

**WARD :** Ruthin

**WARD MEMBER(S):**

**APPLICATION NO:** 02/2020/0713/ AC

**PROPOSAL:** Tynnu coeden a gyflwynwyd yn unol ag amod rhif 5 o gais cynllunio rhif 5/02/7804 / Removal of tree submitted in accordance with condition number 5 of planning application number 5/02/7804

**LOCATION:** 118 Bro Deg Ruthin

**APPLICANT:** Miss Sophie Jones

**CONSTRAINTS:**

**PUBLICITY UNDERTAKEN:** Site Notice - No  
Press Notice - No  
Neighbour letters - No

**The application was submitted as an Approval of Condition application to remove a tree which had been protected by a planning condition back in 1986. The Council no longer protects trees by condition and would issue a TPO if deemed necessary in such circumstances.**

**CONSULTATION RESPONSES:**

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES  
Tree Specialist-

‘According to the drainage report the damage to the pipe has possibly been caused by a fence post. The fact that there is tree root ingress in the pipe as a result this does not justify felling the tree. Tree roots only have a limited capacity to damage pipes but will exploit a leaking pipe and can eventually block them as a result of fibrous root ingress. Roots in a drain are most often the result of damage (caused by other factors) rather than the cause of the damage.

The oak appears healthy, is quite prominent and affords significant amenity.

It is recognised that the house is relatively close to the tree and this may cause some inconvenience to the owner. However the oak’s height and the proximity of the dwelling to it are not justification to allow it to be felled, especially when the tree report does not state that there is anything defective with the tree or that it is unsafe.

There is no justification to fell the tree for the reasons stated and I would recommend refusal’.

**RESPONSE TO PUBLICITY:**  
N/A

**EXPIRY DATE OF APPLICATION:** 15/11/2020

**REASONS FOR DELAY IN DECISION (where applicable)**

N/A

**PLANNING ASSESSMENT:**

**1. THE PROPOSAL:**

1.1 Summary of proposals

- 1.1.1 The application is an approval of condition application to fell a tree which has been protected by condition 5 on a planning approval from 1986 which was when the Bro Deg estate was granted (ref. 5/02/7804). The condition was as follows:
- 1.1.2 *None of the trees or hedgerows within the application site shall be removed without the prior consent of the District Planning Authority.*
- 1.1.3 *Reason: In the interests of visual amenity.*
- 1.1.4 The reasons provided for the felling of the tree are due to the damage the tree has caused to a drainage pipe through the roots. However, the drainage report shows the damage to the pipe has possibly been caused by a fence post. The other reasons provided by the applicant are due to the costs of the tree's upkeep, potential damage to the property by the tree in high winds and the safety risk of fallen leaves on the pathway.

1.2 Description of site and surroundings

- 1.2.1 The tree in question is a oak which appears healthy and is quite prominent in the back garden of 118 Bro Deg. The tree is located to the rear boundary of the garden but can be seen from public vantage points around the estate.



1.1 Relevant planning constraints/considerations

- 1.1.1 The site is located within the development boundary of Ruthin.

1.2 Relevant planning history

- 1.2.1 No history relating to the tree, the estate was granted permission in 1986.

1.3 Developments/changes since the original submission

- 1.3.1 None.

1.4 Other relevant background information

- 1.4.1 None.

**2. DETAILS OF PLANNING HISTORY:**

- 2.1 2/1340 Development of 9.46acres of land for residential development comprising of 74 dwellings, REFUSED 25/05/1976

Reason:

*The sewage disposal works to which this development would drain has reached its design capacity and is not capably of satisfactorily coping with the additional foul sewage resulting from the development.*

2.2 2/780 Development of land by erection of 57 dwellings and estate roads, GRANTED  
17/01/1986

### 3. RELEVANT POLICIES AND GUIDANCE:

The main planning policies and guidance are considered to be:

#### 3.1 Local Policy/Guidance

Denbighshire Local Development Plan (adopted 4<sup>th</sup> June 2013)  
Policy RD 1 Sustainable Development and Good Standard Design  
Policy VOE 1 Key Areas of Importance

Supplementary Planning Guidance  
Supplementary Planning Guidance Note: Trees & Landscaping

#### 3.2 Government Policy / Guidance

Planning Policy Wales Edition 10 (December 2018)  
Technical Advice Note (TAN) 10 - Tree Preservation Orders (1997)

Circular 64/78 'Trees and Forestry'

### 4. MAIN PLANNING CONSIDERATIONS:

4.1 The main land use planning issues in relation to the application are considered to be:

- 4.1.1 Principle
- 4.1.2 Amenity Value of the Tree
- 4.1.3 Is the proposal justified?

