

# **Report to Area Plans Sub-Committee East**

**Date of meeting: 10 February 2010**



**Subject: Confirmation of TPO EPF/42/09 33 Severns Field,  
Epping, Essex**

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## **Recommendation**

That Tree Preservation Order TPO EPF/42/09 be confirmed without modification.

## **Introduction**

Tree Preservation Order 42/09 became effective on 11 August 2009. It protects 2 Horse Chestnut and 1 Sycamore in the garden of 33 Severns Field, Epping. It had been made on the basis that the Council was aware of an allegation of subsidence caused by one or all of them to an adjacent property.

On first examination, it appeared that the investigations were not complete and that a TPO would assist in ensuring that the trees could remain until compelling evidence as to their involvement was forthcoming. Inspection showed that the trees all had a good life expectancy and importance in the local landscape, particularly as a group, although none were outstanding individually.

## **The Objection to the Order**

An objection to the order has been received from the owner of No. 34 Severns Field, where an outbuilding has cracks.

Two grounds of objection are given:

1. that the reasons for making the order are not explained, and
2. that the trees are not worthy of protection.

On this basis they formally object to the order and request that it is not confirmed.

The explanation given is as follows:

## **The reasons for making the order are not explained**

The appellants, referring to various documents, state that the best Government advice is that "LPA's should be able to explain to landowners why their trees or woodlands have been protected by a TPO. They are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the following key criteria ..." The key criteria are:

1. visibility;
2. individual impact;

3. wider impact; and
4. expediency.

It is therefore suggested, the Council having not acted in accordance with best practice or with Government advice, that the order is not confirmed.

### **Trees not worthy of protection**

Under this heading the appellants refer to the allegation that the tree has been implicated in subsidence damage to 34 Severns Field. They assert that since the tree has caused a nuisance it should properly be exempt from statutory control.

### **The Director of Planning and Economic Development's response to the grounds of appeal**

#### **The reasons for making the order are not explained**

In relation to the first grounds of appeal, the justification for the order, sent to all parties, contained the following reason for the TPO:

"The trees are considered to be of high visual importance as significant landscape features within the immediate locality. The trees border the Epping Conservation Area, which encompasses Church Hill. Amenity value can be attributed to the trees' tall and large form. They contribute notably to the green landscape character of this area".

It is considered that this is sufficient, in that it explains the Order's rationale in terms that can be understood by a member of the public. Sufficient information is given to explain why the trees have been protected and for the appellants if they had wished to contest, for example, the relative visibility or health of the trees.

It is true that there are systems for interpreting the value of trees, particularly TEMPO, which give a point scoring system to the factors that need to be considered. It is, however, considered that the available systems all have some flaws, which mean that they are best used as an aid to professional judgement and cannot be relied on solely. They are also not accessible to members of the public. TEMPO was in fact used in this case, and the scoring given was sufficient to suggest that a TPO was justified.

### **Trees not worthy of protection**

The objection states that a tree that is causing third party nuisance is exempt from any Tree Preservation Order. This is true, but only if sufficient evidence has been submitted to demonstrate that damage is occurring and that the damage can be seen to result from the root activity of an adjacent tree or trees.

The owner of the adjacent property has been visited by the Council's Landscape Officer and Arboriculturist to review the damage, so that her views could be taken into account. Owner is seriously concerned about damage to her property, which her insurance company have attributed in particular to some non-TPO'd conifers, but also to one of the Horse Chestnuts that are now the subject of the Tree Preservation Order. However, the insurance company is still engaged in monitoring building movement and so is not yet in a position to submit the information required by the Council's agreed proforma.

The Council has been in contact with the agents for the insurers on several occasions. Officers have received the most up to date information (as of December 2009) but there is no pattern of seasonal movement yet established. It cannot therefore be said that any of the preserved trees are exempt from legal control. As such they are all capable of being protected.

The Committee will be aware that even after confirmation it will be open to the owner or insurers of 34 Severnsfield to make an application under the Order, or to request that the Council take the view that any of the trees is exempt, subject to sufficient evidence being available to substantiate the claim.

### **Conclusion**

That Tree Preservation Order EPF/42/09 should be confirmed without modification.