



PLANNING

Civic Centre Marlowes
Hemel Hempstead
Herts HP1 1HH

MR M J PALFITT
8 LOMBARDY CLOSE
HEMEL HEMPSTEAD
HERTS
HP2 4NG

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/01711/98/TPO TPO FILE NUMBER: 27

8 LOMBARDY CLOSE, HEMEL HEMPSTEAD, HERTS, HP2 4NG
LOPPING OF PRESERVED TREES

Your application for works to a tree protected by a Tree Preservation Order dated 12 July 1998 and received on 29 September 1998 has been **REFUSED**, for the reasons set out overleaf.

Director of Planning

Date of Decision: 28 October 1998

REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/01711/98/TPO

Date of Decision: 28 October 1998

. The proposed works would be detrimental to the well being and amenity value of the preserved trees.

Department of Environment, Transport and the Regions
Eland House
Bressenden Place
London SW1E 5DU

File Reference: E1/A1910/5/4/08

To The Right Honourable John Prescott MP
Secretary of State for the Environment, Transport and the Regions

Sir,

I have been asked to advise on the appeal by Mr. M.J. Parfitt made under the Third Schedule of Tree Preservation Order No. 1/1969, against the refusal of Dacorum Borough Council to permit the reduction of the canopy of two trees by 50% on land at 8 Lombardy Close, Leverstock Green, Hemel Hempstead, Herts, and to carry out an inspection of the site on your behalf. On 15th March 1999 I made an accompanied site visit in the presence of Miss K. Oliver (fiancée of Appellant) and Ms R. Chapman (Head of Landscape Services, Dacorum Borough Council).

1. This report contains a description of the appeal trees and their surroundings and my appraisal (on the basis of my observations and the written representations of the parties) of the likely impact of the proposal. It is illustrated by various photographs which are appended, together with a plan showing the locations from which the photographs were taken.

THE SITE AND SURROUNDINGS.

2. Leverstock Green is a predominantly residential area on the eastern outskirts of Hemel Hempstead, 3km from the town centre. It includes a small local shopping precinct. Lombardy Close is a cul-de-sac, with two arms, to the north west of Pancake Lane which is one of the original small lanes in the locality. Lombardy Close lies close to the north east of the shopping precinct, and is linked to this precinct by a footpath. School playing fields abut the north east and north western edges of Lombardy Close. The majority of the houses in the Close appear to date from the early 1970's. The Geological Survey map indicates that the site lies close to the intersection between recent deposits of Clay-with-flints and the underlying Woolwich and Reading Beds, which outcrop to the south.

3. 8 Lombardy Close is a two storey detached house, forming part of a small infill development adjacent to the entrance to Lombardy Close, built in about 1990. The rear garden is 17.0m long and 12.2m wide, with most of the area laid to lawn (photo 1), except for a small patio to the rear of the house, a vegetable area in the eastern corner and a pond in the south corner. The north eastern boundary of the garden is enclosed by a wooden fence which abuts the pavement of the road. An aviary stands beside this fence, between the two appeal trees.

4. Apart from the trees which are the subject of appeal, there are no other trees in the rear garden. Adjacent to the entrance to Lombardy Close is a large deodar cedar, an Atlas cedar (T11 of the TPO) and a pin oak (T10) (photo 3). At the end of the access section of Lombardy Close, adjacent to the junction where it divides into two arms, is a large mature oak (T1 of the TPO) (photo 2). There are widely spaced ash, oak and lime trees along the north western boundary of Lombardy Close, where it adjoins the playing fields (photo 6). There are various other small trees within the adjacent gardens, all of which post-date development.

THE TREES.

5. T2 of the Tree Preservation Order is an oak (*Quercus robur*). It has a height of about 15m, and a trunk diameter of 54cm. Lateral branches develop above 3.5m, providing a radial crown spread of 6m, except on the south eastern side where there is negligible branch development as a result of competition with the adjacent oak. There is a cavity between two of the buttresses on the base of the tree, and two short branch stubs at the base of the crown where lateral branches have been removed in the past. Shoot extension growth on the tree is slow, with a total shoot extension less than 50cm in the past 8 years since the house was built.

