 2.1 The application site is in Edgmond which is a village approximately 2km to the North West of Newport.
- 2.2 The site where the tree is situated, is a vacant piece of land between 1-2 Newtown & 66 Shrewsbury Road. To the left of the application site is an access track which leads to the fields behind the application site.
- 2.3 The tree is a large, veteran Ash which is visible within the street scene

3. PLANNING HISTORY

- 3.1 TWC/2016/0539 Outline application for the erection of a pair of semi-detached dwellings and garages with associated access with all other matters reserved Outline Granted 23/08/2016
- 3.2 TWC/2016/1118 Crown reduction by 20% and crown lifting to 1no. Ash tree, Tree Preservation Order Granted 10/01/2017
- 3.3 TPO 190274 Dated 05/11/1991

4. PLANNING POLICY CONTEXT

- 4.1 National Planning Guidance:
National Planning Policy Framework

- 4.2 Wrekin Local Plan (Saved Policies):
OL11 Woodlands and trees
- 4.3 Core Strategy:
CS12 Natural Environment
- 4.4 Telford and Wrekin Local Plan 2011-2031 (Publication Version)

5. CONSULTATION RESPONSES

- 5.1 Edgmond Parish Council: No Comment
- 5.2 Arboricultural: Object

Object to the felling of this TPO's Veteran Ash. The tree has a high amenity value, growing in a prominent position adjacent to the B5062 Shrewsbury Road.

It has been claimed that this tree is unsafe because of its proximity to the owner's proposed property (Planning Permission TWC/2016/0539) and to the public highway. However, in recent years the tree has survived, Storm Barney (November 2015), where wind speeds were recorded at upwards of 70mph and more recently Storm Doris (February this year). Up until early 2016 no owner of the site could be found.

Consent was granted by Telford and Wrekin Council in January 2017 to reduce the canopy of the tree by 20%. This consent has yet to be enacted.

The request to fell this tree is based on 2 main reports provided by Sylvan Resources and Rob Keyzor Tree Surgeons and Arboricultural Consultants Ltd. Neither of these recognise the importance of Veteran trees within a local or national scale.

The tree has been categorised as 'A3' in relation to the report prepared for the Council by Ian Murat of ACS Consulting and BS 5837 (2012) meaning that is;

"A tree of significant conservation, historical, commemorative or other value (e.g. a veteran tree or wood pasture"

Emerging Local Plan Policy NE2. States that

"Aged and veteran trees, ancient woodland and important hedgerows will be valued and protected." Section iv. of the policy seeks to "incorporate trees as an integral part of a scheme and ensure protection measures before and during construction and appropriate, maintenance and protection thereafter."

Wrekin Local Plan Policy OL11 states:

"The Council will seek to retain and enhance the contribution that trees and woodland, (especially areas of ancient woodland) make to the landscape character of the district. This will be promoted by;
b) Resisting development proposals that would result in the loss of trees which make a valuable contribution to the character of the landscape, a settlement or its setting or have significant ecological value.

The Telford and Wrekin Tree and Woodland Framework "Connecting Communities With Trees and Woodlands" 2016 -2021. Refers to Veteran trees in Tree Policy 3 It states that TWC will recognise the importance placed on veteran trees and apply a

recognised valuation method. In this case BS 5837 has been used and the tree has been categorised as A3 e.g. a Veteran tree.

A Technical Paper – Biodiversity, Geodiversity, Trees and Woodland was produced by TWC in June 2016, the paper stresses the importance of Veteran Trees both a local and national level.

There is also the Standing Advice given by the Forestry Commission updated the 6th of April 2016. Which states that “Local Authorities have a vital role in ensuring the protection and conservation of ancient woodland and veteran trees, in particular through the planning system.”

With regard to the Ash tree in question, it has a number of features which identify it as a veteran, these include; ‘An old look’, high aesthetic interest, fungal fruiting bodies, cultural and historic values, a prominent position, decay holes, major trunk cavities and or hollowing of the trunk as well as large girth for the species. It must be noted that the trunk hollowing in mature Ash trees takes place at an earlier stage than that of other long lived tree species.

The progressive hollowing of the trunk, forms part of the report by Rob Keyzor who used a PICUS Acoustic Tomograph to assess the structural stability of the tree.

