

## INTRODUCTION

The above Order was made on 29<sup>th</sup> September 2006 pursuant to the Officer Delegation Scheme for Development Control Matters, as amended on 12<sup>th</sup> March 2002, minute reference CL64/01, in accordance with instructions dated 26<sup>th</sup> September 2006. The Order covers two groups of trees, Group 1 consisting of 5 Ash trees and Group 2 of 8 Oak trees and 1 Ash tree on land at Vicarage Spinney, The Trout Farm, Dovecote Lake, Little Linford, Milton Keynes. Notices of the making of the Order were served the day the Order was made.

## BACKGROUND

The Council made the order because it considered that the trees were in danger of removal or substantial injury from unauthorised development taking place on site. The Council's Arboricultural Officer has assessed the trees and considered that they add to the visual amenity of the local area.

## OBJECTIONS

Two objections to the making of the Order have been received:

One has been made by Mr Keith Sweetman, the owner of the site on which the trees are situated. Mr Sweetman has commissioned a report by Dr Frank Hope, Forensic Arboricultural Consultant. The salient points of Dr Hope's report are as follows:

1. All the Ash trees covered by the Order, that is all five in G1 and one in G2 are all suffering from extensive, varying stages of decay and die-back, most with large decaying areas of wood on the main and basal trunks of the trees.
2. Dr Hope states that four of the Ash trees have short, safe life expectancy and the remaining two Ashes are dying and are potentially dangerous and pose a safety hazard.
3. The Government's booklet "Tree Preservation Orders, A Guide to the Law and Good Practice" states "In the Secretary of State's view, it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous. If the Ash trees are retained within the Preservation Order, Dr Hope feels this is a blatant, gross misuse of the tree preservation legislation.
4. One of the Oak trees, numbered Tree 9 within Dr Hope's report, within G2 has extensive damage, with some decay present within the buttress roots, there is also significant decay on one of the large branches. Dr Hope questions whether this tree is worthy of being protected by a Tree Preservation Order.
5. Dr Hope agrees that the seven other Oak trees within G2 are worthy of being protected by the Tree Preservation Order.
6. There appears to be a disagreement between the owner of the site and the Local Planning Authority in relation to the actual position of the foundations of the Lodge, compared to the position agreed within the planning consent. The existing new

foundations for the Lodge are now in place and any minor damage to the Oaks, i.e root severance will have already occurred. No additional root severance will now take place if the foundations are left untouched. The Oak trees appear healthy and there are no signs that they have been affected by the construction.

7. If the foundations are now dug up and repositioned slightly further away from the Oaks, there is a high probability that additional root severance will take place, which could harm the tree. The siting of the foundations of the Lodge have not broken any planning conditions as the trees were not legally protected at the time the foundations were laid and therefore the recommended distance of 8.0 metres between the trees and foundations could not be enforced.

The second objection has been made by Jennifer Lampert Associates Ltd on behalf of their client, Mrs Mairead Keswani, who resides at Linwood House, Gayhurst Road, Little Linford : The salient points of which are as follows:

1. Mrs Keswani's property is located next door to Vicarage Spinney. She was therefore served with the provisional Tree Preservation Order in line with the relevant legislation.
2. Mrs Keswani has objected to the extent of the broken black lines on the northern side of the groups marked G1 and G2 detailed in Map 1, attached to the Preservation Order. These broken black lines should not be extended to the north across the boundary line of Mrs Keswani's property as shown, as these trees are not in the ownership of Mrs Keswani.
3. Map 1 should be redrawn to show the extent of G1 and G2 broken black lines to be entirely contained within the ownership of Vicarage Spinney, Dovecote Lake. If the Order is confirmed with the existing Map 1 it will place an unwarranted and unnecessary charge on Mrs Keswani's land with no justification.

## LANDSCAPE RESPONSES

The Landscape Officer has commented as follows:

1. As intended the period of the provisional TPO has allowed time for closer examination of the trees and further consideration of their condition and worthiness for protection. In considering the safety aspects of the Ash trees in this case, one should take into account the risk as well as the hazard. Many hedgerow trees may be found that are in a similar or worse condition and while they do represent a high degree of hazard, in that if they were to fall upon someone the result is likely to be a fatality, the risk of them actually falling upon someone is low, due to their relatively remote location and the infrequency of people passing within their falling radius. The Ash trees in this case are in a similar situation to hedgerow trees but with a slightly higher risk due to the potential site usage.

Poor condition of trees in an arboricultural sense, does not necessarily preclude the serving of a TPO as trees which are of great age, rarity and or which have important historical associations could warrant a TPO, if any hazards that they pose can be managed to keep risks to people and property at an acceptable level.

I note that the report by the applicant's arboricultural consultant includes no detailed investigations to establish the exact extent of the decay in the Ash trees. Research by the specialist in tree mechanic Prof. Dr. Mattheck indicates that even if decay is present in a tree, as long as more than one third of the trunk radius is composed of

sound wood, it can be considered reasonably safe, though some reduction in the crown sail area might be appropriate.

The trees are currently growing and may be recovering from earlier episodes of crown dieback and it cannot be confidently stated that the trees will be dead within the next two years, indeed they may remain alive for many years yet. The amenity valuation system for trees devised by D. R. Helliwell indicates that a tree with more than two years useful life expectancy can be considered to have amenity value and the Ash trees in this case are not only visibly prominent from the adjacent foot path and residential property to the north, but also from the road to the west and so contribute a useful visual amenity to the location. On balance however, since the serving of the provisional TPO in this case, due consideration has now been given to the condition of the Ash trees and other factors and taking into account my other observations above, I would not recommend the TPO being confirmed to include these trees.

2. In relation to the actual position of the new foundations of the Lodge and its close proximity to the protected Oak trees, I agree with the suggestion of the Planning Officer, which is echoed in the report of the applicants arboricultural consultant, that removal of the concrete base underneath the canopy of the oaks would only cause more damage to the nearest Oak tree.

In response to the Objections raised by Jennifer Lampert Associates Ltd on behalf of their client, Mrs Mairead Keswani, The landscape officer suggests that a new plan be prepared showing the trees for inclusion in the Order, as modified. This would have the advantage of being more precise and should allay any fears of future confusion.

## **PLANNING RESPONSES**

The Planning Officer has commented as follows:

1. I concur with the Council's Landscape Officer's comments in response to the objections raised by both Mr Sweetman and the report submitted by Dr Frank Hope and Jennifer Lampert Associates Ltd on behalf of their client, Mrs Mairead Keswani in respect of the value of the trees and the amendment of the plan.
2. However, contrary to Mr Sweetman's objection at point 7 above, I would point out that the Lodge base has not been constructed in accordance with the relevant planning permission. The landowner has since acknowledged this and has recently submitted a retrospective planning application for its retention.

## **RECOMMENDATION**

The Order may now be confirmed with or without modification under Section 199 of the Town and Country Planning Act 1990. It is recommended that the Order be confirmed with the following modifications:-

- i) that G1 consisting of 5 Ash trees be removed from Order Maps 1 and 2 and from Schedule 1 of the Tree Preservation Order;
- ii) that one Ash tree within G2 be removed from Order Map 1 and from Schedule 1 of the Tree Preservation Order;
- iii) The wording be amended on the back page of the Order to show "1 group of trees

- on land at Vicarage Spinney" etc;
- iv) The Order Map 1 be redrawn to show G2 with 8 Oak trees within it, and the broken black line along its northern extent to be contained wholly within the curtilage of Vicarage Spinney.