

# Planning Committee

05 March 2021

Agenda item number 10

## Tree in Oulton Broad Conservation Area- Prosecution

Report by Kate Knights, Historic Environment Manager

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### Summary

The Broads Authority are aware that there has been wilful damage to a tree in Oulton Broad Conservation Area. The Local Planning Authority is minded to prosecute the perpetrator and approval to do so is sought from the Planning Committee.

### Recommendation

That members authorise the commencement of prosecution proceedings in respect of wilful damage to a protected tree.

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## 1. Introduction and legal background

- 1.1. An effective enforcement service is a fundamental part of the planning system. It ensures compliance both with planning law and planning conditions, investigates and resolves planning breaches and, where necessary, instigates direct action or prosecution in order to achieve compliance. The latter are usually remedies of last resort. The National Planning Policy Framework states at paragraph 58 that “Effective enforcement is important to maintain public confidence in the planning system” and the law gives a Local Planning Authority (LPA) a wide range of powers that it can use in the discharge of its enforcement duties.
- 1.2. Within a Conservation Area, it is a legal requirement for the LPA to be given six weeks’ prior notice of works to any trees within that area. There is a simple formal process for this, whereby the landowner submits a section 211 Notice to the LPA. The purpose of this notice is to give the LPA the opportunity to consider whether a Tree Preservation Order should be made in respect of the tree. If the tree is not considered worthy of a TPO the LPA must allow the works, although it can seek to negotiate amendments if needed.
- 1.3. Anyone who cuts down, uproots, tops, lops, wilfully destroys or wilfully damages a tree in a Conservation Area without submitting a section 211 Notice is guilty of an offence.

## 2. Damage to beech tree at Westerley, Broadview Road, Oulton Broad

- 2.1. The tree in question is a mature beech tree situated at Westerley on Broadview Road, Oulton Broad, Lowestoft. It is positioned at the north east of the site close to the road and no. 33 footpath which passes the site. It is situated within the Oulton Broad Conservation Area. The Oulton Broad Conservation Area Appraisal says of Broadview Road:

‘Mature trees within the gardens and on the roadsides make a positive contribution to the character of the area, providing a backdrop to unify the contrasting styles and scales of development on the north shore...’.
- 2.2. Pre-application discussions have been ongoing for a number of years regarding a replacement dwelling at Westerley and a new dwelling on the adjoining plot known as The Moorings, which is in the same ownership.
- 2.3. As part of these negotiations, there has been discussion about the significance of the view of Oulton Broad from Broadview Road and footpath 33 and the retention of this view.
- 2.4. In November 2020, a planning application (BA/2020/0408/FUL) was submitted for the replacement dwelling and a new dwelling. The application included the removal of the beech tree in order to achieve the applicant’s preferred layout on the plots. The Authority’s Arboricultural consultant raised an objection to the tree’s removal. Following further negotiations, the applicant amended the drawings to show the tree being retained and submitted this revision on 21 December 2020.
- 2.5. Having received the amendments, the Arboricultural consultant carried out another site visit on 18 January 2021. He concluded that the beech tree is a mature specimen in good condition. The tree overhangs the adjacent footpath and is clearly visible from Broadview Road, the footpath and Oulton Broad and so makes an important contribution to the character of the Conservation Area.
- 2.6. In the course of his inspection, however, he discovered that 3 holes had been made in the tree trunk, which appeared to have been made with a drill. The holes had had fungal pellets inserted into them and were plugged with twigs. An unknown fungus was growing out of some of the holes.
- 2.7. Following discussions with officers, he made another site visit on 21 January 2021 at which he undertook a full survey of the tree, including a Tree Evaluation Method for Preservation Orders (TEMPO) assessment to consider the tree’s suitability for a Tree Preservation Order (TPO). At this visit he discovered that there were actually 15 holes drilled into the tree and that 5 of the holes had mushrooms growing from them. He attempted to move one of the pellets from a hole where large clusters of fungi were present and could not. However, not all of the holes had pellets within them.

