



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE
17 JANUARY 2008

ITEM 8A

Report of the Assistant Director - Regeneration

Tree Preservation Order 2007 Number 506 (Coney Grey, South Drive)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2007 number 506 (Coney Grey, South Drive).

SUPPORTING INFORMATION

- 2.1 On 25 October 2007 Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) on Coney Grey, South Drive, as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: "The trees indicated in this Order are proposed for protection in the interests of visual public amenity. The trees are situated in a prominent position and can be appreciated from the immediate vicinity as well as from further afield. The trees add materially to the amenities of the locality by playing an important part in contributing to the general greening effect on the immediate and surrounding area. Their contribution will only serve to increase over time given their young age."
- 2.3 Letters objecting to the TPO were received from Mrs Kathy Wilhelm (86 Belper Road) and Mr. Clive Lemmon & Mr. Gareth Stevens (78 Belper Road). The trees are located in the property (Coney Grey) which adjoins both of these properties. Copies of the objection letters are attached as Appendix 3.
- 2.4 The main points of Mrs Wilhelm's objection are listed below followed by the Assistant Directors response.
- 2.5 Mrs Wilhelm's **objection**: That the tree T1 (Birch tree) is very close to the house and she is concerned about the damage it is causing to the property due to leaf fall and seed drop which causes the guttering to block and consequently overflow water dampens the wall. Branches of the tree have in the past dislodged the guttering which causes leaks to appear in it.

- 2.6 **Assistant Director's response:** The tree preservation order makes an exemption that allows works to be carried out that are deemed necessary in order to abate damage or an actionable nuisance. Any works that are outside the scope of the exemption should be submitted in a formal application, which would in all likelihood be given consent provided that the works are appropriate, necessary and not likely to damage the tree and lessen the public amenity value of the tree. The issue of gutters becoming blocked is not considered significant enough to outweigh the amenity the tree provides.
- 2.7 Mr Lemmon's & Mr Stevens' **objection:** The tree T2 (Beech tree) has overhanging side branches which overhang their garage and shed roofs which limits the amount of rainwater they can collect and store for the purposes of garden watering. The deep shade cast by the tree is affecting the growing potential of their south facing flower border and as such they would prefer the original works to be allowed to go ahead and not be delayed by the preservation order.
- 2.8 **Assistant Director's response:** The preservation order was made as a result of a notification detailing tree works that we felt were extreme and ultimately would lessen the public amenity value of the trees. The tree preservation order allows for works to be carried out that are considered appropriate and having sound arboricultural justification. Mr Lemmon has been advised that if he was to submit a formal application which proposed works consisting of removing the lower branches (crown lifting), it would be given consent. An application has also since been submitted by the tree owner to crown thin the tree, which will be given consent. This coupled with the crown lifting suggestion to Mr. Lemmon, would overcome all the concerns raised by Mr Lemmon and Mr Stevens and demonstrates that the tree preservation order does allow for works to be carried out that are deemed appropriate and necessary.

For more information contact:	Jason Humphreys, Tree Preservation Order Officer, Tel - 01332 256031 E-mail – Jason.Humphreys@derby.gov.uk
Background papers: List of appendices:	Tree Preservation Orders, A Guide to the Law and Good Practice Appendix 1: Implications Appendix 2: Plan of trees location. Appendix 3: letter of objection

IMPLICATIONS

Financial

1. None.

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.
- 2.2 The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

3. None directly arising.

Corporate objectives and priorities for change

4. The confirmation of Tree Preservation Order 2007 Number 506 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment.



DERBY CITY COUNCIL

DERBY CITY COUNCIL
TREE PRESERVATION ORDER
Map referred to in the Derby City Council
Coney Grey, South Drive (Derby)

Tree Preservation Order 2007 No. 506

Regeneration and Community
Roman House
Friar Gate
Derby
DE1 1XB



J. Humphreys

**Clive Lemmon
Gareth David Stevens**

**'Gaddesby'
78 Belper Road
Derby
DE1 3EN**

**Assistant Director, Regeneration
Derby City Council
Regeneration and Community
Services Department
Derby
DE1 1XB**

29 October 2007

30 OCT 2007

Dear Sir,

TREE PRESERVATION ORDER 2007: NUMBER 506

Further to your letter of 25 October addressed to us as 'Owner/Occupier' of 78 Belper Road, we now write to lodge our formal objection to the above tree preservation order, as it applies to the beech tree, T2, on the plan attached to the order.

As you know, a proposal was lodged with you in September to have this tree crown reduced and to have some of its side branches cut. We were in favour of this proposal as, although we enjoy the presence of this tree, its unchecked growth outwards across our garden is becoming a problem. The overhanging side branches are keeping rain off our garage and shed roofs, so limiting the amount of rainwater we can collect and store for purposes of garden watering, and the resulting deep shade is beginning adversely to affect the growing potential of our south-facing flower border.

We, therefore, would prefer the crown reduction and side branch cutting work to be allowed to go ahead as soon as possible and not to be held up by the application of this Tree Preservation Order.

We believe that the general protection afforded by the Conservation Area status that applies to the garden in question to be adequate for the proper maintenance of the tree stock in the Strutt's Park Conservation Area and would welcome your comment on why you do not consider this to be the case.

Yours truly,

Clive Lemmon

Gareth D Stevens

KATHY WILHELM

86, Belper Road
Derby
DE1 3EN

30 October 2007

Derby City Council
Regeneration and Community Dept
Roman House
Friar Gate
Derby
DE1 1 XB

Your Reference JH/PL/506

Dear Mr Humphreys

Re TREE PRESERVATION ORDER 2007 NUMBER 506

Regarding the tree marked on your map T1 this tree comes within 4 feet of my house, I have great worries as to the damage it is causing to my property, because of the amount of seed and leaf drop I have to have my guttering cleared out on a regular basis, during the rain fall the water cannot flow along the guttering into the drain pipe it overflows the guttering and runs down the wall, the wall is damp and turning green, in the past the branches of this tree have dislodged the guttering this also causes leaks to appear in the guttering.

For the above reasons I would appreciate that this tree is allowed to be reduced in size to delay any damage that may be done by the dampness on my property wall.

I would very much appreciate a reply from you with your comments and decision

Yours faithfully

Kathy Wilhelm (Mrs)

Development & Planning Service
DEV
17/10/2007
TNCV 2007



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE
17 JANUARY 2008

ITEM 8B

Report of the Assistant Director - Regeneration

Tree Preservation Order 2007 Number 497 (11a Western Road, Mickleover)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2007 number 497 (11a Western Road, Mickleover, Derby).

SUPPORTING INFORMATION

- 2.1 On 22 August 2007 Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) on 11a Western Road, Mickleover, Derby as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: "The tree indicated in this Order is proposed for protection in the interests of visual public amenity. The tree is situated in a very prominent position and can be appreciated from the immediate vicinity as well as from further a field. The tree contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by having a general greening effect on the immediate and surrounding area.
- 2.3 A letter objecting to the TPO was received from Mr. J.C. Galland (11a Western Road). A copy of the objection letter is attached as Appendix 3.
- 2.4 The main points of Mr Galland's objection are listed below followed by the Assistant Directors response.
- 2.5 **Mr Galland's objection point one:** Mr Galland believes that the Birch tree is responsible for damage to his front bay window area. He has attached photographs showing the extent of visible cracks which are located both internally and externally. (photos will be available at the meeting).

- 2.6 **Assistant Director's response to point one:** "A site visit has been made involving a Council Project Engineer and he acknowledges that cracks are present that in his opinion result from differential foundation movement. He goes on to say that evidence is required that specifically implicates the Birch tree as the primary cause of the damage as there are other buildings in close proximity or within the tree's zone of influence. The reasons for his findings are detailed in his letter (appendix 4) and his fifth point details the evidence that we would expect to receive when determining whether or not a protected tree is responsible for causing alleged subsidence damage. He also states that it is evident that an engineering solution is required to remedy/address the cracking /movement of the bay window area regardless of whether or not the tree is removed.
- 2.7 **Mr Galland's objection point two:** Mr Galland is concerned that the tree canopy is in very close proximity to the over head telephone wire.
- 2.8. **Assistant Director's response to point two:** It is true that the telephone wire runs in very close proximity to the canopy of the tree and the Tree Preservation Order makes allowances for this, as such should any work be necessary in the future to alleviate any problems this may cause, an application submitted to the Council to carry out remedial pruning works would most likely be favourably met, provided it did not have a negative impact on the public amenity value or condition of the tree.
- 2.9 **Mr Galland's objection point three:** Mr Galland considers that the tree is dangerous as it overhangs the road and potentially either the tree or a large branch could fall into the road which is subject to amongst other traffic school buses and children.
- 2.10 **Assistant Director's response to point three:** The tree has been visited by the Assistant Arboricultural Officer who has conducted a standard Health & Safety assessment for suitability in making it the subject of a Tree Preservation Order and has said that the tree is in good condition with no structural defects, and that in his opinion the size of the tree is not an issue with regards to its overall structural integrity - trees are not dangerous just because they are large. Branches that grow over the road and pavement can be removed following an application to the council if it is deemed appropriate.
- 2.11 **Mr Galland's objection point four:** They have difficulty in getting off theirs and next doors driveways.
- 2.12 **Assistant Director's response to point four:** Having to reverse (or otherwise) vehicles onto Western Road is a procedure that is never going to be without risk and I am of the opinion that the position of the tree does not hinder significantly or increase the risk associated with the access or egress from either property due to the tree being located approximately 1.5metres back from the pavement and as such it does not interfere with any visibility splay.
- 2.13 **Mr Galland's objection point five:** The tree was one of a pair, the other being removed 20 years previously by the neighbouring property and upon removal was shown to be rotten inside.

- 2.14 **Assistant Director's response to point four:** The tree has been visited by the Assistant Arboricultural Officer who has conducted a standard Health & Safety assessment for suitability in making it the subject of a Tree Preservation Order and has said that the tree is in good condition with no structural defects.

For more information contact:	Jason Humphreys, Tree Preservation Order Officer, Tel - 01332 256031 E-mail – Jason.Humphreys@derby.gov.uk
Background papers:	Tree Preservation Orders, A Guide to the Law and Good Practice
List of appendices:	Appendix 1: Implications Appendix 2: Plan of tree's location. Appendix 3: Letter of objection Appendix 4: Visual Structural Assessment statement Appendix 5: Assistant Arboricultural Officers report

IMPLICATIONS

Financial

1. None.

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.
- 2.2 The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

3. None directly arising.

Corporate objectives and priorities for change

4. The confirmation of Tree Preservation Order 2007 Number 497 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment."



DERBY CITY COUNCIL

DERBY CITY COUNCIL
TREE PRESERVATION ORDER
Map referred to in the Derby City Council
(11a Western Road, Mickleover, Derby)

Tree Preservation Order 2007 No...497

Regeneration and Community
Environmental Sustainability Unit
Roman House
Friar Gate
Derby
DE1 1XB



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within this publication is provided by
Derby City Council, under licence from
Ordnance Survey, in order to fulfil its
public function to act as a planning authority.

11a Western Road
Mickleover
Derby
DE3 9GN

Dear Sir/Madam,

I am writing to appeal about the Tree Preservation Order placed on the tree on my premises. I spoke to the immediate neighbours either side and neither had a problem about removing it. I spoke to the contractor I was going to get to do the job and he saw no reason it could not be removed as it looks too large and dangerous being close to the house and a busy road on a bus route.

The reasons I would like to remove it are on the following photographs :

No's 1 , 2 , 3 and 4 show damage it is doing to the house ,showing the interior and exterior wall , the crack under the front bay window. These are visible, how these shallow roots are damaging the rest of the service pipes and structure of ours and next doors house you can probably guess it could get quite expensive. Next doors driveway already looks as if in places it is lifting and subsiding.

