

Planning Committee: 12 December 2007
Application No: TPO 347

Item Number:

Town/Parish Council Warwick

Case Officer Robert Toll
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36 Coten End, Warwick, CV34 4NP
Provisional Tree Preservation Order: TPO 347 – 1 individual tree
Objections with regard to all of the trees

(Refer to attached plan for specific trees)

*** Due to the length of the objections raised they have been summarised***

This item was reported to the November 21 Planning Committee meeting and was deferred for a site visit on December 8th.

The Tree Preservation Order took effect, on a provisional basis, on 5 September 2007 and continues in force on this basis for a further six months or until the Order is confirmed by the Council whichever first occurs. Before the Council can decide whether the Order should be confirmed, residents living in the vicinity of the Order have a right to make representations.

This TPO was made in response to a Conservation Notification request to remove the above tree.

SUMMARY OF REPRESENTATIONS

- **Mr and Mrs Thorogood, 34 Coten End, Warwick, CV34 4NP**

T1 Copper Beech, Agincourt Hotel, 36 Coten End, Warwick, CV34 4NP

- The making of a TPO and any application to amend or remove it or permit lopping etc is a balancing act, involving commonsense and approaching the issue as a sensible and prudent citizen would look at the tree and decide if he or she could properly say that lopping or felling was necessary to abate or prevent a nuisance or danger. It seems to us that there are ample grounds to support the conclusion that this tree already constitutes and is likely to cause further nuisance, as defined in S198(6) of the Town and Country Planning Act 1990. Further in **Smith v. Oliver** 1989 2PLR 1 damage to adjoining property was regarded as amounting to a “danger” sufficient to provide a defence to he or she who cut down the tree. The exercise does not involve the citizen having to show that his or her home or drains have been damaged or will flood again due to the inadequacy of surface or foul water drainage in the vicinity. It is only necessary to show that there is, in commonsense terms, a reasonable possibility or likelihood of those events.
- In circa 1995 we discovered tree root damage in the drains on our land close to the Copper Beech. This was causing blocking and causing fouled water to emerge back through the surface drain cover next to our kitchen. The drain

was dug up and replaced at the insurer's expense.

The Council's attention was drawn to the significant faults found within the public surface water drain which receives the flow from the drains. The area suffered very serious flooding in 2005, purely as a result of excessive surface water i.e. poor operation of drains. This will happen again as long as the drainage from the property is hindered by tree root intrusion into the drains. The sensible and conclusion, on the balance of probabilities and on the available evidence, is that our drain is likely to be affected by tree roots.

- The tree is of considerable girth with a dense canopy and there can be no sensible conclusion but that its root system is actively expanding and will be drawing very significant quantities of water from the surrounding soil.

This tree is very clearly drawing water in significant quantities. It is that action which often damages foundations. The tree is close to 34 Coten End and we believe that there is a real prospect that our property could be affected.

- The Beech is set further back from the road than any other and from several angles is significantly obscured. The Beech is not as conspicuous as stated
- The Perrin & Ramage v. Northampton Borough Council case states that the possibility of other "remedial" works other than pruning to abate an actionable nuisance means that underpinning/new drains/root barriers should not be considered if works to the tree would stop the problem from happening. This is in line with section 198(6) of the Town and Country Planning Act 1990. Such works as the above would not remove the subsisting drain damage or the risks to the properties' elevations. In view of this we respectfully suggest undoubted existence of both a legal nuisance and danger, and the certainty that both will get worse.

- **Mr & Mrs Warwick, Agincourt Hotel, 36 Coten End, Warwick, CV34 4NP**

T1 Copper Beech, Agincourt Hotel, 36 Coten End, Warwick, CV34 4NP

- The Copper Beech (T1) is too close to our property and that of our neighbours (the Thorogoods) at no. 34. The tree is 2.6 metres from our wall and 3.9 metres from our neighbours at no.34. It is approx 22 metres high and with a crown diameter of approx 10 metres.