6. T3 is another English oak. It is a larger tree, with a height of 19m and trunk diameter of 89cm. The trunk forks at 2.5m into two stems of similar size. A large lateral branch has been removed at a height of 3m from the south side of the eastern stem. The main lateral branch structure forms above 5m, giving a radial spread of 9m to the south east, 7.5m to the south west over the garden, 7m towards the building, and 10m over the road. Recent shoot extension growth has been vigorous, totalling up to 100cm over the past 8 seasons. There is one branch which is split and is dangling below the crown, and also a low broken branch stub over the pavement, which appears to have been broken by vehicle impact.

7. The two trees are located immediately adjacent to the north eastern boundary fence, with the trunks of two trees 8.0m apart. T2 is 7.3m from the corner of the building and T3 is 13.3m from the corner.

APPRAISAL.

8. T3 is considerably the dominant of the two trees, both in terms of its physical size and in its branches dominating the space between the two trees. As a result, T3 had a fairly symmetrical branch spread, whereas T2 is suppressed on its south eastern side, with negligible branch development in that sector. T3 is also maintaining a more vigorous growth rate.

9. The pair of trees dominate the rear garden. The consent which has been granted previously for the felling of T2 would help considerably in alleviating the situation, and is entirely appropriate.

10. T3 occupies a conspicuous location, particularly as one enters Lombardy Close off Pancake Lane (photo 2). It is also clearly visible from many parts of Lombardy Close, particularly the south western arm (photo 4), and from the adjacent section of Pancake Lane (photo 3). It is of sufficient stature to be seen over the buildings from the footpath which connects Lombardy Close through to the shopping precinct (photo 5). The upper crown of T3 is also clearly seen on the playing field to the west, although from this location it is the trees adjacent to the north west boundary of Lombardy Close in Area A1 of the TPO which are the dominant feature (photo 6). From all of these viewpoints T2 is far less significant.

11. The proposal to reduce the crown of the trees by 50% would spoil their attractive natural crown shape, and leave both trees, particularly T3, far less prominent from surrounding viewpoints. The trees would be left with short truncated branches. Both trees should be capable of surviving this treatment and would develop a mass of new epicormic growth, particularly around all of the cut surfaces but also along all of the length of the branches and main stem. Initially this would produce a "bottle brush" appearance. In due course, the more vigorous shoots would shade out the others, creating a mass of smaller dead twigs falling from the tree, and there would be an increased risk of the epicormic shoots being blown out of the tree in severe weather. Eventually the tree would return to a semblance of normal shape, but the scars of the previous treatment would always be apparent. In addition to the detrimental effects on the appearance of the tree and increased problems with future management, there is also a risk that the large cuts associated with heavy crown reduction will allow the entry of decay fungi which may create structural problems in the future. For these reasons, work of this sort should be avoided unless there is overwhelming justification. If surgery is required, lesser amounts of work which involve less injury will allow most of the growth to continue within the existing branch and twig structure, and minimise the problems associated with epicormic growth.

12. There is inadequate information in the Submissions on which to make a detailed assessment of the risks of the trees causing subsidence. Subsidence as a result of tree root activity can only occur if there is a clay subsoil. In this respect, the Geological Survey map indicates that clay may be present, but probably with substantial quantities of sand, which will greatly diminish any potential risks. If soil conditions are conducive to subsidence damage, it should be anticipated that a building of this age will have foundations constructed in accordance with current guidelines. These should be sufficient to ensure that there is no risk of damage associated with these trees. Likewise, current foundation design should ensure that there is no risk of heave damage as a result of rehydration and swelling of the soil in the event of removal of T2. In the unlikely event that the foundations have not been constructed in accordance with current guidelines, and if it is assumed that the soil is clay, it would be possible that heavy crown reduction could be justified. Equal benefit could also be achieved by complete removal of T2. If there is a risk of heave damage, either of these actions (crown reduction of both trees or removal of T2) would be sufficient to induce heave damage.

13. Branches, particularly from T3, overhang the pavement and road. One of these branches has been struck and broken by a vehicle in the past. Removal of some of the lowest branch ends and twigs, sufficient to provide adequate clearance for vehicles, could be achieved without detriment to the shape or

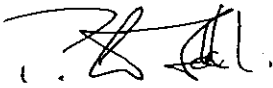
condition of the tree. Crown lifting of this sort is not a part of crown reduction, and should be the subject of a separate application if deemed necessary.

CONCLUSIONS.

