

OTTERY TOWN WARD
(Ottery St Mary)

10/2006

Target Date: 05. 04. 2007

Owner

Unknown

Location:

Land adjacent to 105 & 107 Chineway Gardens

Proposal:

Confirmation of TPO 10/2006

CONSULTATIONS

Copies of order have been sent to Ward Member, Parish Council and neighbouring properties.

TOWN/PARISH COUNCIL

None Received

WARD MEMBER(S)

None Received

REPRESENTATIONS

4 letters of Objection and 1 petition have been received the reasons for objecting to the order can be summarised as follows:

- On 1 November 2005 EDDC wrote to Mr & Mrs Buckley prior to their move to 107 Chineway Gardens stating that there were no protected trees at the property
- The TPO was not correctly served
- The EDDC Tree Preservation Assessment form is flawed and its completion is incorrect
- The tree is barely noticeable from a public place
- The tree is causing an actionable nuisance
- The tree drops leaves branches and acorns which are difficult to clear due to home owners age and disability
- Mrs Buckley of 107 Chineway Gardens suffers from osteoporosis and any fall could potentially be fatal
- It is not possible to manage tree
- Important information was withheld on the Committee process
- 50 local residence signed a petition objecting to the TPO

Support

The adjacent field owner requested the tree be assessed for statutory protection as he believed it was under threat.

RELEVANT PLANNING HISTORY

App. No.	Proposal	Date
10/2006	Provisional Tree Preservation order served	05.10.2006

PLANNING POLICIES

Town and Country Planning (Trees) Regulations 1999

East Devon Local Plan (1995-2011)

Policy D5 – Trees on Development Site

Government Guidance

PPS 9

SITE LOCATION AND DESCRIPTION

Details of the site

Chineway Gardens is a residential development on the outskirts of Ottery St Mary. 105 & 107 Chineway Gardens are on the very eastern perimeter of the development and are adjacent to agricultural land.

Details of tree (Ground based inspection)

The tree is a semi mature *Quercus robur* (Common Oak). The tree currently stands at approximately 13 metres in height with a crown spread of 10m. The tree is in good health with typical form for the species. The tree is growing on a bank with no evidence of disturbance to the ground around the root collar or the base of the tree to indicate root plate instability.

CONSIDERATIONS AND ASSESSMENT

Background

A recent High Court judgement in the Perrin & Ramage verses Northampton Borough Council & Shephard has concluded that a tree causing an actionable nuisance is exempt from the protection afforded by a TPO as section 198 (6) (b) of the regulations is applicable.

Section 198 (6) (b) of the Town and Country Planning (Trees) Regulations 1999 states:

‘(6) Without prejudice to any other exemption for which provision may be made by a tree preservation order, no such order shall apply-

(b) to cutting down, uprooting, topping or lopping of any trees in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance..’

The damage to the patio and retaining wall in the garden of 107 Chineway Gardens are likely to have been caused by the Oak tree and is sufficient evidence of the tree causing an actionable nuisance (Pictures enclosed).

Impact on Landscape

The tree is and will become increasingly prominent on the landscape as it matures.

CONCLUSIONS

It is felt that the tree itself is worthy of protection and that procedures in serving of order have been correctly followed. The fact that the tree is causing an actionable nuisance makes it exempt from any statutory protection. In these circumstances a Tree Preservation Order would not be appropriate.

However, further clarification will be given at the meeting regarding the extent of the nuisance.

RECOMMENDATION

Not to confirm Tree Preservation Order 10/2006

List of Background Papers

TPO file (10/2006)

Site Plan

Pictures of damaged caused by tree.