

**AGENDA ITEM: 9**

Page nos. 129 - 173

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Meeting	Chipping Barnet Area Planning Sub-Committee
Date	8 February 2005
<b>Subject</b>	<b>71-73 Osidge Lane, N14 Tree Preservation Order 2004</b>
Report of	Head of Planning
Summary	To seek authority for confirmation of a Tree Preservation Order affecting a tree at 71-73, Osidge Lane, N14

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Officer Contributors	Borough Solicitor Head of Planning
Status (public or exempt)	Public
Wards affected	Brunswick Park
Enclosures	Letters of Objection & Support
For decision by	Chipping Barnet Area Planning Sub-Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	Not Applicable
Contact for further information:	George Addie

## **1. RECOMMENDATIONS**

**1.1 That the Council, under Regulation 8 of the Town and Country Planning (Tree Preservation Order) Regulations 1999, decide whether to confirm the Order.**

**1.2 That the interested parties be advised of the Council's decision.**

## **2. RELEVANT PREVIOUS DECISIONS**

2.1 Chief Planner – Delegated Powers: 2 August 2004.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

3.1 Unitary Development Plan E2.1  
Revised Draft Unitary Development Plan D12

## **4. RISK MANAGEMENT ISSUES**

4.1 None.

## **5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS**

5.1 None at present.

## **6. LEGAL ISSUES**

6.1 Under Section 199(3) of the Town and County Planning Act 1990, the Local Planning Authority must consider objections and representations before confirming the Order.

## **7. CONSTITUTIONAL POWERS**

7.1 Town and Country Planning and Development Control including Tree and Hedgerow protection – Constitution Part 3, Paragraph 2.

## **8 BACKGROUND INFORMATION**

8.1 A Tree Preservation Order, effective from 5 August 2004, was made following a request from a local resident and the submission of a planning application for development at 71, Osidge Lane. The tree, a copper beech, standing on the boundary of both properties, is approximately 7.5 metres from the front elevations of the properties. It is a mature specimen, approximately 14 metres in height, and appears reasonably healthy with a well balanced crown. The tree is of high amenity value, being very clearly visible along Osidge Lane, and the busy roundabout at the junction of Osidge Lane with Brookside South and Hampden Way. It is one of the few mature, non-Council maintained trees along the road and was considered appropriate to include in an Order

8.2 Notices were served on the persons affected by the Order in accordance with paragraph (c) of Regulation 5 of the Town and Country Planning (Tree Preservation Order) Regulations 1999. Objections have been received from Mrs. E Panteli of 71, Osidge Lane. Representations in support have been received from Mrs J Tucker of 73, Osidge Lane.

8.3 The grounds of objection from Mrs Panteli who has lived may be summarised as follows: the alleged implication of the tree in subsidence damage to her drains, the alleged blocking of access to the side of her house by the tree, alleged infestation by white sticky flies of the tree making it difficult for her to go outside or to park her car under the tree, alleged blocking of her gutter by the tree's leaves, alleged near touching of the telephone wires by the tree's branches and lack of access to her builders to the rear of her property because of the tree. *"Also another factor is I will need to move out of the property because my son who is 12 is asthmatic and I am allergic to dust. If the tree remains and the subsidence comes back, I will need to move out again until someone realises that this beech tree is causing the damage"*. Mrs Panteli also provided some correspondence from Cunningham & Lindsey (Loss Adjusters) in connection with the Subsidence Insurance Claim, which also included letters from OCA UK Ltd (consulting arboriculturists) and a drain estimate from CET Group.

8.4 The representations in support from Mrs Tucker include her observations that the Copper Beech *"is of outstanding merit"* and that *"it would be a tragedy to cut this magnificent tree down when it has many benefits to the local environment"*. Mrs Tucker also provided a file of correspondence from OCA UK Ltd (arboriculturists) and Cunningham Lindsey (loss adjusters), with a long explanation of events, apologising for the extent of the file but stating *"I feel it necessary to highlight certain contradictions between the Chartered Surveyor, Mr Ross {from Cunningham Lindsey} and Mr & Mrs Panteli and the arboriculturist company OCA"*. In relation to the ongoing dispute about subsidence, Mrs Tucker disputes whether the Copper Beech is causing the problem. After an initial 'threatening' letter from Cunningham Lindsey, there is a retraction from the original position in a letter dated 30 July 2004:

*"On the question of trees, I would confirm that there is no evidence to implicate them in the damage and it is not intended to seek this at the present time ....In this instance, an initial assessment was made based on the circumstances of the case and the physical features of the site. This suggested that the problem was linked to leaking drains and this was justified by the results of the drain survey. The arboriculturists were instructed because there is always a worry when large trees exist close to properties built on a clay subsoil. The recommendation for removal may be regarded as a precaution. The fact that there is currently no evidence to implicate and it is not intended to seek any does not mean that the tree may not be implicated at some time in the future."*

8.5 In response, the Council's Tree Officer states:

- i. With regard to access, It is unclear why, given the length of time that the Copper Beech has been growing in its current location, access should now be perceived to be blocked by the tree. The arrangement of the access and steps is not a result of the presence of the tree but appears to be influenced by the layout and slope of the land.
- ii. With regard to the "white sticky fly" and blocked gutters issues, it is unclear from her description exactly what Mrs Panteli is referring to as "white sticky flies". However, it seems likely that the pest, which does not appear to have caused damage to the tree nor be a frequent problem, could (if necessary) be controlled without detriment to the tree. It is considered that gutter maintenance should be a regular part of normal household maintenance and that it may be possible to reduce gutter clogging, for example by use of mesh filters.

If a tree is included in a Tree Preservation Order formal consent for treatment would be required in accordance with the legislation; however, it is likely that if an application was made, consent would be granted for pruning of the tree to clear the building face and telephone cable in accordance with good arboricultural practice.

- iii. With regard to the subsidence issue, there is clearly conflicting information between the parties as to whether the tree is implicated in subsidence. At present the Loss Adjusters consider that the problem is linked to leaking drains, a contention supported by the drain survey. However, whilst noting that the current recommendation for removal of the Copper Beech should be regarded as a precaution, it is clear that the absence of current evidence does not preclude the possibility that the tree may be implicated at some time in the future. Under the terms of the Tree Preservation Order, there is a general right to compensation and the Council would be liable for loss or damage caused or incurred in consequence of any refusal or conditional consent granted (within set parameters). If the Order is confirmed and a subsequent application was made to fell (or otherwise treat) the tree because of its future implication in subsidence, the Council would either have to grant consent for the works or be liable for compensation.

## 8.6 **Conclusion**

The tree is considered to be of significant amenity value. However, since the Order was made issues have been raised about the potential implication of the tree in subsidence. If the Order is confirmed, any future application to treat the tree may entail liability for compensation. The Committee may wish to take this into account when deciding whether the Order should be confirmed.

## 9. **LIST OF BACKGROUND PAPERS**

- 9.1 Tree Preservation Order file TPO/CA/364-DEV2.

BS – ASV

BT – PA