

23 February 2007

Our Ref: LAC – TPO – The Avenue  
Your Ref:  
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To: Councillors: Peter Burt (Chairman), David Barnard, Tom Brindley,  
Lorna Kercher and Michael Weeks.

You are invited to attend a meeting of the

**LICENSING AND APPEALS COMMITTEE  
TREE PRESERVATION ORDER  
(Land at 43 and 44 The Avenue, Hitchin)**  
to be held at

**COUNCIL CHAMBER , COUNCIL OFFICES, GERNON  
ROAD, LETCHWORTH GARDEN CITY**

on

**MONDAY 12 MARCH 2007**

at

**7.30 p.m.**

Yours sincerely,



David Miley  
Democratic Services Manager

**AGENDA**  
**PART I**

<b>ITEM</b>	<b>PAGE</b>
<b>1. PROCEDURE</b> To consider and determine a procedure for Item 2.	<b>1</b>
<b>2. LAND AT 43 AND 44 THE AVENUE, HITCHIN - TREE PRESERVATION ORDER 167 RELATING TO TWO BEECH TREES, ONE PINE TREE AND ONE LARCH TREE</b> REPORT OF THE PLANNING CONTROL AND CONSERVATION MANAGER	<b>3</b>

**LICENSING AND APPEALS COMMITTEE  
12 MARCH 2006**

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**1**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL LICENSING AND APPEALS COMMITTEE**

**SUGGESTED PROCEDURE FOR THE DETERMINATION OF OBJECTIONS RELATING TO  
TREE PRESERVATION ORDERS (TPOs)**

1. The Chairman to ask who appears on behalf of planning control whether any person wishes to speak or read out a statement as an objector to the proposed TPO.
2. The parties involved should be asked if they are in agreement with the recommended procedure. Any reasonable request for a revision should be agreed with all involved.
3. The Chairman to invite the officers appearing in support of their recommendation (i.e. Planning Officer) to present their reasons for proposing to make a TPO.
4. The Chairman, Members of the Committee, the objector or the objector's representative to ask any questions of the officer on their presentation [Cross examination is not permitted and all questions will be asked through the Chairman].
5. The Chairman to invite any objector or objector's representative to speak or read out a statement setting out their objection to the to the proposed TPO.
6. The Chairman, Members of the Committee and officer to put any questions to the objector/s.
7. The Chairman to give the objector or objector's representative and the officer the opportunity to make a final statement.  
[If a Legal Advisor is present, the Committee can ask the Legal Advisor to provide clarification on any legal matters and state the criteria on which the Committee is to make a decision].
8. The Committee to make their decision in public.
9. The Chairman to notify all parties present of the Committee's decision.

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**TITLE OF REPORT: LAND AT 43 AND 44 THE AVENUE, HITCHIN  
TREE PRESERVATION ORDER 167 RELATING TO 2 BEECH TREES, 1 PINE TREE  
AND 1 LARCH TREE**

REPORT OF THE PLANNING CONTROL AND CONSERVATION MANAGER

**1.0 Relevant History**

- 1.1 Planning permission was granted in May 2004 for a detached 3 bedroom dwelling with basement and double garage, and alterations to the existing access. This work has now been completed. Final landscaping and tree planting is shortly to be carried out.
- 1.2 In September 2005 the Local Planning Authority raised no objections to a Section 211 Notice for works to trees in a Conservation Area for the removal of a Yew tree close to the front boundary and a Fir tree and Sycamore next to the rear boundary.
- 1.3 A similar decision was made in March 2006 for the removal of a second Fir tree next to the rear boundary. All these trees were of poor condition and not worthy of a Tree Preservation Order.
- 1.4 In July 2006 no objection was raised to the reduction of the canopy of one of the two Beech trees next to the rear boundary, and in September to the shaping and balancing of the second Beech tree and the two Lime trees next to the rear boundary.
- 1.5 The provisional Tree Preservation Order, subject of this appeal, has been made in respect of the two Beech trees plus a Pine tree and Larch tree in the left-hand back corner of the property.

**2.0 The Provisional Order**

- 2.1 Following investigations into the appropriateness of making a Tree Preservation Order upon the trees, a provisional order was made on 3<sup>rd</sup> October 2006, as the trees in question make an important contribution to the visual amenity of the locality. The owners of the land and local residents adjoining the site were notified of the Order and given the requisite 28 days to respond. There is a 6 month period within which the Local Planning Authority needs to confirm the making of the Order which expires on 3<sup>rd</sup> April 2007.