14. T3 is a fine attractive specimen, which is clearly visible from surrounding areas and provides a significant contribution to the treescape of the locality.

15. It is unlikely that the trees pose any risk of subsidence damage to the adjacent properties, but if there is any such risk the complete removal of T2, in accordance with the consent which was previously granted, would reduce the risk as effectively as crown reduction. It is unlikely that ground heave would occur if T2 is felled, but if there is any such risk the same problems would occur if the two trees are reduced by 50%.

16. Reducing the trees by 50% would spoil their natural shape and create additional problems in their future management. Work of this sort should be avoided wherever possible, and there is no justification for work of this nature to these trees.



Dr. P.G. Biddle, M.A., D.Phil., F.Arbor.A
29th April 1999

DEPARTMENT OF THE ENVIRONMENT

RIGHT TO CHALLENGE THE DECISION

Under the provisions of Section 288 of the Town and Country Planning Act 1990, a person who is aggrieved by the decision given in the accompanying letter may seek to have it quashed by an application made to the High Court.

The grounds upon which such an application may be made to the Court are:-

- i. that the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
- ii. that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in Section 288 of the Act; they are the requirements of that Act and the Tribunals and Inquiries Act 1992, or any enactment replaced thereby, and the requirements of any orders, regulations or rules made under those Acts or under any of the Acts replaced by those Acts. These include, for referred applications decided following a local inquiry, the Town and Country Planning (Inquiries Procedure) Rules 1992 (SI 1992 No 2038).

Any person who thinks there may be a legal grounds for challenging the decision, is advised to seek legal advice before taking any action. It is important to note, however, that any application to quash an appeal decision must be made to the High Court within 6 weeks of the date of the decision letter.



GOVERNMENT OFFICE
FOR THE EAST OF ENGLAND

Mr M J Parfitt
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Our Ref: E1/A1910/5/4/08

PLANNING DEPARTMENT						
DACORUM BOROUGH COUNCIL						
D.W.	L.D.	D.P.	D.C.	B.C.	S.S.	FILE
				JE		
29 July 1999 received - 2 AUG 1999						
Comments						

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990
THE BOROUGH OF HEMEL HEMPSTEAD TREE PRESERVATION (NO. 1)
ORDER 1969 - THIRD SCHEDULE
APPEAL AGAINST REFUSAL OF CONSENT TO REDUCE THE CANOPY OF
TWO OAK TREES BY 40-50% ON LAND AT 8 LOMBARDY CLOSE
LEVERSTOCK GREEN

1. I am directed by the Secretary of State for the Environment, Transport and the Regions to refer to your appeal, made under the Third Schedule of the above-mentioned Order, against the decision of Dacorum Borough Council to refuse consent to reduce by 40-50% the canopy of two oak trees situated on land at 8 Lombardy Close, Leverstock Green, Hemel Hempstead, Hertfordshire. The trees are identified as trees T2 and T3 in the Order.
2. The Secretary of State has carefully considered your representations, together with those of the Council. An Inspecting Officer visited the site on 15 March 1999. A copy of his report is appended to this letter.
3. In your grounds of appeal you said that consent had been given to the felling of tree T2. However, that consent had not been implemented. You suggested that in granting consent for the tree's felling, the Preservation Order had in effect been removed from tree T2. The Secretary of State is of the opinion that until a consent is actually implemented a tree remains protected by an Order. He is therefore satisfied that tree T2 is covered by Order 1/69 and that he has jurisdiction to determine your appeal in respect of that tree. The Council's decision to allow its felling is however a material consideration in the determination of your appeal.
4. In support of your appeal you argued that both trees needed to be managed to keep them healthy. You explained that the canopy of the trees had increased in size creating a

potential public danger. Many of the limbs were weak. The trees also posed a threat of subsidence to surrounding houses. Pruning would reduce the risk. You had retained tree T2 to preserve the rural image of the area. You were also concerned that its felling could lead to "heave". You had received advice that extensive pruning encouraged stronger and more substantial new growth.

5. In their statement, the Council argued that the proposed works would be detrimental to the well being and amenity value of the preserved trees. Tree T3 was mature and in good overall condition, with only minor defects. Tree T2 was suppressed and misshapen. Whilst there was an existing permission to fell tree T2, the refusal of the current application had been based on the appropriateness of the work in arboricultural terms. The effects of the proposed works would have grave consequences on the trees' health. The proposed works would leave the trees unsightly and significantly reduce their public amenity. There was scope for pruning tree T3, but it had to be in sympathy with its biology and visual appearance.