4.2 In relation to the main planning considerations:

#### 4.2.1 Principle

Policy VOE 1 in the Local Development Plan seeks to protect sites from development that would adversely affect their biodiversity and landscape value.  
Policy RD 1 includes tests which seek to protect the visual amenity of the area.

Section 6.2.24 of Planning Policy Wales (PPW 10) states that trees, woodlands, copses and hedgerows are of great importance to biodiversity. They are important connecting habitats for resilient ecological networks and make a valuable wider contribution to landscape character, sense of place, air quality, recreation and local climate moderation. Section 6.2.25 states that Local Planning Authorities should protect trees, hedgerows, groups of trees and areas of woodland where they have ecological value, contribute to the character or amenity of a particular locality, or perform a beneficial and identified green infrastructure function.

Circular 64/78 and TAN 10 provides guidance in relation to Tree Preservation Orders (TPO's) and states that TPO's are made if it is considered expedient '*in the interests of amenity*'. TPO's are used to protect selected trees and woodlands if their removal would have '*a significant impact on the environment and its enjoyment by the public*'.

The tree in question is not protected by a TPO, however is considered to merit protection. Given the age of the original application for the development of the estate, it was reasonable back then to impose conditions to protect trees, however, by modern day standards, a tree which is worth of protection would be issued a TPO on it rather than protection by condition.

Therefore, in determining applications for felling or carrying out of works to protected trees, current guidance is as follows:

- i) to assess the amenity value of the tree or woodland, and the likely impact of the proposal in the amenity of the area, and

ii) in light of their assessment at i), to consider whether or not the proposal is justified, having regard to the reason put forward in support of it.

The proposal is therefore considered acceptable in principle subject to the consideration of the above tests, which are set out below.

#### Test i) Amenity value of the Tree

Whilst the tree is not currently protected by a TPO, TPO's are made on the basis of an assessment of the amenity value of the trees. Therefore assessment of the application to fell or undertake works to trees which is protected by a condition equivalent to a TPO, must be restricted to an assessment of the amenity value of the tree(s).

The proposal involves the felling of an Oak tree in the rear garden area of 118 Bro Deg, Ruthin which is currently protected by a condition from a 1986 permission.

Having regard to the comments provided by the Tree Specialist, the Oak appears healthy, is quite prominent and affords significant amenity. It is therefore considered that the proposed felling of the oak tree would have a significant impact on the visual amenity of the area and is not considered to be acceptable.

#### Test ii) Is the proposal justified?

The reasons for the felling of the tree have been stated by the applicant are due to the damage the roots of the tree have caused to a drainage pipe.

However, according to the drainage report the damage to the pipe has possibly been caused by a fence post. The fact that there is tree root ingress in the pipe as a result this does not justify felling the tree. Tree roots only have a limited capacity to damage pipes but will exploit a leaking pipe and can eventually block them as a result of fibrous root ingress. Roots in a drain are most often the result of damage (caused by other factors) rather than the cause of the damage.

It is recognised that the house is relatively close to the tree and this may cause some inconvenience to the owner. However the oak's height and the proximity of the dwelling to it are not justification to allow it to be felled, especially when the tree report does not state that there is anything defective with the tree or that it is unsafe.

The oak is a mature specimen that affords significant public amenity and it is not considered that the damage to the drain has been caused by the Oak's roots. No evidence has been provided that the Oak is defective and as a result should be felled for health or safety reasons. Therefore the application for approval of condition to fell the tree protected by a condition should be refused.

## **5. SUMMARY AND CONCLUSIONS:**

5.1 The Oak is a mature specimen and it is considered that the proposal to fell the tree would have an unacceptable impact in relation to public amenity. It is not considered that the damage to the drain has been caused by the tree's roots and therefore the proposal is not considered to be fully justified. The felling of the tree is not considered acceptable in the circumstances as its removal would have a detrimental impact upon the visual amenity of area and therefore it is considered that a Tree Preservation Order is merited.

## **RECOMMENDATION: REFUSE – for the following reason:-**

1. It is the opinion of the Local Planning Authority that the felling of the oak protected by condition is unacceptable in the circumstances as its removal has not been appropriately justified. Its removal would result in a detrimental impact upon the visual amenity of area and therefore it is considered that a Tree Preservation Order is merited.

**NOTES TO APPLICANT:**

The Local Planning Authority are of the opinion that a Tree Preservation Order should be issued on the Oak tree given that it affords significant public amenity.

**NOTES TO ADMIN:**

Stuart Body has advised that the tree merits protection by a TPO and has made contact with the Legal Officer Tim Dillon to arrange for this to take place. Please can the decision certificate be forwarded to Tim and Stuart. Thanks.

**PLANS AND  
DOCUMENTS SUBJECT  
TO THE DECISION:**

(i) Supporting information received 21 September 2020