No 5 shows how close it is getting to the telephone wire.

No 6 shows how it now overhangs the road and with buses and cars up and down the road all day, including school buses and children, and Mums and Dads taking young children to school I dread to think what could happen if either the tree or a large branch comes down. Especially in this sue and blame culture we now live in.

No 7 and 8 show the difficulties in getting off ours and nextdoors drives.

Speaking with next door they say the Silver Birch was one of a pair and they removed theirs 20 years ago and although it looked good on the outside it was rotten all inside.

After getting a quote for the job I asked the contractor was it alright to remove he said yes but if I wanted to be sure ring the council up. I did this and did not get a reply for 5 days so I phoned again and spoke to someone who gave me an immediate answer of yes it can be removed as there is no T.P.O on it. He said he would note it down on the computer of our conversation. Then the following day I got this delivered by post sent by someone else.

Thankyou for reading my appeal and going over the reasons I have put down, I look forward to hearing from you soon

Yours Sincerely

MEMO

To: Jason Humphreys
TPO Officer
Roman House

From: Allieu Mackie
(Building Structures)
Tel.: 01332 256089

Copy to: Ian Janes/File

Date: 5th November 2007

TPO: Birch tree at 11a Western Road, Derby.

I refer to your request for a structural assessment and our subsequent limited visual structural inspection of the above property carried out on the 30th of October 2007.

My observations and inferences are as follows:

- The external bay window of no. 11a Western Road shows what appears to be a diagonal crack resulting from differential foundation movement of some sort.
- The alleged offending tree is at a distance of approximately 6.5m from the face of property, Birch species of low water demand. The mature height of the specie is 14m.
- The tree may not necessarily be the primary cause of the damage to the property at no. 11a Western Road since there are other buildings at close proximity or within the tree's zone of influence.
- The extent/depth of the existing foundations needs to be confirmed and seasonal monitoring of cracks within the property carried out for at least four seasons to ascertain/relate movements to the trees' zone of influence.
- In terms of water movements leading to shrinkage/swelling of the soil, the owner may submit in evidence details of soil tests carried out from trial pit or bore hole logs to establish soil type, fluctuations of water table (if any), soil plasticity and foundation depth (minimum depth 0.9m). Clearly demonstrate how these parameters interact with the tree and the resulting movements in the building. Other parameters such as the actual height of the tree, age category relative to the structure and distance to the structure will be required for a full assessment.
- It is evident that an engineering solution is required to remedy/address the cracking/movement of the bay window area of the property irrespective of whether the tree is removed or not.

This report only covers a limited visual inspection of the external walls of the property adjacent to the tree concerned. Any damage which may become apparent from other areas cannot be predicted.

Should you require any further clarification on this matter please do not hesitate to contact Mr. Allieu Mackie on Tel. 01332 256089.

Humphreys, Jason

From: Oakes, Jonathan
Sent: 01 November 2007 08:47
To: Humphreys, Jason
Subject: TPO 11a Western Road, Mickleover - PCC report

Jason

My comments regarding the objection letter received from Mr and Mrs Galland of the above address (letter undated).

The tree is in good condition with no structural defects. Its white stem and pendulous habit provide an attractive amenity for the locality. The size of the tree is not an issue with regards to its overall structural integrity – trees are not dangerous just because they are large. Branches that grow over the road and pavement can be removed following an application to the LPA.

The main issue that surrounds this tree is whether it has been responsible for the cracking mentioned in the letter and attached photographs. If the tree **is** responsible then placing a TPO on it would not be appropriate, however, if the cracking to the property was being caused by other factors such as leaking drains, settlement, inadequate foundations etc then protecting the tree with a TPO is perfectly reasonable.

I am not qualified to be able to comment on why this building has cracks I can only say that birch is in the 'low' category in terms of water demand (NHBC Chapter 4.2 – Building Near Trees). I would like to see further evidence that this tree is implicated in any cracking. Examples of such information to include;

- Soil type and plasticity under foundations
- Presence of birch roots
- Evidence of continuing movement (either crack monitoring or level distortion survey)
- Foundation depth
- Etc

If it is proved that the tree is responsible for damage to the building then it should be allowed to be removed.

Regards
Jonathan

Jonathan Oakes | Assistant Arboricultural Officer | Environmental Services | 15 Stores
Road, Derby, DE21 4BD | Tel: 01332 715539
www.derby.gov.uk
Derby City Council - committed to being an Excellent Council



Tree Preservation Order 2007 Number 502 (6 Constable Drive, Littleover)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2007 number 502 (6 Constable Drive, Littleover).

SUPPORTING INFORMATION

- 2.1 On 3 October 2007 Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) on 6 Constable Drive, Littleover as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: The trees indicated in this Order are proposed for protection in the interests of visual public amenity. The trees are situated in very prominent positions and can be appreciated from the immediate vicinity as well as from further a field. The trees contribute materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by contributing significantly to the general greening effect of the immediate and surrounding area.
- 2.3 A letter objecting to the TPO was received from Mrs M Paul (6 Constable Drive, Littleover). A copy of the objection letter is attached as Appendix 3.
- 2.4 The main points of Mrs Paul's objection are listed below followed by the Assistant Director's response.
- 2.5 **Mrs Paul's objection point one:** She is suffering health problems and being rendered unwell due to two Lime trees close to her house that provide continuous tree droppings throughout the year. She attaches a letter from Dr. S Sinha. A copy of the letter is attached as Appendix 4.
- 2.6 **Assistant Director's response to point one:** Whilst we appreciate the concerns Mrs Paul has over her health it should be pointed out there are a significant number of mature trees nearer to the house, which have potential to accentuate her health problems in addition to the two Lime trees she refers to. Of these two Lime trees, only one is the subject of the new tree preservation order she is objecting to. So even if the trees were to be removed, the problems she has with trees affecting her health would still be present.

- 2.7 **Mrs Paul's objection point two:** It costs her a lot of money to arrange removal of the debris from these trees and the neighbours object to the burning of the debris and have complained to the Council.
- 2.8 **Assistant Director's response to point two:** The council discourages the use of bonfires and we recommend utilising the brown bins to dispose of any arisings that the tree might generate. The arisings can also be used for composting and there are other more environmentally friendly forms of dealing with the arisings from the tree. There are inevitable maintenance costs associated with looking after any tree whether it be protected by a preservation order or not, but by considering the above points these costs can be kept to a minimum.

For more information contact:	Jason Humphreys, Tree Preservation Order Officer, Tel - 01332 256031 E-mail – Jason.Humphreys@derby.gov.uk
Background papers:	Tree Preservation Orders, A Guide to the Law and Good Practice
List of appendices:	Appendix 1: Implications Appendix 2: Plan of tree's location Appendix 3: Letter of objection Appendix 4: Letter from Dr. S. Sinha

IMPLICATIONS

Financial

1. None.

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.
- 2.2 The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

3. None directly arising.

Corporate objectives and priorities for change

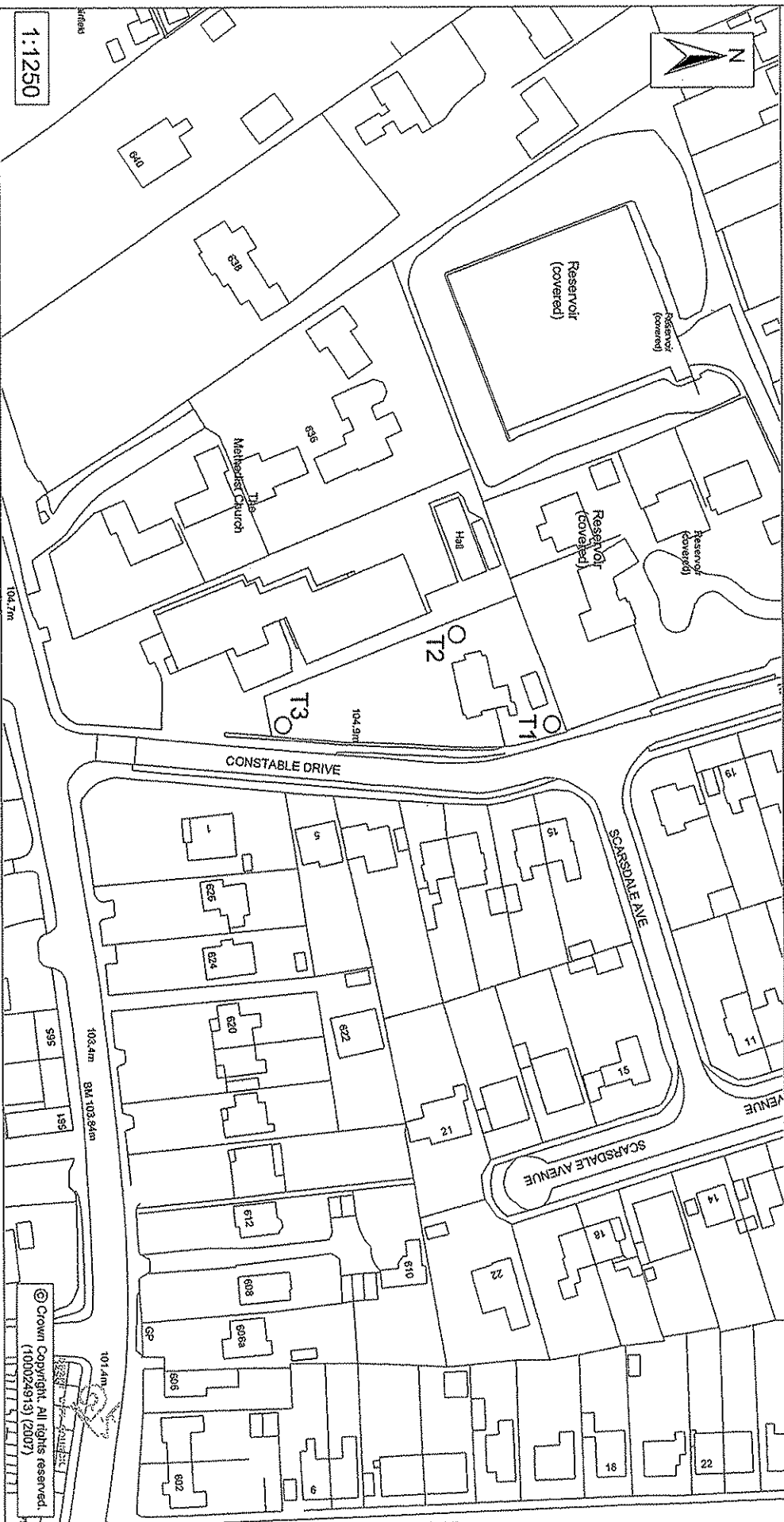
4. The confirmation of Tree Preservation Order 2007 Number 502 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment.



DERBY CITY COUNCIL

DERBY CITY COUNCIL
TREE PRESERVATION ORDER
Map referred to in the Derby City Council
6 Constable Drive (Derby)
Tree Preservation Order 2007 No. 502

Regeneration and Community
Roman House
Friar Gate
Derby
DE1 1XB



Jason Humphreys
Derby City Council
Regeneration & Community Services Dept
Roman House
Priar Gate
Derby
DE1 1XB

Mrs M Paul
6 Constable Drive
Littleover
Derby
DE23 6EP

Your Ref: JH/PL/502

Dated: 20th October 2007

Dear Mr Huphreys

Re: Tree preservation order 2007 Number 502

I am writing in connection with your letter dated 3rd October 2007, informing me of the order. I was given a written confirmation dated 3rd July 2007, confirming that none of the trees on my premises had preservation order. I fail to understand that when you realized, my intentions of removing two of the lime trees, that are very close to the main entrances of my house, you sent me letter dated 3rd October, informing me of your application to impose a preservation order on these trees.

