

Planning Committee: 12 December 2007
Application No: TPO 355

Item Number:

Town/Parish Council Kenilworth

Case Officer Robert Toll
01926 456212 planning_appeals@warwickdc.gov.uk

7 Wisley Grove, Kenilworth, CV8 2NP
Provisional Tree Preservation Order: TPO 355 – 1 individual tree
Objections with regard to all of the trees

(Refer to attached plan for specific trees)

The order was created as part of the on-going TPO review that is taking place in Kenilworth.

The Tree Preservation Order took effect, on a provisional basis, on 12 October 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.

SUMMARY OF REPRESENTATIONS

- **Mr and Mrs Curry, 6 Wisley Grove, Kenilworth, CV8 2NP**

T1 Swamp Cypress – 7 Wisley Grove, Kenilworth, CV8 2NP

- The tree is situated so close to our property the roots could soon be causing problems with subsidence.
- The height is not practical in a small garden – placed in a large open area the tree could be enjoyed, it could still grow a further 70 feet from its present height
- Winds tend to cause this type of tree to sway and snap – this would cause terrific damage to our property
- Should we, in the near future, wish to extend our property we can envisage a refusal from the Planning Authority due to the close proximity of the trees and its unknown underlying roots which could cause subsidence or heave to our house.
- If we decide to sell our property in the near future this tree will cause devaluation from both the property surveyor and new purchaser.

- **Mr M Harper, 7 Wisley Grove, Kenilworth, CV8 2NP**

T1 Swamp Cypress – 7 Wisley Grove, Kenilworth, CV8 2NP

- The Swamp Cypress is a native tree of the eastern seaboard of the USA where it grows to heights of 150ft. It is primarily a tree of wet areas although it will grow in other conditions. According to literature it is well capable of attaining 100ft in this country. At present it is about 60ft.
- After reading Tree Preservation Orders : A Guide to the Law and Good Practice it was found that there are three criteria that a tree is should be assessed against before making a TPO. They are:
 1. **Visibility** – The tree is in a rear garden surrounded by housing and mature native trees, a large number of which are Oaks. The effect of this is to obscure the tree from many directions. I have visited locations around my house and tried to observe the tree but have only effectively achieved that from one direction, namely the north. Only a few people will ever see the tree from that direction. In my estimation, the tree does not warrant preserving on this particular ground.
 2. **Individual Impact** – This particular tree is not symmetrical from any direction and does therefore portray a particularly pleasing shape. Many of its lower branches are twisted out of shape. Its form does not in my opinion warrant preservation. I acknowledge that the tree may not be common. That may well be explained by reference to its erratic growing habit and unsuitability to a domestic location. The tree at present is not of such great size to leave a hole in the landscape – indeed it may not even be noticed if it were removed.
 3. **Wider Impact** - As mentioned above, this tree is capable of reaching 150 feet in height, over twice its current estimated height. The bole of the tree is about 15 feet from both mine and my neighbour's houses. Its roots are clearly visible on the surface of the garden and spread beyond the extent of the canopy. A substantial root is visible only 2 ft from my house. It can only be a short time before the roots cause structural damage. I do not believe any responsible person would recommend planting such a tree in its current position knowing its characteristics. For the same reasons there cannot be any reason to support retaining this tree on these grounds. Paragraph 3.3(3) of the guide refers to “taking into account how suitable they are to their particular setting.” I do not believe this has been properly taken into account. It is not a suitable garden specimen and would be more suited to being grown in an arboretum or other parkland setting. It is clearly a tree in the wrong place, and if the person who planted it knew anything about trees, it would not be there. I am sure you would not have recommended such a tree be planted that close to any council premises.

- Of great concern to me is the fact that no one has inspected the tree by entering my garden or that of my neighbour. I would have thought that this was a prerequisite in considering an Order of this sort. Indeed, paragraph 3.7 of the Guide states “the LPA officer should visit the site.” I trust this will be done to make a more considered assessment and before any recommendations are made for councillors to consider.
- In light winds a considerable number of leafy twigs – 2 to 3 ft long – came down. Surely not the sign of a healthy tree. It would be inappropriate to put an Order on a tree if it is dying or dangerous
- This location is not suitable for a tree of such enormous potential dimensions, the tree does not appear to be in the best of health, it is not attractive at close quarters and it is bound to cause damage to the adjacent houses in the not too distant future. There are many native trees in the close proximity that create an attractive setting – one of the reasons why I purchased this property this year.
- If this type of tree is so prized, could the council not plant one on the grassed area at the junction of Leyes Lane and Dencer Drive where an old Oak tree was cut down some years ago and not replaced? There is plenty of room for it to grow and flourish and be more conspicuous by reason of its location.