The findings of the PICUS report are contested by Ian Murat in his report commissioned by the Council, who suggests in Section 39 of the report, that the tree is outside of the failure criteria established in the VTA method. The Council's Trees and Woodland officer agrees with Mr Murat's view.

In this particular location, the veteran Ash tree is of high amenity value. It is a striking feature and clearly visible from the public highway. This tree is approximately 180 years old and has a potential healthy life span of 20 – 40 years which means that it has considerable future amenity value. Not only does it have physical characteristics which contribute positively to the adjacent landscape, as a veteran tree it has rarity and historic value. The tree also makes a contribution in broader nature conservation and climate change terms.

In conclusion the tree is a veteran Ash which is important on both a local and a national level. Veteran trees are irreplaceable within the landscape, because of Chalara die back of Ash. Ash trees may become rarer within the British landscape and the Forestry Commissions advice is that they should be retained wherever possible.

There is an existing consent to reduce the canopy of the tree by 20% which has yet to be undertaken, which in turn would lessen the sail area of the tree and thus the fears of failure. The report by Ian Murat of ACS Consulting has ratified the Council's stance in that the tree is not an imminent danger to people or public and could be retained in the landscape following remedial tree surgery which the applicant has consent for. This could be the start of a veteran tree management plan

5.6 Neighbourhood Consultation

1 letter of representation has been received from the neighbour at the adjacent property, Fields View House. The points raised are:

- Support its removal as there was another tree on the same site which was of the same age and appearance and this has fallen in recent years causing damage to my garage roof.
- Been told previously by the tree surgeon who came to make the tree that fell safe that it is only a matter of time until this one falls.
- Looks unsafe to a layman.
- Should this tree fall, it could fall on my workshop, the proposed new build property on the site or the main Shrewsbury Road and due to its size will do considerable damage.

6. PLANNING CONSIDERATIONS

6.1 Having regard to the development plan policy and other material considerations, including comments received during the consultation process, in considering this application to fell, the local authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard for the reasons and additional information put forward in support of it. The planning application for consent to fell raises the following main issues.

- The principle of felling the Ash tree
- Need to fell the tree

The principle felling the Ash tree

6.2 Policy OL11 of the Wrekin Local Plan relates to woodlands and trees and the Council's responsibility to retain and enhance those that contribute to the landscape character of the borough. Where trees are of significant amenity value they are to receive Tree Protection Orders, which is the case with this Veteran Ash Tree. The policies continue to resist proposal for the loss of trees which make a valuable contribution to the character of the landscape and its setting.

6.3 Furthermore, the NPPF in paragraph 118 is clear that consent should be refused for schemes resulting in the loss of trees, unless the needs for or benefit of the development outweighs the loss.

6.4 Emerging Local Plan Policy NE2. States that Aged and veteran trees, ancient woodland and important hedgerows will be valued and protected."

6.5 The application site has an outline consent for the erection of 2no. dwellings. This application was submitted by the previous owner. This application shows the tree being retained within the landscape which confirms the view that the permission can be implemented without removal of the protected tree.

6.6 The current owner of the land submitted an application in November 2016 for 20% crown reduction and crown lifting to the Ash tree which was granted on 10/01/2017. This work would reduce the impact of high winds on the stability of a tree but has not been carried out by this owner.

Need to fell the tree

6.7 The applicant has submitted 4 tree reports to justify the felling of the Ash tree. The applicant has confirmed that due to these reports, he is having difficulty in getting insurance for the site. Prior to the submission of this application, one of the Council's Arboriculturists met the applicant on site to discuss the felling of the tree and it was stated at that point that the Council would not support the application.