I am raising my objection to this application, with a request that two lime trees that are situated on the North direction and are very near to my house are causing serious health problems and I am keeping unwell, because of the continuous tree droppings through out the year. I am attaching supporting Doctor's note as well.

Secondly, it's costing me a lot to arrange removal of the debris from these trees. The neighbours are objecting to the burning of the debris and have put forth a complaint to your department.

Finally, I am prepared to replace these trees, making an effort to keep the greenery in the area.

Many thanks

Yours sincerely

Mrs M Paul

Enc:

Dr S Sinha

12 Charnwood Street
Derby

Tel - 01332 345406

17.10.2007

Our ref: VMC

Re Mrs Madhu Paul Date of Birth 
6 Constable Drive, Littleover Post Code DE24 6EP

Dear Sir/Madam

This is to certify that Madhu Paul of the above address is suffering from asthma since last twenty years. Her condition has deteriorated because of the trees in her garden. Removal of these trees will improve her condition tremendously.

Yours sincerely

Dr S Sinha



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE
17 JANUARY 2008

ITEM 8D

Report of the Assistant Director - Regeneration

Tree Preservation Order 2007 Number 494 (83 Merchant Avenue, Spondon)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2007 number 494 (83 Merchant Avenue).

SUPPORTING INFORMATION

- 2.1 On 22 August 2007 Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) on Land adjacent to 83 Merchant Avenue as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: "The trees indicated in this Order are proposed for protection in the interests of visual public amenity. The trees are situated in a very prominent position and can be appreciated from the immediate vicinity as well as from further afield. The trees contribute materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by having a general greening effect on the immediate and surrounding area".
- 2.3 A letter objecting to the TPO was received from Mrs J Crilly (31 Park Road, Spondon). A copy of the objection letter is attached as Appendix 3.
- 2.4 The main point of Mrs Crilly's objection is listed below followed by the Assistant Directors response.
- 2.5 **Mrs Crilly's objection:** Mrs Crilly is objecting to the tree preservation order because she has had a refusal of outline planning permission for a bungalow. She had previously received a number of outline planning permissions for this development, although this latest one had expired. It was refused on the grounds that the proposed development was deemed likely to have had an adverse impact on the mature trees on the northern boundary of the site (see Planning Officers Report attached as Appendix 4). The plan attached to the application showed the removal of a sycamore tree, as it had been in the previous applications. Mrs Crilly hopes that we will reconsider the preservation order and not put an order on this tree.

- 2.6 **Assistant Director's response:** The implementation of the planning consent showed the removal of one of the trees, the type of preservation order is a group type and the loss of one of the trees would significantly decrease the public amenity value of the group. The order is appropriate now rather than 9 years ago to reflect the amenity value this group of trees has today. If a further planning application was made for a development that satisfactorily retained the tree and did not lessen the public amenity value of the tree group, then scheme of development may be appropriate on this site. A tree survey completed by an Arboriculturalist submitted in conjunction with an Architect's plan would demonstrate whether or not this was possible.

For more information contact:	Jason Humphreys, Tree Preservation Order Officer, Tel - 01332 256031 E-mail – Jason.Humphreys@derby.gov.uk
Background papers:	Tree Preservation Orders, A Guide to the Law and Good Practice
List of appendices:	Appendix 1: Implications Appendix 2: Plan of tree's location Appendix 3: Letter of objection Appendix 4: Planning Officer's Report

IMPLICATIONS

Financial

1. None.

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.
- 2.2 The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

3. None directly arising.

Corporate objectives and priorities for change

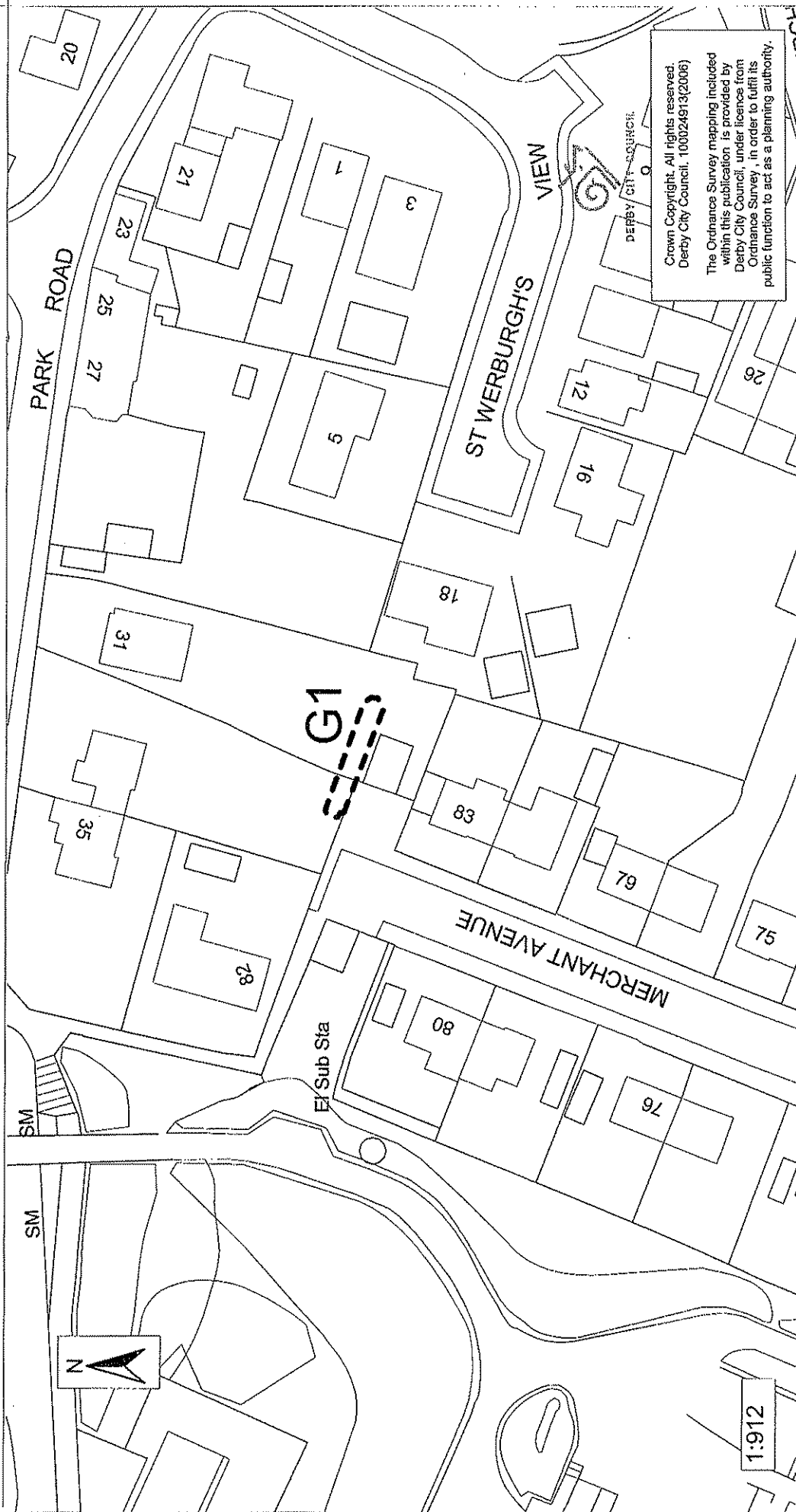
4. The confirmation of Tree Preservation Order 2007 Number 494 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment."



DERBY CITY COUNCIL
TREE PRESERVATION ORDER
Map referred to in the Derby City Council
(Land adjacent to 83 Merchant Avenue and
to the rear of 31 Park Road, Spondon)

Tree Preservation Order 2007 No...494

Regeneration and Community
Environmental Sustainability Unit
Roman House
Friar Gate
Derby
DE1 1XB



31 Park Road
Spondon
Derby
DE217LN
6 Sept 2007-09-02

Your ref JH/PL/494

To the Assistant Director Regeneration

I wish to object to the tree Preservation Order being put on the tree in the middle at the Rear of the garden of 31 Park Rd Spondon.

As since (approximately) 1998 I have had outline planning permission to build a bungalow, and in the plans the planning dept agreed that the tree could come down, the location is land adj 83 Merchant Ave and to the rear of 31 Park Rd Spondon the application since 1998, which has been renewed ever since and been granted planning permission. Hope you will reconsider and not put an order on this tree, I think the tree in question is a Maple tree.

Yours sincerely

Mrs J Crilly

V

REPLIED

10 SEP 2007

D. Slinger

V

Officer Report

Visit date:

30/07/2007

Site notes:

This application relates to a brownfield site, within an established residential area, within the site boundaries of 31 Park Road in Spondon, Derby. The site currently occupies a rear garden to the dwelling house.

The proposed site for this application is bounded on the east and south boundaries by residential development, a single storey bungalow to the east and a semi-detached, 2 storey, dwellinghouse to the south. To the west is the highway of Merchant Avenue which provides access to the rear of 31 Park Road. To the north of the proposed boundary of the site is the rear garden of the existing dwellinghouse on the overall site.

The end of the garden is currently used to store old vehicles and has a dilapidated wooden garage, which would be demolished should the proposal get planning permission. This area is well screened from view from within the rear garden of number 31 by the existing trees.

The planning application relates to the demolition of the existing garage and the proposal for outline planning permission for a single storey bungalow on the site. The proposal would require the felling of an existing tree, indicated as a beech tree on the submitted plans, which falls within the Spondon Conservation Area.

The access to the dwellinghouse would utilise the existing access from Merchant Avenue and would provide 2 no. off street car parking spaces. There would be a small rear garden of approximately 5.4m depth x 9.0m length. However due to this being an outline application, it is only the principle of the erection of the bungalow that we are concerned with. As such the details on the site block plan cannot be confirmed and would be dealt with under a reserved matters application.

It is important to note that this site has had 3 previous outline applications in reference to the same proposal in this outline application. The applicant has let the permission for outline application expire in this case and as such forms a new application.

History:

The latest application was:

DER/12/03/02257 – Outline application for the erection of a bungalow on the site – Granted Conditionally.

For a full history please refer to attached sheets.

Policies:

Policy E9 – Trees
Policy E10 – Energy
Policy E18 – Conservation Areas
Policy E23 – Design

Policy GD4 – Design and the Urban Environment
Policy GD5 - Amenity
Policy H13 – Residential Development – General Criteria
Policy T4 – Access, Parking & Servicing

Consultation responses:

CAAC – Objection raised and recommended refusal of this application on the grounds that removal or severe pruning of the trees would have a significant adverse effect upon the Conservation Area. The plans showed inaccurate information in relation to the tree cover.

Environmental Services – Objection raised and recommended refusal of this application on the grounds that the trees have significant amenity value and as such are recommended for a Tree Preservation Order.

Natural Environment – Trees within the Conservation Area are to be the subject of a Tree Preservation Order.

Built Environment – No objection raised

Building Control – No objection raised

Plans & Policies – No objection raised.

Appraisal:

The existing site is for residential land use and as such the principle of an existing site being proposed for residential land use is considered to be in accordance with policy. It is brownfield land.

This application has received outline planning permission on three previous occasions and as such the proposal is considered to be justified in terms of the principle for residential development.

The proposed development will utilise the existing access route of Merchant Avenue. There will be 2 no. off street car parking spaces as well as a pedestrian route from the highway. There are no highway objections to this proposal.