The publication Cutler DF & Richardson IBK (1989) "Tree Roots and buildings" state a safe height of 20 metres and a safe distance from the house of 15 metres for a Copper Beech.

- Damage has already occurred to our driveway and more importantly the immediately adjacent (Old Warwick) stone wall that has been repaired several times to avoid danger to our guests and neighbours who have to come in close proximity to the wall.
- To prune this tree would only encourage new leaf growth and therefore even greater water extraction from the surrounding soil. This is therefore not a solution to the problem.

- This tree is already partly hidden by many other trees that are growing at a considerable rate
- The tree in question gives us a large workload as we must constantly clean under the tree. Our guests must pass under the tree, (within 1 metre from the trunk) as this is the main entrance to our guest house.

We are unhappy to put our guests at risk, should they fall on wet leaves or trip on uneven ground surrounding the tree. Although this is not a conclusive reason to remove the tree, it is a factor that should be taken into consideration due to the very close proximity of the tree to the entrance.

- The native habitat that this tree provides would not be affected if the tree were not there. Coten End is a very mature area with many large trees and hedges both at the front and rear of the properties to give excellent habitat to wildlife.

KEY ISSUES

T1 Copper Beech, Agincourt Hotel, 36 Coten End, Warwick, CV34 4NP

- **The making of a TPO and any application to amend or remove it or permit lopping etc is a balancing act, involving commonsense and approaching the issue as a sensible and prudent citizen would looking at the tree and deciding if he or she could properly say that lopping or felling was necessary to abate or prevent a nuisance or danger. It seems to us that there are ample grounds to support the conclusion that this tree already constitutes and is likely to cause further nuisance, as defined in S198(6) of the Town and Country Planning Act 1990. Further in Smith v. Oliver 1989 2PLR 1 damage to adjoining property was regarded as amounting to a “danger” sufficient to provide a defence to he or she who cut down the tree. The exercise does not involve the citizen having to show that his or her home or drains have been damaged or will flood again due to the inadequacy of surface or foul water drainage in the vicinity. It is only necessary to show that there is, in commonsense terms, a reasonable possibility or likelihood of those events.**

Whether or not the tree constitutes a danger is up to the justices to determine in the event of prosecution.

- **In circa 1995 we discovered tree root damage in the drains on our land close to the Copper Beech. This was causing blocking and causing fouled water to emerge back through the surface drain cover next to our kitchen. The drain was dug up and replaced at the insurer’s expense.**

The Council’s attention was drawn to the significant faults found within the public surface water drain which receives the flow from the drains. The area suffered very serious flooding in 2005, purely as a result of excessive surface water i.e. poor operation of drains. This will happen again as long as the drainage from the property is hindered by tree root intrusion into the drains. The sensible and conclusion, on the balance of probabilities and on the available evidence, is that our drain is likely to

be affected by tree roots.

There is little evidence to show that the damage to the drains was actually caused by the roots and the fact that the Beech roots exploited the damage does not constitute a danger. The assertion that the Beech is close to a drain is irrelevant as urban trees are near to drains, but it does not necessarily mean that drains near to a tree has tree roots invading them.

- **The tree is of considerable girth with a dense canopy and there can be no sensible conclusion but that its root system is actively expanding and will be drawing very significant quantities of water from the surrounding soil.**

This tree is very clearly drawing water in significant quantities. It is that action which often damages foundations. The tree is close to 34 Coten End and we believe that there is a real prospect that out property could be affected.

No evidence of subsidence has been provided with the application to remove. To allow removal of trees on the basis that a tree or trees **could** cause damage to a structure would mean that any tree on a clay soil, close to a building could be removed.

- **The Beech is set further back from the road than any other and from several angles is significantly obscured. The Beech is not as conspicuous as stated**

After this comment was made the tree was looked at from Coten End again and the picture on the slide show is taken directly in front of the property. The tree is conspicuous enough to be considered for a TPO and the fact that the tree is under threat makes it expedient.

