

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To G E & W Birch Parkfield House 15 Parkfield Road S Harrow Aitchisons 154 High St Berkhamsted Herts

4 detached dwellings at 27 Pancake Lane Hemel Hempstead

Brief description and location of proposed development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 2.12.88 and received with sufficient particulars on and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:-

The proposed development is likely to result in the loss of trees to the significant detriment of the character and visual amenity of the area.

Dated 6th day of February 1989

Signed [Signature]

Chief Planning Officer

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.

3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.



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Department of the Environment

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J. D. W.
J. B.

PLANNING DEPARTMENT GTN 1374 DACORUM BOROUGH COUNCIL						
Ref.			Ack.		Your reference	
Group	C.P.O.	T.C.P.M.	D.P.	D.C.	B.C.	Admin. File
						Our reference
Received			25 JAN 1990		Date	
Comments						

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T/APP/A1910/A/89/128848/P8

24 JAN 90

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9 AS AMENDED BY THE HOUSING AND PLANNING ACT 1986, LOCAL GOVERNMENT ACT 1972, SECTION 250(5) APPEAL AND APPLICATION FOR COSTS BY G E AND W BIRCH
 APPLICATION NO: 4/2194/88

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal against the decision of the Dacorum Borough Council to refuse planning permission for the erection of 4 detached dwellings and 2 detached garages on land at 27 Pancake Lane, Hemel Hempstead. I held a local inquiry into the appeal on 19 December 1989. At the inquiry, an application for costs was made on behalf of your clients and I deal with this separately below.

APPEAL

2. The appeal site is located within a residential area of Hemel Hempstead and the Council confirmed that there is no policy objection to residential development. Two oak trees, the subject of a Tree Preservation Order, stand within the site. The Council were originally concerned about the relationship of house type C to the smaller of these, identified as T2. However, it has been discovered to be diseased and consent has recently been granted for its felling, subject to the planting of a suitable replacement. The Council confirmed at the inquiry that there is no longer any objection to the proposal in relation to the remaining tree, nor in relation to the replacement tree, whose species and location is yet to be agreed.

3. Therefore, from my inspection of the appeal site and its surroundings and from the representations and evidence, I consider the main issue in this case to be whether the proposal would lead to an unacceptable level of on street car parking and a reduction in highway safety in Lombardy Close.

4. The Council have recently adopted interim parking guidelines which would require each 3 bedroomed house to provide 3 off street car parking spaces. The 2 proposed type A dwellings would comply with this standard. The types B and C with access from Lombardy Close would provide 2 spaces each, a shortfall of one in each case. Although the Council accepted at the inquiry that this did not amount to sufficient justification to refuse the application, the residents who gave evidence showed great concern about this matter.

5. It was pointed out that a great deal of on street parking occurs at present due to high levels of car ownership, use of garages for storage purposes and in winter due to the difficulty of using the steep drives opposite the appeal site. Development Control Policy Note 2 points to the undesirability of on-street parking which can cause danger, impede traffic, hinder refuse collection and street cleaning and look unsightly. The use of Lombardy Close as a through pedestrian route by children gaining access to the playing fields at the rear is a consideration to be taken into account.

6. The proposed house types B and C would not have steeply sloping drives and I have no reason to assume that their occupants would not use the garages for the intended purpose. Despite acknowledging a shortfall below the Council's desired parking standards I find the proposal acceptable for the following reasons. Firstly, the proposal would result in a considerable improvement to the forward visibility on the approach to this section of Lombardy Close where at present the screen fencing limits visibility to a dangerously low level. In my view this outweighs the risk of additional on street parking. Secondly, the appeal site is unusual in having a considerable flank frontage where occasional visitors could park without in my view unduly harming traffic safety. I conclude, therefore, that the net result would not be unduly harmful to highway safety.

7. I have taken account of the difference in the proposed house designs from those existing in Lombardy Close. However I do not find this objectionable. Development Control Policy Note 2 also offers advice on this matter and points to the potential benefit of introducing variety into a residential area. Given the densely built up appearance of much of Lombardy Close, I do not find the proposal would over develop the site such as to harm the character of the area.

8. The Council suggested a number of conditions which they considered should be imposed if I allow the appeal and I have examined these in the light of the advice of Circular 1/85 and the views expressed at the inquiry. Specific details of facing materials are not given and I consider it important that control should be exercised to ensure the proposed houses are compatible with the existing. Conditions requiring landscaping and the protection of trees are also important to safeguard the character of the area. Conditions to ensure visibility from the proposed access drives and around the bend in Lombardy Close are important to road safety in the area and a condition to ensure on site parking and turning areas is important to minimise on street parking. The conditions seeking to control the construction of the crossovers appears to me covered by other legislation. Furthermore, I heard no evidence to justify the junction alterations in Lombardy Close suggested in the Council's draft condition No 6.

9. I have taken into account all other matters raised but have found nothing of sufficient importance to outweigh the material considerations which have led to my conclusions.

10. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the erection of 4 detached dwellings and 2 detached garages on land at 27 Pancake Lane, Hemel Hempstead in accordance with the terms of the application (No 4/2194/88) dated 1 December 1988 and the plans submitted therewith, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;
2. no development shall take place until details of the external facing materials to be used have been submitted to and approved by the local planning authority.
3. no development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include details of all existing trees on the land, and details of any to be retained, together with measures for their protection in the course of development;
4. all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development,

whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation;

5. no obstruction over 600 mm above carriageway level shall be constructed, grown or stationed within the forward visibility area shown cross hatched within the curtilage of house type C on drawing No 572/10;

6. the dwellings hereby permitted shall not be occupied until the arrangements for vehicular parking and turning shown on drawing No 572/10 have been provided. They shall not be used thereafter otherwise than for the purpose approved.

11. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

12. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

THE APPLICATION FOR COSTS

13. In support of your clients' application, you argued that the Council had behaved unreasonably in 3 significant areas. When the tree in question (T2) was first looked at by the Council in 1988 as part of their appraisal of an earlier application, a thorough examination should have revealed the disease which later led to their agreeing to its felling. Had that occurred, the reason for refusal could not sensibly have been imposed.

14. Secondly, leaving aside the condition of the tree, the reason for refusal was still unreasonable. The layout was designed to accommodate the trees on site in accordance with the latest draft British Standards. At worst, there would have been the need for relatively infrequent pruning of the tree to enable its satisfactory co-existence with house type C.

15. Thirdly, having discovered the disease in tree T2, the Council did not take reasonable steps to prevent the inquiry's taking place. Your clients made it clear that if the Council would grant planning permission for a duplicate application they would not persist with the inquiry. A duplicate application had been with the Council for 6 weeks by the time the inquiry took place yet no decision had been made. Indeed, there remained the possibility that it could be refused.

16. The Council's response pointed to the difficulty of diagnosing the disease in the tree without extensive investigation. Your clients' previous tree expert did not identify a problem with the tree and no request to fell was made.

