

PLANNING DEVELOPMENT CONTROL COMMITTEE

20 February 2008

CONFIRMATION OF TREE PRESERVATION ORDER 1905 (AS AMENDED) – JOLLY
FARMER PUBLIC HOUSE, ANDOVER ROAD, WINCHESTER

REPORT OF DIRECTOR OF DEVELOPMENT SERVICES

Contact Officer : Kevin Cloud Tel 01962 848317

RECENT REFERENCES

None

EXECUTIVE SUMMARY:

To consider confirmation of Tree Preservation Order 1905 to which objections have been made.

RECOMMENDATION:

That, having taken into consideration the representations received, Tree Preservation Order 1905, land at Jolly Farmer Public House, Andover Road, Winchester, is confirmed subject to modifications.

PLANNING DEVELOPMENT CONTROL COMMITTEE20 February 2008CONFIRMATION OF TREE PRESERVATION ORDER 1905(AS AMENDED) – JOLLY FARMER PUBLIC HOUSE, ANDOVER ROAD, WINCHESTERREPORT OF DIRECTOR OF DEVELOPMENT SERVICESDETAIL:1. TPO 1905 land at Jolly Farmer Public House, Andover Road, Winchester.

1.1 A planning application (06/03243/FUL) was submitted to the local planning authority on the 30 October 2006 for redevelopment of land adjacent to the Jolly Farmer public house. The development comprised erection of 4 no. 4 storey town houses with access, parking and landscaping and reconfiguration of the public house car park. This application was refused on 22 December 2006.

1.2 Following refusal of this application a pre-application enquiry (PE07722) was received on 23 July 2007 for a revised scheme for residential development based upon the previously submitted scheme (06/03243/FUL) as detailed in paragraph 1.1 above.

1.3 At this stage a request was made by the Planning Team Leader, Development Control East Team for an arboricultural officer to assess the potential for tree protection at this site.

1.4 An emergency Tree Preservation Order (TPO) was made and served on 21 August 2007, to protect five individual trees and two groups of trees. If not confirmed the TPO will expire on the 20 February 2008.

1.5 Formal Objections

1.6 Correspondence has been received from B J Unwin Forestry Consultancy (on behalf of Caldecote Consultants, agents for owner Greene King PLC) and Mr N J Hazlitt, resident at 34 Brassey Road, Winchester.

1.7 There have been objections on the following grounds:

The trees subject of the tree preservation order are intrinsically average to poor trees (Mr Unwin).

The argument for protection based on amenity value is weak (Mr Unwin).

Greene King PLC is a responsible landowner and thus there is only a perceived threat to the trees (Mr Unwin);

The argument that the trees have amenity value is factually incorrect (Mr Hazlitt).

Some of the trees are having negative impact on the access path to the rear of properties in Brassey Road (Mr Hazlitt)

The trees are impeding access along the path as low branches block the way (Mr Hazlitt).

The trees block sunlight to the path and back gardens (Mr Hazlitt).

1.8 Officer Comments

The argument for protection based on amenity value is weak (Mr Unwin).

The argument that the trees have amenity value is factually incorrect (Mr Hazlitt).

- 1.9 The Department of Communities and Local Government provides a guidance document entitled *Tree Preservation Orders: a guide to the law and good practice* [good practice guide]. This document is aimed at providing guidance directly to local planning authorities (LPAs) and suggests ways in which such local authorities can work in line with good administrative practice.

- 1.10 Chapter 3 paragraph 3.2 states that:

“The Act does not define ‘amenity’, nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State’s view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public”.

The removal of these trees would be of significant detriment to the character of the area and would leave exposed views through to the railway line from the area of the public house. In addition the trees add to the softening and screening of the rear of properties in Brassey Road.

- 1.11 Paragraph 3.2 continues:

“LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath, although, exceptionally, the inclusion of other trees may be justified”.

The trees are viewable from pedestrian public viewpoints along Andover Road and the rear of Brassey Road. These include the path to the rear of properties in Brassey Road, pedestrian footway from the railway bridge to the public house and public house car park and garden. The trees are also an important landscape feature providing a screen and backdrop for approach to the town centre along Andover Road by vehicles and along the railway line for rail passengers.

