

BABERGH DISTRICT COUNCIL

FROM: Head of Leisure and Community
Services

REPORT NUMBER **E170**

TO: **LICENSING AND APPEALS
COMMITTEE**

DATE OF MEETING **24 October 2005**

TREE PRESERVATION ORDER BT00396

- LAND AT GOODLANDS FARM, SWAN STREET, BOXFORD, SUFFOLK

1. SUMMARY

1.1 The purpose of this report is to consider objections to the making of a Tree Preservation Order No. BT00396, and the recommendation that the Tree Preservation Order (TPO) be confirmed without modification.

2. RECOMMENDATIONS

2.1 It is recommended that the Committee confirms Tree Preservation Order No. BT00396 without amendment.

The Committee is able to resolve this matter.

3. FINANCIAL IMPLICATIONS

3.1 The Town and Country Planning Act (Trees) Regulations 1999 contain provisions for financial compensation and this may be payable in certain circumstances if consent is refused under the Order for works to protected trees or if consent is granted subject to conditions. However this is the case when making any TPO and there are no extraordinary financial considerations in this case

4. KEY INFORMATION

4.1 Tree Preservation Order BT00396 (TPO BT00396) was served on 2nd August 2005. It has provisional existence of six months and will expire on 2nd February 2006 if not confirmed by this Committee.

4.2 The area of land to which this TPO refers is sited close to the centre of Boxford behind house numbers 45 – 53 on the west side of Swan Street. Part of the site is within Boxford Conservation Area. The land in question relates to domestic garden areas of Goodlands Farm and 55 Swan Street both of which have fallen into disrepair.

4.3 The three trees that are the subject of this TPO are mature even-aged specimens of Walnut which are outstanding within their surroundings. T1 is sited close to the derelict dwelling of 55 Swan Street, just within the cartilage of Boxford Conservation Area. T2 & T3 are located south east of T1 adjacent to a dilapidated swimming pool. All three trees are of good form and display no obvious external indicators of ill health. They provide maturity of setting, habitat and landscape value to the community. They also will be considerable visual assets to any redevelopment proposed within the vicinity.

- 4.4 As a result of the potential demolition of 55 Swan Street, and subsequent construction on this site, the trees are under threat of damage or removal. The Local Planning Authority considers the trees to be of significant public amenity value and as such it was determined that they should be afforded statutory protection by the making of a Tree Preservation Order in the interests of maintaining the visual amenity of the area.
- 4.5 One letter of objection to the making of TPO BT00396 has been received from Solicitors Bates Wells and Braithwaite. Their objections are summarised as follows:
- (a) T1 – The proximity of this walnut to the buildings on this land will, if the tree remains in situ cause damage to the Grade II Listed Barn on the site which is itself already on the “At Risk” register. .
 - (b) T2 – This tree is self-seeded and will severely restrict the future use of the land if allowed to remain.
 - (c) T3 – A poor specimen due to it being sited close to T2.
- 4.6 The responses to the objections are as follows:
- (a) This tree is a mature specimen, which due to its age and position is not expected to grow significantly larger than it is now. Additionally, the stem is sited 11 metres from the Grade II listed Barn – the canopy coming no closer than approximately 3.5 metres at the nearest point. It is claimed that the retention of T1 will damage the barn, but no evidence has been provided to substantiate this. There is no desire to place a historic building at greater peril than it is at present, but the value of the tree is also important, having been assessed using the Helliwell System as having a score of 120 points (trees of 100 points or more are normally considered worthy of protection by a TPO). In view of this, T1 and the barn should be allowed to coexist. If evidence is provided that shows that the tree is causing harm to the structure of the barn then appropriate surgery or felling would be considered through the normal application process. There is no fee charged for applications and if the applicant disagrees with any decision Babergh District Council he has the option to appeal to the Office of the Deputy Prime Minister. There is no fee payable for the appeal process.
 - (b) There is no reason that the presence of T2 should severely restrict the use of the land. The serving of this TPO has been prompted by potential development and its purpose is to inform the planning process, thus ensuring that the important amenity contribution that all three trees provide is safeguarded by reasoned evaluation when comparing proposals for which the site may be put to. It does not mean that this or any of the trees may not be felled or pruned by application as noted above. Furthermore, should a planning application be received which shows the loss of one or more of the protected trees, then it will be the duty of the Local Authority to determine any such application by weighing the benefits of the proposal as against the amenity value of the trees. The value of T2 has been calculated under the Helliwell System as 120points.
 - (c) Although T3 is described as a poor specimen, this is substantiated only on its close proximity to T2. A thorough ground based examination of T3 showed it to have no external indicators of disease instability or decay. It is accepted that individually T2 & T3 have slightly unbalanced crowns, but this is attenuated by the overall visual affect created by the combination of both trees. Further support to the value of T3 is evidenced by its Helliwell Value being calculated as 120 points.

4.7 The following implications of Human Rights legislation should be considered:

- (a) Article 1 of Protocol 1 "The right to peaceful enjoyment of possessions and protection of property" – appropriate if the individuals' rights to enjoyment of their property are affected.
- (b) Article 8 "The right to respect for private and family life, home and correspondence" – appropriate if the condition of the tree is causing a safety risk, hazard or health problem at the homes of the individuals.

It is unclear as to the relationship of the land to the objector. However if all the trees that are the subject of objection are growing within the curtilage of the objectors' property or the objector's clients' property, Article 1 of Protocol 1 will be applicable. The objector is concerned that the presence of the TPO will affect the use of the land. The Committee should consider whether the presence of the TPO is an unreasonable constraint on the use of this land and that this outweighs the amenity value of the trees.

As far as Article 8 is concerned, at present there is no evidence to suggest that these trees pose a reasonably foreseeable risk to persons or property. If the trees unexpectedly become dangerous there are exemptions within the TPO legislation to allow the tree owners to resolve the problem to an extent proportionate to abate the danger. Furthermore, and as referred to in items 4.6 (a) and (b) above, provisions exist within the TPO legislation to permit tree owners to apply to the Local Authority to undertake surgery. Each application is assessed on its appropriateness to the situation, and if the Local Authority refuses permission to proceed with requested surgery, the applicant may appeal to the Office of the Deputy Prime Minister. There are no fees payable to the Local Authority for the submission of TPO applications or TPO refusal appeals.

5. **APPENDICES**

- (1) Copy of Tree Preservation Order No. BT 396
- (2) Objection letter dated 26 August 2005 submitted by Bates, Wells and Braithwaite

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