Report A

- 6.8 The first report submitted is by Sylvan Resources Ltd and dated March 2016 which is before the applicant applied for works to the tree. The report was prepared for the previous owner of the land to support the outline application for 2no. dwellings and contains an initial report from September 2015. It states:
- The tree is over mature, approximately 18m in height and has a diameter of 900mm measured 1.2m from the ground.
 - There are a number of broken limbs on the tree which present potential hazards.
 - The tree has decay which runs approximately 1m up the stem from its base.
 - Due to the failure of another Ash tree on site and this tree's proximity to the highway, the tree should be urgently felled.
- 6.9 Following the Council's tree officers comments objecting to the felling of the tree, the applicant commissioned another report from Sylvan resources. The new report contains commentary on the tree officers consultee comments and disagrees with them.
- Further investigation of decay has confirmed the earlier findings.
 - A similar path of decay as shown on this tree likely caused the first tree to fail.
 - Permission was granted 20 years ago for the felling of the tree and find it odd that the Council's decision has been reversed.
- 6.10 The report erroneously refers to consent to fell said tree given in March 1993. This is not actually correct. This letter was written by the Council's then Woodlands Management Officer, Jim Waterson. Officers can find no formal application for the tree to be felled. However, this letter was written over 24 years ago and the tree is still standing and officers are of the opinion that this letter holds very little weight.

Report B

- 6.11 The second report was written by Jim Waterson (The Council's former Woodlands Management Officer) submitted on 13 February 2017 which refers to the Sylvan Resources report and comments:
- The tree is large and physically impressive displaying many key features of advanced age and major structural decay.
 - It has real presence and some useful biodiversity value.
 - Due to its condition and location, the tree should be removed to eliminate the hazard it currently presents to the adjacent highway and to third parties potentially accessing the land.
 - The advanced age and extent of structural decay within the tree do not lend itself to retention of the tree even in a reduced form

Report C

- 6.12 The third report is by Rob Keyzor Tree Surgeons & Arboricultural Consultants Ltd submitted on 13 February 2017. This is a very detailed report and contains the finding of a PICUS Tomograph stem investigation:
- The tree is structurally impaired by the activity of one or more pathogens.
 - Buttress roots are decayed and the stem basal area has through and through open cavities.
 - The southern side of the stem is cracked vertically from ground level to 3m with a cavity formed.

- The main ascending stems and principle lower order branches are infected with a wood decaying fungus that causes brittle fracture and branch loss.
- Loss of principle lower branches has already occurred and current visible tree condition indicates further branch loss should be expected.
- The tomography shows significant areas of reduced strength and dysfunctional wood.
- Most importantly, the areas of reduced strength breach the residual wood around the circumference in multiple locations.
- Tree work operations to mitigate the current condition will entail removal of live tissue and leaf bearing branches.
- Any removal of live tissue will be detrimental to the health and safety of the tree and will jeopardise any current growth increment and may exacerbate fungal activity.
- Any works to the tree have the potential to disrupt physiological processes to the detriment of future health and safety and may expose tree work operatives to risk from branch failure.
- In view of the change of use expected on the site the condition of the tree does not indicate a tree in retrenchment or recovery and current pathogenic activity will be ongoing.
- The scale and proportions of the site do not indicate suitable room to retain the tree in appropriate open space.
- Construction of a residential property will increase occupancy and target value areas around the tree already struck by falling branches and the potential for damage or harm from branch failure is not acceptable. In the circumstances tree retention is not sustainable or advised.

Report D

- 6.13 The final report submitted by the applicant is less detailed, prepared by Jerry Dicker submitted 28 February 2017. This report mentions the reports previously submitted but specifically mentions the report by Rob Keyzor Associates. However, as stated in the report, Mr Dicker has not visited the tree, who says this:
- The PICUS Tomograms especially the lower one, would indicate the need for immediate removal.
 - The Ash tree has a very short useful life expectancy and should be removed immediately.
- 6.14 Planning officers have had many discussions and conversations during the application process with the Council's two tree specialists, both of which were of the opinion that the tree could still be managed and retained in the landscape regardless of the erection of a dwelling on the site or not.
- 6.15 It must be noted that Report A from September 2015 recommends the tree to be felled immediately. This current tree application is the first application to be submitted for the felling of this particular Ash tree so this is the first time the proposal has been fully assessed. The tree was shown to be retained on the submitted plans for the erection of the 2 dwellings. To date, even following the recent high winds, the tree is still standing and its stability does not appear to have been affected.

Report E

- 6.16 Due to the difference of opinion between the Council's Arboricultural officers and the 4 reports submitted by the applicant, the Planning Service Delivery manager consulted Legal Services and it was decided that the Council would fund an independent survey. None of the reports provided by the applicants have been

undertaken by consultants that are Arboricultural Association Registered.

