

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE - 25 AUGUST 2010

REPORT BY DIRECTOR OF NEIGHBOURHOOD SERVICES

6. TREE PRESERVATION ORDER 552, 60, BULLOCKS LANE, HERTFORD AND 4A, HOLLYDELL, HERTFORD, HERTS

WARD(S) AFFECTED: HERTFORD CASTLE

Purpose/Summary of Report

- To Support Confirmation Of Tree Preservation Order 552, 60, Bullocks Lane, Hertford And 4a, Hollydell, Hertford, Herts.

<u>RECOMMENDATIONS:</u> that	
(A)	Tree Preservation Order (No4) 2009 P/TPO 552 be confirmed as an opposed order; and
(B)	The Director of Neighbourhood Services be authorised to bring it into operation.

1.0 Background

1.1 A Tree Preservation Order was served under section 201 of the Town and Country Planning (Trees) Act 1990 on 18th September 2009. This order had the immediate effect of protecting its subject trees, for a period of six months, but it is required to be submitted to committee for confirmation and permanent effect.

2.0 Report

2.1 A notification of proposed works to trees in a conservation area, in respect of the beech tree (T1 of the order) was submitted on 6th August 2009. It requested permission for an overall crown reduction of 30 % and prune back of overhanging branches. The LPA dealt with this notice in one of the three ways open to them by making a TPO in the interests of amenity. The Local Planning Authority (LPA) assessed the amenity value of the tree(s) and special attention was paid to the desirability of preserving the character and appearance of the conservation area. It was also

considered expedient to make the TPO because the proposed work is not considered to be in line with good practice.

3.0 Implications/Consultations

3.1 If objections or representations are duly made, the Local Planning Authority (LPA) cannot confirm the TPO unless they have first considered them. There has been no objection or representation made on technical grounds (for example, that the tree is diseased or dangerous), although there has been reference to a discussion by the property owner with a tree contractor who suggested, that a 30% crown reduction would be sympathetic to the tree.

3.2 It is important to point out that some species (e.g. lime, plane, sycamore) will apparently tolerate almost unlimited pruning, and respond with a mass of new sprout growth. (If felled or “topped” they respond similarly.) Such sprouts are not an indication of health and vigour, rather a reaction to the demand for fresh leaves necessary for photosynthesis. Other trees such as beech, cherry and birch frequently die back as a result of severe pruning. Other important factors are the age and condition of the tree – the genetic predisposition for beech trees to respond poorly to pruning is exacerbated with age. The beech tree (T1, the subject of the TPO) is a large mature specimen which should not therefore be pruned back hard or crown reduced unless good reason can be shown to do so. This view is supported in the Arboriculture Association guide to tree pruning.

3.3 The non arboricultural objections are based on ‘rights of light’ - concerned with the shade cast by the tree, and leaf fall.

3.4 However, the only right to light in law is if it can be proved that the owner / occupier has the right to ancient light e.g. if it can be proved that the owner / occupier has had the uninterrupted use of that light for a period greater than 20 years; and this only applies to the windows of the property.

3.5 The effect of the TPO is as follows:

When considering applications for tree works, and the LPA decide to refuse consent (or grant consent subject to conditions) they should:

(1) Give their reasons for the decision. These should relate to each of the applicant’s reasons for making the application. For

example, if a person applies for consent to prune or cut down a tree on the grounds that (i) it is causing damage to his property, (2) it blocks out too much light from his property, and (iii) it has little 'amenity value', the refusal notice should address each of these points. It would not be sufficient simply to refuse such an application 'because the work proposed would be detrimental to amenity',

- 3.6 It has taken many years for the beech tree (T1) to have attained its current size and the LPA would normally refuse an application for excessive pruning. However, any reasonable request for pruning or crown thinning is likely to be granted. The effect of the TPO will not be to preclude active management of the tree, but merely to ensure that pruning work will not be of such scope and nature that it will be detrimental to the health and amenity value of the tree. If an application for work is refused then the applicant has redress to the appeal procedure where an independent inspector will make a ruling on such matters.

