

**TO CONSIDER AN OBJECTION TO THE MAKING OF A TREE PRESERVATION ORDER,
No. 11A/2008,
At The Three Ashes Public House, Cressing Agenda Item 5**

Portfolio Area: Enterprise & Culture
Report Presented by: Melvyn Crow, Landscape Services Manager

Background Papers: Tree Preservation Order 11A/2008 file
Letter of objection dated 02 June 2009
Copy of Appeal Decision dated 18th February 2009
Planning Application 09/01002/FUL

Corporate Implications: Please refer to table at end of report

Options:

- 1) To confirm the Tree Preservation Order in the interests of amenity.
- 2) Not to confirm the provisional Tree Preservation Order and allow the owner to prune/fell the trees as he sees fit.

Risks: Compensation rights could arise if the Council subsequently refuses an application for tree work consent and the tree or a part of it then fails.

Executive Summary

This report is to consider the objection on behalf of the owner of The Three Ashes PH., Cressing, to the making of Tree Preservation Order No. 11A/2008.

In June 2009, for amenity and tree protection reasons, a provisional Tree Preservation Order was placed on two ash trees on the objector's property.

Planning permission (09/01002/FUL) for residential development was granted on the 01st October 2009, subject to conditions. These conditions included requirements for the retention and protection of the two ash trees.

Decision

1. That Tree Preservation Order No. 11A/2008 at The Three Ashes Public House, Cressing, is confirmed.

Background

In 2008, an application (08/01155/FUL) was submitted seeking planning permission for residential development at The Three Ashes Public House, Ashes Road, Cressing.

A landscape assessment submitted with the application made reference to 3 significant trees on the site. These trees were a large weeping willow to the south east corner of the site, and 2 young ornamental ash on the edge of the car park to the former public house. The proposed layout indicated the removal of the 2 young ash trees. When officers visited the site to consider the proposals, it was found that the weeping willow had been recently felled.

It was considered appropriate to formally safeguard the 2 ash trees, particularly in view of the apparent indiscriminate removal of the weeping willow. A copy of the plan attached to the Tree Preservation Order is appended to this report (Appendix 1).

An objection to the making of the Order was lodged on behalf of the owners which we sought to resolve. The owners' agent failed to respond to correspondence, and the Order was confirmed in the belief that the objection was not being pursued.

This planning application was refused, and the subsequent appeal was dismissed. A copy of the Appeal Decision is appended to this report (Appendix 3).

Members will recall that, at their meeting held on the 28th April 2009, it was decided that Tree Preservation Order No. 11/2008 should be revoked, to demonstrate that we operate a fair and transparent system following a claim by the agent that he had not received three separate pieces of correspondence. The Order was then re-served as No. 11A/2008, and the agent re-submitted the objection. A copy of the objection is appended to this report (Appendix 2).

A further planning application (09/01002/FUL) for residential development, was approved conditionally on the 1st October 2009. This provided for the retention of tree no. T.1 in situ, with tree no. T.2 being moved a short distance within the site. All relevant conditions attached to the planning permission have now been discharged.

Comments

The owners' agent was advised it was considered most appropriate to consider the objection at such a time as the planning application (09/01002/FUL) and relevant reserved matters had been determined.

The main issue is the contribution to the amenity value afforded to the area by these 2 trees. It is officers' opinion that they do make a worthwhile contribution to the area, and it can be seen that this is endorsed by the Planning Inspector in dismissing the appeal.

It is accepted that tree no. T.2 is still young enough to be moved within the site, and a method statement for this has been agreed. Following development of the site, both trees will remain as important features.

The Secretary of State has made it clear that local planning authorities should not use conditions attached to a planning permission to secure the long term protection of trees when Tree Preservation Orders are available for this purpose.

Corporate Implications			
Financial:	None		
Legal:	None		
Equalities & Diversity:	None		
Customer Impact:	None		
Environment & Climate Change:	If the order is not confirmed there is a risk that the visual amenity of the area will be diminished and the trees ability to act as carbon store will be reduced/lost.		
Consultation/Community Engagement:	Local Committees		Partners
	Public		Staff
Key Decision:	No		
Public/Private Report:	Public		
Officer Contact:	Melvyne Crow		
Designation:	Landscape Services Manager		
Ext No:	2561		
Email:	melcr1@braintree.gov.uk		



Appeal Decision

Site visit made on 16 February 2009

by **Janet L Cheesley BA (Hons)**
DipTP MRTPI
an Inspector appointed by the Secretary of
State for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.
gov.uk

Decision date:
18 February 2009

Appeal Ref: APP/Z1510/A/08/2084857

**The Three Ashes Public House, Ashes Road, Cressing, Braintree, Essex
CM77 8DP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Berkeley Street Properties plc against the decision of Braintree District Council.
- The application (Ref 08/01155/FUL), dated 12 June 2008, was refused by notice dated 11 August 2008.
- The development proposed is conversion of existing public house to private dwelling, demolish existing dining room, kitchen and toilets associated with public house and erection of four No. dwellings on adjoining land.

Decision

1. I dismiss the appeal.

Main issues

2. I consider that there are two main issues:

the effect of the proposal on the character and appearance of the surrounding area; and

whether sufficient information has been provided to ensure the provision of bus stop improvements as community facilities.

Reasons

Character and Appearance

3. National policy in *Planning Policy Statement 1: Sustainable Development (PPS1)* emphasises the importance of good design. Design which is inappropriate in its context or fails to improve the character of an area should not be accepted. Braintree District Local Plan Review Policy RLP3 allows new residential development in villages if it satisfies a list of criteria including the protection of the existing streetscene.
4. The appeal site lies within the village in an area characterised by dwellings set back and fronting the road. The predominant appearance is of a low density of development with verdant front gardens in a spacious semi-rural setting. The proposal includes alterations to and the conversion of the existing public house and the erection of four dwellings. From my observations due to the scale and layout of the development proposed I consider it would appear as a cramped form of development in the more spacious street scene. In addition, the design

of the dwellings, particularly the two and a half storey elements and the excessive hard landscaping would have an unacceptable urbanising effect on the more rural streetscene.