- 2.8. The conclusion of the TEMPO assessment was that the tree was of sufficient quality to justify protection and a provisional TPO was served on 26 January. The Arboricultural consultant advises that the ultimate extent of the potential damage to the tree caused by the fungi is not quantifiable at this stage, but the TPO emphasises the significance of the tree, provides further protection and also protects the LPA's position should a replacement be required in the future.
- 2.9. It is clear from the survey that there has been deliberate damage to the tree and officers have been in touch with the landowner. In a telephone conversation on 21 January 2021 the landowner admitted carrying out the works early in 2020. Officers wrote to confirm the details of the conversation, and the following confirmation was received from the landowner on 22 January:
- “I take full responsibility for my actions over my treatment of T7 [the beech tree] starting early last year before the first lock down and the ending with the removal of the plugs in that Summer; as I reflected to correct the situation. My actions were foolish and ill-considered at the time and I apologise for it. I have no excuse by my actions in addressing a conundrum...”.
- 2.10. The landowner goes on to state that the reason for wanting to remove the tree was in order to create a clear view between the two properties (ie the replacement and new dwellings) which, he felt, would be of benefit to the neighbour to the east of the plot and walkers. The landowner was asked about the type of fungus contained in the pellets, but the agent has confirmed that they are not able to provide this information.

### 3. Action proposed

- 3.1. The law states that anyone who carries out works to a tree in a Conservation Area without giving the requisite notice to the local authority is guilty of an offence. It is clear from the survey of the tree and the correspondence with the landowner that there has been wilful and deliberate damage caused to the tree, with the explicit purpose of causing it to fail.
- 3.2. The Broads Authority as the LPA has a number of duties in regard to this matter. Firstly, it has a duty to protect the Conservation Area which it has designated; secondly it has a duty to protect the trees within the Conservation Area and determine what works are appropriate; and thirdly, it has a duty to protect the planning system and the procedures established in law.
- 3.3. With regard to the first two duties, the trees within the Conservation Area contribute generally to its character, whilst this particular beech tree, by virtue of its prominent location and maturity, contributes both to the character of the wider Oulton Broad Conservation Area and in particular to the public amenity in this area through its visual amenity and ecology.
- 3.4. With regard to the protection of the planning system and the legal process, a distinction can be drawn between public and private benefits. The amenity value of the

tree and its contribution to the Conservation Area are public benefits which the LPA should protect in the public interest. The actions which have occurred were undertaken with the purpose of securing the removal the tree over time. The landowner claims that this was in order to improve the view for the community, but the LPA considers it more likely that the reason was to remove the impediment to his development ambitions, as without the tree his preferred layout could be achieved. There are also other benefits to the landowner arising from the removal of the tree, for example an easier build without the impediment of root protection areas or the requirement to protect roots when constructing parking areas, less shading of the dwelling and less leaf fall and debris over the parking area and garage. If this is the case, then in damaging the tree the owner of the site was seeking private gain at the expense of the public benefits afforded by the tree.

- 3.5. It is considered that there is a strong justification for a prosecution in this case. It is evident what works have taken place, and it is clear that these were wilfully and deliberately undertaken by the landowner with the purpose of damaging the tree in order to achieve its removal. Whatever the explanation given for this - whether it was to improve the view for a wider audience, as claimed by the landowner, or to address development constraints, as suspected by the LPA – the actions were unlawful.
- 3.6. The LPA has a duty to uphold the planning system and it should take action where there has been a deliberate breach, particularly where this has caused significant damage to interests of public importance. In this case, there has been harm to the Conservation Area as a whole, harm to this particular tree and, if not remedied, harm to the integrity of the planning and legal processes. It is proposed that the LPA commence prosecution proceedings against the landowner for wilful damage to a protected tree.

## **4. Financial implications**

- 4.1. There will be a financial cost associated with a prosecution. Legal costs to bring a prosecution are estimated at £1,200, but the final cost will be dependent on how the matter proceeds, including whether or not there is a guilty plea. The need for further legal advice regarding the ongoing monitoring of the tree and its potential replacement will also incur costs.
- 4.2. The LPA would seek to recover some of its costs through the Court.

## **5. Risk implications**

- 5.1. There are reputational risks arising from the LPA failing to take action where there has been unauthorised damage to a tree.