17. On the second matter, the Council felt this was a matter of professional disagreement over the interpretation of the draft British Standards. The Council took a broader view of the impact of the development on the trees rather than the minimum standards for protecting trees during development adopted by your clients.

18. Finally, the Council felt they had responded reasonably to the circumstances which had arisen since the disease in the tree was discovered. They had granted consent to fell on 6 December subject to a suitable replacement being planted.

They were considering a duplicate application and had offered to adjourn the inquiry until the decision was known. As the application needed to go before their committee, officers were unable to fetter the committee's decision by giving an undertaking as to the outcome.

CONCLUSIONS

19. In determining your clients' application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are only awarded on the grounds of unreasonable behaviour. Accordingly, I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances of the appeal.

20. From the evidence, it appears to me that the disease which ultimately led the Council to agree to the felling of tree T2 exhibits seasonal characteristics such that its presence is not readily apparent throughout the year. Also, its attack is on the roots, thereby making it full extent difficult to appraise. As no evidence was forthcoming from your clients' own tree expert at that time to indicate the tree was other than sound, I consider the Council did not act unreasonably in determining the application which is the subject of this appeal as though tree T2 was healthy. Moreover, even had the disease been apparent, the Council would have had to have regard to the impact of the development on the replacement tree.

21. Given that the tree in question was to be retained, there is clearly a difference of professional opinion as to the risk to its ability to survive the development long term. Your clients' tree expert was able to convince me that, with proper protection by fencing, the tree would most likely have survived the proposed building operations and that occasional pruning would have prevented physical interference with the adjacent building. However, in my view the Council were entitled to consider the wider aspects of the proximity of the proposed house type C to the tree and its effect on the living conditions of future occupants which could lead to pressure for felling. Irrespective of what my conclusion would have been on this issue, I consider the evidence which the Council presented to justify their stance was of considerable substance.

22. On the third matter, the Council acknowledged in writing on 27 November and at the inquiry that, had the condition of the tree been apparent earlier, it is likely that consent would have been granted subject to conditions. The Council were made aware of the condition of the tree on 2 November and a revised application for 4 dwellings was submitted the next day. It appears to me unfortunate that the application was not due to be determined until the evening of the inquiry date, there being a requirement for it to come before the committee. However, by the inquiry date, the application had not run beyond its statutory period for determination and, although the delay may be rather longer than desirable, it does not in my view amount to unreasonable behaviour.

FORMAL DECISION ON COSTS

23. For the above reasons and in exercise of the powers transferred to me, I hereby determine that your clients' application for costs against the Council be refused.

I am Gentlemen
Your obedient Servant

B.S. Rogers

B S ROGERS BA(Hons) DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANTS

Mr N Nardecchia

- of Counsel, instructed by Cheek, Lesson and Co, Solicitors, 198a Northolt Road, South Harrow.

He called:

Mrs J Ashton BA DipTP MRTPI

- Consultant Planning Group, 256 King Street, Hammersmith, London. W6 OSP

Mr C Yarrow BSc MF MICFor
FarborA

- Chris Yarrow and Associates, Wilderness Wood, Hadlow Down, Nr Uckfield, Sussex. TN22 4HJ

FOR THE PLANNING AUTHORITY

Miss A Freezer

- Articled Clerk, Dacorum Borough Council.

She called:

Mr S Murphy BA(Hons)

- Planning Officer, Dacorum Borough Council.

Miss R L Chapman BSc(Hons)
MSc(Oxon)

- Woodlands Officer, Dacorum Borough Council.

INTERESTED PERSONS

Mr A Rhodes

- 27 Lombardy Close, Hemel Hempstead.

Cllr M Malham

- on behalf of Mr Yates of 12 Lombardy Close, Hemel Hempstead.

Miss C Faichley

- 19 Lombardy Close, Hemel Hempstead.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Letter of notification of the inquiry and list of persons notified.

Documents 3.1-3.6 - Letters of objection.

Document 4 - Copy of Hemel Hempstead TPO (No 1) 1969.

Document 5 - Copy of Dacorum Borough Council's consent to fell tree T2.

Document 6 - Extract from draft BS5837 on trees.

DOCUMENTS CONTINUED

- Document 7 - Extract from Hertfordshire County Structure Plan Approved 1986 Review.
- Document 8 - Interim parking guidelines - Dacorum Borough Council. 11 October 1989.
- Document 9 - Dacorum Borough Council - draft list of planning conditions.

PLANS

- Plan A1-A4 - Layout and detailed plans 572/10 to 572/13.
- Plan B - Location plan.

PHOTOGRAPHS

- Photo 1 - Photograph of oak tree at 19 Lombardy Close.

Chris Yarrow & Associates

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PUBLIC ENQUIRY

PROPOSED DEVELOPMENT

BY

G.E. & W. BIRCH LIMITED

AT

PANCAKE LANE, HEMEL HEMPSTEAD

PROOF OF EVIDENCE

OF

CHRISTOPHER YARROW, CHARTERED FORESTER

B.Sc. M.F. M.I.C.For. F.Arbor.A.

J5.63

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
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Received		14 DEC 1989				
Comments						

December, 1989

Directors: Chris Yarrow B.Sc., Chartered Forester, Arboricultural Association Registered Consultant
Anne E. Yarrow B.A., M.Sc.

Proprietors & Service Co. Time-Off Properties Ltd. Reg. Office 27 Morden Hill, London SE13 7NN
Reg. England No. 976435 VAT No. 191 - 3350 - 75

CHRISTOPHER YARROW WILL SAY:

1. I am a Chartered Forester holding an honours degree in Forestry the University of Wales and Master of Forestry degree from the University of Montana, U.S.A. I am a Fellow of the Arboricultural Association and one of their listed consultants. I have specialised in amenity forestry, and the care of trees on development sites forms a significant element of my work. I have been in practice for the last twenty years and am a principal of a consultancy called Chris Yarrow and Associates, whose office is at Hadlow Down in East Sussex.

2. INTRODUCTION

I was instructed by G.E. & W. Birch to carry out a tree survey and visited the Appeal site in Pancake Lane, Hemel Hempstead in September of this year, and my findings are as follows -

2.1 Part of the site is covered by a Tree Preservation Order No.1 confirmed 7th June 1969 and reproduced as Appendix One of this Proof.

3. SURVEY FINDINGS

3.1 Description of Site

The site is comprised of the former garden of a house fronting on to Pancake Lane which was demolished in November/December 1988. It is almost level and measures some 20m. by 85m. There were a number of small trees, mainly fruit on the site but these had been felled some time prior to my inspection. There are a number of large trees in the vicinity of the Appeal site, on the west side of Lombardy Close. Three trees are outside the site boundary; a Cedar of Lebanon, an Atlantic cedar and a Pin Oak, the locations of which are shown on plan 572/10 prepared by Aitchisons. There are two oaks within the site boundary and shown on the above plan, and I shall refer to these as trees 1 and 2. These are the only significant trees on the site.

