

### **Ben Larkham Associates Ltd Objection to the service of the Order**

The full report submitted in objection to the service of the Order was originally attached to the Committee Report, but had to be removed before publication of the agenda for data protection reasons. The objection is summarised below:

The Wellingtonia or Giant Sequoia is a tree native to the Sierra Nevada, California. In its native environment it can attain a height of over 100 metres and 27 metres in girth. It was introduced to the United Kingdom in 1853 during a period of Victorian overseas plant hunting and introductions of 'exotic' forms of new trees and shrubs. Wellingtonia trees are commonly seen in grand avenues approaching private estates and as isolated specimens in lawns to large houses, both being situations where the trees have the opportunity to develop to their full potential.

The trees would have formed part of the estate planting to the larger original property on the site. At the time of the residential redevelopment (of Southways) in 1987 the British Standard current at that time focused on the above ground parts of the tree with little attention or understanding of the below ground root environment. The spread of the canopy or crown of the tree was seen as the important criterion when establishing how close to build without detriment to the tree. Knowledge of trees and their rooting environment has developed and if an application were submitted today then 5 Southways would not have been built in such proximity to the Wellingtonia trees and a clearance of 14.0-15.0 metres would be required by the Local Planning Authority. By today's standards, there is an inappropriate relationship between the trees and structures

Root loss would have inevitably occurred to these trees during construction of number 5 and the associated garage.

The current buildings are at their closest point 2.7 metres from centre of stem to the garage and between 7.3 and 9.1 metres from centre of stem to the main house. The row of trees creates, in effect, a vertical obstructing element to the west side of the property. The presence of the trees obstructs western sunlight and a significant proportion of ambient skylight to this elevation.

The trees at this proximity to the house are oppressive and dominant to the scale of the building. As a result of this proximity the gutters of the property on the west side require year round attention to remove needle fall and build up of 'detritus' from the trees. Lack of airflow around the building results in a build up of moss on the roof. Failure of branches and deadwood from the trees has resulted in the loss of roof tiles.

T1 was previously struck by lightning and is of limited future viability as a result of associated defects. T2 –T4 were reduced in height approximately 2.5 years ago to attempt to mitigate their overbearing nature however they remain obviously dominant in relation to the property. The trees are contributing to damage of the existing concrete block paving paths and surfaces. The disruption to ground levels and lightly loaded structures are a result of root development and the continued radial expansion of that root mass.

The service of any TPO is principally founded in the contribution the tree makes to amenity. Whilst not defined in the legislation amenity is usually understood to be the visual

contribution or benefit a tree provides from a public viewpoint. The trees could be said to be visible by pedestrian use of the footpaths but little by motorists given the presence of the Sutton Valence School and Primary School any driver's attention is focused to the road. There is a break in the frontage planting at the entrance to Sutton Valence Primary School and also over the front garden of the detached property to the north of no 5. The upper parts of the trees are also seen above the Doctors surgery which occupies no 6 Southways to the east of the subject property and which divides it from North Street.

It is important to consider that these are broken views of the trees also being seen through the winter canopy of a number of larger trees fronting North Street. When these trees are in leaf any contribution arguably provided by these trees would be diminished significantly. Within the south western corner of no 6 Southways there is also a mature Western Red Cedar which obscures much of the visibility onto the Wellingtonia trees when viewed from North Street. Aside from the dominant Wellingtonia trees Southways as a development has an open plan appearance with frontage trees and shrubs appropriate to the scale of the space and setting of the development.

The benefit these trees provide to the locality may, as suggested by the local authority, be seen as positive in respect of amenity, or as I would contend negatively in the context of the setting of the site with the height and mass of the trees being so incongruous to no 5 and the overall open appearance of Southways.

The owner of the property has been attempting to market it through estate agents now for approximately seven months. There have been no offers on the property due to the presence of the trees. The preservation order thus provides a material obstacle to the effective sale of the property.

In considering the proximal relationship of the trees to the existing property the owner has raised concerns over the potential for the trees to contribute to a subsidence risk. At the distance found the trees would definitely be within a zone of potential influence to the soil beneath the foundations of the house and garage. I have been unable to source information on foundation detail through the Maidstone Borough Council website. My experience of Berkeley Homes is that they are a building firm of good reputation and it is likely that in 1987, or shortly after when the houses were built that the trees would have been of mature proportions. The foundation design to the structures should therefore have reflected the presence of the trees to meet building regulation approval current at that time.

Whilst on site I took a soil sample to approximately 50 centimetres depth adjacent to tree T1. This sample was found to both hold its shape when squeezed and also when rolled into a solid form cylinder. In the absence of further analysis this simple test suggests a soil with a higher percentage clay content. I have also referenced the 1:50000 scale Geological Survey of Great Britain (England and Wales) Solid and drift – sheet no 288 Maidstone which identifies the subject property as falling within an area of head deposits, over Hythe Beds, over Atherfield clay over Weald Clay. Given the poorly sorted and stratified variability of head deposits, and on the basis of the sample taken, the notes following within this objection are written on the understanding that clays are present.

