

Item No. 8

Enforcement No:	E/08/0088	Date	of 13 th May 2008
Type:	Works to TPO trees	Complaint:	
Developer:	Mr M Pancholi		
Breach:	Unauthorised cutting down of Sycamore tree and lopping of branches of Lime tree (Tree Preservation Order)		
Location:	115 Graylyn Court, Humberstone Lane, Thurmaston, Leicestershire, LE4 8HL		
Parish:	Thurmaston	Ward:	Thurmaston
Case Officer:	Miss S J Coleman	Extension:	01509 634773

Description of the Unauthorised Development

In May 2008 the Council received a complaint about the felling of a Sycamore tree and the lopping of branches of a Lime Tree. These trees are located alongside the highway within the land occupied by 115 Graylyn Court, Humberstone Lane, Thurmaston. Investigations have concluded that the felling of the sycamore took place in August 2006 and the pruning of the lime a few days before the complaint was received.

The Sycamore and Lime affected by this action, along with another Lime that has remained undisturbed, are subject to the Barrow upon Soar Rural District Council (Adj 109 Humberstone Lane, Thurmaston) Tree Preservation Order of 1972. The felling and therefore destroying of the sycamore is an offence under Section 210 of the Town and Country Planning Act 1990 and evidence has been gathered. It is considered that action to pursue a prosecution for the offence would be warranted and in the public interest given that the Sycamore tree has been destroyed and subsequently further unauthorised works to prune the Lime tree, subject to the same protection order, have been undertaken. Investigations have also been carried out to ascertain responsibility for these works.

The Order was confirmed before the current properties were constructed.

- **Development Plan Policies**

Borough of Charnwood Local Plan (adopted 12th January 2004)

None relevant

- **Other Policies**

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether the breach of control is unacceptably affecting public amenity or the existing use of land or buildings.

Circular 10/97: Enforcing planning control: provides legislative provisions and procedural requirements for Local Planning Authorities with regard to a wide range of issues including the duty on the landowner in relation to replacement of trees when they are removed in contravention of a Tree Preservation Order.

- **Other Material Considerations**

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 2000 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified”. It is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the offender must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the balance points to safeguarding the visual amenity of the street scene and the positive contribution that the group of trees afforded the area.

Relevant Planning History

None

Responses of Statutory Consultees

The Council’s Landscape Officer – considers that the felling of the sycamore, together with the removal of lateral branches of the lime has exacerbated the exaggerated form of the tree, reducing its amenity value and visually the important contribution of the group in the street scene has been severely eroded.

Furthermore, an application for the pruning of the lime tree would not have been permitted but the manner in which the branches have been removed, at least, comply with British Standard recommendations. Regeneration of the lime is already evident and over time it is likely to develop a fuller crown and improve aesthetically. The felling of the sycamore has, however, altered the immediate environment in which the lime has grown and its benefited mutual protection. This co-existence has now been compromised and as a result there is an increased risk to the lime of storm damage occurring, possibly requiring additional remedial works to minimise this risk, which may further detract from its amenity value.

He also suggests an appropriate replacement for the sycamore and that it should be a tree of sufficient stature in maturity to effectively compliment the remaining trees

which would be a *Tilia x euchlora*, a medium sized lime, free from aphids and associated stickiness which would be suitable for street planting.

Other Comments Received

None

Consideration of the Planning Issues

Section 210 of the Town and Country Planning 1990 provides that any person who cuts down, uproots or wilfully destroys a tree in contravention of a tree preservation order shall be guilty of an offence and any person found guilty on summary conviction or conviction on indictment shall be liable to a fine.

Under Section 206 of the Act, if any such tree is removed, uprooted or destroyed in contravention of the order, it is the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can. The relevant tree preservation order will apply to any tree so planted as it applied to the original tree.

If it appears to the LPA that the provisions of Section 206 of the Act are not complied with the authority may serve on the owner of the land a notice requiring them to plant within a period to be specified in the notice a tree or trees of such size and species as may be specified in the notice.

It is considered that these group of three trees, subject to the protection order, made an important contribution to the visual amenity of the street scene and therefore it is expedient to serve a notice to ensure the replacement of the tree of a size and species to replace what has been removed without consent, within the next available planting season.

The lime tree which has been pruned, according to a recent assessment carried out by the Council's Landscape Officer, is not showing signs of it being destroyed, which would include the cessation of amenity value and something worth preserving. It is considered that it is likely to regenerate, as it is at present, develop a fuller crown and improve aesthetically.

However, its long term health is uncertain as it is now exposed and no longer benefits from the protection afforded by the sycamore tree which has led to an increased risk of storm damage occurring which may require additional remedial works to minimise this risk, which may further detract from its amenity value.

It is a requirement, in accordance with section 206 of the Town and Country Planning Act 1990 following the removal of a tree subject to a tree preservation order that a replacement tree is planted. It is recommended that a replacement is planted as soon as possible whatever the outcome of the decision of members in respect of the removal of the original tree. The replacement tree will, as mentioned earlier, help to protect the remaining lime tree following the pruning works that have taken place. This matter is complicated by the fact that the person that has admitted to carrying out the works does not own the land concerned and the owner

has maintained throughout the investigation, they did not give permission for the works to take place. It is however the responsibility of the owner to replace the tree.

In deciding whether they should authorise a prosecution, members are reminded that there is provision for the Council to issue a formal caution on the offender instead.

RECOMMENDATION:

1. Authorise legal proceedings

That the Committee authorises the Director of Governance and Procurement to instigate and conduct all legal proceedings necessary in respect of the unlawful felling of a sycamore tree that is protected by a Tree Preservation Order.

2. Authorise Tree Replacement Notice

It is **RECOMMENDED** that the Committee:

authorise the Director of Development and the Director of Governance and Procurement to issue a Tree Replacement Notice under Section 206 of the Town and Country Planning Act 1990 and the Director of Governance and Procurement to institute and conduct any legal proceedings necessary to secure compliance with the notice;

give the following reasons why it is expedient to authorise this action:

- a) On or around 7th August 2006 a sycamore tree the subject of a Tree Preservation Order, Barrow Upon Soar District Council (Adj 109 Humberstone Lane, Thurmaston) Tree Preservation Order 1972 was removed and destroyed. In accordance with section 206 of the Town and Country Planning Act 1990 replacement trees are required to be planted.
- b) It is considered that by reason of the removal of the sycamore tree it has led to a detrimental impact on the important contribution that the group of trees made to the visual amenity of the street scene.

confirm that the notice will require the following steps to be taken:

1. Grind out the stump and remove all roots associated with the felled sycamore
2. Plant one *Tilia x euchlora*, heavy standard size -12/14 cm girth at 1m with overall height of 3.5m/4.25m, staked and tied in the location referred to and shown on the attached plan.

give the following period for compliance with the notice:

2 months

for the purposes of any appeal proceedings, resolve that, had an application for consent to remove the tree been received permission would have been refused for the reasons set out in the preceding section of this report.



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Location: 115 Graylyn Court, Humberstone Lane, Thurmaston, Leicestershire, LE4 8HL
Scale: 1:500

