

PLANNING DEVELOPMENT CONTROL COMMITTEE

28 MAY 2009

APPROVAL OF TREE WORKS APPLICATION ON TREE PRESERVATION  
ORDER 0020 - ARDMHOR, 38 CHILBOLTON AVENUE, WINCHESTER

REPORT OF THE HEAD OF ENVIRONMENT

Contact Officer : Thomas Gregory (Tel 01962 848 317) tgregory@winchester.gov.uk

RECENT REFERENCES

None

EXECUTIVE SUMMARY:

To consider approval of a tree works application 09/00246/TPO submitted by Mr Richard Waite of Drew Smith Ltd. to which an objection has been raised. Councillor Karen Barratt requested that this application be referred to committee for determination because of landscaping issues and the public interest.

RECOMMENDATIONS:

1. That the tree works application on Tree Preservation Order 0020 be permitted subject to the condition that four replacement trees are planted.
2. That an article 5 certificate shall not be issued because the trees are not of outstanding and/or special amenity value.

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DETAIL:

1. TPO 0020, Winchester

- 1.1 Winchester City Council received an application from Richard Waite of Drew Smith Ltd. to carry out some tree work in the grounds of their development in Chilbolton Avenue.
- 1.2 The objection came from John and Sheila Murray of 13 Shelley Close, Winchester. Their objection email stated that:
  - *“These trees are so well established that they have become rather inter-dependant on each other not only below the ground but above it as well.”*
  - *“Removing this number of trees close to our boundary will have an adverse affect on our quiet enjoyment of our house and gardens and will expose the development at 38 AND 40 even more to view.”*
- 1.3 The arboricultural officer attended site to assess the trees and it was decided that the work was appropriate at this time and that the application should be permitted.
- 1.4 The arboricultural officer’s report stated that:
  - *The trees are located to the rear of the new properties being built at this location. They can be seen from the adjacent school playing fields, the main road, and surrounding residential properties.*
  - *The trees to be removed are mostly suppressed by adjacent trees, others have significant defects which limit their useful life expectancy and therefore justify their removal.*
  - *In removing the proposed trees, additional space will be opened up for the remaining trees to establish further. It should also be noted that where the larger defected trees are to be removed, there will be room for some replacement tree planting.*
  - *The remaining pruning work is fairly minimal and will not be detrimental to the health or visual amenity of the trees as a group.*
  - *It is recommended that this application is permitted subject to the condition that replacement trees are planted.*

- 1.5 In response to the objection received, the arboricultural officer's response is as follows:
- *It is quite probable that the trees root systems would have fused together and the trees in the centre of the group will rely on those surrounding them for shelter in the wind. The concern is that with so many trees growing in such close proximity to one another, the space in which the trees have to grow will be limited. By taking out the poorer specimens, you are giving the remaining trees a far better environment in which to establish. This would be considered good practice.*
  - *The proposed tree works will have minimal impact on adjacent properties as the green screen will remain intact. The noise levels or view of the new development would not be altered significantly by carrying out the proposed tree works.*

## 2. Article 5 Certificate

- 2.1 Head of Legal Services has advised that when refusing consent or granting consent subject to conditions under a TPO which was made before 2 August 1999 the Council may issue, in relation to any tree to which the refusal of consent (or conditions) relate, a certificate under article 5 of that TPO. In simple terms the effect of an article 5 certificate is to remove the Council's liability under the TPO to pay compensation for loss or damage caused or incurred as a result of their decision.
- 2.2 An article 5 certificate may only be issued in particular circumstances where the Council is satisfied that their decision is in the interests of good forestry, or that the trees, groups of trees or woodlands to which the certificate relates have an 'outstanding' or 'special' amenity value. An article 5 certificate cannot be issued simply to extinguish the Council's liability.
- 2.3 In the event that no article 5 certificate is issued, the Council's liability for loss or damage is unlimited save that damages may only be claimed for that which is fair and reasonable and attributable to the refusal or conditions attached to the approval of works.
- 2.4 The arboricultural officer has not identified the trees as justifying an article 5 certificate.

## 3. Conclusion

- 3.1 It is recommended that there be conditions attached to the approval of the application as follows:

**Condition** - Following the removal of the trees hereby consented, four extra heavy standard Beech trees shall be planted within the area of trees subject to tree felling (T9, T27, T42 and T43) in the survey submitted with the application) and within a period of 9 months or such other species, size location or period as may be agreed in writing by the LPA.

If, within a period of 2 years from the date of planting, the tree (or any other tree planted in replacement for it) is removed, uprooted, destroyed or dies,

another tree of the same size and species shall be planted at the same place, or in accordance with any variation for which the local planning authority give their written consent.

**Reason** - To maintain the tree cover and the contribution that trees make to the character and amenity of the area.

**Informative** - Extra Heavy standard is defined as having 16-18cm girth at planting and having a height between 4.25 and 6m at planting. Replacement of trees is enforceable in law and failure to comply with the condition could result in the issue of a tree replacement notice and prosecution if the local planning authority believe that the criteria of the condition has not been met.

Trees make an important contribution to the character of the conservation area creating a green environment which we all enjoy. Winchester City Council encourages the planting of new trees to replace any that are felled in order to maintain the positive benefits that trees provide.

### OTHER CONSIDERATIONS:

#### 3 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

The approval of this trees works application will contribute to the High Quality Environment outcome of the Sustainable Community Strategy.

#### 4 RESOURCE IMPLICATIONS:

There are no financial implications for the City Council.