- 3.7 For example:

Crown cleaning would be allowed – this simply means the removal of dead dying, damaged or diseased wood from the tree for the reasons of appearance, health and safety.

Crown thinning would be allowed if carried out professionally and in incremental stages. Crown thinning is usually undertaken to reduce crown density without altering the overall size or shape of the tree. Crown cleaning would be carried out first, followed by the removal of weak, crossing and rubbing branches. Often this may be all the thinning that is required to allow more light to windows etc, however more thinning can be undertaken to a required density. Crown thinning should follow a general rule of never removing more than one third (less in the case of beech) of the foliage and usually much less – otherwise the tree may be reduced to a 'skeleton' and may suffer severe dieback. Also if overdone it can allow long branches more room to move independently, sometimes resulting in breakages in high winds. Thinning the aerial bulk or 'crown' of a mature tree is a skilled operation. The main reason is to allow more light to pass through the tree. The effect in practice is not usually very large, but it can make the tree look less dark and dense and allow a small increase in light reaching nearby windows.

Crown reduction and reshaping is done for different reasons in

which the objective is to make the tree smaller without unduly spoiling the shape of the tree. It is the hardest type of pruning to do properly and sympathetically. It may be necessary for a number of reasons such as to reduce the weight of potentially dangerous limbs, reduce the effect of wind stress on a potentially unstable tree, or to improve the appearance of a misshapen tree, to prevent a tree obstructing buildings or damaging property, or to prevent trees interfering with overhead power lines. A major crown reduction to the beech tree is likely to be refused by the LPA if the TPO is confirmed.

- 3.8 The final objection to the confirmation of the TPO is that it does not provide amenity value due to its rear garden location. The Tree Evaluation Method For Preservation Orders (TEMPO) is the industry standard for deciding whether or not a tree meets the criteria for the making of a TPO. This has been carried out and the beech scores 17 points. In Part 3 of the TEMPO the decision guide states that a score of 15+ definitely merits a TPO. This tree can be seen from the public highway and contributes to the character of the conservation area.

Background Papers:

None.

Contact Member: Councillor Malcolm Alexander – Executive member for Community Safety and Protection.

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ESSENTIAL REFERENCE PAPER 'A'

<p>Contribution to the Council's Corporate Priorities/ Objectives</p>	<p>Pride in East Herts <i>Improve standards of the neighbourhood and environmental management in our towns and villages.</i></p> <p>Caring about what's built and where <i>Care for and improve our natural and built environment.</i></p>
<p>Consultation:</p>	
<p>Legal:</p>	
	<p><i>This section should address:</i></p> <ul style="list-style-type: none"> • <i>The revenue and capital costs and any income impacts, the extent to which costs or income will vary in future years and the extent to which existing budgets and the future years set out in the MTFP are able to meet these costs.</i> • <i>If the report is mainly about capital works and costs consider and comment on any implications for the revenue budget.</i> • <i>Estimates are based on assumptions about activity levels, prices etc. Consider how the financial implications might change if those assumptions prove wrong and illustrate the impact of changed assumptions by way of a sensitivity analysis. Comment on which assumptions are relatively robust and where uncertainty lies. If the report is a review of a past decision how did forecast turn out?</i> • <i>Those who are close to the subject matter of the report can lose objectivity about the assumptions and display an optimism bias or pessimism bias. Consider and independently challenge the likelihood of this.</i> • <i>A sense of proportion in all the above is important. The bigger the numbers the more these factors should be considered in some detail. Where spending is £100k or more a separate ERP may be appropriate to address all the issues.</i> • <i>Remember reports dealing with "policy" can have financial implications about the resources needed to implement policy and changes thereto. Simply recording "from existing resources" is hardly ever sufficient to provide readers with a sense of the scale of resources involved.</i> • <i>If in doubt about the approach – ask the Financial</i>

	<i>Services team for advice. This is particularly the case where the financial analysis looks at longer periods – 5 years or more – where discounting of cash flows may be required.</i>
Human Resource:	None
Risk Management:	None