3.2 Details of the Trees.

Both trees were assessed from the ground and no climbing was carried out as this was considered unnecessary. Their heights were measured by a hypsometer and crownspreads by pacing. The diameter of the trunk was measured at 1.3m, using a girthing tape.

3.3 Tree No.1

This is an English Oak growing immediately adjacent to the boundary fence. Its height is 16m and trunk diameter is 48 cm. The crown is

one sided extending approximately 6 m. on the north-west, north and north-east sides but only 4m. to the south-east because of the presence of the larger tree no.2. I would estimate the tree to be in the region of 60-70 years old but is already relatively senescent, with some dead wood and epicormic branches beginning to form throughout the crown. The tree would appear to be stressed and has been dominated by the larger tree to its south-east.

- 3.4 At the base of the tree on the south-east side there is a major wound with active soft white decay into the buttress roots. There is a buttress root on the east side which disappears under the boundary fence and into the asphalted pavement. I would imagine it was damaged if not severed at the time of the development of Lombardy Close approximately 19 years ago. The decay appears to have entered this buttress root but without excavating the pavement it would not be possible to determine the extent of the decay.
- 3.5 At the time of a meeting with representatives of Dacorum Borough Council on the 2nd November there was a bunch of fruiting bodies of the fungus Sulphur Tuft, *Hypholoma fasciculare*. This fungus lives on dead wood, and is common on dead stumps. In common with other fungi the fruiting bodies do not appear until the fungus is well established and one must conclude that a significant amount of dead wood is present at the base of the tree. This dead wood is decaying partly as a result of the Sulphur Tuft but also I suspect as the result of some more aggressive fungus whose fruiting body was not present on both the occasions I visited the site. This is hardly suprising as most fungi exhibit such fruiting bodies only periodically, and can go years before they appear. In my opinion this tree has now reached the stage where it is becoming dangerous and should be felled. The tree overhangs a public highway and if it fell and caused damage to persons or property my clients would inevitably be held liable in a court of law. Many trees show signs of decay and can quite happily survive for a number of years, but when establishing whether or not a tree should be felled or not prudence dictates that the result of a trees failure should be considered. A tree in a remote piece of countryside could be left to fall with little consequence; a tree overhanging a public highway should be felled if there is significant doubt as to its potential stability.
- 3.6 **Tree No.2** is also an English Oak with a height of 20m. and a breast height diameter of 75 cm. The crown spreads some 8m. to the south-east, 9 m. to the south-west, approximately 8m. across the road and some 5-6m. towards tree no.1. This tree is somewhat older than tree no. 1 and I would estimate it to be 150 years old. Although there is some small amount of dead wood and small broken branches in the crown, the foliage is dense and vigorous and in good health. The trunk divides at 2½ metres to form a narrow fork but I did not consider this to be weak. There is a small cavity at the base between two root buttresses but probing indicated that this was superficial and of no consequence.

4. Effects of the Proposed Development

- 4.1 The proposed development calls for the building of four new houses, as illustrated in Aitchison's plan no. 572/10. The two houses at the Pancake Lane frontage are sufficiently far away from the large verge trees in Lombardy Close for them not to be affected in any way by the development. The only house close to any tree is the one labelled "House Type C" in the neighbourhood of tree no.1. The Borough Council refused permission in February of this year on the sole grounds that "the proposed development is likely to result in the loss of trees to the significant detriment of the character and visual amenity of the area". From my discussions with the Borough's Woodlands Officer I gather that the main concern is solely with regard to tree no.1. I consider it to be unfounded for the following reasons:
- 4.2 Firstly, the tree has become unsafe and should in any case be felled whether or not the development goes ahead. Secondly, even if the tree were to be left it is sufficiently far away from the house for its roots not to be affected by the development. The nearest part of the house is 7.2m. from the tree. I understand that there were two smaller trees immediately adjacent to the oak, and between it and the proposed house C. These also would have prevented the roots colonising that part of the garden by virtue of their competition.

5 Tree Protection

- 5.1 Whenever trees have development in their close proximity there is always a danger of root loss and compaction of roots causing damage to the trees. It has been known for a long time that trees can lose a certain proportion of the roots with no ill effect, and in order to give guidance to architects, planners and builders, the British Standards Institution issued a code of practice "Trees in relation to construction" (B.S. 5837:1980). This code of practice was useful in its time but found to be too simplistic in many of its respects and a draft revision has been under preparation for some time, but it is not likely to be published for a few months yet. In the latest draft, dated 15th December 1988, preferred minimum distance is given depending on the size, age and vigour of the tree. I have reproduced this in my Appendix 2 at the back of this proof. Tree No. 1 is middle-aged and of low vigour with a diameter between 250-500mm. and therefore the preferred minimum distance is 6.0m. Although the proposed excavation is only on one side disturbance by the construction of Lombardy Close in effect means the development is occurring on more than one side, and therefore, the more stringent standards should be used. However, as the applicable standard is 6.0 metres and the tree is 7.2 metres from the nearest part of the proposed house it is not at risk.

- 5.2 It could be argued that even with tree no.1 removed, a course of action I would recommend, the occupant of house C would want the larger remaining oak, no.2, to be lopped on grounds of loss of light. I think this is an unnecessary fear on the following grounds:
- 5.3 Firstly the nearest part of the crown is 8m. from the house and the tree is now reaching a stage of its life when further extension is relatively slow. The tree is on the east south-east side of the house and any shading would be restricted to the morning and most of the garden would have unrestricted sunshine thereafter. Secondly, the tree is covered by a preservation order and the Local Authority is not bound to acquiesce to requests for tree lopping.
- 5.5 Finally, people often move into houses because of the large trees in their gardens or close proximity. A good case is the large oak in the fork of Lombardy Close outside no. 19. This is on the south side of the house and the degree of shading is shown clearly on the photograph which I now produce in exhibit CY 1.
- 5.6 Should this Appeal be allowed stringent measures should be taken to protect the trees worth keeping and I would recommend stout fencing be erected round the crown spreads and all building work kept outside the fenced area. No doubt this could be made a condition of development. Other protective measures are well enough known not to need re-iterating here, and are covered in section 8 of the draft British Standard.
- 5.7 At the time of writing this proof I understand the Borough's Woodlands Officer agrees that tree no. 1 is potentially unsafe and that permission is about to be granted for its felling.

6. Replanting

The application plan shows a number of new trees being planted. Following a meeting with the Borough's Woodlands Officer a further plan, 572/10A was submitted, showing an additional tree planted on the eastern site boundary as a replacement for the oak I recommend felling, tree no.1. By consensus, it was felt that a Norway maple would be appropriate, and that this should be a large specimen when planted, perhaps 5m. high.