The application has been submitted with an indicative site layout plan which indicates a rough form of a bungalow in outline. This plan cannot be commented upon in detail due to the nature of the application. However, the Reserved Matters application should include a bungalow which would not have an adverse impact upon the existing trees to the north boundary and the neighbouring dwelling houses, to the south and east boundaries, in regards to loss of privacy, overlooking, and overshadowing. There should be a suitable layout with an adequate sized private rear garden.

The existing trees, in particular the trees within the Conservation Area, 2 lime trees, 2 maple trees and 1 Birch tree bordering the site to the north, are considered to form a collection which have significant amenity value, especially when viewed from Merchant Avenue, providing a setting to the Conservation Area. They have been recommended for a Tree Preservation Order and an Order made for 6 trees on this and the adjoining site. It is considered that development could not take place without seriously affecting

the trees.

On the basis of the above, I would recommend refusal of planning permission as it is considered that the proposed development will be contrary with policies E9 and E18 of the 2006 adopted City of Derby Local Plan Review.

Recommendation:

To refuse planning permission

Reason:

The development proposed on this site would be likely to have an adverse impact on the mature trees on the northern boundary of the site which have a significant visual impact in the area. Consequent pruning or removal would be detrimental to the amenities of the area in general and have an adverse effect on the character and appearance of the conservation area which the site adjoins and is partially within. As such it is considered that the proposal would be contrary to Policies E9 and E18 of the adopted City of Derby Local Plan Review.

N.B. all measurements are approximate



Tree Preservation Order 2007 Number 492 (42 Middleton Avenue, Littleover)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2007 number 492 (42 Middleton Avenue).

SUPPORTING INFORMATION

- 2.1 On 8 August 2007 Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) at 42 Middleton Avenue, as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: "The tree indicated in this Order is proposed for protection in the interests of visual public amenity. The tree is situated in a very prominent position and can be appreciated from the immediate vicinity as well as from further afield. The tree contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by contributing to a general greening effect on the immediate and surrounding area."
- 2.3 Letters objecting to the TPO were received from Dr and Mrs Edworthy (44 Middleton Avenue), P Young (Middleton Avenue Developments) and John and Elaine Forkin (42 Middleton Avenue). Copies of the objection letters are attached as Appendix 3.
- 2.4 Letters in support of the TPO were received from Mr and Ms Donoghue (40 Middleton Avenue), A Whiting (Middleton Drive), Justin Norman (14 Middleton Avenue), Mrs Junokas (119 Bretton Avenue), Mr P J Kidd (Middleton Drive). Copies of the letters of support are attached as Appendix 4.
- 2.5 The main points of Dr and Mrs Edworthy's objections are listed below followed by the Assistant Directors response. These comments have been prepared after consultation with the Assistant Arboricultural Officer.
- 2.6 **Dr and Mrs Edworthy's objection point one:** The stated grounds of visual public amenity are not of a sufficient degree to warrant the making of a TPO. They make reference to 'Tree Preservation Orders: A Guide to the Law and Good Practice' which states that 'the mere fact that a tree is publicly visible will not itself be sufficient to warrant a TPO'

- 2.7 **Assistant Director's response to point one:** In making Tree Preservation Orders we and other local authorities refer to 'Tree Preservation Orders: A Guide to the Law and Good Practice' and in doing so we have demonstrably considered the above point by also assessing the tree's present size, visual amenity, form and its future potential for increased visual amenity whilst taking into account its rarity and the expediency for making the order.
- 2.8 **Dr and Mrs Edworthy's objection point two:** The Eucalyptus tree is dangerous and has on occasions shed large and heavy branches without warning in weather conditions that one might not consider extreme. They believe this to be a characteristic of certain Eucalyptus trees and resulted in many deaths and serious injuries in its native Australia. This point was expanded by Dr Edworthy in a letter dated 16 November 2007.
- 2.9 **Assistant Director's response to point two and to the letter dated 16/11/07:** Whilst not doubting what Dr. Edworthy has said, there is no evidence of the tree having shed large and heavy branches in the past. There are no splits, broken branches or broken stubs visible from the ground. The tree is free from defects such as poor branch/stem unions, large unbalanced branches or other defects visible from a ground inspection. It is not possible to compare the growth of Eucalypts in their native habitat where they can attain several hundred feet in height with relatively young specimens growing in this country.
- As there is no evidence (e.g. photographic) that the tree has shed large branches in the past, and no evidence in the tree of broken stubs it is not possible to state the likelihood of this happening again.
- 2.10 **Dr and Mrs Edworthy's objection point four:** The falling branches constitute a nuisance in the legal sense. This point was expanded in the further letter from Dr Edworthy dated 16 November 2007.
- 2.11 **Assistant Director's response to point four and to the letter of 16 November 2007:** A 'nuisance' can only be caused to a third party. For the tree to be seen as a nuisance to a third party it would have to be 'actionable', i.e. causing an actual danger or damage such as branches touching a building or growing low and hitting people as they walk past, not just a potential nuisance. This is not the case with this tree.
- 2.12 **Dr and Mrs Edworthy's objection point five:** That the making of the TPO has been an abuse of the TPO system and was initiated from objectors wishing to block a planning application. They say: "A planning application should be decided on its own merits and where a planning application involves removal of trees there is the opportunity for the effects of this to be considered before any application is granted."

- 2.13 **Assistant Director's response to point five:** The TPO was made as a direct result of an amended planning application. The original application was granted and the tree survey submitted as part of that application drew attention to the fact the Eucalyptus was a significant tree. The amended application detailed the removal of the tree and subsequently the tree was made the subject of a TPO through the normal internal consultation and planning application process. It was not made to "block" any development but to protect a visually important tree that was under threat. As such the planning application was indeed decided on its own merits and the effect of the removal of trees was considered. The amended planning application has since been withdrawn.
- 2.14 The main points of John and Elaine Forkin's objections are listed below followed by the Assistant Directors response, which again have been prepared after consultation with the Assistant Arboricultural Officer.
- 2.15 **John and Elaine Forkin's objection point one:** The tree is not a visual public amenity and that the tree cannot be appreciated from further field as stated in the grounds for making the order. The view from Middleton Avenue is a partial one limited to one point at the end of Number 44's driveway. The view from Bretton Avenue is limited to only the very top of the hill.
- 2.16 **Assistant Director's response to point one:** We have visited the site since the making of the order to reconsider the public amenity value of the tree. This is of particular relevance with regard to the fact that the amount of the tree visible will be reduced from the Bretton Avenue aspect as the construction of the new dwellings takes place on site. However, we are satisfied that the tree offers enough public amenity value to warrant making it the subject of a tree preservation order. Furthermore, at the time of making the visit other deciduous trees in the immediate area had shed their leaves enhancing the public amenity value of the Eucalyptus.
- 2.17 **John and Elaine Forkin's objection point two:** The Eucalyptus tree is not a native species and is suited to tropical and sub-tropical areas. It is an extremely fast growing tree and currently stands at some 70ft in height and will ultimately attain a height of 200ft. The view of the Tree Preservation Order Officer is that the tree is still young.
- 2.18 **Assistant Director's response to point two:** It is true that eucalyptuses are not native trees but then neither are the vast majority of trees grown in gardens. As an evergreen it has visual amenity and in many parts of Britain eucalypts are providing a welcome addition to the urban landscape. They are popular garden trees and as winters become warmer are thriving in the British climate. Size of the tree in itself does not constitute a danger, but should it become so an application to abate any danger can be made.
- 2.19 **John and Elaine Forkin's objection point three:** The roots of the tree are 6ft deep and lateral roots will extend to 100 ft in all directions. It is generally considered as a problem when situated near to buildings and can crack cisterns, clog water pipes and damage services.
- 2.20 **Assistant Director's response to point three:** Eucalypts are no different to most trees in that the roots spread out beyond the canopy and are predominantly found in the top 60cms of soil. They are only able to penetrate water pipes, etc if there is an existing defect in the pipe.

- 2.21 **John and Elaine Forkin's objection point four:** The tree has been causing problems, dropping branches and bark, leaves burning the lawn and suffocating other species.
- 2.22 **Assistant Director's response to point four:** The issue of dropping branches has been covered in 2.9 above. There is current research that suggests eucalyptus leaves can suppress the growth of other plants (allelopathy) but this is true of a number of garden plants such as laurel, rhododendron, walnut, etc. as long as the leaves are cleared in the usual way this should not cause a problem.
- 2.23 **John and Elaine Forkin's objection point five:** There is a consensus that the planting of Eucalyptus in domestic gardens is not advisable. In cities it is best suited to large expansive areas such as parks and commons. The Eucalyptus has no place and is out of scale in a domestic garden.
- 2.24 **Assistant Director's response to point five:** As has already been stated in 2.18 above these trees are very common in domestic gardens and although they are not suited to a very small garden in this situation (medium to large garden) they have the space to grow without being confined.
- 2.25 **John and Elaine Forkin's objection point six:** The Eucalyptus tree is recognized as a dangerous tree, especially in an unsuitable environment such as a domestic garden. Its natural growth cycle involves the dropping of entire branches (which can be extremely dense and dangerous) splitting of bases, cupping, twisting or collapsing. In Australia it is actually known as the 'widow maker' due to the number of people killed by falling branches.
- 2.26 **Assistant Director's response to point six:** I am not aware that there is any research that states eucalyptus trees are dangerous per se, and in this country are not renowned for dropping large branches as could be said to be the case with willows and poplar.
- 2.27 **John and Elaine Forkin's objection point seven:** The Eucalyptus has high levels of phenolics and toxic terpenoids as well as weak mutagenics and carcinogenics. World health company Merck, states that the Eucalyptus has been implicated in the deaths of small animals and the oils contained in the leaves is poisonous if ingested (as little as 4 to 5ml can be fatal for humans. The toxic nature of the Eucalyptus means birds and other wildlife avoid it. Consideration should also be given to another of the eucalyptus tree's features: its tendency to burn rapidly due to its flammable aromatic oils.
- 2.28 **Assistant Director's response to point seven:** The toxicity of the tree is not a relevant consideration in terms of the condition of the tree or its amenity. The native yew is highly toxic but can still be protected for its amenity. Most conifer trees are flammable but can still be protected.
- 2.29 **John and Elaine Forkin's objection point eight:** Branches on the tree have been reduced on the North side leaving a serious imbalance in its remaining branch distribution and splits have recently appeared at the trees' base and root system. We are seriously concerned that if left, the stability of the tree is a danger to 42 and to the house currently being constructed at 44, one of which is immediately adjacent to the tree.