- 6.17 The Council had commissioned a report by Ian Murat of ACS Consulting, who is an Arboricultural Association Registered Consultant with 25 Years experience in the field of Arboriculture. He is also a LANTRA Professional Tree Inspector specialising in tree failure & hazard evaluation. He has detailed knowledge of Visual Tree Assessment techniques, modern tree biology and Tree Hazard Evaluation systems. He is also an assessor of the Arboricultural Association Registered Consultant scheme.
- 6.18 Mr Murat of ACS Consulting states that the physiological condition of the tree is considered to be good. The tree has a good distribution of buds and twigs throughout the canopy. There are a number of pieces of dead wood of varying sizes, some historical storm damage as well as signs of poor past pruning practice. The structural condition of the tree is considered to be good for a veteran. The tree has a number of defects and areas of significant decay that, in the context of the tree's status are considered to be normal and acceptable. The tree has the feature of a 'bottle butt' with the typical swelling associated with adaptive growth. The report goes into more detail about the overall condition of the tree.
- 6.19 Mr Murat's report is critical of the various reports submitted by the applicant. He states that none of the reports make reference to planning policy on either a local or national level. He comments that the report submitted in 2016 as part of the housing application gives little in the way of detailed analysis of the tree and there is no assessment of any failure criteria. Age assessment fails to take account of its potential to be a veteran or transitional veteran. There is no discussion on the potential of specific pruning that could be employed. The report appears to be ignored in the determination of the application. No appeal was made nor a separate TPO application to fell the tree or a notice made under Section 198 of The Town and Country Planning Act 1990 (as amended) by the then applicant at the time.
- 6.20 Mr Murat also mentions the current application and the accompanying report (the Rob Keyzor Associates report). It mentions the PICUS Sonic Tomography system and states that it is not known what model is being used or if it is up to date. He states that it is acknowledged by the surveyor that the tree is a veteran specimen. Over the last 2 decades the management of veteran trees has advanced. Work led and publications by Neville Fay, in conjunction with the Ancient Tree Forum have developed management prescriptives that retain veteran trees where once they would have been consigned to felling. There is clearly scope to manage the Ash as a veteran tree utilising the techniques advanced by the Ancient Tree Forum. As part of this, the council has already consented to crown reduction works which could be aligned with the aims of veteran tree management.
- 6.21 Mr Murat also mentions the other comments submitted by other tree surveyors (Jerry Dicker and Jim Waterson) and states he has attached no weight to these comments as neither of them has viewed the tree and considers it is unprofessional to make any comment without first having undertaken their own independent survey.
- 6.22 Mr Murat concludes that the tree is a significant specimen of high visual amenity giving scale and maturity as a landscape feature. It has veteran status giving it added importance in the landscape and in any planning decision. The tree has good canopy architecture with a good distribution of buds and twigs.
- 6.23 It is agreed by all parties that the tree is a veteran specimen and as such in an assessment for development would be allocated A3. The Rob Keyzor Associates

report prepared for the applicant states it can be used for development and a TPO application. The report fails to grasp the importance of veteran trees in the landscape and the planning sphere. It fails to acknowledge the importance placed on veteran trees by Telford & Wrekin Council and Central Government. This report's findings are fundamentally wrong and fail to take account of current good arboricultural practice in the assessment of aged and veteran trees. There is no reason why the load-carrying capacity of the tree will not increase. The load carrying capacity has the potential to be further increased by implementing the consented works. The council has already granted permission for crown reduction works to be undertaken to the tree that could form part of a veteran tree management strategy. There are currently no reasons why this work cannot be completed. Mr Murat sees no reasons why, currently the tree cannot be managed as a veteran tree in the landscape and integrated into any site development. The Council granted permission for a development that showed the tree well integrated.

- 6.24 The application that Mr Murat refers to (our reference TWC/2016/0539) was granted outline permission for 2 dwellings. The approved plan shows a 14m exclusion zone around the tree where no works can take place. If the works that have already be consented are carried out on the tree, it will take this under the exclusion zone lessening any danger to the proposed dwellings.