7. Conclusions

From the above I would draw the following conclusions:

- 7.1 The Appeal site has only two significant trees on it. These are two oaks on the north-eastern boundary.
- 7.2 The smaller of the two trees is now potentially dangerous and should be felled. Its removal would benefit the growth of the remaining tree.
- 7.3 Even if the smaller tree were not felled the proposed development is sufficiently far away for its roots not to be affected by the proposed development.
- 7.4 The remaining tree is to the east south-east of the nearest house and would result in only limited shading for the early part of the day. Pressures to fell or lop it would be unfounded, and as the tree is covered with a preservation order the Local Authority could resist any such requests.

TREE PRESERVATION ORDER. TOWN AND COUNTRY PLANNING ACTS, 1962 and 1968. (Civil Amenities Act 1967)*

THE BOROUGH OF HEMEL HEMPSTEAD TREE PRESERVATION (NO.1) ORDER 1969

THE MAYOR, ALDERMEN AND BURGESSSES of the BOROUGH OF HEMEL HEMPSTEAD acting on behalf of THE COUNTY COUNCIL OF THE ADMINISTRATIVE COUNTY OF HERTFORD in this order called "the authority" in pursuance of the powers conferred in that behalf by Section 29 of the Town and Country Planning Act, 1962 (and section 10 of the Civil Amenities Act, 1967)*, and subject to the provisions of the Forestry Act, 1967, hereby make the following Order :-

1. In this Order :-

"the Act" means the Town and Country Planning Act, 1962.

"owner" means the owner in fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years; lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more and a mortgagee in possession; and

"the Minister" means the Minister of Housing and Local Government, ~~Secretary of State for the Environment~~

2.—Subject to the provisions of this Order and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the authority and in accordance with the conditions, if any, imposed on such consent, cut down, top, lop, or a fully destroy or cause or permit the cutting down, topping, lopping or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland therein specified, the position of which trees, groups of trees and woodlands is defined in the manner indicated in the said First Schedule on the map deposited for inspection at the Borough of Hemel Hempstead Tree Preservation (No.1) Order 1969 signed by the Clerk of the Authority and deposited for inspection at offices of the authority at the Town Hall, Hemel Hempstead, which map shall, for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

3.—An application for consent made ~~to the authority~~ under article 2 of this Order shall be in writing stating the reasons for making the application, and shall by reference if necessary to a plan specify the trees to which the application relates, and the operations for the carrying out of which consent is required.

4.—(1) Where an application for consent is made ~~to the authority~~ under this Order, the authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof), as the authority may think fit, or may refuse consent.

Provided that where the application relates to any woodland specified in the First Schedule to this Order the authority shall grant consent so far as accords with the principles of good forestry, except where, in the opinion of the authority, it is necessary in the interests of amenity to maintain the special character of the woodland or the woodland character of the area, and shall not impose conditions on such consent requiring replacement or replanting.

(2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of the application, the decision of the authority thereon, any compensation awarded in consequence of such decision and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

5.—Where the authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied —

(a) that the refusal or condition is in the interests of good forestry; or

(b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

6.—(1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless —

(a) such consent is granted for the purpose of enabling development to be carried out in accordance with a permission to develop land under Part III of the Act, or

(b) the authority with the approval of the Minister dispense with replanting,

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where such a direction is given and the part is felled the owner shall, subject to the provision of this Order and section 25 of the County-side Act, 1968, replant the said land in accordance with the direction

* Include any where order contains a direction under section 10 of the Civil Amenities Act, 1967.

† Delete where the Order is made by a District Council.

‡ Map to be a scale of not less than 25 metres to one mile, except in the case of large woodlands when the scale shall be 6 inches to one mile.

NOTE. — It is intended to fill any of the trees included in this Order whether included as trees, groups of trees or woodlands and the trees for the felling of which a licence is required under the Forestry Act, 1967, application must be made not to the authority for consent under this Order but to the Conservator of Forests for a licence under that Act (section 15 (6)).

FIRST SCHEDULE

No. on Map Description Situation

TREES SPECIFIED INDIVIDUALLY
(Circled in black on the map)

No. on Map	Description	Situation
T.1	Oak	In the grounds of property known as "Tompe", 35 Pancake Lane, Homel Hempstead.
T.2	Oak	To the south-east of area A.1.
T.3	Oak	To the south of T.5.
T.4	Scotch Fir	To the south-east of T.2.
T.5	Yew	To the north of T.5.
T.6	Lime	To the north-east of T.5.
T.7	Sycamore (Variegated)	To the north-east of T.6.
T.8	Picea	To the north-east of T.7.
T.9	Cedar	To the east of T.8 and to the west of the property known as "Tompe".
T.10	Oak	To the south-east of T.3.
T.11	Cedar	To the south-east of T.10.
T.12	Cupressus	To the north of T.6.

TREES SPECIFIED BY REFERENCE TO AN AREA
(Within a dotted black line on the map)

No.	Description	Situation
A.1	The several trees of whatever species standing in the area numbered A.1 on the map	In the grounds of property known as No. 25 Pancake Lane, Homel Hempstead. North-western end of property.
A.1	Do.	In the grounds of property known as No. 27 Pancake Lane, Homel Hempstead. North-western end of property.
A.1	Do.	In the grounds of property known as "Tompe", 35 Pancake Lane, Homel Hempstead. To the north-western end of the property.

GROUPS OF TREES
(Within a broken black line on the map)

No.	Description	Situation
G.1	Group consisting of 7 poplars	In the grounds of property known as "Tompe", 35 Pancake Lane, Homel Hempstead. To the north-east of the property known as "Tompe".

WOODLANDS
(Within a continuous black line on the map)

NONE

* The word "NONE" must be entered where necessary.

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(5) Before determining an appeal under this section, the Minister shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(7) The decision of the Minister on any appeal under this section shall be final.

25. **Appeal in default of decision.**—Where an application for consent under the Order is made to the authority, then unless within two months from the date of receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either—

(a) give notice to the applicant of their decision on the application; or

(b) give notice to him that the application has been referred to the Minister in accordance with directions given under section 22 of the Act;

the provisions of the last preceding section shall apply in relation to the application as if the consent to which it relates had been refused by the authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

27. **Power to revoke or modify the consent under the order.**—(1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the authority may by Order revoke or modify the consent to such extent as they consider expedient.

(2) Any Order made under the provisions of section 27 of the Town and Country Planning Act 1962 and Section 27 of the Town and Country Planning Act 1968 in exercise of this section shall not have effect unless it is confirmed by the Minister; and the Minister may confirm any such Order submitted to him either without modification or subject to such modifications as he considers expedient.

