

Meeting:	Development Management Committee
Date:	25 th March 2009
Subject:	Tree Preservation Order No. 929
Key Decision: (Executive-side only)	No
Responsible Officer:	Russell Ball, Tree Preservation Officer
Portfolio Holder:	Councillor Marilyn Ashton, Portfolio Holder for Planning, Development and Enterprise.
Exempt:	No
Enclosures:	<ol style="list-style-type: none">1) Letter dated 12th January 2009 from Mr Simon Pryce of Simon Pryce Arboriculture (Appendix 1)2) Letter dated 24th January 2009 from Mr Cottrell of Dantepark Ltd.3) Letter dated 18th December 2008 from Roger Pidgeon Interim Chief Planning Officer Harrow Council

SECTION 1 – SUMMARY AND RECOMMENDATIONS

Tree Preservation Order (TPO) No. 929 covers the property at Cottrell Cottages 57-65 The Broadway Stanmore and was served on 26th November 2008 as an emergency Order. Objections have been made against this TPO in respect to the protected Ash and Silver Birch in the rear car park of the above property. This report sets out why this TPO should be confirmed.

RECOMMENDATIONS:

The Committee is requested to confirm TPO No. 929 notwithstanding the objections.

REASON: This emergency TPO needs to be confirmed within 6 months otherwise the statutory protection afforded to the aforementioned trees will be lost (see extended time period for objections in Section 2.2.2).

SECTION 2 - REPORT

2.1 On 26th November 2008, TPO No. 929 was made in respect of an Ash and Silver Birch in the rear car park of Cottrell Cottages. The TPO was made as the applicant – for the purpose of a planning application - wished to remove the subject trees to install car parking bays. Objection letters were subsequently received from Mr Simon Pryce of Simon Pryce Arboriculture on behalf of Mr Kirby who holds the lease on Cottrell Cottages (Letter at Appendix 1) and Mr Cottrell of Dantepark Ltd. who owns Cottrell Cottages (Letter at Appendix 2).

2.2 Mr Pryce's objections are set out below with the Council's response:

2.2.1 The Ash and Silver Birch were made subject to an emergency TPO only after the planning application was submitted to the Council. Prior to this application, his client, Mr Kirby was advised by the Council that these trees had no statutory protection.

Response: Before the formal planning application was submitted for Cottrell Cottages Mr Kirby was informed that the Ash and Silver Birch trees were not protected. However, once the application was submitted and a site visit made, the threat of development was then manifest against these trees and they were made subject to TPO No. 929 to preserve them. In light of their amenity value (see Appendix 3 for a more detailed response to this objection).

2.2.2 Despite numerous requests a copy of the TPO was not supplied to Mr Kirby.

Response: Due to an administrative error the TPO was posted to the wrong address and was returned undelivered. A copy of the TPO was subsequently sent to Mr Kirby at the correct address with an extended time period of one month for him to submit any objections to the TPO.

2.2.3 The Ash tree has been disfigured by a low limb branch wound & an adjacent broken branch.

Response: The above have had no significant effect on the appearance or amenity value of this tree.

2.2.4 Whilst prominent in the immediate vicinity, the Ash & Silver Birch have limited public view as they are obscured by buildings and other trees.

Response:

(a) The upper crown of the Ash and the Silver Birch (to a lesser degree) are clearly visible from The Broadway.

(b) The trees provide visual amenity to visitors who use the car park.

(c) There is a pizza restaurant immediately adjacent to the car park. Within this restaurant, and in clear view of the subject trees, there is a seating area with 28 chairs. Furthermore, this establishment is open 7 days/ week and from 11.30am-11.30pm. In my opinion, given the above, the trees have a significant viewing public.

(d) The trees are also visible from the flats at the rear in Chartridge Court and from the flats at Nos.69A-E The Broadway.

2.2.5 The loss of the subject trees would be mitigated by the Sycamores adjacent to the Ash.

Response: The Sycamores, in comparison, provide only limited public amenity and would not provide for the loss of the subject trees.

2.2.6 The Ash has hazardous limbs

Response: The Ash is not a hazard tree. It has two limbs with limited injuries/defects. This could be addressed by some judicious – branch end weight - pruning that would not affect the visual amenity of the Ash tree.

2.2.7 The Ash is starting to dominate its immediate surroundings, is blocking gutters and in time could cause direct damage to the building.

Response: The ‘dominate’ effect of the Ash tree is directly related to its public amenity value. It is not out of scale with its surroundings and some minor tipping back of branches could address the above issues that are limited to only a small section of the tree’s over all crown.

2.2.8 Crown reducing the Ash tree would make it look unnatural and cause heavy branch sprouting. Such pruning is against BS:3998 tree works guidance.

Response: Within the Borough, crown reductions (30% max.) of protected Ash trees - in accordance with BS:3998 - have been granted in the past. In general, for Ash, such reductions do not (a) significantly affect their amenity value or (b) produce heavy branch sprouting. Moreover, in the Borough, successive crown reductions have been granted to manage Ash tree crown dimensions.

2.2.9 The Silver Birch overhangs the building and is causing leaf-litter gutter problems

Response: The latter could be addressed by some limited judicious pruning that would not affect the visual appearance of this tree.

2.2.10 The Ash, and to a limited degree the Silver Birch, could cause subsidence damage to the building.

Response: There is no known history of tree related subsidence damage associated with these trees. If in the future the trees are the subject of a *bonafide subsidence* claim then tree management options (including removal & replacement) would be explored with the claimant.

2.3 Mr Cottrell’s objections are set out below with the Council’s response:

2.3.1 The Ash and Silver Birch trees have no aesthetic value.

Response: See the previous amenity evaluation in section 2.2.4.

2.3.2 Leaf from the subject trees blocks gutters and drains.

Response: This has already been addressed in paragraphs 2.2.7 & 2.2.9 above. Also as a more permanent, relatively inexpensive solution, chicken-wire type mesh could be placed over gutters and drains.

2.3.3 Since the TPO has been made on the Ash and Silver Birch it has not been possible to develop the site and generate the necessary income to maintain the properties.

Response: These are not material considerations when considering whether a TPO should be placed on the Ash and Silver Birch.

2.4 There is no right of appeal to the Secretary of State against the confirmation of a TPO. However, under Section 288 of the Town and Country Planning Act 1990 ("the Act"), the validity of a TPO can be challenged on a point of law by an application to the High Court within six weeks of the date the TPO is confirmed on the grounds that: -

2.4.1 The TPO is not within the powers of the Act, or

2.4.2 The requirements of the Act (or Regulations made under the Act) have not been complied with in the making of the TPO.

2.5 The Committee is requested to give due consideration to the objections and the Arboricultural Officer's opinion that the objections do not outweigh the amenity considerations in this case.

2.6 It is accordingly recommended that the TPO be confirmed.

Financial Implications

There are no financial implications.

Performance Issues

None.

SECTION 3 - STATUTORY OFFICER CLEARANCE

Name: Sheela Thakrar	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 12th March 2009		
Name: Abi Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 11 th March 2009		

SECTION 4 - CONTACT DETAILS AND BACKGROUND PAPERS

Contact: Russell Ball, Planning Arboricultural Officer, extn: 6092