

EAST HERTS COUNCIL

DEVELOPMENT CONTROL COMMITTEE – 9 NOVEMBER 2011

REPORT BY THE DIRECTOR OF NEIGHBOURHOOD SERVICES

6. CONFIRMATION OF EAST HERTFORDSHIRE DISTRICT COUNCIL
TREE PRESERVATION ORDER(No. 7) 2011 P/TPO 563
'103, NEW ROAD, WARE, HERTS'

WARDS AFFECTED: Ware Christchurch.

Purpose/Summary of Report

- A Tree Preservation Order (No. 7) 2011 Ref., P/TPO 563 was served under Section 201 of the Town and Country Planning Act 1990 on the 15th August 2011. This order had the immediate effect of protecting three lime trees for a period of six months, but it has to be submitted to committee for confirmation and permanent effect.

RECOMMENDATION FOR DECISION: that

(A)	Tree Preservation Order (No.7) 2011 P/TPO 563 be confirmed as an opposed order and that the Director of Neighbourhood Services be authorized to bring it into operation.
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1.0 Background

1.1 A planning application was submitted to the LPA (Local Planning Authority) Ref: 3/10/2139/FP and dated 03/12/2010 for the demolition of existing office and construction of 2 houses at 103, New Road, Ware. The Development Control Landscape Officer Advice was...*"There are three pollard limes along the street frontage (in the front garden) which are important to retain, yet there is no tree survey and tree protection measures do not appear to have been thus far considered. A tree survey together with method statement, tree protection plan, construction exclusion zone etc. need to be submitted and approved (in accordance with BS 5837:2005) before commencement of the construction phase on site is allowed."*

1.2 The decision notice dated 14th February 2011 by the LPA was to grant permission subject to conditions.

Condition 10 of the decision notice reads ...*"All existing trees shall be retained, unless shown on the approved drawings as being removed. All trees on and immediately adjoining the site shall be protected from damage as a result of works on the site, to the satisfaction of the Local Planning Authority in accordance with the relevant British Standards, for the duration of the works on site and until at least five years following contractual practical completion of the approved development. In the event that any tree dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case not later than the end of the first available planting season, with trees of such size, species and in such numbers and positions as may be agreed with the Authority."*

Reason: to ensure the continuity of amenity afforded by existing trees in accordance with policies ENV2 and ENV11 of the East Hearts Local Plan Second Review April 2007.

- 1.3 In disregard of the planning condition, Mr Pearce submitted an application form to the Council to fell the three lime trees: under works to trees subject to a tree preservation order (TPO) and/or notification of proposed works to trees in a conservation area - in effect a Section 211 Notice to the LPA.
- 1.4 The receipt of this application indicated to officers that the trees were at risk. In order to ensure the trees continued to be protected, a Tree Preservation Order was issued on 15th August 2011. This was justified on the grounds of amenity.
- 1.5 On 24th August 2011 Mr. Pearce appealed to The Planning Inspectorate, seeking to have the TPO revoked. The Planning Inspectorate's response to Mr. Pearce (dated 27th September 2011) was to inform him that the legislation under Section 211 Notices provides no right of appeal to the Secretary of State.
- 1.6 The LPA received on 13th September 2011 a letter of objection to the confirmation of the TPO from Mr. Pearce (owner) on the following grounds:
 - The trees are a nuisance due to their rapid growth after pollarding and cutting of epicormic growth (suckers).
 - Obstruction of the public footpath as a result of the above.
 - Interfering with telephone lines
 - Causing damage to the front boundary wall.

- Affecting sight lines
- Trees are unsightly once pruned.

2.0 Report

2.1 The Council's Landscape Officer has considered each objection and can advise as follows:

- 1) Owner's objection to the confirmation of the TPO on the grounds that that the trees ... *"are a nuisance due to their rapid growth after pollarding and cutting of epicormic growth."*

Pollarding is a system of pruning in which a tree's branches above a certain height are removed to promote a denser head of foliage and branches. This method of pruning trees has been in practice in most of Europe since medieval times.

In urban areas, the main reason for pollarding is to keep the tree within sensible bounds where space is limited in streets and when they are planted near to buildings. Also trees pruned in this fashion are less likely to be blown over in high winds or drop deadwood as the pollarding promotes young growth making them safer in densely populated areas.

The LPA's consent is not required for cutting down or carrying out work on trees so far as may be necessary to prevent or abate a nuisance. The term 'nuisance' is used in a legal sense, not its ordinary everyday sense.

Under common law a landowner can cut the branches from a neighbour's trees if they overhang his or her property. The overhanging branches are regarded as a 'nuisance' and may be cut at the boundary between the two properties whether or not they are causing any damage. The cut branches, including any fruit, remain the property of the neighbouring owner. The same rule applies to encroaching roots. Two properties must be involved, and so householders cannot claim that the trees in their own garden are the cause of a nuisance to themselves.

And ... *"that the trees are interfering with telephone lines."*

Utility companies have the right to remove branches that interfere with telephone lines to an extent that services can be provided without removing the trees. This right is not affected by the making and confirmation of TPOs and is dealt with instead by the code of practice for utility operators, which is as follows:

Utility operators (i.e. gas, electricity, telecommunication (including cable communication) and water or sewerage undertakers) should take particular care to avoid damaging trees (and not just protected trees) when installing and maintaining their services above and below ground.