- 1.12 Mr Unwin’s original arboricultural report, submitted to the planning authority with planning application (06/03243/FUL), accepts (paragraph 2.2.1) that tree T1 is a key tree providing significant public visual amenity. At paragraph 2.2.2 Mr Unwin states that *“all other TPO’d trees (T2,3,4,5 and G1, G2) provide some collective amenity to the rears of Brassey Road and from Andover Road when seen from the railway bridge”.*

The good practice guide states (paragraph 3.2):

“Trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape” and that “the value of a group of trees or woodland may be collective only”.

Mr Unwin’s report states at paragraph 4.3.2 that *“as a piece of scrubby woodland in an urban location, trees at the Jolly Farmer collectively do provide local amenity value to this part of Winchester”*

The trees subject of the tree preservation order are intrinsically average to poor trees (Mr Unwin).

- 1.13 Mr Unwin states that he has carried out an assessment of the trees in line with British Standard 5827:2005 *Trees in relation to construction*. Mr Unwin asserts that this is the industry standard for grading trees and that his assessment has not been challenged. BS5837 is the industry standard in relation to trees and development proposals. However it is not the standard for assessing trees in terms of suitability for TPO. Furthermore the British Standard does not suggest any correlation between the grading contained within it and suitability for TPO. Clearly it would be easier to justify a TPO on a higher graded tree (BS grade A or B) but the British Standard does not specifically state that C grade trees should not be included, presumably because of the variety of factors involved in assessing trees for TPO.
- 1.14 The trees have been assessed using the Tree Evaluation Method for Tree Preservation Orders (TEMPO) and the visual observations of the arboricultural officer. TEMPO is a nationally recognised tool for assessing trees for suitability for TPO and is recommended for use by the Winchester City Council Tree Strategy – consultation draft. In addition the good practice guide states (paragraph 3.3) that LPAs “*are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way*”. The use of TEMPO has been adopted in line with this guidance.
- 1.15 T1 is accepted by Mr Unwin as a key tree.
- 1.16 T2 Sycamore. Mr Unwin’s report states that the tree is in early maturity and has average vigour (still growing at a typical rate for a tree of that species and age). In addition Mr Unwin’s report comments that the tree is a “*slender tree almost upright, recent crown lifting*” and indicates a useful life in excess of 20 years.
- 1.17 Therefore the statement that this is a particularly poor tree contradicts Mr Unwin’s report. The British Standard grading reflects that it is a tree grown amongst others and thus not of an exceptional form for the species. TEMPO considers trees of FAIR condition to be:
- “Trees which have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential or, if they have already done so, their condition is likely to decline. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse”.*
- 1.18 The condition of T3 is not contested.
- 1.19 T4 horse chestnut. The Council’s arboricultural officer accepts that this tree is in decline having deteriorated considerably since the original assessment for TPO. The good practice guide states that:
- “In the Secretary of State’s view, it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous”.*
- The TPO map and schedule have been amended to exclude this tree. The numbering of the trees has been amended for clarity with T4 now being Ash (originally numbered as T5)
- 1.20 The condition of T5 (ash) is not contested. In light of paragraph 1.19 this tree will now be renumbered to be T4 on the amended order.

- 1.21 Mr Unwin states that *“one sycamore in G1 is very poor”*. The Council’s arboricultural officer accepts that this tree is not a particularly good specimen. However the good practice guide is clear in stating that:

“The group category should in general terms be used for trees whose overall impact and quality merit protection”.