Applicant's response to Council Commissioned report

- 6.25 Since the publication of the report, the applicant has submitted further comments from his tree consultants that do criticise Mr Murat's report.
- 6.26 Jim Waterson states:-
- The Murat Report is clearly loaded with material to try to remind the council that it has general policy-driven reasons to retain the tree at the expense of a completely objective assessment of the clear and technical defects and faults that justify felling to remove the risks presented to it.
 - The report is inaccurate and misleading in asserting that reports were not based on site visits and direct examination of the tree.
 - The veteran tree concept applied by Mr Murat and Mr Onions previously needs some serious questioning regarding the land setting and context in which this tree sits.
- 6.27 Jerry Dicker responds:-
- It is a completely wrong assertion to say none of the other tree surveyors have viewed the tree as has been pointed out that his comments are the only ones made by an individual who has not been on site.
 - He rejects the slur that it is completely unprofessional to make comment and states his comments were entirely compatible with his professionalism and remit.
 - The assessment of the tree should be an objective examination of its condition and not be driven by policy.
 - someone else could say the reports finding are not fundamentally wrong. Who does one believe?
- 6.28 Sylvan resources have sent a detailed report in which again criticises the Council's report:-
- The Council is presented with a problem of whether to act upon the evidence of the applicants experts or the advice of its own expert and its tree officers.
 - The evidence presented by the applicant suggests that the tree is dangerous. I have not been provided with any evidence from the Council's employees. I

have seen some correspondence and emails but these contained very little technical detail.

- I have not been provided with any explanation as to why the Council instructed Mr Murat, and conclude that it must have considered that it lacked the technical expertise to address all or some of the applicants evidence.
- Much of Mr Murat's evidence focuses on planning policy and the status of the tree. Very little addresses its structural integrity and the evidence he presents in relation to the results of the tomographs is flawed.
- Lonsdale10 considers risk factors presented by trees to comprise, "the probability of mechanical failure, the severity of impact in the event of failure, the probability of one or more persons or particular items of property being present at the time". Mr Murat fails to acknowledge the last two of these factors. His evidence is loaded in favour of retaining the tree.
- The Council's duty is to balance the opinion of the various consultants who have advised the applicant against the view of its tree inspectors and Mr Murat. In doing so it must consider the duty of care owed by each expert.
- Mr Murat is completely dismissive of the reports by other surveyors (para 49) and without naming anyone dismisses the opinion of those who he believes did not visit the site. The only commentator who has not inspected the tree was Mr Dicker and his role was to peer review the evidence the applicant was presented with.
- It is not unusual for experts to disagree, but rare for one to wholly dismiss the opinions of others, particularly when In the case of this tree, the overriding duty is the safety of people and the Council must decide if it is being misled by its own expert or the applicant's experts.
- In my opinion, the Council should disregard the planning considerations and address the issue of safety. Its decision must weigh the evidence of those professionals who consider the tree to be dangerous against those who do not. In doing so, the Council needs to consider the duty of care it owes to Mr Bond, users of and visitors to his property, and users of Shrewsbury Road.
- The Council needs to consider the risk of the tree's failure in terms of its location. The applicant's property and Shrewsbury Road are within its target zone should it fail. I have also seen a letter from his neighbour which expresses concern about the risk the tree presents to his property but I have not assessed this risk.
- The applicant wants to exercise his duty of care but may be prevented from doing so by the Council. Were the tree to collapse and cause injury or death, the applicant's defence would be to argue that he was prevented from removing the tree by the Council. The various consultants he has instructed would be called as witnesses and their reports used as evidence. The weight of evidence would make defence of any civil claim or criminal prosecution difficult. The Council would have to rely on its experts to argue that on the balance of probabilities the accident was unforeseeable.
- The Council's decision should not be determined by planning policies and arguments about veteran trees and BSS 5837 methodology. It should be based upon its judgement of risk and how much confidence it has in its employees and expert's opinions. Its appetite for risk will also be a consideration in determining its decision.