- 2.30 **Assistant Director's response to point eight:** The removal of branches although unfortunate, will not unbalance the tree and the cracks in the bark are caused by the bark splitting as the tree expands its girth and is totally natural.
- 2.31 **John and Elaine Forkin's objection point nine:** The proposal to consider a Tree Preservation Order for the Eucalyptus has been initiated by small resident opposition to a planning application for plot 5 at the base of 42 Middleton Avenue. It is our understanding that regulations state that a TPO cannot be used as a tactic to block a bona fide planning application.
- 2.32 **Assistant Director's response to point nine:** Please see my response to Dr Edworthy's point five.
- 2.33 **John and Elaine Forkin's objection point ten:** The issue of a TPO had not been raised at any point by Derby City Council officers in all discussions relating to either the original planning application (consented for development at 44 Middleton Avenue) or during extensive consultations in preparing the amended planning application for land at 42 Middleton Avenue. We understand that the planning officer had understood that the position was 'OK' and gave a clear indication to that effect. We were advised that as the Eucalyptus is alien it could be replaced by a British specimen. We could have taken action to remove the tree in advance of planning but chose not to and the TPO appears to have punished that goodwill.
- 2.34 **Assistant Director's response to point ten:** The issue of a TPO was not raised when considering the original planning application because there was no expediency at any time. The original planning application didn't compromise the Eucalyptus. I am not aware that any advice was given by Council Officers that the removal of the tree was acceptable. However, any pre application discussion on the amended planning application has no relevance to the decision as to confirm this Tree Preservation Order.
- 2.35 **John and Elaine Forkin's objection point eleven:** The decision to make the TPO was not overwhelming and indeed was a 50/50 decision with the TPO officer stating that there were far more deserving trees in Derby.
- 2.36 **Assistant Director's response to point eleven:** The decision taken to make the Eucalyptus tree the subject of a TPO was not a hasty one and indeed there may be trees in Derby that are more deserving of a TPO. However, we have revisited the site and are satisfied that the tree provides enough public amenity value to warrant its inclusion in a tree preservation order.
- 2.37 **John and Elaine Forkin's objection point twelve:** This process has been inconsistent and unsatisfactory and we have a legitimate expectation for this to be considered in due course We reserve the right to consider the use of the DCC Complaints Procedure and subsequent referrals to assess the level and standard of service.
- 2.38 **Assistant Director's response to point twelve:** The TPO has been served in its usual manner and periods for objections have been extended in order to allow time for residents to supply other information relevant to the objection. In all other respects the making, serving and notification of the TPO has been in accordance with any statutory obligations and duties we have as a Local Authority. Mr and Mrs Forkin has of course the right to use the formal Complaints Procedure if he feels the proper procedures have not been followed.

- 2.39 **John and Elaine Forkin's objection point thirteen:** The only way for the tree to be appreciated with a high degree of public amenity value in the future is if it is allowed to grow out of control to its ultimate height. This would not be allowed as the tree would be an even greater danger than it currently is. Reasonable maintenance would result in a reduction in its size and so would never be able to be seen from the immediate vicinity.
- 2.40 **Assistant Director's response to point thirteen:** As has already been stated the tree currently provides a visual amenity, this will increase as it grows. Crown reduction is not usually acceptable on trees of this type and so it should be left to grow in its natural state for as long as the tree remains healthy and safe.
- 2.41 **John and Elaine Forkin's objection point fourteen:** If the TPO is confirmed then we will be requiring confirmation in writing that DCC accepts full liability for any consequences, damage or accidents as a result of the risks outlined above as they are documented and predictable.
- 2.42 **Assistant Director's response to point fourteen:** The Council could only be seen as responsible for the safety of the tree if it prevented its felling or pruning after an application was made, (and would be only be relevant for a limited period perhaps two year maximum) not after the confirmation of a TPO.
- 2.43 The main points of Mr P Young's objections are listed below followed by the Assistant Directors response.
- 2.44 **Mr P Young's objection point one:** The existing planning consent was granted after the consideration of the impact on any adjoining trees. Whilst this tree was taken into account in terms of design layout, this was done to mitigate the effect of the tree on the new dwellings and not just because of its perceived amenity value as we were not in control of its treatment as it fell outside the property boundary, the Council obviously did not consider that the tree had any special amenity value and surely it would have been incumbent upon them to ensure its protection at that time with a TPO.
- 2.45 **Assistant Director's response to point one:** The original planning application and consequent consent did not relate to the land at the rear of 42 Middleton Avenue where the Eucalyptus tree is situated. It was not expedient to make the tree at that time the subject of a tree preservation order as it wasn't compromised by the proposals in the application.
- 2.46 **Mr P Young's objection point two:** The issue of the TPO at this stage can clearly be seen as a blocking tactic to prevent the construction of an additional dwelling on brownfield land. It was our understanding that all necessary criteria to satisfy planning requirements had been met and consent would have been granted save for this intervention. It can therefore be demonstrated that the issue of this order is more in response to neighbour antipathy than reflecting the merits of the tree and is not enforceable on these grounds.
- 2.47 **Assistant Director's response to point two:** Letters of support demonstrate that there is indeed support for the order but the TPO was made as a direct result of an amended planning application. Also I refer to my response to Dr Edworthy's point five.

- 2.48 **Mr P Young's objection point three:** The tree in question is a non native species. The Eucalyptus originates from Australasia and occurs in the mountain regions of Tasmania and southern Australia. It is clearly not suitable for a British domestic garden setting and will probably increase in height by a further 50% if left unchecked. This would become hazardous for the dwelling currently under construction. Further more this species of tree has a very high water intake and a very fast rate of growth. It has reached its present size in 20 years and the hazards referred to would become apparent during the next years. Indeed evidence of this has already been experienced by the shedding of large branches without warning.
- 2.49 **Assistant Director's response to point three:** These points have all been answered previously. It is unlikely that this tree is 20 years old; it is probably a good deal older. It is a cider gum (Eucalyptus gunii) and although they do grow vigorously the tallest one in Britain is 33metres tall and was planted in 1912.

Summary

This TPO was made in light of an amended planning application to one previously given consent. The amended application detailed removal of a Eucalyptus tree which was not implicated in the original application.

The tree has been deemed to have public amenity value sufficient enough to make it the subject of a TPO. Had the tree been detailed for removal in the original application then because of the processes in place it would have been made the subject of a TPO then.

The original application did not contain the land occupied by the Eucalyptus tree, the site boundary of the amended application has been extended to include the land where the Eucalyptus is situated.

The tree has been the subject of site visits by Officers of the Council in order to assess its public amenity value and the health and safety of the tree, as a result I am satisfied that it meets the criteria for both of these factors.

It is because of these factors that the recommendation is made to confirm the Tree Preservation Order in its current state without modification.

For more information contact:	Jason Humphreys, Tree Preservation Order Officer, Tel - 01332 256031 E-mail – Jason.Humphreys@derby.gov.uk
Background papers:	Tree Preservation Orders, A Guide to the Law and Good Practice
List of appendices:	Appendix 1: Implications Appendix 2: Plan Appendix 3: Letters of objection Appendix 4: Letters of support

IMPLICATIONS

Financial

1. None

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.
- 2.2 The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

3. None directly arising

Supporting the Council's vision and priorities

4. The confirmation of Tree Preservation Order 2007 Number 492 will support the Council's vision and priorities by contributing to the "Leading derby towards a better environment"

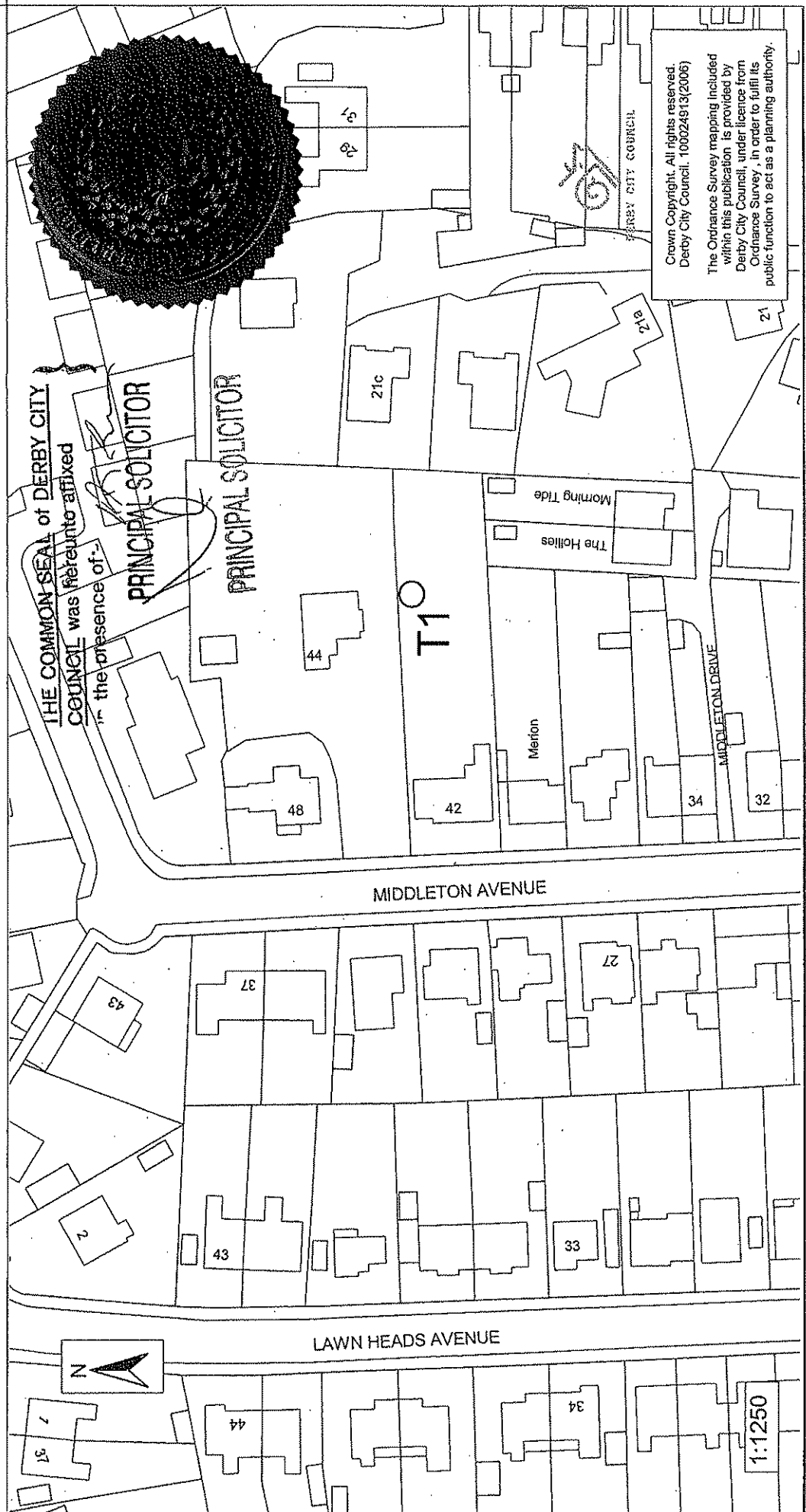


DERBY CITY COUNCIL

DERBY CITY COUNCIL
TREE PRESERVATION ORDER
Map referred to in the Derby City Council
(42 Middleton Avenue, Littleover)

Tree Preservation Order 2007 No. 492

Regeneration and Community
Environmental Sustainability Unit
Roman House
Friar Gate
Derby
DE1 1XB



Gpy to Isaac
Humphries
for info (application
required as
921/16PS)

Middleton Avenue Developments Limited

Unit 8, Grassy Court
Etwell Road, Mickleover
Derby DE3 0BX

Tel: 01332 540222

Fax: 01332 540226

email: broadjef@aol.com

Assistant Director Regeneration
Derby City Council
Regeneration and Community Services Department
Derby
DE1 1XB

3rd September 2007

Dear Sirs,

**Tree Preservation Order 2007, Number 492
42 Middleton Avenue, Littleover, Derby**

We refer to the issue of the above order and write to lodge our objection. The grounds for our objection are set out below:

1 The existing planning consent no. DER/08/06/01325/PRI dated 27th October 2006 for the erection of four dwellings on the land comprising 44 Middleton Avenue was granted after consideration of the impact on any adjoining trees. Whilst this tree was taken into account in terms of the design layout, this was done to mitigate the effect of the tree on the new dwellings and not because of its perceived amenity value, since we were not in control of its treatment as it fell just outside the property boundary. The Authority obviously did not consider the tree to have any special amenity value at this time as, surely, it would have been incumbent upon them to ensure its survival with a Preservation Order.

2 The issue of the Preservation Order at this stage can clearly be seen as a blocking tactic to prevent the construction of an additional dwelling on brownfield land. It is our understanding that all the necessary criteria to satisfy planning requirements have been met and consent would have been issued save for this intervention. It can therefore be demonstrated that the issue of this Order is more in response to neighbour antipathy than reflecting the merits of the tree and is not enforceable on these grounds.


