

# EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE : 17 MARCH 2000

00/0019/TP : PROPOSED FELLING OF ELM TREE AT 9 CLARINDA  
CRESCENT, MAUCHLINE BY MR T KENNEDY

## Report by Head of Planning and Building Control

### 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination an application which is to be considered by the Local Planning Committee under the scheme of delegation as the proposed application is not in accordance with Leisure's advice and is recommended for refusal.

### 2. APPLICATION DETAILS

2.1 **Site Description:** The application site lies on the east side of Clarinda Crescent in Mauchline, some 60 metres north-east of the junction of Clarinda Crescent with Ayr Road. The application site comprises the existing detached dwellinghouse and its curtilage, within which lies a tree (T8) covered by the Mauchline Tree Preservation Order (Netherplace Area).

2.2 **Proposed Development:** This is an application for the felling of an Elm tree (T8) within the front garden area of No. 9 Clarinda Crescent. The large tree is located adjacent to the boundary of the front garden area with the public footpath at Clarinda Crescent.

2.3 The applicant has stated that the base of the tree is rotten, has Dutch Elm Disease and several branches have recently fallen off. The applicant also submitted an independent tree surgeon's report in support of this application.

### 3. CONSULTATIONS AND ISSUES RAISED

3.1 Mauchline Community Council have not responded to the consultation letter.

*Noted.*

3.2 West of Scotland Water have no objection to the proposal.

*Noted.*

3.3 East Ayrshire Council Roads and Transportation Division have no objection subject to conditions.

3.3.1 The Roads Division advise that the applicant was initially contacted by the Roads Division Clerk of Works over safety concerns in respect of the tree. A number of branches had fallen from the tree, and there are two snagged branches within the tree. However, as a consequence of this application, advice has been received by the Council's Outdoor Services Division who advise that the tree appears to be in reasonable condition, and they do not consider the tree to be in danger of imminent collapse. Therefore, providing the two snagged branches are removed from the tree then the Roads Division will be satisfied that there is no imminent safety hazard presented by this tree.

***It is recommended that the applicant is advised that the two snagged branches are removed from the tree as a matter of priority.***

3.3.2 There are a number of low hanging branches which will require to be trimmed in the near future to ensure the required vehicle headroom over the carriageway is maintained. So that this it not an annual occurrence and as a number of branches have fallen on the road over the past few years, I would recommend the removal of the large limbs overhanging the road for road safety reasons.

***The Roads Division have powers to remove the trees/branches if it were deemed dangerous under Section 91 of the Roads (Scotland) Act 1984 (See Paragraph 7.2). However, following the advice of Outdoor Services (Paragraph 3.4), they recommend that the applicant is advised to remove the overhanging branches. The applicant has however advised the Planning Division that they wish the application to be determined as it stands and do not wish to submit a new application, or amend this application, for the felling of the branches.***

3.3.3 Appropriate traffic control must be provided for any works undertaken, and the applicant should contact the Area Engineer in this regard.

***A note could be attached to any planning consent with regard to appropriate traffic control.***

3.4 **East Ayrshire Council Outdoor Services** advise that further to the inspection of the Ulmus Glabra (Elm) tree, they identified two snagged up branches, which should be removed as soon as possible. The decay within the east side of the trunk is not so extensive as first indicated. A resistograph reading identified two small areas of decay of approximately 3cm and 4cm which was caused by internal decay from a large limb, which was removed several years ago. This amount of decay is minimal for a tree of this size.

It is difficult to determine at this time of year whether this tree has been infected by Dutch Elm disease, and, if it has, to what extent. There are buds present throughout the canopy although they appear less at the top of the

crown. This could be caused by Dutch Elm disease or by loss of vigour due to age.

The tree canopy is unbalanced due to limbs being removed towards the house in the past, which gives the roadside most weight within the crown. A resistograph reading of the main buttress on the opposite side indicates healthy wood 400mm into the tree.

In conclusion, it is recommend waiting until the tree is in full leaf to inspect for Dutch Elm disease. If the disease is significant, the tree should be removed between November and March (next winter) to reduce the incidence of contaminating healthy Elm trees during transport. If the tree has no sign of Dutch Elm disease, the canopy could be raised on the roadside to give the tree a more balanced appearance. This could be carried out between June and August when the tree is still in full leaf, or next winter. The tree is fully mature and has a large canopy, which is exposed to high winds from any direction. This could cause branches to break at any time due to the forces of nature and the lightwood construction of the tree.

***Noted.***

#### **4. REPRESENTATIONS**

One letter of representation received regarding the proposed felling.

4.1 Their house is in direct line of the tree and over the past years branches have fallen, in fact several branches are now overhanging Loudoun Street. If this tree was to fall it would cause considerable damage to this property. They have now been advised by the applicant that the tree is not now deemed dangerous and will not be felled. This situation is not satisfactory, there seems to be some conflict.

***See paragraph 3.4 of the report : Outdoor Services' comments.***

#### **5. DEVELOPMENT PLAN STATUS**

5.1 The relevant policy document is the East Ayrshire Local Plan Finalised Version. The application site lies within a designated residential area.

5.2 Landscape and Rural Environment Policy ENV15 states that the Council will actively seek to preserve and supplement existing broadleaf and native tree species throughout East Ayrshire. In particular, the Council will protect those individual groups and areas of trees which contribute significantly to the landscape quality of both the built and rural environment, through the serving of Tree Preservation Orders.