KEY ISSUES

T1 Swamp Cypress – 7 Wisley Grove, Kenilworth, CV8 2NP

- **The tree is situated so close to our property the roots could soon be causing problems with subsidence.**

There is no evidence at this time to show that there is any subsidence being caused to the property. It is agreed that the tree “could” cause damage to the property; however there is an equally good chance that the tree will not cause damage to the property. Until evidence is provided then there is no credible threat to the surrounding structures.

- **The height is not practical in a small garden – placed in a large open area the tree could be enjoyed, it could still grow a further 70 feet from its present height**
- **The Swamp Cypress is a native tree of the eastern seaboard of the USA where it grows to heights of 150ft. It is primarily a tree of wet areas although it will grow in other conditions. According to literature it is well capable of attaining 100ft in this country. At present it is about 60ft.**

A Swamp Cypress form and shape tends to be tall and conical. There does not seem to be an actionable nuisance being caused at the present time. The height of the tree means that it is highly conspicuous to the surrounding area. It is worth remembering that information supplied in books and on the internet usually shows the extreme height that a tree “could” reach. Just because a tree could or is growing tall is not a valid reason not to TPO a tree. In actual fact it is worth remembering that a tree is TPO’d for its amenity which increases the validity for a TPO.

- **Winds tend to cause this type of tree to sway and snap – this would cause terrific damage to our property.**

It is agreed that the wind does make this type of tree sway; however it does not necessarily mean that the tree will fail. Every tree species has the capacity to fail in inclement weather; unfortunately it is a freak of nature when it does happen. To not put a TPO on a tree and allow it to be removed on the basis that it could fail, would set a dangerous precedent that could threaten large numbers of trees across the district that are covered by a TPO. If the tree does become dangerous in the future then an application to fell should be submitted with evidence showing the problem.

- **Should we, in the near future, wish to extend our property we can envisage a refusal from the Planning Authority due to the close proximity of the trees and its unknown underlying roots which could cause subsidence or heave to our house.**

A tree is a material consideration when a planning application is made which means that even if the tree was TPO'd now or not it would be still be looked at in the future and could possibly be TPO'd at a later date.

- **If we decide to sell our property in the near future this tree will cause devaluation from both the property surveyor and new purchaser.**

The valuation fluctuations of a residents property is not a Planning issue. The above statement is also inaccurate as trees can often increase the value of a property.

- **After reading Tree Preservation Orders : A Guide to the Law and Good Practice it was found that there are three criteria that a tree is should be assessed against before making a TPO. They are:**

1. **Visibility** – The tree is in a rear garden surrounded by housing and mature native trees, a large number of which are Oaks. The effect of this is to obscure the tree from many directions. I have visited locations around my house and tried to observe the tree but have only effectively achieved that from on direction, namely the north. Only a few people will ever see the tree from that direction. In my estimation the tree does not warrant preserving on this particular ground.
2. **Individual Impact** – This particular tree is not symmetrical from any direction and does therefore portray a particularly pleasing shape. Many of its lower branches are twisted out of shape. Its form does not in my opinion warrant preservation. I acknowledge that the tree may not be common. That may well be explained by reference to its erratic growing habit and unsuitability to a domestic location. The tree at present is not of such great size to leave a hole in the landscape – indeed it may not even be noticed if it were removed.
3. **Wider Impact** - As mentioned above, this tree is capable of reaching 150 feet in height, over twice its current estimated height. The bole of the tree is about 15 feet from both mine and my neighbour's houses. Its roots are clearly visible on the

surface of the garden and spread beyond the extent of the canopy. A substantial root is visible only 2 ft from my house. It can only be a short time before the roots cause structural damage. I do not believe any responsible person would recommend planting such a tree in its current position knowing its characteristics. For the same reasons there cannot be any reason to support retaining this tree on these grounds. Paragraph 3.3(3) of the guide refers to “taking into account how suitable they are to their particular setting.” I do not believe this has been properly taken into account. It is not a suitable garden specimen and would be more suited to being grown in an arboretum or other parkland setting. It is clearly a tree in the wrong place, and if the person who planted it knew anything about trees, it would not be there. I am sure you would not have recommended such a tree be planted that close to any council premises.