(3) Where an authority submit an Order to the Minister for his confirmation under this section, the authority shall transmit the Minister a statement of their reasons for making the Order and shall serve together with a copy of the aforesaid statement on the owner and on the occupier of the land affected, and on any other person who in their opinion will be affected by the Order, and if within the period of twenty-eight days from the date on which any person entitled to be notified of the Order has notified the Minister, before confirming the Order, shall afford to that person, and to the owner and to the occupier, an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(4) The power conferred by this section to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed.

Provided that the revocation or modification of consent shall not affect so much of those operations as has been previously carried out.

(5) Where a notice has been served in accordance with the provisions of subsection (3) of this section, no operations or further operations in the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Minister under subsection (2) of this section.

(b) Town and Country Planning Act 1968.

80. (1) The following provisions shall have effect where the local planning authority have made an Order (hereinafter called "such Order") under section 27 above revoking or modifying any consent granted on an application made under a previous provision of this Act but have not submitted such Order to the Minister for confirmation by him and the owner and the occupier of the land, and all persons who in the authority's opinion will be affected by such Order have notified the authority in writing that they do not object to such Order.

(2) The authority shall advertise the fact that such Order has been made and the advertisement shall specify (a) the period not less than twenty-eight days from the date on which the advertisement first appears within which persons affected by such Order may give notice to the Minister that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose and (b) the period (not less than 14 days from the expiration of the period referred to in paragraph (a) above) at the expiration of which, if no such notice is given to the Minister, such order may take effect by virtue of this section and without being confirmed by the Minister.

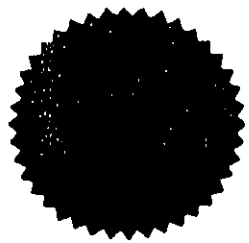
(3) The authority shall also serve notices to the same effect on the persons mentioned in subsection (1) above.

(4) The authority shall send a copy of any advertisement published under subsection (2) above to the Minister, not more than three days after the publication.

(5) If within the period referred to in subsection (2) (a) above no person claiming to be affected by such Order has given notice to the Minister as aforesaid and the Minister has not directed that such Order be submitted to him for confirmation, such Order shall at the expiration of the period referred to in subsection (2) (b) of this section, take effect by virtue of this section and without being confirmed by the Minister as required by section 27 (2) of the Town and Country Planning Act 1962.

(6) This section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Minister under Part III or Part IV of the Town and Country Planning Act 1962 or under Part II or Part V of the Town and Country Planning Act 1968.

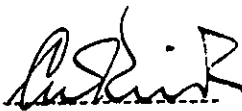
GIVEN under the Common Seal of the
MAYOR AND BURGOESSES of the
BOROUGH OF BIRMINGHAM
the twenty-third day of
April in the year
nineteen hundred and sixty-eight



William Clark
Mayor and Bailiff
[Signature]
Town Clerk

SEAL REVENUE
BOOK 1
NOV 3231

Confirmed by the Council on the 17th day of June one thousand
nine hundred and sixty nine in pursuance of
their powers under Section 11 of the Land and
Country Planning Act 1968.

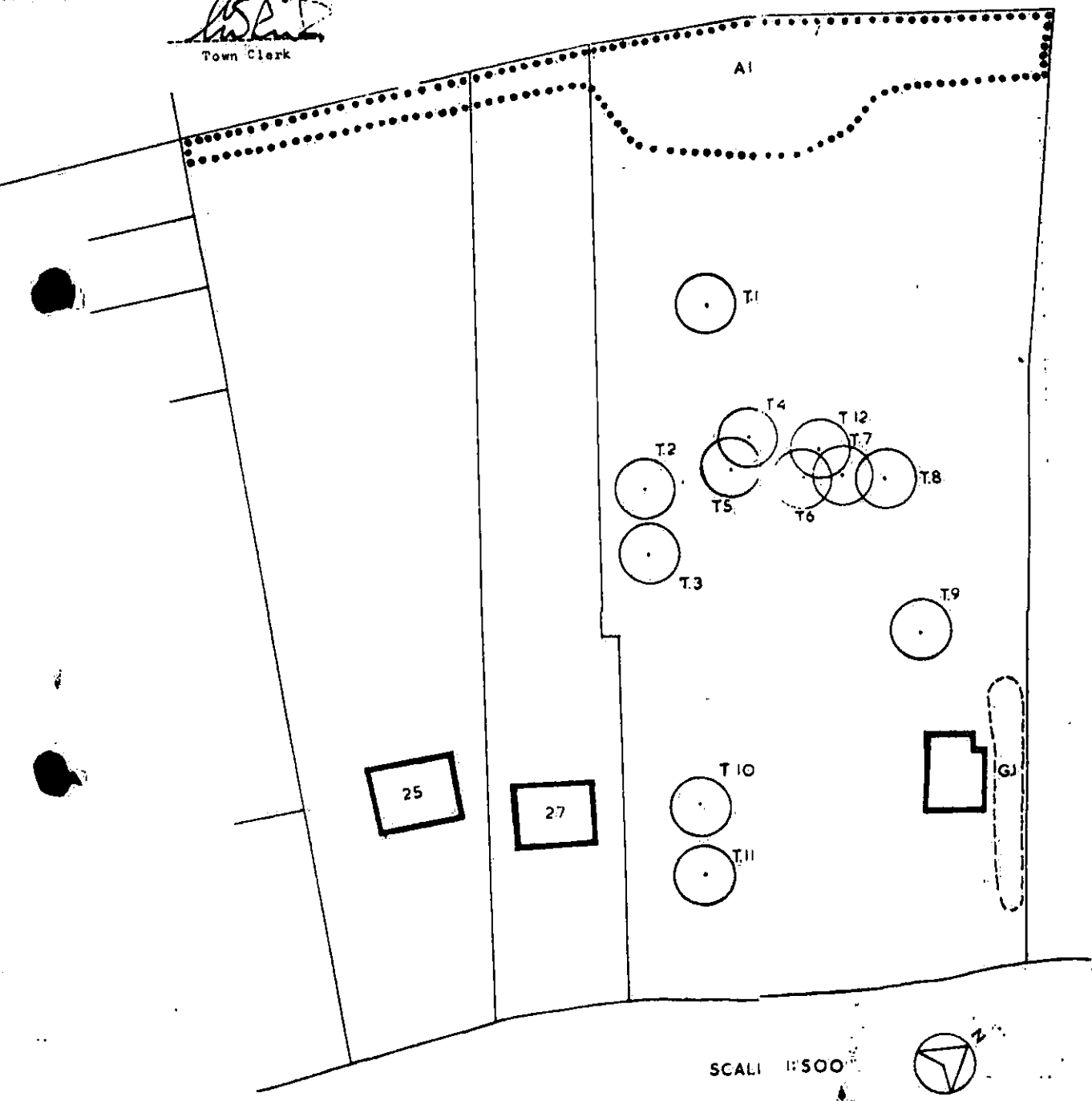


Town Clerk

BOROUGH OF HEMEL HEMPSTEAD

ordered by the Hemel Hempstead Borough Council
on the seventh day of June One thousand nine hundred
sixty nine in pursuance of their powers under
section 81 of the Town and Country Planning Act 1968