## **6. Recommendation**

- 6.1. That members authorise the commencement of prosecution proceedings in respect of wilful damage to a protected tree.

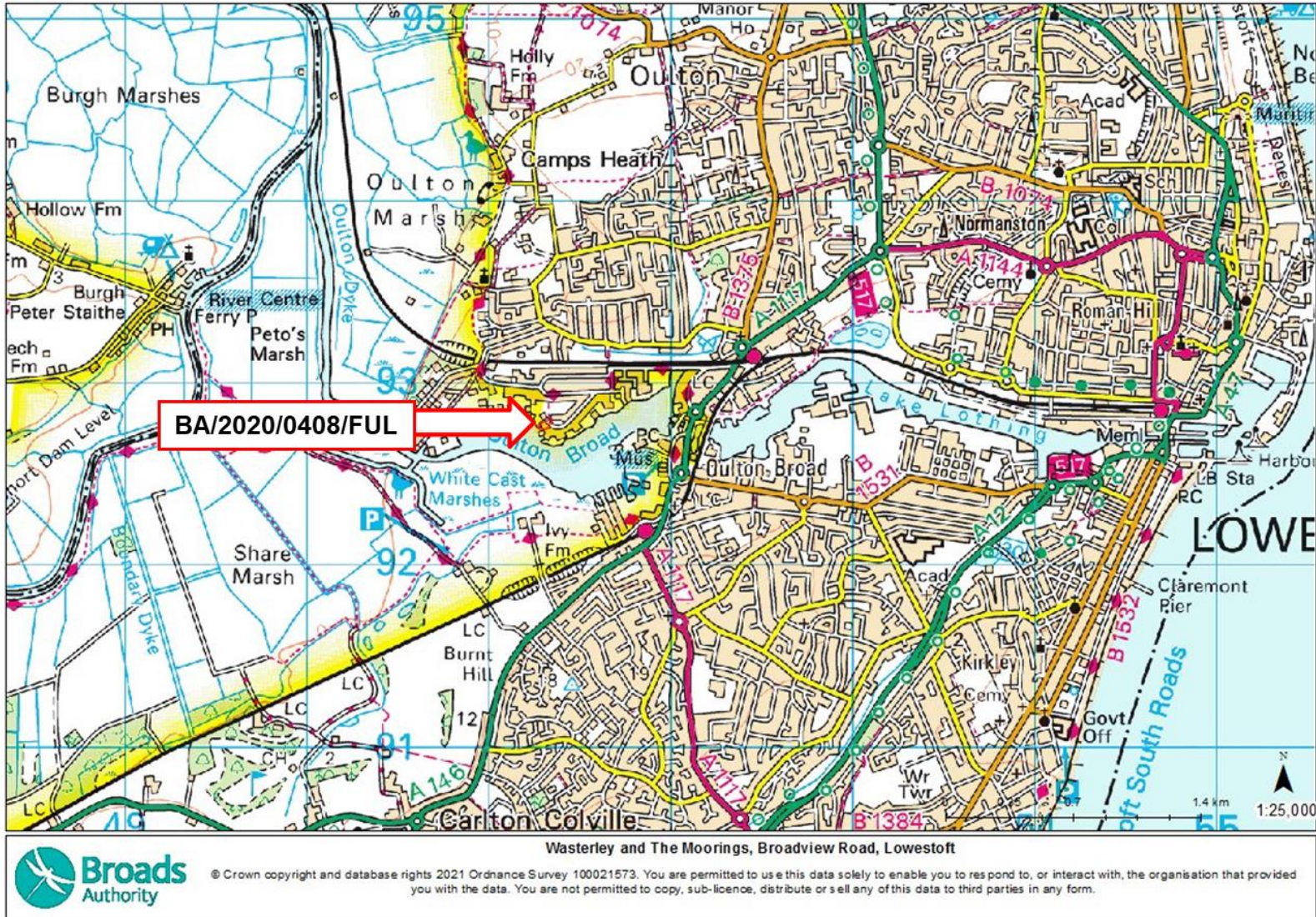
Author: Kate Knights

Date of report: 22 February 2021