- **The Perrin & Ramage v. Northampton Borough Council case states that the possibility of other “remedial” works other than pruning to abate an actionable nuisance means that underpinning/new drains/root barriers should not be considered if works to the tree would stop the problem from happening. This is line with section 198(6) of the Town and Country Planning Act 1990. Such works as the above would not remove the subsisting drain damage or the risks to the properties’ elevations. In view of this we respectfully suggest undoubted existence of both a legal nuisance and danger, and the certainty that both will get worse.**

The application of the Perrin case is not at this point relevant to this case as there is no evidence to show that the tree has caused the damage to the drains and as has been stated above is probably exploiting the damage that has occurred due to ageing drains. The facts stated by Mr and Mrs Thorogood are noted but the issue is what remedial works to the tree are necessary to abate this nuisance. Although roots are the problem because they are invading the drains, given that the roots are probably not structural roots, it would probably be advisable to prune the roots that are in close proximity to the drains, rather than removal of the tree, but it must be remembered that before this can be carried out it must be proven that the tree has caused that damage and not the tree exploiting already damaged drains.

- **The Copper Beech (T1) is too close to our property and that of our neighbours (the Thorogoods) at no. 34. The tree is 2.6 metres from our wall and 3.9 metres from our neighbours at no.34. It is approx 22 metres high and with a crown diameter of approx 10 metres.**

The publication by Cutler DF & Richardson IBK (1989) “Tree Roots and Buildings” state a safe height of 20 metres and a safe distance from the house of 15 metres for a Copper Beech.

The publication by Cutler DF & Richardson IBK (1989) “Tree Roots and Buildings” does not give safe heights or distances. It in fact gives maximum recorded distances of subsidence damage to buildings occurring in the south-east of England, highly shrinkable clay soil. The authors of this also wrote a paper on this issue of misinterpretation in Arboricultural Journal in 1998.

- **Damage has already occurred to our driveway and more importantly the immediately adjacent (Old Warwick) stone wall that has been repaired several times to avoid danger to our guest and neighbours who have to come in close proximity to the wall.**

Once again there is no evidence provided to show that the tree is causing significant damage to the driveway. If the wall had been repaired taking into account the tree nearby then it should have been done in way to cope with the close proximity of the tree.

- **To prune this tree would only encourage new leaf growth and therefore even greater water extraction from the surrounding soil. This is therefore not a solution to the problem.**

There is no need to prune the tree in such a manner at this time as there is no evidence of roots damaging the foundations. Once evidence has been provided that there is evidence of subsidence on the property then this would be looked into. With regard to pruning the crown to give a reasonable clearance from the buildings near to the tree, it can be done by making an application which will be given due consideration.

- **This tree is already partly hidden by many other trees that are growing at a considerable rate**

At the present time the Copper Beech is conspicuous. When these trees have grown to an extent that the Copper Beech has been obscured then an application should be submitted and the matter will be looked into.

- **The tree in question gives us a large workload as we must constantly clean under the tree. Our guests must pass under the tree, (within 1 metre from the trunk) as this the main entrance to our guest house.**

We are unhappy to put our guests at risk, should they fall on wet leaves or trip on uneven ground surrounding the tree. Although this is not a conclusive reason to remove the tree, it is a factor that should be taken into consideration due to the very close proximity of the tree to the entrance.

The fact that the tree drops leaves is not a consideration when making a TPO as all trees have leaves. Leaves are household maintenance issue and should be swept up if there is a slip worry.

- **The native habitat that this tree provides would not be affected if the tree were not there. Coten End is a very mature area with many large trees and hedges both at the front and rear of the properties to give excellent habitat to wildlife.**

As the tree is there it is inevitable that were the tree removed that this would have an effect on the creatures that are inhabiting it. Consequently removal would affect the habitat of the wildlife in the area to that extent.

CONCLUSION

The tree meets the requirements of the TPO legislation and guidance. It is considered a conspicuous tree and it is under threat so it is expedient to protect the tree.

RECOMMENDATION

That the TPO be **confirmed** to protect T1 Copper Beech, Agincourt Hotel, 36 Coten End, Warwick, CV34 4NP