[Signature]
Town Clerk



SCALE 1:500



APPENDIX TWO

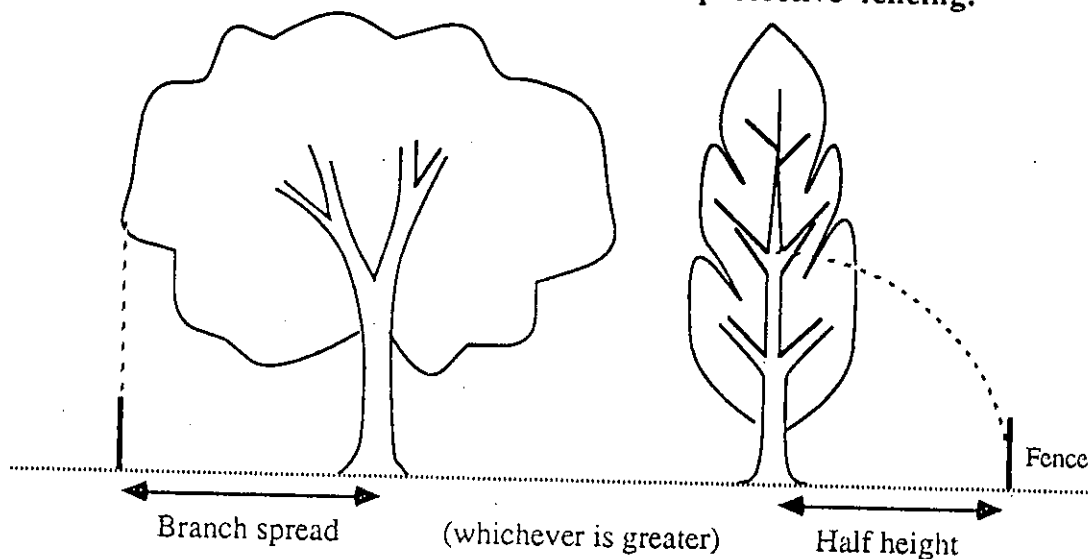
Table 1. Distances for protection around trees by fencing.

1. <u>Tree condition</u>	2. <u>Trunk Diameter (mm)</u>	3. <u>Preferred minimum distance (m)</u>	4. <u>Minimum distance on one side only *</u> (m)
Young trees (age less than 1/3 life expectancy), growing vigorously	<200	2.0	1.0
	200-400	2.5	1.5
	>400	3.0	2.0
Young trees, low vigour	<200	3.0	2.0
	200-400	4.0	2.5
	>400	5.0	3.0
Middle age trees (1/3 to 2/3 life expectancy), growing vigorously	<250	3.0	1.5
	250-500	4.0	2.0
	>500	5.0	2.5
Middle age trees, low vigour	<250	5.0	3.0
	250-500	6.0	4.5
	>500	7.5	6.0
Mature trees growing vigorously	<350	4.0	2.0
	350-750	5.0	2.5
	>750	6.0	3.0
Mature trees of low vigour, and overmature trees	<350	6.0	4.0
	350-750	9.0	6.5
	>750	12.0	9.0

* Excavation or root damage closer than distances in Column 4 may render the tree dangerous - see 7.4.5

7.5.6 As a simple alternative to using Table 1 which requires assessment of the age and vigour of the tree, the fencing may be erected below the outermost limit of the branch spread, or at a distance equal to half the height of the tree, whichever is the further from the tree. (see figure 2). This distance will usually be significantly greater than the distances advocated in Table 1.

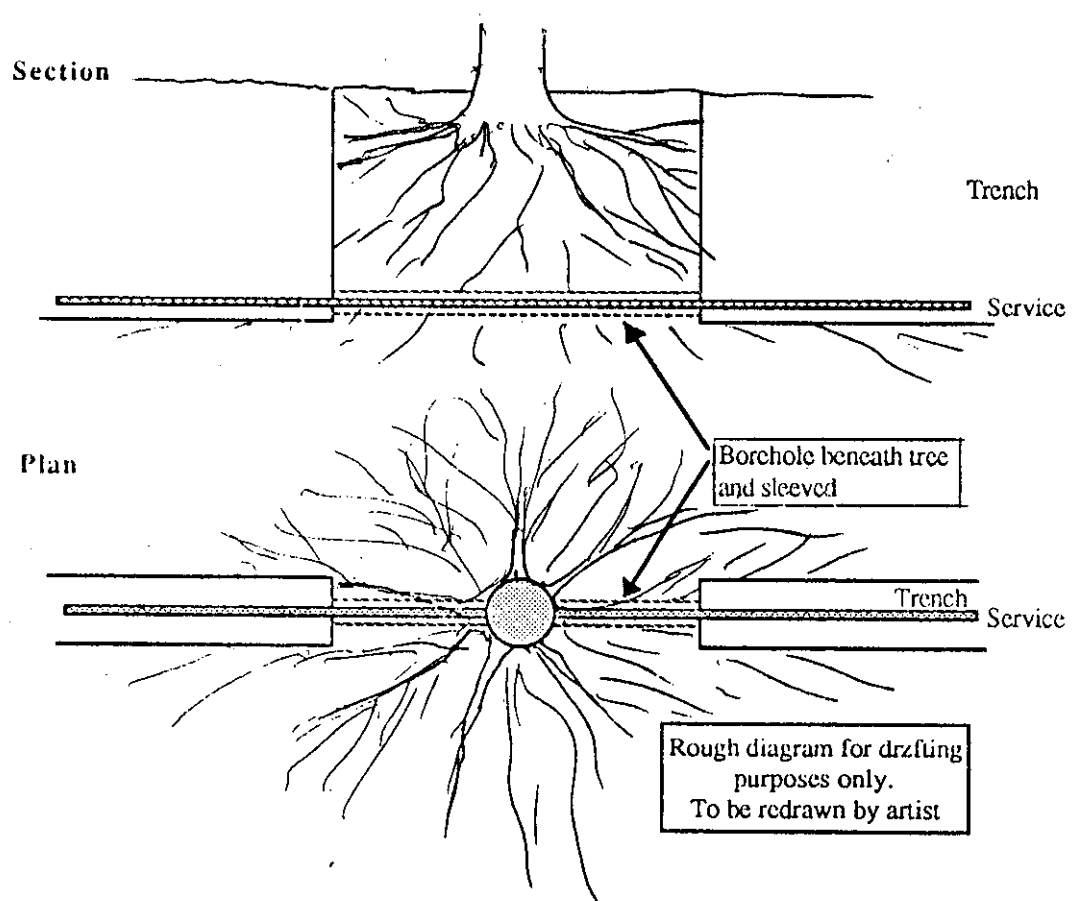
Figure 2. Alternative location for protective fencing.