3 The tree in question is a non-native species. The Eucalyptus originates from Australasia and occurs in the mountain regions of Tasmania and southern Australia. It is clearly not suitable for a British domestic garden setting and the tree in question would probably increase its height by a further 50% if left unchecked. This would become hazardous for the dwellings currently under construction. Furthermore, this species of tree has a high water intake and a very fast rate of growth. It has reached its present size in approximately 20 years and the hazards referred to would become apparent during the next 10 years. Indeed, evidence of this has already been experienced by the shedding of large branches without warning.

4 The previous observations support the principle objection to Tree Preservation Orders in enclosed private gardens in that there are inherent dangers posed by a tree of this type and size in domestic settings.

In the light of the above remarks it has been decided to apply for consent to remove the tree in question and the relevant forms are enclosed for your attention.

Yours faithfully
For Middleton Avenue Developments Limited

^


P C Young
Director

42 Middleton Avenue
Littleover
Derby DE23 6DL

Assistant Director Regeneration
Regeneration and Community Services
Derby City Council
Roman House
DERBY DE1 1XB

4th September 2007

Dear Sir

Re; Tree Preservation Order 2007, Number 492

We are writing to object most strongly to the proposed Order dated 8 August 2007 concerning the Eucalyptus tree at the base of 42 Middleton Avenue.

Our objection is on the following grounds:

1. The tree is not a visual public amenity

The proposed order states that the tree 'can be appreciated from the immediate vicinity as well as from further a field'. This is NOT the case.

The tree cannot be seen from any part of Middleton Avenue, unless one is standing at the end of the drive of number 44, where there is only a partial view. The tree cannot be seen from Heath Avenue, which backs onto Middleton Avenue. The tree cannot be seen from Burton Road. The tree cannot be seen from Bretton Avenue, unless one is standing at the very top of the street. In terms of views of the tree from immediate gardens on Middleton Avenue, the tree cannot be seen from numbers 38, 40, 46 and the owners of number 44, where it can be seen, consider it a nuisance and are opposing the TPO.

The Eucalyptus cannot be described in any way as an amenity.

2. The tree is not suited to a domestic garden

The Eucalyptus is an alien, non-domestic tree, imported from Australia and suited to tropical and sub-tropical areas. It is an extremely fast growing tree (roughly up to 8 feet of growth per year) and at 42 Middleton Avenue it currently

stands at some 70 feet in height. The view of the DCC TPO Officer is that the tree in question is still young - it will grow to approximately 200 feet. The Eucalyptus is described as one of the tallest trees in the world. Furthermore, its tap roots are 6 feet deep and lateral roots will extend to 100 feet in all directions. It is generally considered as a problem when situated near to buildings and can crack cisterns, clog water pipes and damage services.

The planting of Eucalyptus trees outside of Australia is subject to much debate, due to its rapid growth, demands on water, expansive root structure and impact on other species. Its growth in the UK is so significant due to the absence of natural restraints and pests.

For some time the tree at 42 has been causing problems, dropping branches and bark, leaves burning the lawn and suffocating other species.

We have been considering whether to reduce or remove the tree as it is becoming completely out of context with the garden and research we have carried out, since receiving the TPO letter, has convinced us that it is simply not suited to a domestic garden.

There is a consensus (even among the 'pro-eucalyptus' community) that the planting of eucalyptus in domestic gardens is not advisable. In cities it is best-suited to large expansive areas such as commons and parks.

The Eucalyptus has no place and is out of scale in a domestic garden.

3. The tree is dangerous

The Eucalyptus is recognized as a dangerous tree, especially when growing in an unsuitable area such as a domestic garden.

Its natural growth cycle involves the dropping of entire branches (which can be extremely dense and dangerous) splitting of bases, cupping, twisting or collapsing. In Australia, it is actually known as the '*widow maker*' due to the number of people killed by falling branches. It is not used in plantations for the same reason. The tree continually drops leaves and significant amounts of bark (see enc picture as current evidence at 42 Middleton) and it is an aggressive grower dominating all other species.

Amazingly, the Eucalyptus has high levels of phenolics and toxic terpenoids as well as weak mutagenics and carcinogenics. World health leading company, Merck, states that the Eucalyptus has been implicated in the deaths of small animals and the oils contained in the leaves is poison if ingested (as little as 4 to 5 ml can be fatal for humans!). The toxic nature of the Eucalyptus means birds

and other wildlife avoid it – again explaining to us the mystery of why birds never nested there at 42, despite its height.

We have had incidents of branches falling at 42 and until now had assumed this had been due to adverse weather. Clearly, this is not the case – falling branches are part of the natural growth pattern and can occur at any time. We are seriously concerned about the danger now caused by the tree in its natural state, to family and visitors including many young children.

In addition, branches on the tree at 42 have been reduced on the north side leaving a serious imbalance in its remaining branch distribution and splits have recently appeared at the tree's base and root system.

We are seriously concerned that if left, the stability of the tree is a danger to 42 and to the houses being constructed at 44, plot 2 of which immediately adjoins the tree. Consideration might be given here to assessing the risk from another of the Eucalyptus's features – its tendency to burn rapidly due to its flammable aromatic oils.

The Eucalyptus is clearly dangerous, especially in a domestic garden.

4. The TPO process has been flawed.

The proposal to consider a TPO for the Eucalyptus has been initiated by small minority resident opposition to a planning application for plot 5 at the base of 42. It is our understanding that regulations state that the award of a TPO cannot be used as a tactic to block a bona fide planning application. This is the sole motivation in this case and we were surprised not to be involved or consulted in any way in considering the TPO.

Furthermore, the issue had not been raised at any point by Derby City Council officers in all discussions relating to either the original planning permission (given to development at 44) or during extensive consultations in preparing the amended planning application for land at 42.

Quite the opposite, we understand that the planning officer had understood that the position was 'OK' and gave a clear indication to that effect. We were advised that as the Eucalyptus is alien, it could be replaced by British specimen. We could have taken action to remove the tree in advance of planning but chose not to and the TPO appears to punish this goodwill.

We also understand that the decision to award the TPO was not overwhelming and indeed was a '50/50' decision. The DCC TPO officer stated to us that there are far more deserving trees in Derby.

As owners we were never consulted, no visit has been made to our garden, nor permission sought and indeed the TPO notification arrived on the morning we were setting off on holiday, so have little time to assemble this response. The letter dated 8 August from the Legal Clerk, was addressed anonymously and didn't even have the courtesy to be addressed personally to us, despite being Council Tax payers and on the electoral register.

This process has clearly been inconsistent and unsatisfactory and we have a legitimate expectation for this to be considered in due course. We reserve the right to consider use of the DCC Complaints Procedure and subsequent referrals to assess the level and standard of service.

In conclusion, it our belief that a TPO is not warranted for the Eucalyptus at 42 Middleton Avenue as it is dangerous, is directly in the way of a development for which detailed planning permission has been granted and is at risk of becoming a legal nuisance.

The amenity basis of the TPO is clearly flawed within a Catch 22-like situation. The inescapable fact is that the only way that the Eucalyptus might at some point in the future be considered as an amenity (if the amenity is defined as purely as being viewed) is if it is allowed to grow out of control to its eventual height of some 200 feet. However, this would not be allowed (even within the constraints of a TPO) as the tree would be an even greater danger than it currently is. Reasonable maintenance would result in a reduction in its size and so it would never be able to be seen from the immediate vicinity.

We agree with the view of the TPO officer that the provisional decision was marginal and hope that the case outlined above results withdrawal of the TPO.

If the TPO is upheld we will be requiring confirmation in writing that DCC accepts full liability for any consequences, damage or accidents as a result of the risks outlined above as they are documented and predictable.

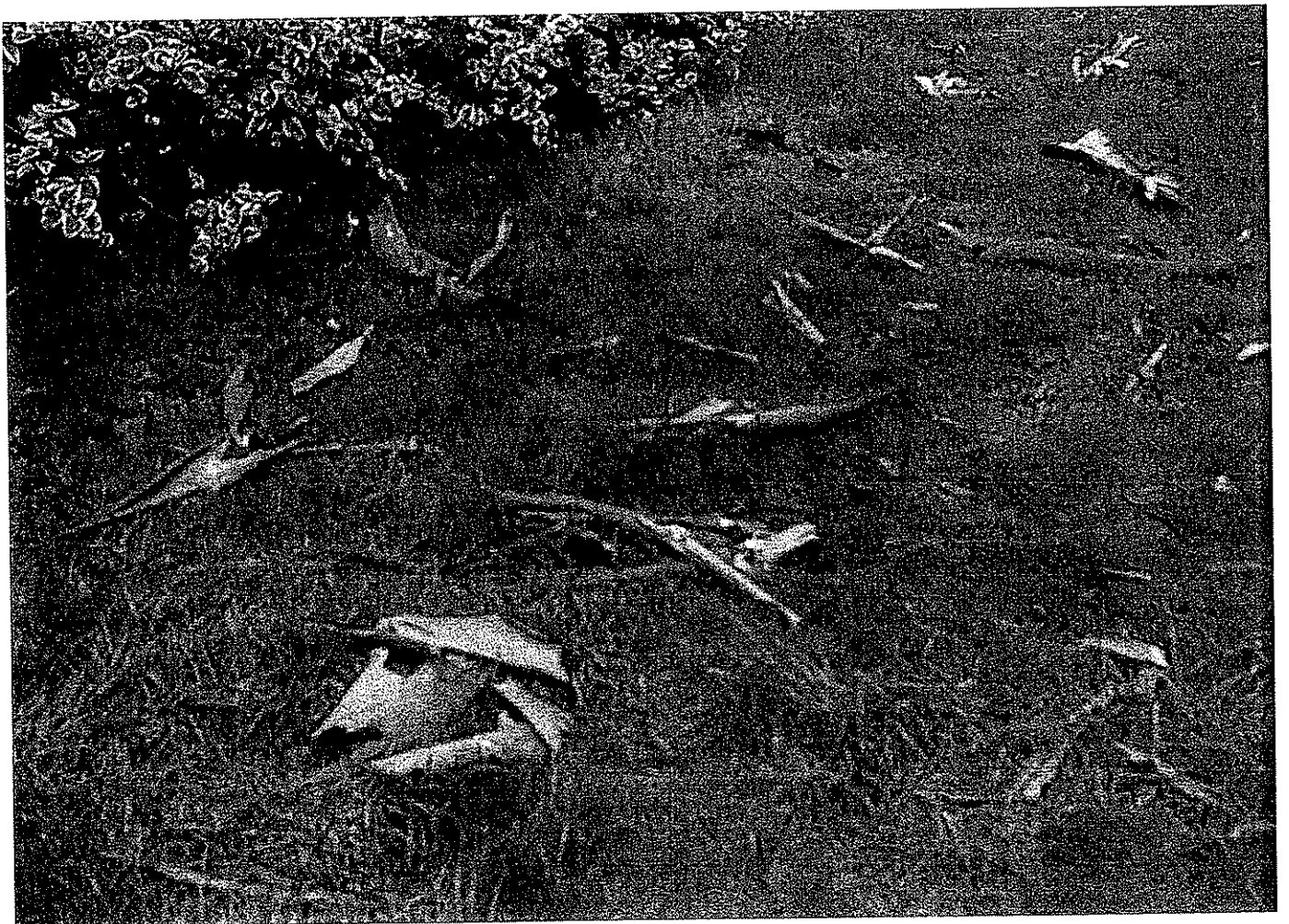
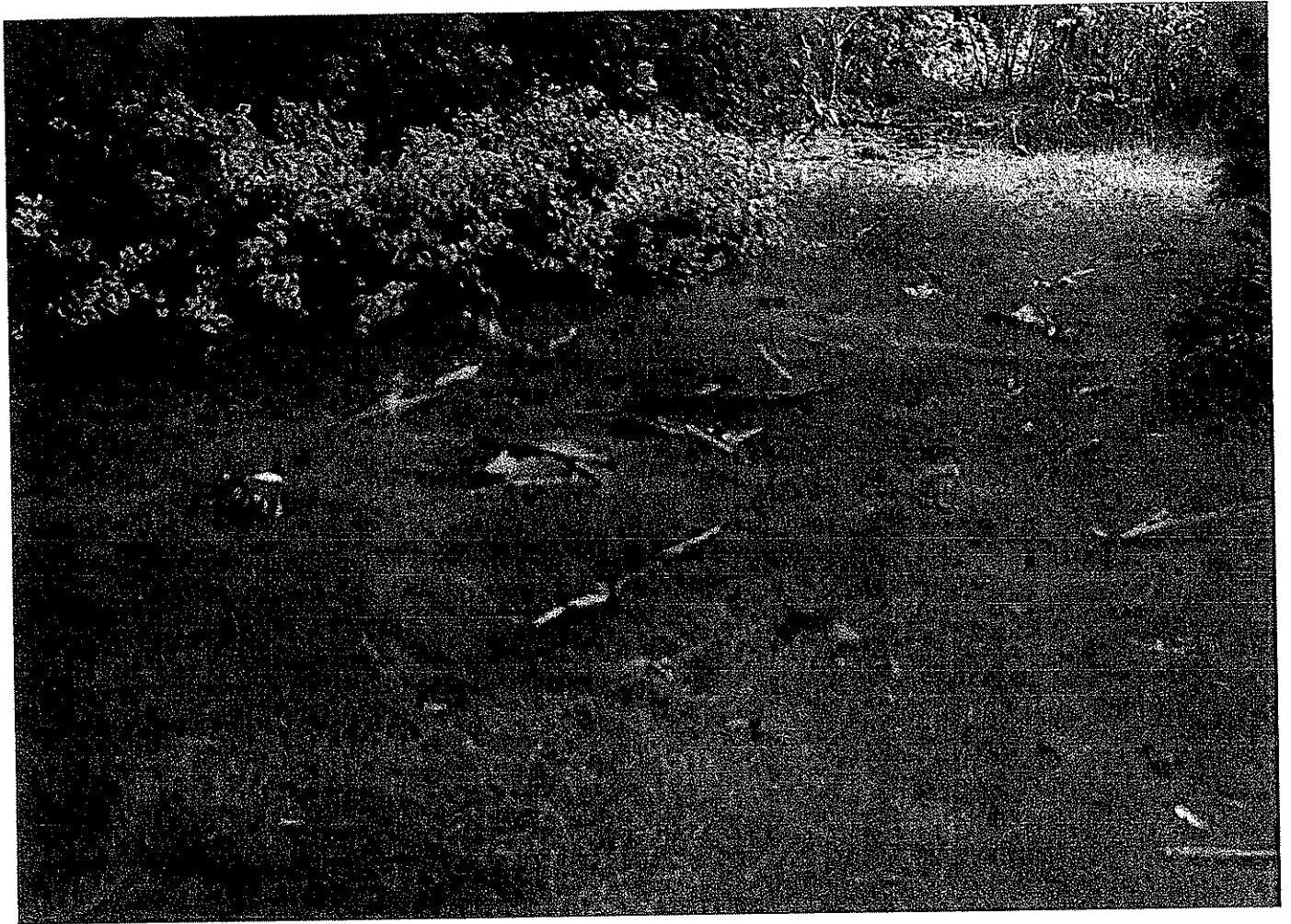
If you require any further information do not hesitate to contact us.