Visibility

Although the tree is surrounded by houses, the people who live in the houses are also part of the public that get a benefit of the amenity of the tree. On top of this the tree is also visible from Glasshouse Lane (a major public highway) and is visible from at least 2 other public highways above the house. The fact that it is visible above the house also means that it adds a natural softening to the harsh straight edges to house. Bearing this in mind, the tree is visible to wider public. In paragraph 3.2 of the government guidance it states that “the trees or at least part of them should therefore normally be visible from a public place, such as a road or footpath, although, exceptionally, the inclusion of other trees may be justified. The benefit may be future”. Also it states “the trees may be enhanced by their scarcity.”

Individual Impact

No tree is symmetrical as it is a natural living organism that grows according to where it is planted. The form of this tree is perfectly in keeping with the form of a Swamp Cypress. The tree has great future potential and there is also special factor of rarity of the tree.

Wider Impact

As has been mentioned above, the fact that the tree is tall does not mean the tree is either unsuitable for a TPO or dangerous. If the crown was encroaching onto property causing a nuisance then an application outlining necessary and reasonable works to be carried out on the tree can be submitted to the council and a decision will be made on the application, either consenting or refusing permission. Once again as has been stated above there maybe a potential for root damage to occur, however there is a strong chance that it won't. To not TPO a tree on the basis that something could or could not happen is a dangerous decision to make. If there is evidence of damage being done by the roots then evidence should be provided to the council and the matter will be looked at. Although the tree is close to the property, it should be noted that the conservatory that is closest to the tree was constructed after the tree had been planted.

Expediency

This is a fourth consideration that has not been mentioned that needs to be taken into account when creating a TPO. This means.. “is there a risk that the tree could be under threat” , be it immediate or suspected. In this case, the tree would appear to

be under threat which would be an important reason to protect the tree.

- **Of great concern to me is the fact that no one has inspected the tree by entering my garden or that of my neighbour. I would have thought that this was a prerequisite in considering an Order of this sort. Indeed, paragraph 3.7 of the Guide states “the LPA officer should visit the site.” I trust this will be done to make a more considered assessment and before any recommendations are made for councillors to consider.**

The tree is clearly visible from Glasshouse Lane and the property was visited twice to do a visual assessment of the trees. There were no visible defects and the tree's overall vigour and form indicate that it is a healthy tree. A preservation order does not prevent necessary or reasonable maintenance being carried out to the tree, it does mean that permission must be granted before any works are undertaken.

- **In light winds a considerable number of leafy twigs – 2 to 3 ft long – came down. Surely not the sign of a healthy tree. It would be inappropriate to put an Order on a tree if it is dying or dangerous**

A characteristic of the Swamp Cypress is that it does lose very minor branches in the wind, however they are not of a size that would cause great damage, it also does not mean that the tree is dying, dangerous or unhealthy.

- **This location is not suitable for a tree of such enormous potential dimensions, the tree does not appear to be in the best of health, it is not attractive at close quarters and it is bound to cause damage to the adjacent houses in the not too distant future. There are many native trees in the close proximity that create an attractive setting – one of the reasons why I purchased this property this year**

After the assessment that has been undertaken, it is deemed that the tree is suitable for its location and is in good condition. During the spring and summer months a Swamp Cypress has wonderful rich green colour, turning Copper in the autumn, until finally it loses its needles in the winter showing its lovely red, brown bark. When buying the house it may have been prudent to observe the tree that would have been there when the property was bought. It is also important to remember that the area was under the protection of an area order and has been for the last 43 years. It is also worth pointing out that there is as much chance of the native Oaks in the area and close to 7 Wisley Grove causing structural damage to property both from the roots and falling branches.

- **If this type of tree is so prized, could the council not plant one on the grassed area at the junction of Lyes Lane and Dancer Drive where an old Oak tree was cut down some years ago and not replaced? There is plenty of room for it to grow and flourish and be more conspicuous by reason of its location.**

The Council could potentially plant a tree on the neighbouring grassed area, however this is Warwickshire County Council land who have their own planting regime; however this is not a relevant issue as the tree that is a 7 Wisley Grove is there now and worth protecting.

CONCLUSION

The Swamp Cypress is a superb specimen tree that greatly enhances the area. The objections raised relate to possibilities in the future and there is no evidence to show that the tree is or will cause a problem to structures, the residents or the public.

RECOMMENDATION

That the TPO be **confirmed** to protect T1 Swamp Cypress – 7 Wisley Grove, Kenilworth, CV8 2NP