I have looked over the external fabric of the property from a lay person's perspective and not noted any features associated with settlement. However given the presence of clay and the continued growth of these trees the future potential for settlement associated with a persistent moisture deficit cannot be ruled out. It is recommended that further investigation as to the construction specification for the foundations to both the house and garage is undertaken.

What is also pertinent is that if the TPO is not confirmed there clearly remains a limitation on the owner from undertaking any material tree removal. The trees predate the construction of the property therefore any tree removal could result in an increase in soil volume through re-hydration with a potential for ground heave. The burden of responsibility for retention/management or part removal of the trees due to their proximal relationship to the property and those liabilities and risks, both current and future, should remain with the property owner without the imposition of a TPO.

It is therefore evident that the placement of the TPO on these trees is misguided for the reasons stated above including - proximal relationship, overbearing nature, loss of sunlight, damage to existing lightly loaded structures, management of gutters and roof surface and potential for future structural influence. These effects from the presence of the trees have a current and future potential cost implication to the owner of the property.

For the above reasons I would respectfully request that Tree Preservation Order 5003/2018/TPO is not confirmed. The owner is best placed to consider the long term management of these trees especially given the risk of heave from removal.

I would suggest that if the local authority wishes to see an element of protection afforded to these trees out of principle, that the order be modified to omit trees T1-T3 with only tree T4 being retained under the order. This tree is just over 9.0 metres from the corner of the house and would continue to provide the amenity contribution to the locality that the Local Authority is seeking to preserve.

Should members be mindful to confirm the order unmodified then my client would be obliged to make an immediate application to remove trees T1-T3, which would be accompanied with our request for a prompt refusal to be issued. This will allow an immediate appeal to be made to the planning inspectorate. If the inspector were to uphold the appeal the decision on phased removal and works to mitigate heave potential would be made by the client. Should the Local Authority be mindful to refuse a future application on confirmation of the order they may legitimately be held responsible for compensation following that decision and for the reasonable costs of any future loss or damage arising after the date of that decision.

### **Officer response**

The factual elements of the report are considered to be an accurate description of the trees and their relationship to the property. However, the more speculative and subjective comments made are the author's opinion.

Officers do not consider that there is evidence to suggest that T1 is structurally compromised by the lightning strike and associated defects at this time and potentially could continue to make a contribution to amenity for several decades. Trees 2-4 do not have any significant defects. The public amenity contribution that the trees make is set out in the report. Whilst the objection discusses their partially obscured visibility from public viewpoints on the A274 North Street, the Southways road itself is also considered a public viewpoint, from which closer views of the trees can be obtained, albeit by fewer people, principally residents of Southways and people using the road for parking.

Anecdotal evidence about the trees being the reason for the lack of offers on the sale of the house is not necessarily a complete picture. Potential buyers may be discouraged for other reasons, but not voice them, preferring to cite the presence of the trees as the reason.

The soil assessment made in the report is crude; the simple presence of a clay content in a soil is not evidence that it possesses the physical characteristics that can lead to subsidence or heave. Whilst the potential for future damage cannot be ruled out, the risk of such

damage occurring seems very low, given the absence of damage since the property was built. There is currently no settlement damage to the house reported, which suggests that either the soil is not of a type likely to result in damage or the foundations to the property were constructed to a standard designed to withstand such effects. More detailed investigation would be required before any conclusions can be drawn on this matter. Notwithstanding this, with the property for sale, it is unlikely that the current owners have any interest in the long term management of the trees as suggested.

Damage to lightly founded structures such as garden paths is not generally considered to be justification to fell trees. Similarly, inconvenience from problems such as leaf litter blocking gutters can be addressed through regular maintenance and is not generally considered to be justification to fell trees of perceived amenity value.

The decision on whether or not to confirm the Order does not directly raise the issue of compensation, which is a consideration when determining an application for works to trees, when a refusal is being considered.

The Council has the option to confirm the order without modification, to choose not to confirm it, or to confirm with modification (the latter can only remove, not add trees to an Order).

The Council must consider whether the confirmation Order is appropriate on the grounds of the trees' contribution to amenity and whether it is expedient to continue to protect them. In simple terms, whether they are considered to be of sufficient quality and prominence to merit protection and if they are under threat of works that would be detrimental to those attributes.

It is not considered that the grounds for objection or the evidence submitted demonstrates that the harm to amenity that would result from the intended felling of the trees is outweighed and it is therefore appropriate that the Local Planning Authority should seek to continue to have a measure of control over works proposed to the trees by confirming the Order.

**The recommendation remains unchanged**