We look forward to hearing from you in due course.

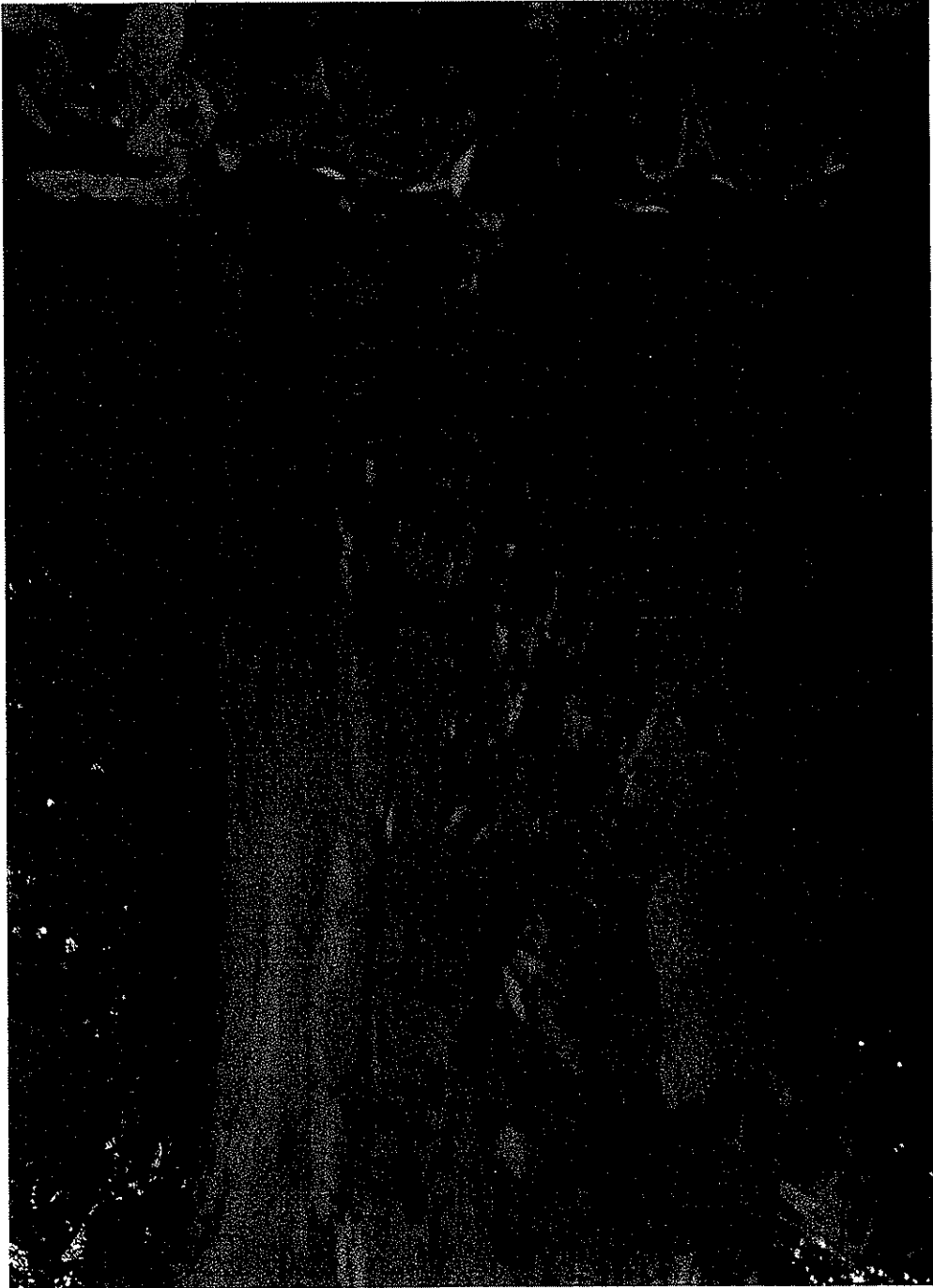
Yours Sincerely



John and Elaine FORKIN
enc







DEVELOP	
FILED	
RECEIVED	SEP 27 2007
	D. Smith
REPLIED	

44 Middleton Avenue
Littleover
Derby
DE23 6DL

Assistant Director Regeneration,
Derby City Council,
Regeneration and Community Services Dept,
Derby
DE1 1XB

01 September 2007

Dear Sir,

Objection to Tree Preservation Order 2007, No. 492

My wife and I wish to formally object to the above order which identifies a single Eucalyptus tree, T1, at number 42 Middleton Avenue, i.e. next door.

We wish to object for the following reasons:

1. The stated grounds of "visual public amenity" are not of sufficient degree to justify the granting of a TPO, according to the guidance published by the Department for Communities and Local Government (Previously Office of the Deputy Prime Minister). This clearly states that the fact that a tree is publicly visible is not in itself sufficient to warrant a TPO. Special factors such as its rarity, value as a screen, or contribution to the character or appearance of a conservation area should be taken into account. None of these factors apply in this case.

We both realise that any nuisance caused by a tree to its owner and owners of land, which the tree overhangs or threatens, has to be balanced against any significant public amenity. However, we cannot believe that the minor visual amenity of merely being able to see a large and inappropriately sited tree, which, although common, is not a native species, can outweigh the nuisance to those who live in its shadow. However, there is a more serious consideration. This tree has proved to be dangerous as detailed below, and the danger of death or serious injury must outweigh what appears to be a very minor visual amenity.

2. This Eucalyptus tree is dangerous. It has on several occasions shed large branches **without warning**. The branches it has shed have been large and extremely heavy. They are extremely heavy because of the high density of the Eucalyptus wood and because of their size. What makes the tree particularly dangerous is the fact that these branches fell without warning, not during high winds or other extreme conditions when the odd branch might reasonably be expected to be blown down from a tree. We have since learned that this is a characteristic of certain Eucalyptus trees and has resulted in many deaths and serious injuries in Australia, where the tree is

native. It is a simple matter of fact that this particular tree is dangerous and should not therefore be subject to a TPO.

3. The third objection to the TPO is the fact that the serious danger from the tree caused by falling branches constitutes a nuisance in the legal sense. We discussed this in person with our neighbours who own the tree, who then became as concerned as us about the possible danger of serious injury or worse to visitors and young children. We believe they were planning on removing the tree because of this danger. They were unaware that there is a history of serious damage from falling trees on the site. We are at the top of a hill and subject to high wind gusts because of the surrounding topography. Thirty years ago a large tree at 44 Middleton Avenue was blown down in high winds causing serious damage. It destroyed a car, and two garages, but fortunately caused no injuries.

Finally, we understand that the TPO was initiated as a result of pressure from objectors wishing to block a planning application for land to the rear of 42 Middleton Avenue. We find this surprising because this is not the purpose of a TPO as confirmed by the Department for Communities and Local Government. A planning application should be decided on its own merits and where a planning application involves removal of trees there is the opportunity for the effects of this to be considered before any application is granted. To confirm a TPO in the light of these facts could be considered an abuse of the TPO system, and would encourage the premature removal of trees before any planning application was submitted.

We realise that the history of this Eucalyptus tree and the history of the site would not have been known to the council when the TPO was made but now that we have confirmed that this tree is demonstrably dangerous we trust that the council will decide to revoke or not confirm the order.

Yours faithfully,

Dr and Mrs Edworthy

44 Middleton Avenue
Littleover
Derby
DE23 6DL

Assistant Director Regeneration,
Derby City Council,
Regeneration and Community Services Dept,
Derby
DE1 1XB

16 November 2007

Dear Sir,

Objection to Tree Preservation Order 2007, No. 492

Following telephone conversations and a meeting with Jason Humphreys, Tree Preservation Order Officer, I am writing this second letter to expand on the points contained in my objection letter of 01 September 2007. I am doing this because the above tree is dangerous and I am presenting my evidence of this as requested so that there is no doubt. I am also taking the opportunity of this second letter to quantify the very limited views of the tree which I drew attention to in my earlier letter and which, in my opinion, fail to provide sufficient "visual public amenity" to justify the granting of a TPO. I have used the guidance published by the Department for Communities and Local Government (Previously Office of the Deputy Prime Minister). Finally, I comment again on the legal nuisance presented by this tree.