7.5.7 In situations where it is unavoidable for a service trench to be taken closer than the distances shown in column 3 of Table 1, thrust boring a hole for the service provides an acceptable solution. Provided the diameter of the borehole is small, the amount of root damage will be minimal. The boreholes should be kept as deep as possible.

7.5.8 An alternative solution is to excavate a trench passing directly towards the tree along a radius, tunnel straight beneath the tree, and exit on the opposite side along another radius (see Figure 3). Provided the trench is kept as narrow as possible, the amount of root severance will be minimal, and will be far less than a trench passing close beside the tree. It may be necessary to sleeve a service where it passes beneath a tree in order to reduce the risk of damage (see Table 2) and facilitate future servicing and repair.

Figure 3. Trenching along radii to minimise damage.



7.6 Damage to trunk or branches

7.6.1 The area of fencing which protects the root system is usually sufficient to enclose the branch spread. If branches extend beyond the fencing in positions where they are liable to impact, the branch should either be shortened back to a fork (in accordance with the recommendations of BS 3998) or the area of fencing should be increased to a point below the branch spread.

7.6.2 At all times care should be taken to avoid any equipment striking the trunk, branches or foliage. Particular care is needed with overhead cranes, mechanical excavators and piling rigs.

7.6.3 Trees can also be damaged by heat. For this reason, fires should not be lit in a position where the flames could extend to within 5m of foliage, branches or trunk, bearing in mind size of fire and wind direction. With a large fire this may necessitate keeping the fire at least 20m from the tree.

8. Protection of existing trees against damage on site

8.1 General

8.1.1 All trees which are being retained on site should be protected by stout fencing, enclosing an area as recommended in 7.5. Such fencing should be erected before any materials are brought on the site or before any demolition or development is commenced. Once erected, fences should be regarded as sacrosanct, and should not be removed or altered without prior consultation with a specialist in arboriculture.

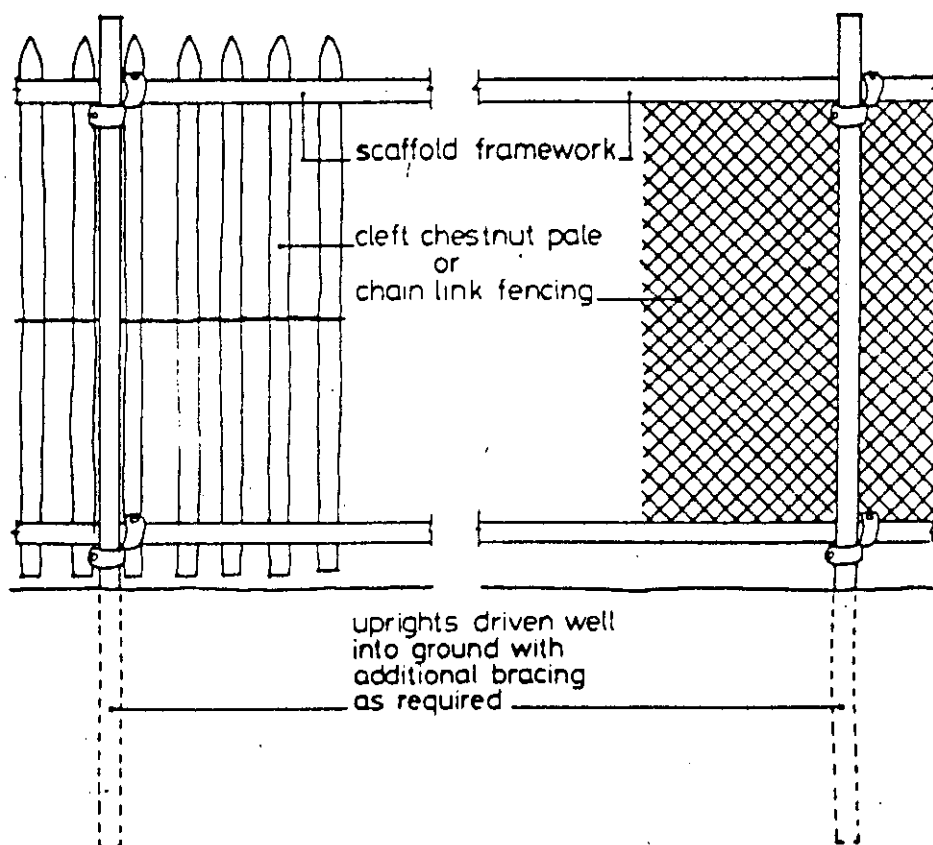
8.1.2 Occasionally the site will be so sensitive or vulnerable to damage that particular areas need to be protected or treated even before the constructor takes possession of it. In such a case, particular arrangements should be made by the owner or developer with an arboricultural specialist for hand work in the affected areas. Examples might include very old or rare trees, or trees sited unavoidably close to the constructors' access.

8.2 Fencing around trees

8.2.1 The fencing should be strong and suitable for local conditions, and should be appropriate to the degree of construction activity taking place on the site.

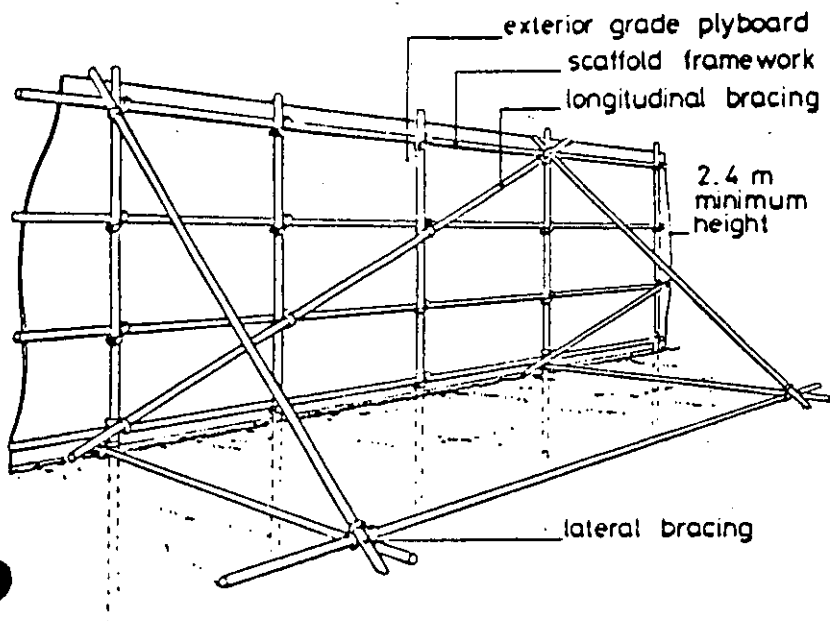
8.2.2 In most situations it is recommended that fencing at least 1.2m high should be erected, comprising a vertical and horizontal framework of scaffolding, well braced to resist impacts, supporting either chain link fencing (to BS1722: Part 1) or cleft chestnut pale fencing (to BS 1722: Part 4), as shown in Figure 4.

