

18 January 2008

Our Ref: LAC – TPO – CODICOTE  
Your Ref:  
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To: Councillors: Peter Burt (Chairman), David Barnard, Simon Bloxham,  
Paul Clark, Joan Kirby and Michael Weeks.

You are invited to attend a meeting of the

**LICENSING AND APPEALS COMMITTEE  
TREE PRESERVATION ORDER - 170  
(The White House, 41 High Street, Codicote)**

to be held at

**COMMITTEE ROOM 3 , COUNCIL OFFICES, GERNON  
ROAD, LETCHWORTH GARDEN CITY**

on

**TUESDAY 29 JANUARY 2008**

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. THE WHITE HOUSE, 41 HIGH STREET, CODICOTE, HERTFORDSHIRE - TREE PRESERVATION ORDER 170 RELATING TO ONE BEECH TREE.</b> REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL	<b>3</b>

**LICENSING AND APPEALS COMMITTEE  
29 JANUARY 2008**

**\*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: THE WHITE HOUSE, 41 HIGH STREET, CODICOTE, SG4 8XB - TREE PRESERVATION ORDER 170 RELATING TO ONE BEECH TREE**

REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL

**1. Relevant History**

- 1.1 No objections were raised by the Council on 29 September 2000 against a section 211 notice for the lopping of lower branches of Copper Beech and Hawthorn in a Conservation Area.
- 1.2 A section 211 notice for the removal of the Beech tree was submitted on 21<sup>st</sup> June 2007. The provisional Tree Preservation Order, subject of this appeal, was made in respect of the Beech tree on 31 July 2007.

**2. The Provisional Order**

- 2.1 Following investigations into the appropriateness of making a Tree Preservation Order upon the tree, a provisional order was made on 31 July 2007, as the tree in question makes 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 31 January 2008.

**3. Representations**

- 3.1 A letter of objection was received from the neighbour at 43-45 High Street on 23 August 2007 objecting to the Tree Preservation Order for the following reasons:
  - The tree is close to their property and the roots are causing subsidence and cracks to the property directly and to the boundary walls;
  - Their house is Grade II Listed and they consider it important to protect the house from further damage caused by the tree;
  - Offered to provide photographs to give evidence of the cracks inside the property and also of the boundary wall, as this has moved considerably since they have been living in the property over the last 18 months;
  - The survey carried out before purchasing the property gave an indication that the tree was the cause of the damage to one of the internal walls, which is nearest to the tree. Offered to provide a copy of this survey if needed;
  - Offered access for a site visit.

Copies of the photographs and copies of the survey were requested on several occasions. The relevant parts of the survey were submitted on 9 January 2008 and were passed to the independent Arboricultural Consultant to consider.

- 3.2 The owner of the White House, where the tree is situated, has raised no objections to the making of the Tree Preservation Order.

#### **4. Planning Considerations**

##### **4.1 Site & Surroundings**

4.1.1 The Beech tree is in the southern corner at the front of the site, close to the north west corner of the neighbouring cottage, 43-45 High Street (as per plan presented at Appendix B). The site is within a Conservation Area. The White House is not Listed. 43-45 High Street is a Listed early eighteenth century cottage, which was originally two cottages, but converted into one dwelling in the 1950s. It has a two storey side extension on the side nearest the tree, which was built in the 1970s (planning reference 1/843/72). On the far side of this property there is a two storey side extension and a detached outbuilding is currently under construction. The boundary wall was granted planning permission in 1994 (planning reference 94/1021/1HH).

4.1.2 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.”*** The tree is clearly under threat, as a Section 211 Notice for the removal of this tree in a conservation area was submitted on 21 June 2007 by Marishal Thompson & Co on behalf of insurers. The justification given for the proposed removal of the tree was that the tree is has been implicated as a contributory factor in subsidence damage related to clay shrinkage. In this case it was considered by the Council’s Landscape Architect, following a site visit in July 2008, expedient to make a Tree Preservation Order.

4.2.3 The government guidance “Tree Preservation Orders: A Guide to the Law and Good Practice” states: ***“TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed.”*** The Council’s Landscape Architect considered the tree against the “amenity value” criteria for making a Tree Preservation Order in terms of visibility, individual impact and expediency, as set out in the aforementioned guidance. The tree is large, has a relatively long useful life expectancy, is an important individual roadside tree and prominent garden tree and is prominent in the High Street. As such he concluded the tree provides good amenity value, and warrants a Tree Preservation Order in this respect. The Landscape Architect considered the allegation that the presence of the tree is causing subsidence to 41 High Street. Following a review of the supporting text submitted with the section

211 notice and a site visit, he remained ambivalent with regards to the matter of damage to property. As such, he concluded that the tree should be made subject of a Tree Preservation Order, in order to safeguard it, pending any further investigation. The Landscape Architect suggested an alternative arboricultural solution to removal of this tree and considered that as part of the care and maintenance of this tree some pruning or surgery may be appropriate.

- 4.2.4 The objections raised by the neighbour appear to be that the roots are causing subsidence and cracks to the property directly and to the boundary walls. An independent Arboricultural Consultant, Henry Girling, was employed by the Council to look at the tree. The tree specialist carried out a site visit with the Planning Officer on 9 January 2008 and his detailed report is attached at Appendix A. This report responds to the objections made by the neighbours at 43-45 High Street and the justification given by Marishal Thompson & Co provided with the original section 211 notice. The Arboricultural Consultant reached the following conclusion:

***“I conclude that, in my opinion, the making of a Provisional TPO was a correct and proper response to the application of Marishal Thompson, and that further investigation establishes that there is no good reason established to prevent confirmation of the Order”.***

- 4.2.5 North Hertfordshire Building Control were consulted on the tree. Without a detailed structural engineers report, they could only provide opinions based on assumptions. They highlighted the lack necessary evidence provided with the original section 211 Notice. They made the point that if the tree is removed clay heave is possible and this can cause problems with foundations and floors due to uplift forces. They strongly recommend that whatever option is chosen specialist advice should be sought and a full structural survey carried out. This would be required to ascertain whether the tree is causing any damage to the properties.

- 4.2.6 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 a tree in a Conservation Area the Local Planning Authority can only raise no objections to the proposed work or make the tree subject of a Tree Preservation Order. Therefore, in this case had the Provisional Tree Preservation Order not been served within 6 weeks of receipt of the section 211 notice, the tree could have been removed. 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 tree considerably more protection than its Conservation Area status. If a tree is subject of a Tree Preservation Order it does not preclude any justified work being carried out.

#### 4.3 **Conclusion**

- 4.3.1 That Tree Preservation Order 170 be confirmed in view of the important contribution that the tree make to the appearance and visual amenity of the area.

## **5. 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. Recommendation**

That Provisional Tree Preservation Order 170 be confirmed by the Council.

## **7. Background Papers**

Local Planning Authority File References 1/843/72, 94/01021/1HH, 00/01114/1TCA, 07/01568/1TCA and TPO 170.

**Contact Officer:-** Naomi Gould, Extension 4318