In addition the good practice guide gives lengthy guidance on ensuring that TPOs have clarity and are enforceable. To remove a single tree from G1 would mean that 8 sycamores exist on the ground and only 7 are stated on the TPO schedule and map. This is contrary to advice as it would allow the removal of one stem to bring the situation on the ground in line with the TPO. This has the potential for removal of any individual tree not just the poorest and for this reason is contrary to the government guidance

Greene King PLC is a responsible landowner and thus there is only a perceived threat to the trees (Mr Unwin)

- 1.22 The council’s arboricultural officer accepts that Greene King PLC considers itself to be a responsible landowner. However it is not uncommon for landowners to sell land for development and this is more likely in situations where previous attempts to develop land have failed. The good practice guide paragraph 3.5 states that:

“It may be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases the LPA may believe that certain trees are at risk generally from development pressures. The LPA may have some other reason to believe that trees are at risk; changes in property ownership and intentions to fell trees are not always known in advance, and so the protection of selected trees by a precautionary TPO might sometimes be considered expedient”.

Some of the trees are having negative impact on the access path to the rear of properties in Brassey Road (Mr Hazlitt).

- 1.23 The Council are aware of the issues regarding the status and usability of the access path to the rear of properties in Brassey Road. The environment team are working with residents to resolve the issues and the Council’s arboricultural officer has been consulted on tree issues.

- 1.24 This report has previously commented on the importance of the tree cover in this area. The making of this tree preservation order should not hinder the work of council officers and local residents in seeking a sustainable solution to the problems encountered with the access path. Should a scheme for improvement of the access path recommend the removal of TPO trees, this would be given appropriate consideration and a balanced decision with regard to tree cover will need to be made. The lead officer involved in the liaison process and the chairman of the residents association were consulted at the time of serving the TPO.

The trees are impeding access along the path as low branches block the way (Mr Hazlitt).

The trees block sunlight to the path and back gardens (Mr Hazlitt).

- 1.25 These are issues which would not normally prevent the confirmation of a TPO. This is because an application to fell or prune trees may be made to the local planning authority at any time. The local planning authority will then give consideration to the

proposed works in line with government guidance and the Winchester City Council Tree Strategy – consultation draft.

1.26 Paragraph 6.36 of the good practice guide states that:

“Anyone can apply for consent under a TPO. You do not have to have a legal interest in the land and, unlike applications for planning permission, a TPO application does not have to be accompanied by a certificate that the applicant is the owner of the land concerned, or that the owner has been notified”.

1.27 In addition the guide also states that:

“Their [the local planning authority] decision on the application should be based on the merits of the case, in the public interest”

1.28 Conclusion

1.29 Objections on the grounds of poorly assessed amenity value are unfounded. Winchester City Council has followed the relevant guidance contained within *Tree Preservation Orders: a guide to the law and good practice*. Therefore the grounds for making the order are sound.

1.30 The trees have been assessed in line with a recognised national standard. Of the specifically contested trees, two are agreed to be of poorer quality. One tree has been removed from the amended TPO schedule and map. The other remains to maintain clarity within the group.

1.31 A perceived threat to trees is a common and acceptable reason to consider a TPO expedient.

1.32 The presence of a TPO does not place an unacceptable hindrance on the progress of any solution to overcome access path issues behind properties in Brassey Road.

1.33 An application may be made at any time and will be judged on its merits by the local planning authority.

1.34 It is considered that the location of the TPO trees, on the eastern flank of the rear of Brassy Road properties, does not significantly reduce enjoyment of these properties in terms of sunlight and daylight.

OTHER CONSIDERATIONS:

1 CORPORATE STRATEGY (RELEVANCE TO):

Looking after the built and natural environment is a key objective.

2 RESOURCE IMPLICATIONS:

None

BACKGROUND DOCUMENTS:

Tree Preservation Order 1905

Tree Evaluation Method for Preservation Orders (TEMPO)

