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| Meeting:                            | Strategic Planning Committee  |
| Date:                               | 22 <sup>nd</sup> April 2009   |
| Subject:                            | Tree Preservation Order No. 930   |
| 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:                         | Appendix 1 – Extracts from Arboricultural Report<br>Appendix 2 -Letter dated 19 <sup>th</sup> January 2009 from Mr Taylor of Fusion Residential<br>Appendix 3 - Letter 16 <sup>th</sup> January 2009 from Mr Terry Lee<br>Appendix 4- Photograph of driveway serving 78 Wellington Road |

## **SECTION 1 – SUMMARY AND RECOMMENDATIONS**

Tree Preservation Order (TPO) No. 930 covers the property at 76 Wellington Road and was served as an emergency Order on 16<sup>th</sup> December 2008. Objections have been made against this TPO in respect to the protected Wellingtonia tree at the above address. This is the sole tree covered by this TPO. This report sets out why this TPO should be confirmed.

### **RECOMMENDATIONS:**

The Committee is requested to confirm TPO No. 930 notwithstanding the objections.

**REASON:** This emergency TPO needs to be confirmed within 6 months otherwise the statutory protection afforded to the aforementioned tree will be lost.

## SECTION 2 - REPORT

2.1 On 16<sup>th</sup> December 2008, TPO No. 930 was made in respect of a Wellingtonia tree (the sole tree covered by this TPO) at the front garden of 76 Wellington Road. The land on which the tree is sited and at No. 78 Wellington Road has three planning consents: one in outline for three detached houses, one full permission for three houses and one outline application (won at appeal) for a block of eight flats. As part of the planning applications, an arboricultural consultant report (HB report) was commissioned by the applicant in respect of the subject Wellingtonia (plus other trees on the site). See relevant extracts at Appendix 1.

Objection letters were subsequently received from Mr Taylor, Planning Director of Fusion Residential (at Appendix 2) and Mr Lee of 78 Wellington Road (at Appendix 3).

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

2.2.1 The Wellingtonia causes an undue constraint on the ability to develop the land or subsequently sell the property.

**Response:** It is accepted that this large (35m) tree represents a significant constraint but its visual amenity is related to its size and presence on the site. For this reason, and due to a threat of development, a TPO was placed on the tree. Furthermore, the HB report cites the tree as having a BS:5837 'A' grade (see survey inspection form at Appendix 1). As such, in my opinion, the tree is an asset to any future occupiers of the site.

2.2.2 If the tree were to fall, it could have serious consequences for the 6 other properties in the vicinity of this tree.

**Response:** During my inspection of the Wellingtonia tree no visual defects were noted. No tree defects are noted in the HB survey inspection form (see Appendix 1). Therefore, it is my view that the Wellingtonia is not a hazard tree.

If in future, tree defects become evident, Council permission would likely be granted to carry out appropriate remedial pruning works, including removal & replacement if this can be demonstrated to the Council as justified.

2.2.3 The Wellingtonia is too close to existing property & any future development.

**Response:** Planning permission exists for the site that includes the demolition of the existing house (at No. 76: that is uninhabited) and construction of three houses (P/2090/08 and P/3281/08). There is also an extant outline planning permission for eight flats allowed on appeal (P/4280/07) on 21<sup>st</sup> November 2008. In respect to future development, the HB summary (see Appendix 1), states: "The new building will also be set further away from this tree [the Wellingtonia] than the existing house" and therefore any new development would have an improved relationship and setting with this tree.

2.2.4 It is apparent that the Wellingtonia is causing root damage to the driveway at No. 78 Wellington Road.

**Response:** A visit was made (29<sup>th</sup> Jan. 2009) to evaluate the alleged driveway damage. Running alongside, the Wellingtonia there is a driveway that serves the property at No. 78 Wellington Road. On the driveway, immediately adjacent to the tree, a line of tarmac has been lifted (see photo attached as Appendix 4 with a biro pen included for scale). Whilst this has likely been caused by the subject tree, in my opinion, this defect could be remedied with some limited infill to produce a small ramp-like repair over the affected tarmac area. Given the Wellingtonia's significant public visual amenity value this remedial repair could be justified.

2.2.5 The Wellingtonia is causing "unseen problems for adjacent properties both below and above ground."

**Response:** There is no evidence to support this claim. In any event, applications can be made to the Council in future to remedy such problems when they become apparent with justified reasons to carry out tree works on the Wellingtonia.

2.3 Mr Lee's objections are set out below with the Council's response

2.3.1 It is not necessary to impose a TPO on the Wellingtonia as the tree has the potential to cause damage to nearby properties. A TPO will also prevent its removal in the future should it become unhealthy or over-bearing both in its present setting or future development schemes.

**Response:** The subject tree is not considered to be a hazard tree (see further comments in section 2.2.2 and 2.2.3 above). As already indicated, the Council is likely to grant permission for remedial works to the tree should tree defects become evident in the future,

2.3.2 The Wellingtonia causes constant damage to the driveway at No 78 Wellington Road

**Response:** No evidence of this on-going damage and associated costs have been submitted to the Council. (see section 2.2.4 above for further comments on damage to the driveway to No 78).

2.3.3 Below ground, the Wellingtonia is causing damage to adjacent properties.

**Response:** No evidence to this effect has been submitted to the Council.

2.3.4 Branches/debris falling from the Wellingtonia is causing damage to property at 76 Wellington Road.

**Response:** No evidence has been submitted to the Council.

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: -

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

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

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

2.7 It is accordingly recommended that the TPO be confirmed.

### **Financial Implications**

There are no financial implications.

### **Performance Issues**

None.

## **SECTION 3 - STATUTORY OFFICER CLEARANCE**

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|----------------------------------|-------------------------------------|--|
| Name: Sheela Thakrar             | <input checked="" type="checkbox"/> | on behalf of the*<br>Chief Financial Officer |
| Date: 11 <sup>th</sup> Mach 2009 |                                     |  |
| Name: Abiodun Kolawole           | <input checked="" type="checkbox"/> | on behalf of the*<br>Monitoring Officer      |
| Date: 4 <sup>th</sup> March 2009 |                                     |  |

\*Delete the words "on behalf of the" if the report is cleared directly by Myfanwy or Hugh.

## **SECTION 4 - CONTACT DETAILS AND BACKGROUND PAPERS**

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