**3.0 Representations**

- 3.1 A letter was received from Porphyrios Associates on behalf of the owner of the newly built property on 17<sup>th</sup> November 2006 stating that the owner would be appealing against the decision to place a Tree Preservation Order on the four trees

and that he was arranging for objections and representations to be made by tree specialists.

- 3.2 On 19<sup>th</sup> January 2007 a letter of objection was received from Countrywide Tree Specialists on behalf of the owner of the site making the following comments:
- All the trees are now situated in the garden of 43 The Avenue (the garden having been extended behind no. 44).
  - The trees are situated within a Conservation Area, which means that no work may be carried out to the trees without first giving notice to the Local Planning Authority. The owner applied for permission to the Council to reduce the canopy of T1- Beech tree and works to T2 – Beech tree and two Lime trees following the tree surgeon's climbing inspection of the three trees. The tree specialist cites this as proof of the owner's good intentions.
  - The trees are most important to the owner in creating a screen between him and the properties to the rear. The owner has spent a considerable amount of money on these trees which he would not do if he had any intention of removing them in the future.
  - Commented that the two Lime trees, both of which are healthy, if a little suppressed, have been left out of the Tree Preservation Order.
  - Both T3 – Pine and T4 – Larch are of very limited life span and certainly not worthy of a Preservation Order as the Conservation Area in which they are situated protects all the trees on his client's property.

- 3.3 I replied to the tree specialist on 7<sup>th</sup> February 2007 addressing the points he raised and asking him to confirm by 16<sup>th</sup> February whether they wished to withdraw their objection or proceed to an appeal hearing. In response an e-mail was received on 16<sup>th</sup> February from Countrywide Tree Specialists with the following comments:
- "I would state that neither the Larch or Pine are worthy of a Tree Preservation Order as they have a very limited life span with both trees being in decline. With regard to the Beech trees, T1 did sustained (sic) some minor damage to the root system during building operations. As a result of this my professional opinion was sought with regards to the long-term effect that this might have on the tree. My recommendation was to lightly reduce the canopy to offset the minor damage. This was carried out after consultation with your planning department and the work was carried out as an emergency. Why was a Tree Preservation Order not put on at this point? Following this work I was requested to carry out a climbing inspection on the other Beech tree (T2) and the two Lime trees, as my client was most anxious that they should be retained. I quoted for the work which was accepted by my client and contacted yourselves by letter on the 27<sup>th</sup> July 2006 giving the Council 6 weeks notice of my intention to carry out the work. The permission to carry out the works was given by yourselves and the work was carried out. This was the second opportunity that the Council had to exercise their authority and make the trees the subject of a Tree Preservation Order.
  - My client was and is, most anxious that the trees should be retained as they form an important screen between himself and the neighbouring properties to the rear.
  - I believe the above is sufficient proof that the trees are in safe hands with Mr Isaly which makes a Tree Preservation Order unnecessary. I think I have also provided proof that the TPO was a rear guard action by yourselves, otherwise I would ask why the TPO was not made when the minor damage to the root system occurred or when I applied for permission to carry out the works to the other Beech tree and two Limes.
  - In the circumstances my client will not withdraw his objection to the TPO."

## **4.0 Planning Considerations**

### **4.1 Site & Surroundings**

- 4.1.1 T1 - Beech and T2 – Beech are to the rear of 44 The Avenue, which is a large detached property on the south west side of The Avenue. T3 - Pine and T4 - Larch are in the south west corner of the rear garden of 43 The Avenue, which is a recently built property, which replaced an existing detached house. The four trees are close to the boundary with properties in Highbury Road
- 4.1.2 I understand from the planning application and the letter from the owner's tree specialist that the boundaries have been amended so that the garden of no. 43 is actually an L-shape including part of the former garden of no. 44, which thus now includes the two Beech trees; T1 and T2. However, I do not consider it necessary to amend the title or plan on the Tree Preservation Order, as the plan clearly shows where the trees are situated. On the Council's GIS system, which uses an Ordnance Survey base, the garden boundaries have not yet been changed.
- 4.1.3 Photographs of the trees will be available at the meeting.