***The Elm tree contributes significantly to the amenity of the area and the proposed felling of the tree would conflict with the policy provisions of the East Ayrshire Finalised Plan.***

## 6. OTHER PLANNING CONSIDERATIONS

6.1 An independent tree surgeon's report, by QTS Environmental Services, was submitted by the applicant in support of this application. QTS advise that the tree is in the early stages of Dutch Elm disease with the crown showing signs of dieback and loss of vitality and also signs of a large number of broken branches. There is severe rot in the main trunk starting from an old pruning wound and travelling down the base of the tree. The distance of the rot is 3 metres long and 0.5 metres wide. The balance of the crown is uneven probably due to limbs being removed which were growing towards the applicant's house. It now gives an impression of leaning over the Ayr Road. The tree will deteriorate quickly and unfortunately the health and safety of road users and nearby householders could be in jeopardy.

***The tree surgeon from QTS confirmed with the Council's Outdoor Services Division, that during his inspection of the tree, no resistograph readings were taken. It would therefore not have been possible to fully assess the extent of the rot. Furthermore, the tree surgeon was present during the Council's Outdoor Services inspection of the tree when resistograph readings were taken and subsequently agreed with their findings and recommendations.***

6.2 The tree is protected under the Mauchline Tree Preservation Order No. 1, 1996, being specified as Tree T8 in the Order. Section 160 of the Town and Country Planning (Scotland) Act 1997 confers power to planning authorities to make an order for the preservation of trees where this is in the interests of amenity. It is considered that the elm tree which is the subject of this application to fell, contributes significantly to the streetscape and visual amenity in the locality of Clarinda Crescent, and felling should only be granted where there is a reasoned justification for doing so.

***See paragraph 3.4 : Outdoor Services' comments.***

6.3 Under the 1997 Act, there are consequences on removal of trees covered by a Tree Preservation Order. On removal of a protected tree, Section 167 of the 1997 Act confers a duty on the owner of the land on which the tree is located to plant another tree of an appropriate size and species at the same location as soon as is reasonably practical.

***A condition could be attached to any consent requiring the planting of another tree.***

6.4 A previous application was submitted ( Ref. No. 96/0061/TP) by the applicant in 1996 to fell the tree. This application was subsequently withdrawn.

6.5 If the Committee are minded to approve this application it would not require to be submitted for determination by the Development Services Committee under the scheme of delegation as it does not constitute a significant departure from the development plan.

## **7. LEGAL AND FINANCIAL IMPLICATIONS**

7.1 Under Section 165 of the Town and Country Planning (Scotland) Act 1997, a Tree Preservation Order may make provision for the payment of compensation in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the Order, subject to such exceptions and conditions as may be specified in the Order. The exception to the compensation provision contained in Tree Preservation Order No. 1/1996 is that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent subject to conditions where it is certified that the refusal, or grant subject to conditions, is in the interests of good forestry, or, in the case of trees other than trees comprised in woodlands, that the trees have outstanding or special amenity value.

7.2 Under Section 91 of the Roads (Scotland) Act 1984, the Roads Authority can carry out works necessary to prevent danger to vehicles/pedestrians. The Roads Authority can carry out the work themselves when there is danger or notify the owner of the tree and require them to carry out the necessary works. Where the Roads Authority carry out the work, they can cover the cost incurred from the owner. The Roads Authority can also contribute to the cost incurred by the owner, if they wish.

## **8. CONCLUSIONS**

8.1 In terms of the East Ayrshire Local Plan, Finalised Version, the proposal conflicts with the policy provisions contained therein.

8.2 It is considered that the tree, at this time, does not present a danger to the general public. The elm tree contributes significantly to the visual amenity and character of the locality at Clarinda Crescent and Loudoun Street and it is considered that there is currently insufficient justification for its felling. However, the tree should be inspected by Outdoor Services in the summer months, to determine if the tree is diseased, and if so, if the disease is significant.

8.3 It is considered that this application to fell the elm tree should be refused, however, it is recommended that the applicant be advised that the branches overhanging Ayr Road are lopped and two snagged branches removed as per the Roads Division recommendation and advice from the Council's Outdoor Services Division. This work shall commence after not less than 14 days notice has been given and it shall be supervised by a representative of the Planning Authority.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be refused on the grounds listed on the attached sheet.**

**9.2 It is recommended that the applicant be advised that the two snagged branches and the large limbs overhanging the road shall be lopped.**

Alan Neish  
Head of Planning and Building Control

VE/SMB/IH  
1 March 2000

FV/DVM

### **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory notices/certificates.
3. Consultations and representations.
4. East Ayrshire Local Plan, Finalised Version.
5. 96/0061/TP : Felling of one tree.

Any person wishing to inspect the background papers listed above, should contact Miss Vivien Emery on 01563 555485.

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1972

Application no: 00/0019/TP

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Location 9 Clarinda Crescent, MAUCHLINE

Nature of Proposal: Proposed felling of an elm tree

Name and Address of Applicant: Mr Thomas W Kennedy  
9 Clarinda Crescent, MAUCHLINE

Name and Address of Agent:

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DPO's Ref: [VE/SMB ]  
PPO's Ref; [ ]

The above **TREE PRESERVATION ORDER** application should be refused on the following grounds.

1. The Council considers that the elm tree (Ref. T8), covered by the Mauchline Tree Preservation Order No. 1-1996, contributes significantly to the visual amenity and character of the locality and does not present a danger to the public or property. The felling of the tree is therefore not justified at this time.

**MAP**

Due to Ordnance Survey regulations and copyright the map may be viewed at the Council's Planning Offices in Lugar. For information on viewing please telephone (01563) 555320).

**AGENDA**