Figure 4. Protective fencing on scaffold framework.



8.2.3 In circumstances where the concentration of construction activity is particularly intense, or the trees and shrubs to be retained are either particularly valuable or particularly vulnerable, fencing at least 2.4m high should be erected, comprising a scaffolding framework (as in 8.2.2) supporting 20mm exterior grade ply boards, (of bond type WBP, and complying with the requirements of BS 6566:Part 8:1985) as shown in Figure 5.

Figure 5. Protective fencing for special conditions.



8.3 Additional precautions for fenced areas

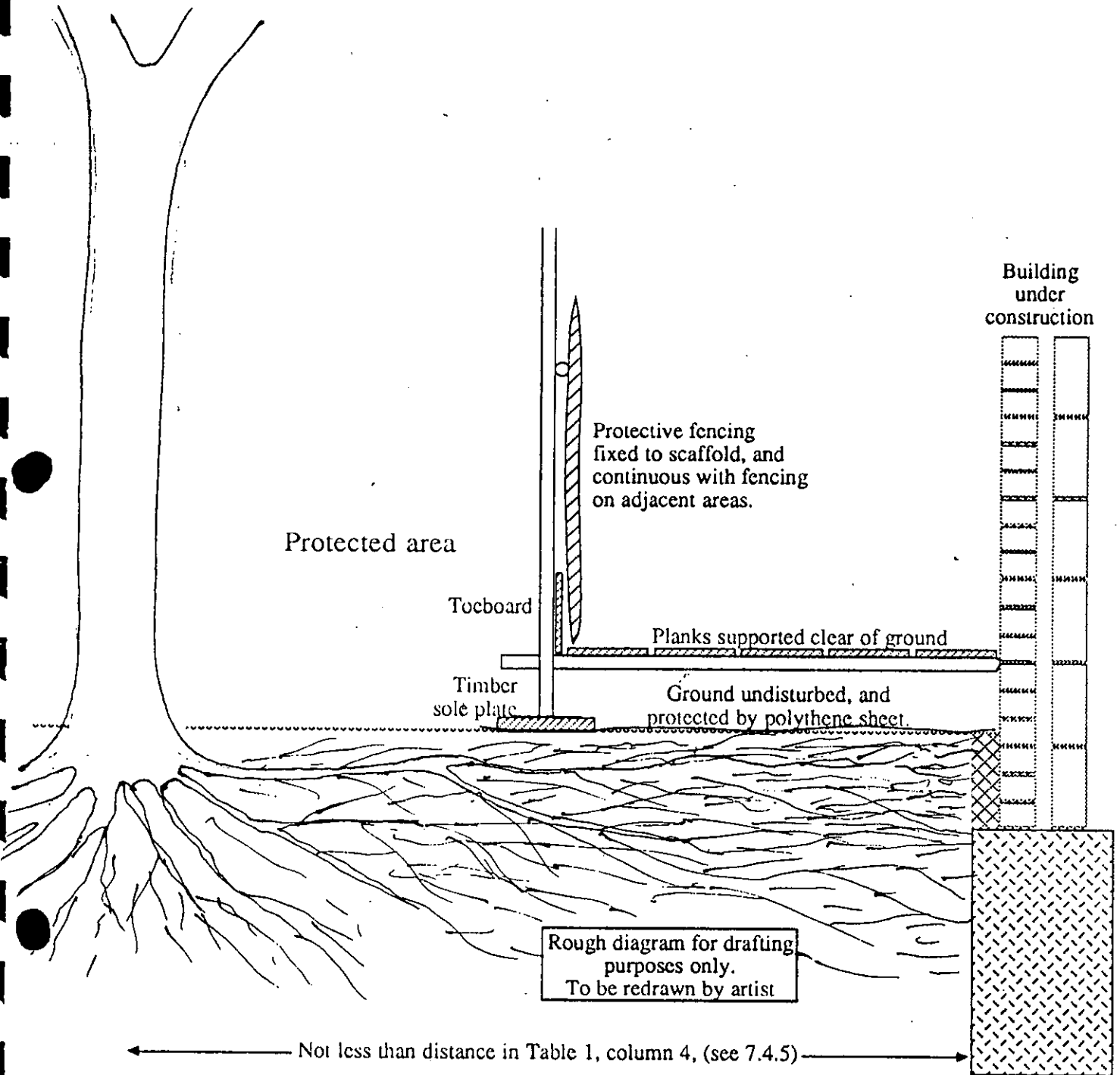
8.3.1 Once the area around trees has been protected by the fencing, any works on the remainder of the site can be carried out, provided such activities do not impinge on the protected areas.

8.3.2 In particular, care is needed to avoid damage in the following ways:

- (a) oil, bitumen, cement or other material likely to be injurious to a tree should not be stacked within 10m of a bole, and materials generally should not be stacked within 5m of a bole;
- (b) it is essential that fires should not be lit beneath or in close proximity to the canopy of a tree (see 7.6.3.);
- (c) if possible, trees to be conserved should not be used as anchorages for equipment used for removing stumps, roots or other trees or for any other purposes. When this is unavoidable, the trees should be protected in accordance with the recommendations of BS 3998;
- (d) notice boards, telephone cables, or other services should not be attached to any part of a tree;
- (e) care should be exercised when using cranes or similar equipment near the spread of the canopy of a tree;
- (f) trees to be felled that are adjacent to, or that lie within a continuous canopy of trees to be retained, should be removed with particular care. In some cases a tree may have to be removed in sections to avoid damage;
- (g) concrete mixing should not be carried out within 10m of a tree. It is essential that allowance should be made for the slope of the ground so that caustic materials cannot run towards trees.

8.3.3 If in exceptional circumstances it is essential for scaffolding to be erected within a protected area, timbers (such as railway sleepers) should be placed on the ground to support the scaffold, with horizontal scaffold and planks just above and clear of the ground. The ground should be protected by polythene, and fencing placed along the outside of the scaffold to maintain the protected area (as shown in figure 6).

Figure 6 - Scaffolding within a protected area



9. Tree removal and surgery.

9.1 Planning

9.1.1 A schedule or plan should be prepared listing all trees for removal. This should include :

- (a) all trees outside the areas designated for protection,
- (b) all trees listed in 5.2.2. (d),
- (c) other trees where it is agreed that removal is appropriate.

9.1.2 These trees should be marked on site with a timber scribe or paint, but when felling it should be confirmed that all marked trees correspond with those shown on the schedule or plan.



CHRIS. YARROW EXHIBIT C.Y.1.

LARGE OAK OUTSIDE NO.19 LOMBARDY CLOSE.

ADJACENT TO APPEAL SITE.