Appendix 1 – Location map

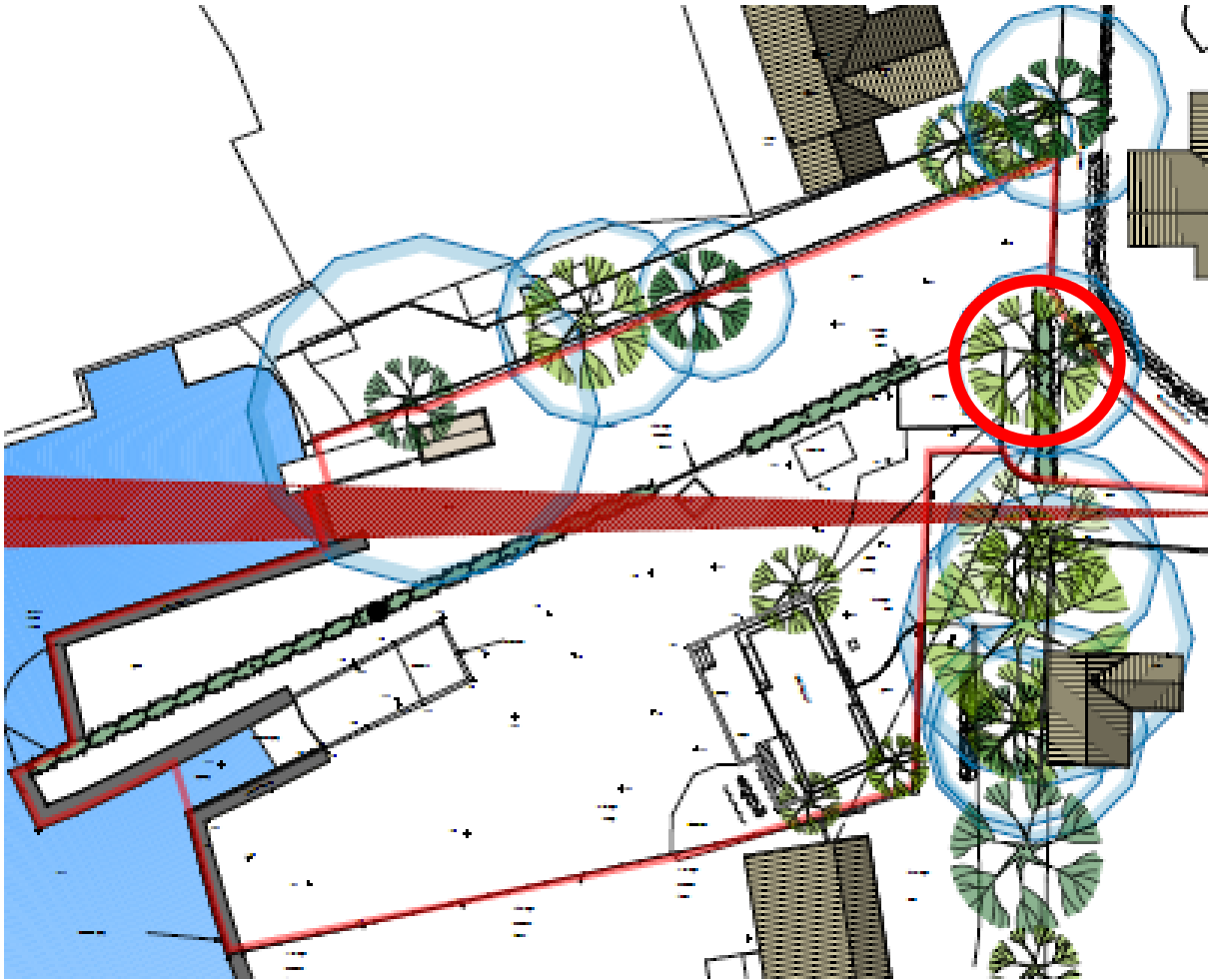
Appendix 2 – Existing and Proposed layout for development of The Westerley and The Moorings (submitted 21 December 2020)

# Appendix 1 – location map



# Appendix 2

## Existing Plan



Proposed Plan