### **4.2 Key Issues**

- 4.2.1 Local Planning Authorities may make a Tree Preservation Order if it appears to them to be "expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area" (Section 198(1) of the Town and Country Planning Act 1990).
- 4.2.2 The government guidance "Tree Preservation Orders: A Guide to the Law and Good Practice" states: "It may be expedient to make a Tree Preservation Order if the Local Planning Authority believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate." In this case it was considered by the Council's Senior Tree Officer, following a site visit in August 2006, expedient to make a Tree Preservation Order. During the course of construction on the site, additional works (structures and trenches) were undertaken near the trees threatening their future health and safety. Also, the builder failed to protect properly the trees from hazards such as material storage and encroachment. In view of these potential threats to the important trees on the site, the continuing public concern, and uncertainty over future management of the trees, it was decided to impose a Tree Preservation Order to reinforce the existing Conservation Area "protection".
- 4.2.3 The Tree Preservation Order was placed on the four trees, because they are considered to have high public amenity value, as viewed from the road and in relation to surrounding properties. All of the trees are visible from The Avenue. All the trees are mature specimens.
- 4.2.4 The two main objections raised by the owner's tree specialists appear to be as follows. Firstly, that the Conservation Area status affords the trees sufficient protection and in any case the owner has demonstrated that he wishes to retain the trees. Secondly, that T3 - Pine and the T4 - Larch are not worthy of a Tree Preservation Order. In response to the objections raised by the owner's tree specialists I would make the following points.
- 4.2.5 The Department of the Environment, Transport and the Regions (March 2000) "Tree Preservation Orders: A Guide to the Law and Good Practice" (London: DETR) states: "Under section 211 anyone proposing to cut down or carry out work on a tree in a Conservation Area is required to give the Local Planning Authority six weeks' prior notice (a "section 211 notice"). The purpose of this requirement is to

give the Local Planning Authority an opportunity to consider whether a Tree Preservation Order should be made in respect of the tree.” When considering a section 211 notice for works to trees in a Conservation Area the Local Planning Authority can only raise no objections to the proposed work or make the trees subject of a Tree Preservation Order. It is not possible for the Local Planning Authority to refuse or grant consent with conditions on a section 211 notice, whereas they can do when determining an application for Tree Preservation Order Consent. Therefore, a Tree Preservation Order affords the trees considerably more protection than their Conservation Area status. If a tree is subject of a Tree Preservation Order it does not preclude any justified work being carried out.

- 4.2.6 The Pine and the Larch trees were considered worthy of a Tree Preservation Order due to their amenity value. The Tree Preservation Order does not preclude the owner from carrying out justified work to the trees in future.
- 4.2.7 The owner’s tree specialists also questioned why the trees were not made the subject of a Tree Preservation Order earlier. The approved planning application showed the important trees on the site to be retained and there was a condition on the planning permission for the new house that the trees should be protected during the building work. At the time, this together with the Conservation Area legislation was considered sufficient protection for the trees. However, it transpired that it was expedient to make the trees subject of a Tree Preservation Order when construction work threatened the trees due to a lack of appropriate care. The Head of Legal and Democratic Services is currently engaged in pursuing a possible prosecution in support of suspected damage to the roots of one of the Beech trees as a result of cutting a trench for services associated with the new house. It was considered necessary for the Council to act pro-actively in order to minimise the risk of further damage.
- 4.2.8 The two Lime trees referred to by the tree specialist were not considered to have a high amenity value, therefore were not included in the provisional Order.
- 4.2.9 If the Tree Preservation Order is not confirmed, the applicant would still have to serve a Section 211 Notice on the Council for any future works to or removal of these four trees, however the Council would have little choice but to raise no objections to the works to the trees, as they would have not been considered worthy of a Tree Preservation Order. If the Tree Preservation Order is confirmed from the applicant’s point of view the procedures are very similar to serving a Section 211 Notice, therefore it should make little difference to the applicant in terms of the process for carrying out future works.

#### 4.3 **Conclusion**

- 4.3.1 That Tree Preservation Order 167 be confirmed in view of the important contribution that the trees make to the appearance and visual amenity of the area.

### **5.0 Legal Implications**

- 5.1 Local Planning Authorities may make Tree Preservation Orders if it appears to them to be “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area.” The Council is required to notify the landowner and occupiers of adjoining land of the making of the Order. Before the Order is confirmed, people affected have a right to make representations to the Local Planning Authority. The authority is required to take any representations to the Local Planning Authority. The authority is required to take any representations received into consideration before deciding whether to confirm the Order either without modification, or subject to “such modifications as they consider expedient”.

## **6.0 Recommendation**

6.1 That Provisional Tree Preservation Order 167 be confirmed by the Council.

## **7.0 Background Papers:**

7.1 Local Planning Authority File References 04/00529/1, 05/01167/1TCA, 06/00177/1TCA, 06/01020/1TCA, 06/01689/1TCA and TPO 159

## **8.1 Contact Officer:**

8.1 Naomi Gould, Extension 4318

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