In 1995 the National Joint Utilities Group (NJUG) published guidelines on how this can be done. All the utility operators are committed to implementing the guidelines. They emphasise the importance of regular contact between utility operators and the LPA, a point which is also made in DOE Circular 9/95 in relation to the carrying out of permitted development rights under the Town and Country (General Permitted Development) Order 1995. A code of practice for utility operators, which restates the principal messages in DOE Circular 9/95 and the NJUG guidelines.

The issue of telephone wires is not therefore a material consideration in deciding whether or not to confirm the TPO.

- 2) Owner's objection on the grounds that the trees are "*causing damage to the boundary wall*". A visual inspection of the wall by the Landscape Officer observed no signs of direct damage by roots to the wall i.e. no obvious signs to indicate lifting of the wall as a result of ground heave, or indirect damage such as ground shrinkage on clay soils caused by excessive moisture extraction by roots, and the wall is observed to be more or less plumb. There is some remedial pointing work to be done but this is probably attributable to the long term effects of weather combined with the age of the wall. The landscape Officer therefore advises that there is insufficient supporting evidence to persuade the LPA not to confirm the TPO due to the trees causing structural damage to the wall.
- 3) Owner's objection on the grounds that the trees obstruct sight lines into / out of the site. The Landscape Officer observes that the "sight lines" will certainly be improved by the removal of basal epicormic growth from the trees. Confirmation of the TPO will not prevent the pruning back and removal of basal epicormic growth.
- 4) Owner challenging the LPA's view that it is expedient in the interests of amenity to make a TPO based on the owner's expressed view that the lime trees are ..."*unsightly once pruned.*"

- 5) This is a view not shared by the neighbours and other residents of New Road who have written to the LPA in support of the TPO, and in any case the pollarding of lime trees is relatively common and accepted management practice.
- 2.2 In determining whether the TPO is to be confirmed it is requested that the Committee consider the amenity value of the tree(s), paying special attention to the desirability of preserving the character or appearance of the conservation area.
- 2.3 The Landscape Officer gives the following reasons for confirming the TPO:
- G1 Group of three lime trees along front garden boundary with public footpath and highway at 103, New Road, Ware, Herts.
- This tree group is visible from New Road, Ware and comprises moderately large (although previously pollarded) lime trees exhibiting reasonable form and condition for the species type under periodic pollarding management. The group contributes towards the verdant character of this section of New Road via their collective impact. These trees are suitable for their particular setting and sit well with the presence of other nearby (also pollarded) lime trees. Using the Tree Evaluation Method for Preservation orders – TEMPO the trees score 19 points. The Decision Guide states that a score of 16+ definitely merits the making or confirmation of a TPO.
- The removal of these lime trees would be detrimental to the landscape character and appearance of the Ware Conservation Area. They provide a level of amenity value to local residents and visitors to the area.
- The serving and confirmation of the Tree Preservation Order on would ensure retention of these trees of public amenity value for the next 20-40 years.
- The District Council has a policy to protect trees because of their amenity value and the contribution that they make to the landscape character of our towns and villages.
- 2.4 It is therefore recommended that the Order be confirmed.

Background Papers:

Application for tree work Ref: 406995 received 27th June 2011
'Tree Preservation Orders: A guide to the law and good practice'

Contact Member: Malcolm Alexander, Executive Member for
Community Safety and Environment.

Contact Officer: Paul Stevens, Landscape Officer, Extn: 1538.

Report Author: Paul Stevens, Landscape Officer, Extn: 1538.

ESSENTIAL REFERENCE PAPER 'A'

<p>Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i></p>	<p>Pride in East Herts <i>Improving standards of the built neighbourhood and environmental management in our towns and villages.</i></p> <p>Shaping now, shaping the future <i>Safeguard and enhance our unique mix of rural and urban communities, ensuring sustainable, economic and social opportunities including the continuation of effective development control and other measures.</i></p>
<p>Consultation:</p>	<p>There have been several letters in support of the TPO from the owner(s) of 99, New Road on the grounds that:</p> <ul style="list-style-type: none">• The trees constitute a very significant and positive feature in the street scene• The trees absorb traffic noise and contribute to the traditional appearance of a road that has developed over the past 170 years• The trees may have been a feature of the street for over 100 years.• Condition 10 of the planning consent explicitly requires the retention and protection of the trees. <p>There has been a letter in support of the TPO from the owner(s) of 105A New Road who respond that:</p> <ul style="list-style-type: none">• The lime trees are a valuable asset to the visual landscaping of New Road.• They are the last three trees at the northern end of the road and do much to soften the appearance of the street scene.• The lime trees form part of a relic avenue of limes.• The trees are healthy• It would add weight to the planning condition to retain the trees. <p>There has been a letter in support of the TPO from the owner(s) of 50 & 54 New Road (opposite neighbours) who respond that:</p> <ul style="list-style-type: none">• Failure to confirm the TPO would be in contravention of the requirements set out in condition 10 of the

	<p>planning consent.</p> <ul style="list-style-type: none"> • The three lime trees have contributed very significantly to the leafy aspect of New Road and the Ware conservation area for many years. • The limes represent a remnant avenue of limes. • The trees will have an important screening function in respect of the approved development. • The trees are very visible and help to give New Road its landscape character • The trees have improved in health as a result of recent pollarding (two years ago)
Legal:	Confirmation of Tree Preservation Orders is a legal requirement of the planning acts and is in compliance with the regulations.
Financial:	There are no financial implications in confirming this order.
Human Resource:	None
Risk Management:	None