This tree is dangerous:

In my previous letter I showed that the tree is dangerous because it has shed large branches **without warning**. I have been pressed by yourselves to quantify exactly when this occurred and how large the branches were. I cannot tell you exactly when this occurred or the exact sizes of these falling branches because I did not record the facts in my diary at the time as I had no reason to. I am a scientist and I do not exaggerate observations, so for the avoidance of doubt, let me state the following:

On at least three occasions large branches have fallen from this tree. These branches, of the order of 3 metres long, have been of sufficient mass (weight) to cause serious injury or death should they have landed on a person, even an adult, having fallen through a distance of the order of ten metres. I observed at the time that these large branches did not seem to fall as a result of high winds. In other words they seemed to fall without warning.

There have probably been more than three occasions when I have observed fallen branches from this tree on my land, and I expect there have been similar falls on the owner's land, but I can confirm a minimum of three. I am prepared, if necessary, to state these facts on oath, and will certainly be doing so in the future if the TPO is confirmed and death or injury results from further falls.

Prior to the provisional TPO I had discussed the danger arising from this Eucalyptus tree with the owner, who had agreed to remove the danger by removing the tree. He has been prevented from doing this because of the TPO, so the danger remains directly as a result of this TPO.

It is a simple matter of fact that this tree is dangerous and should not therefore be subject to a TPO. I understand that you have contacted an arborer to get advice on the danger posed by this tree. With the best will in the world, such a person will only be able to give an opinion of what is likely to happen in future. I am stating facts of what has happened in the past and which, by implication, cannot be ruled out in the future.

Reference to section 6.4 of the official publication "Tree Preservation Orders: A Guide to the Law and Good Practice" gives the following guidance on when a tree is considered dangerous: *"The threatened danger does not actually have had to have occurred; it is sufficient to find that, by virtue of the state of the trees, their size, their position and such effect as any of those factors have, one can properly conclude that the trees have become dangerous. The Court will look at what is likely to happen, such as injury to a passing pedestrian."*

See also **Smith v Oliver (1989)**

The fact that large, heavy, branches with the potential to cause death or serious injury, have repeatedly fallen without warning, and is now on record, confirms this danger.

This danger would be exacerbated in future if the tree were allowed to remain, because the development of the site to the rear of 44 Middleton Avenue, for which full planning permission has been granted, would increase the probability of a person being hit by these falling branches. As I pointed out in my earlier letter, shedding branches without warning is a characteristic of certain Eucalyptus trees. Many deaths and serious injuries have resulted in Australia, where the tree is native.

I again state that it is a simple matter of fact that this tree is dangerous and should not therefore be subject to a TPO.

The Visual Public Amenity of this tree is extremely limited:

In order for a tree to have a Visual Public Amenity value it seems reasonable to assume that the tree must be publicly visible. Since my previous letter in which I described this tree as a very minor visual amenity, I have quantified exactly from where the tree can be seen, and how much of the tree is visible. The results are quite surprising. The tree can only be seen from a very short section of Middleton Avenue, not even extending to the full frontages of numbers 42 and 44, from short section of the turning circle at the end of Middleton Avenue, and from a short section of Bretton Avenue. There is also a very short section of the turning circle at the end of Heath Avenue, approx 2 metres in length, from which the tree is visible. I have plotted the angles over which the tree is visible, with some surprising results:

At no point is the whole of the tree visible. The most that can be seen is approximately 70 % of the tree, which is currently briefly visible if one looks sideways while walking past the end of the driveway to number 44 Middleton Avenue. However this view will be substantially blocked by other trees when they are in leaf.

If we add together all the angles over which more than 50% of the tree is visible, the total adds up to 16 degrees, and as there are 360 degrees in a circle, this represents less than 5 % of the solid angle around the tree. By contrast, a tree in an open space would typically have over 95 % of the tree visible over 100 % of the solid angle around the tree.

If we extend the criteria to find out over what solid angle at least 5 % of the tree is visible, i.e. at least a "glimpse", even then the total of solid angles only adds up to 65 degrees, i.e. just 18 % of solid angle.

I stress that when these observations were made in mid November, the tree was probably at its most visible. When other trees are in leaf, they will further block even these very limited views of the tree.

I believe the guidance published by the Department of Communities and Local Government, referred to above, would require very special factors to be present to justify a TPO on grounds of public visual amenity with such limited and incomplete views of the tree. Examples of special factors listed in this document are rarity, value as a screen, or a contribution to the character or appearance of a conservation area. None of these special factors apply in this case so surely the TPO cannot be justified on the grounds of Visual Amenity.

The Tree is a legal nuisance

I described the nuisance (in the legal sense) caused by the dropping of branches onto my property in my previous letter. I am fortified after reading the judgement in **Perrin & Ramage v Northampton Borough Council**

(2006) to see that this nuisance would be considered an "actionable nuisance".

If you require any clarification of any of the above details, please contact me as above.

Yours faithfully,

Dr R M Edworthy, B.Tech, Ph.D, C.Eng, C.Phys, MIEE, M.Inst.P

A. WHITING
MORNINGTIDE
MIDDLETON DRIVE
LITTLEOVER
DERBY

Dear Sir or Madam,

I am writing to you about 42,
Middleton Avenue Littleover Derby
and the tree preservation order
2007 N° 492, in the hope that
the trees will not be chopped
down thus destroying all the wild
lifes habitats and also for our own
pleasure of such a view that we
now have, I purchased the house
for the beautiful scenery & privacy
which could now be replaced by more
housing, there is not a lot of Greenery
left nowadays, I consider myself
lucky to have such a view, I hope
to be fortunate enough to keep some
of it.

Yours Sincerely

◁

Re: Tree Preservation Order,
42 Middleton Avenue, Littleover, Derby,
No 492, 2007.

14 Middleton Ave,
Littleover,
Derby,
DE23 6DL.

30 August '07

Dear Sir/Madam,

We are writing in connection with the Tree Preservation Order, (2007, no. 492). We would like to support the order, due to the view offered by the tree across Middleton Avenue and Middleton Drive.

This public amenity is recognisable from a wide area and should be conserved so that the public can continue to enjoy it, and the character of the area is maintained.

Yours sincerely,

[Signature]

119 Bretton Avenue
Littleover
Derby
DE23 6EE
Tel: 07872 197789

30 August 2007

**Re: Derby City Council [42 Middleton Avenue, Littleover, Derby]
Tree Preservation Order 2007 # 492**

Dear Sir/Madam,

I am writing in support of the above tree preservation order and wish to oppose further building work on the Middleton Avenue site.

I am a local resident directly affected by the new building site which has already destroyed some established trees and is negatively impacting on my outlook. The tree in question is very well established and still enables me to enjoy some leafy aspect rather than more tall buildings. When I moved into the area, I was told that local residents love their trees and are passionate about retaining them.

Therefore I wish to register my support for this and other tree preservation orders in the vicinity as I do not wish to live in an urban jungle but want to retain natural elements.

Yours sincerely

✓
Mrs Ena Junokas

DEVELOPMENT	CITY OF DERBY	RES DEPT
FILE NO	DS6	
DATE	7 1 AUG 2007	
REF	Card add. J. J. G.	
REPLIED	Refer to Jason Humphries in TPO	
	copy of STD for completion.	
	707/1300.	

~~John Booth
Parks~~

~~Jason Humphreys
Planning~~

P J Kidd
The Chalet
Middleton Drive
Littleover
Derby
DE23 6DP

Assistant Director Regeneration
Derby City Council
Regeneration and Community Services Dept
Derby
DE1 1XB

1st Sept 2007



Dear Sir,

RE: Propose house building at the rear of 42 Middleton Avenue, Littleover, Derby

I am pleased to hear of the Tree Preservation Order Number 492, and hope it remains in place for ever!

The trees in question are both of pleasing to the eye and environmentally useful ie:(removal of carbons, etc.).

There are very few trees in the area, this being due to The Council Policy of tree removal along highways.

Surely we must preserve the above trees for the future of the planet and the generations whom will follow.

Yours faithfully,
P J Kidd

Humphreys, Jason

From: Skaper, Antony
Sent: 05 September 2007 16:05
To: Humphreys, Jason
Subject: FW: TPO 492
VF-DOC-ID: 00258248.HST
VF-ITEM-ID: 2454350:28137609
VF-MT-CODE: 14250
VF-MT-TYPE: V2GA

Jason

Address details for Mr Donoghue and Ms Donoghue below.

Antony.

Antony Skaper | Legal Clerk| Corporate and Adult Services Department | Derby City Council, PO Box 6292, Council House, Derby, DE1 2ZL | Telephone 01332 255461 Minicom 01332 256666 | www.derby.gov.uk

Derby City Council – committed to being an Excellent Council

From: JS DONOGHUE
Sent: 05 September 2007 15:55
To: Skaper, Antony
Subject: RE: TPO 492

Dear Mr. Skaper,

The address is 40, Middleton Avenue, Littleover, Derby. DE23 6DL.

Many thanks.

Barbara Donoghue

"Skaper, Antony" <Antony.Skaper@derby.gov.uk> wrote:

*** Before reading or acting on this e-mail, or opening any attachment, please read Derby City Council's disclaimer and confidentiality statement ***

Dear Mr Donoghue and Ms Donoghue

Thank you for your email in support of this TPO.

Please can you provide me with your home address so that I can send this to the TPO Officer along with your email letter as I need to give this information to him by the end of the day.

Yours sincerely
Antony Skaper

Antony Skaper | Legal Clerk| Corporate and Adult Services Department | Derby City Council, PO Box 6292, Council House, Derby, DE1 2ZL | Telephone

05/09/2007

01332 255461 Minicom 01332 256666 | www.derby.gov.uk

Derby City Council – committed to being an Excellent Council

From: JS DONOGHUE [mailto:
Sent: 05 September 2007 11:42
To: Skaper, Antony
Subject: RE: TPO 492

Dear Mr. Skaper,

We are writing to you in support of TPO 492.

We support the preservation of this tree because of its visual public amenity. It is a dominant feature in the area and whilst it is more visible than its neighbour, the Indian Cedar, they both contribute significantly to the locality in terms of supporting wildlife. The trees are used by a local owl and a great number of birds and therefore make important greening effect on the immediate area.

The eucalyptus is not the only tree worthy of preservation. Several significant trees were hastily felled before planning application was applied for by the owners of 44, Middleton Avenue, with scant disregard for either local residents or the local amenity or local wildlife. their argument being that they were dangerous, which was a baseless contention. We would urge you to review this site with Jonathan Oaks as a matter of the utmost urgency before anything else is poleaxed in the name of property speculation.

Yours sincerely,

John and Barbara Donoghue.

"Skaper, Antony" <Antony.Skaper@derby.gov.uk> wrote:

*** Before reading or acting on this e-mail, or opening any attachment, please read Derby City Council's disclaimer and confidentiality mail ***

Dear Ms Donoghue

Thank you for your email. I have sent a copy to the TPO Officer for him to reply regarding the condition of the tree.

I confirm that representations can be made by electronic mail. Please ensure that your address is on the email representation when sending it to the Council.

Yours sincerely

Antony Skaper

Antony Skaper | Legal Clerk| Corporate and Adult Services Department |
Derby City Council, PO Box 6292, Council House, Derby, DE1 2ZL |
Telephone 01332 255461 Minicom 01332 256666 | www.derby.gov.uk
Derby City Council – committed to being an Excellent Council

From: JS DONOGHUE [mailto:bardo007@btinternet.com]

05/09/2007