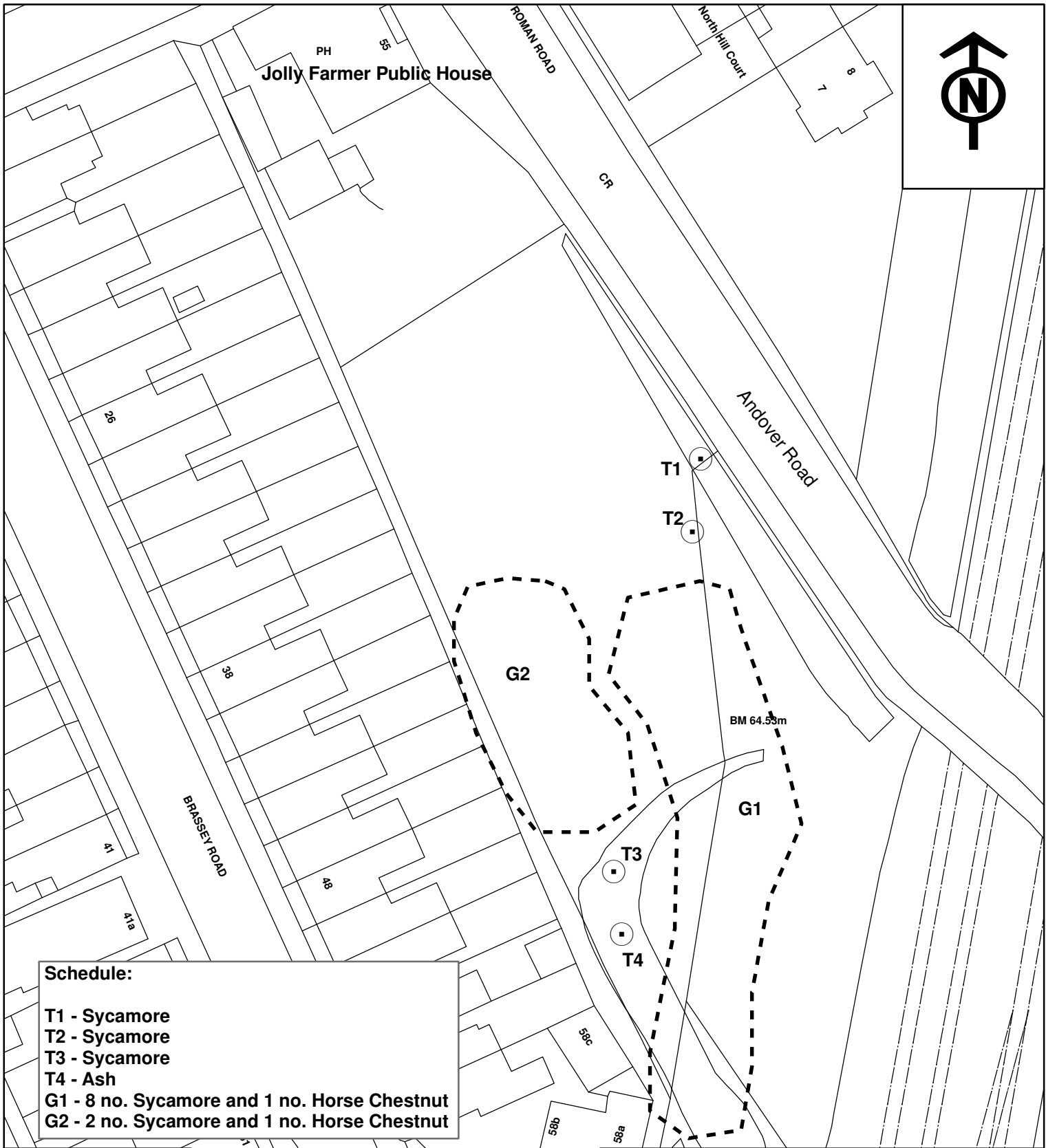
Tree Preservation Orders: a guide to the law and good practice

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

Correspondence from objectors is available

APPENDICES:

Map



Schedule:

- T1 - Sycamore
- T2 - Sycamore
- T3 - Sycamore
- T4 - Ash
- G1 - 8 no. Sycamore and 1 no. Horse Chestnut
- G2 - 2 no. Sycamore and 1 no. Horse Chestnut

- A1 Area
- G1 Group
- W1 Woodland
- T1 Tree

TOWN AND COUNTRY PLANNING ACT 1990
 Section 198 - 201

TREE PRESERVATION ORDER No: 1905

**Location: Land adj Jolly Farmer public house,
 Andover Road, Winchester**



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