- 6.29 Rob Keyzor Associates have also issued a further report. It states that:-
- The report by ACS Consulting has been commissioned to provide Telford and Wrekin Council with their own independent opinion of the tree but covers a wide range of topics relating to planning policy and planning frameworks at local and national level. It goes further by combining an appraisal of the subject tree in the context of BS5837: 2012 Trees in Relation to Design, Demolition and Construction with a critique of other reports commissioned for the original planning application and latterly by you.
 - The report implies that as a veteran tree T1 is entitled to default retention status regardless of the implications of its current physical condition and prognosis and seems to dismiss all other opinions and conclusions.
 - For clarity, this response is not a revision of the original tomography report dated February 2017, which you commissioned to report our findings and opinions of our tomography test and VTA to elucidate a prognosis for the tree given its obvious visible defects. Our conclusions were based on those findings and our recommendations prepared in the context of future change in site use.
 - Mr Murat's concludes that our reports "findings and conclusions are fundamentally wrong". This is based on his opinion that the tree is safe and can be made safer by pruning and maintenance as is already consented by Telford and Wrekin Council document TWC/2016/1118.
 - Rob Keyzor Associates concur absolutely that veteran trees can be managed and sustained with pruning works and would endorse this management style on a site that was to remain as rough pasture with low occupancy and/or limited access. We disagree that our findings and conclusions are fundamentally wrong in the context of our original objectives because the management of veteran trees is entirely separate from risk management on a development site with permission for residential dwellings, a planning condition for provision of generic tree protection notwithstanding. The ACS recommendations are to carry out the agreed pruning. Our recommendations are that the agreed pruning will remove a significant volume of leaf bearing buds and twigs that will diminish tree health even if only in the short term, which may cause stress, encourage secondary pathogens and will do nothing to abate the branch failure hazards as a consequence of the *Inonotus hispidus*.

Assessment of the issues

- 6.30 This application rests on the difference of opinion of the applicant and his appointed tree specialists and the Council's 2 Arboricultural officers and its appointed specialist, Ian Murat. It has been argued that the tree could be retained within the landscape if the land was to remain undeveloped. However as the land is to have housing on it has been argued that this is not practical. When the residential planning application was granted, it was not determined on the basis that the permission could only be implemented if this protected tree was felled. Officers are of the opinion that this was taken into account when the outline planning application was being determined and hence why there is a 14m exclusion zone around the tree. Officers are also of the opinion that if the works to the tree that have already been consented are carried out, then this would lessen any possible danger.
- 6.31 The Council's qualified arboricultural officers have pointed out that none of the reports submitted by the applicant have been prepared by Arboricultural Association Registered consultants. The independent report commissioned by the Council has been carried out by Ian Murat of ACS Consulting who is a registered consultant with the Arboricultural Association.

- 6.32 Therefore, officers consider that the recommendations made by the Council's tree officers and its appointed expert are correct and therefore, the tree should be retained and managed within the landscape.

7. CONCLUSIONS

- 7.1 The Council can grant consent unconditionally, grant consent subject to conditions as it thinks fit, or refuse consent. A consent to fell could include a condition relating to planting of a replacement tree or trees. If the Council refuses this application or grants consent subject to conditions the applicant can appeal to the Secretary of State.
- 7.2 In all the circumstances and having regard for the amenity value of the tree and taking into account the various submissions received, officers consider that consent for the proposed felling of the Ash tree should not be granted. This is a veteran tree which has the potential to be retained and managed within the landscape. Accordingly, the proposal is contrary to policy CS12 of the LDF core strategy and 'saved' policy OL11 of the Wrekin Local Plan and guidance within the NPPF.

8. COMPENSATION

- 8.1 It should be borne in mind that the Council may be liable to pay compensation for loss or damage as a result of refusing consent. This factor needs to be taken into account alongside other key considerations such as the amenity value of the tree and the justification for the proposed works, before reaching its decision.

9. RECOMMENDATION

- 9.1 Based on the conclusions above, it is recommended that the committee **REFUSE PLANNING PERMISSION** for the following reason:
In all the circumstances and having regard for the amenity value of the tree and taking into account the various submissions received, the Local Planning Authority considers that consent for the proposed felling of the Ash tree should not be granted. This is a veteran tree which has the potential to be retained and managed within the landscape. Accordingly, the proposal is contrary to policy CS12 of the LDF core strategy and 'saved' policy OL11 of the Wrekin Local Plan and guidance within the NPPF.