6. The Secretary of State has given careful consideration to all the arguments for and against the appeal proposals and to the Inspecting Officer's appraisal and conclusions. He has considered initially whether the trees possess amenity value. The Inspecting Officer found tree T3 was a fine, attractive specimen, which was clearly visible from surrounding areas and provided a significant contribution to the treescape of the locality. Tree T2 was suppressed on its south eastern side and was far less significant than tree T3. The Secretary of State accepts these findings and, in determining your appeal, has given tree T3's amenity value considerable weight. He is satisfied that tree T2 possesses only limited amenity value.

7. The Secretary of State has considered whether the proposed reduction of the appeal trees would be arboriculturally justified. The Inspecting Officer was of the opinion, for the reasons given in paragraph 11 of his report, that reducing the trees by 50% would spoil their natural shape and create additional problems in their future management. Work of that sort should be avoided wherever possible. The Secretary of State agrees and, like the Inspecting Officer, is satisfied that there is no justification for works of that nature to the trees.

8. The Inspecting Officer considered that there was inadequate information in the submissions on which to make a detailed assessment of the risks of the trees causing subsidence. Nevertheless, for the reasons given in paragraph 12 of the report, the Inspecting Officer concluded that it was unlikely that the trees posed any risk of subsidence damage. The Secretary of State agrees. He is therefore satisfied that there are no grounds for allowing the canopies of the trees to be reduced by 40 – 50%.

9. The Inspecting Officer found that the two trees dominated your rear garden but that the consent which had been granted for the felling of tree T2 would help considerably in alleviating the situation and was entirely appropriate. He also considered, in respect of tree T2, that the current foundation design of your property should ensure that there was no risk of heave damage in the event of its removal. In the unlikely event that the foundations had not been constructed in accordance with current guidelines, and if it were assumed that the soil underlying your property were clay, the Inspecting Officer considered it would be possible that

heavy crown reduction could be justified. However, equal benefit could also be achieved by the complete removal of T2. If there were a risk of heave damage, either the crown reduction of both trees or tree T2's removal would be sufficient to induce heave damage. You may wish to note these comments. You may also wish to note the Inspecting Officer's view that the removal of some of the lowest branch ends and twigs, sufficient to provide adequate clearance for vehicles, particularly from tree T3, could be achieved without detriment to the shape or condition of the tree. Such work would fall outside the scope of the current application and would require a fresh application, which would be for the Council to consider in the first instance. The Secretary of State has drawn no conclusions on the merits of that work.

10. For the reasons given above, the Secretary of State agrees with the Inspecting Officer's appraisal and conclusions. Accordingly, he hereby dismisses your appeal.

11. A separate note is enclosed setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by the making of an application to the High Court.

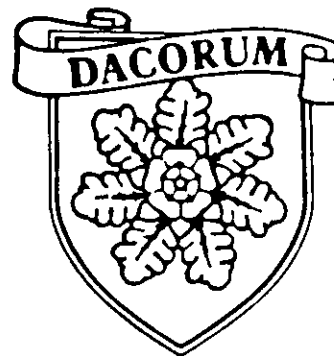
12. A copy of this letter has been sent to Dacorum Borough Council

Yours faithfully

Andrew N Hayes

ANDREW N HAYES

Authorised by the Secretary of State
to sign in that behalf



TOWN AND COUNTRY PLANNING ACT 1990
DACORUM BOROUGH COUNCIL

Application Ref. No. 4/1182/92

Title of TPO: 1969

TPO File No: 27

M J Parfitt
8 Lombardy Close
Hemel Hempstead
Herts
HP2 4NG

DEVELOPMENT ADDRESS AND DESCRIPTION
=====

8 Lombardy Close, Hemel Hempstead,

APPLICATION FOR REMOVAL OF BRANCHES

Your application for *works to a tree protected by a TPO* dated 10.09.1992 and received on 16.09.1992 has been **GRANTED**, subject to any conditions set out on the attached sheet(s).

Director of Planning.

Date of Decision: 28.09.1992

(encs. - Conditions and Notes).