#### 5 RISK MANAGEMENT ISSUES

The proposal within the survey forms part of the risk mitigation to the Strategic Risk SR0016 'The District no longer a desirable place to live and work'.

The requirement for an article 5 certificate has been considered and is not appropriate.

Where an article 5 certificate is not issued, the risk if the Council were to refuse the application (or grant it subject to conditions) is that the Council will be liable for a claim for loss or damage which is proven to be fair and reasonable and attributable to the decision to approve/refuse the works to the trees. The risk of liability is likely to be lower where an application is approved subject to conditions, but it is not necessarily extinguished and compensation may be awarded where conditions are shown to impose excessive requirements.

The costs of such claim would necessitate expert evidence and legal advice and representation. Such costs would be £10,000 in addition to which the Council would be liable for the costs of the claimant should the claim against the Council succeed.

**BACKGROUND DOCUMENTS:**

Tree Preservation Order 0020

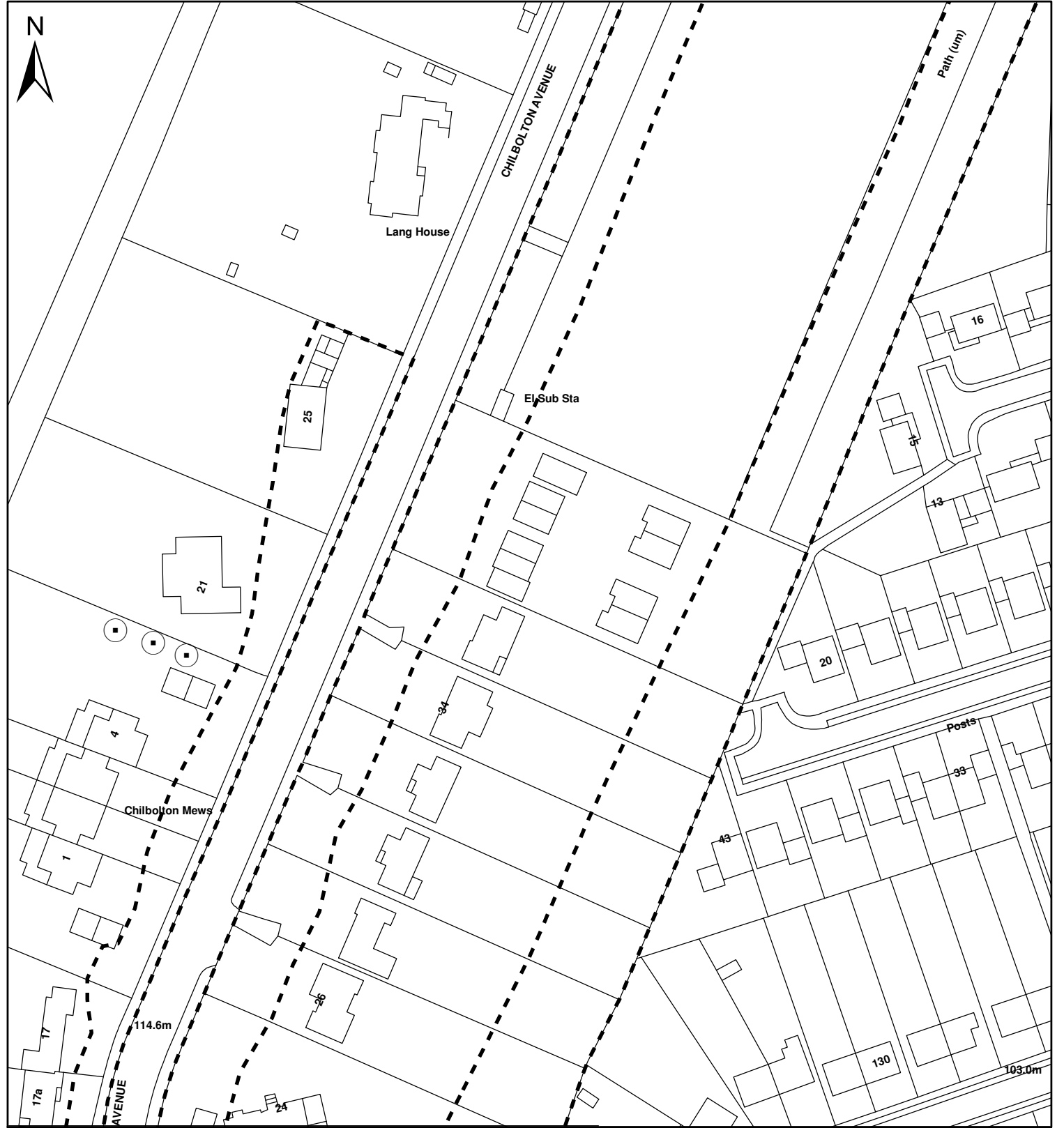
Winchester City Council Tree Strategy consultation draft 2007. Policy TPO 1

Tree Evaluation Method for Preservation Orders (TEMPO)

Tree Preservation Orders: a guide to the law and good practice

The Councils Risk Register

**APPENDICES:** Map



- ⋯ A1 ⋯ Area
- ⋯ G1 ⋯ Group
- W1 Woodland
- T1 (circle with dot) Tree

**TOWN AND COUNTRY PLANNING ACT 1990**  
Section 198 - 201

**Tree Preservation Order No.0020**

Location: **Ardmhor**  
**38 Chilbolton Avenue**  
**Winchester**

OS Grid:                      Scale: 1:1250@ A4    Date:    13/05/09



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