5. Local Plan Policy RLP90 requires new development to reflect local distinctiveness and be sensitive to the need to conserve local features of landscape importance. Within the appeal site are two Ash Trees protected under Tree Preservation Order 11/2008. From my observations these trees make a positive contribution to the appearance of the area due to their stature. I am of the opinion that the loss of these trees would be to the detriment of the appearance of the locality. I note that it may be possible to relocate these trees within the appeal site. However, without any information as to where an acceptable alternative location would be, I am unable to determine whether such relocation would protect the future of these trees. Therefore I conclude that there may be long-term effects to the trees that would put at risk their health. These trees make a positive contribution to their setting and thus I consider such a risk unacceptable.
6. For the reasons stated above I conclude on this matter that the proposal would have an adverse effect on the character and appearance of the surrounding area. Therefore the proposal would not accord with national policy in PPS1 and Local Plan Policies RLP3 and RLP90.

Community Facilities

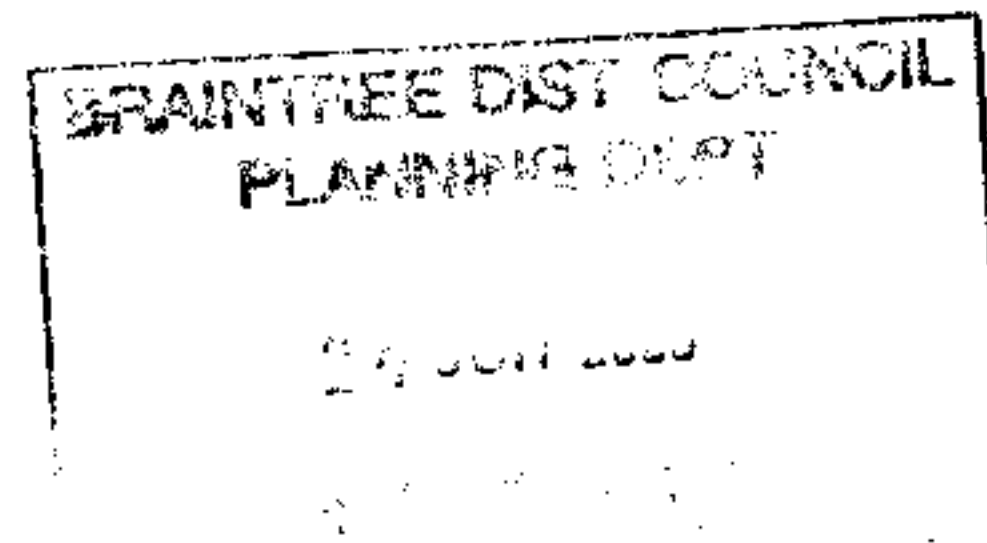
7. The appellant has completed a Unilateral Undertaking, although has not paid the associated legal fees. This is to provide a capital contribution for bus stop improvements requested by the Highways Authority. The Council has indicated that such a contribution is required by Local Plan Policy RLP 9. This policy requires site appraisals for development sites over 1 hectare to include amongst other things the need for any additional community facilities and infrastructure. The appeal site is less than 1 hectare and therefore I do not consider that this policy applies. I have been given no explanation of the impact that the formation of five additional households would have on existing facilities. For these reasons I am not persuaded that contributions are necessary to make the proposal acceptable. Circular 05/2005 *Planning Obligations* indicates that an obligation is only necessary to make a proposed development acceptable in planning terms. From the evidence available I am not persuaded that this is the case and I consequently give limited weight to it in reaching my decision.

Conclusion

8. I have found that the proposal would have an adverse effect on the character and appearance of the surrounding area. I have not found that the proposal would prejudice the provision of community facilities. However, in the light of the harm I have identified, I do not consider this matter justifies allowing the appeal. For the reasons stated above and having taken into consideration all other matters raised upon which I have not specifically commented, including the proposed redevelopment of the site opposite, I dismiss the appeal.

Janet Cheesley
INSPECTOR

Landscape Services Manager
Development Services
Braintree District Council
Causeway House
Braintree
Essex CM7 9HB



Date: 02 June 2009

Your Ref: 11A/2008TPORDER

Dear Mrs Dean,

**TOWN and COUNTRY PLANNING ACT 1990
TOWN and COUNTRY PLANNING (TREES) REGULATIONS 1999
BRAINTREE DISTRICT COUNCIL TREE PRESERVATION ORDER No.11A/2008
ADJACENT THE NORTH-EAST BOUNDARY OF THE CAR PARK, THE THREE
ASHES PUBLIC HOUSE, CRESSING, ESSEX**

**Regulation 4, Town & Country Planning (Trees) Regulations 1999 – Objections
and Representations**

We hereby give notice that we object to the imposition of Tree Preservation Order No. 11/2008 on trees numbered T1 (Ash) and T2 (Ash) as shown on the attached plan issued by Braintree District Council on 6th August 2008.

The Council state that the Tree Preservation Order has been made "because the trees involved, have significant visual and amenity value". The TPO's were first proposed by the Council during the course of considering an application to redevelop the site, which was submitted last year.

The objections and representations are based upon the facts that the trees do not have "significant visual and amenity value" as claimed and that the letter dated 9th October 2008 from the landscape services manager, M G T Crowe, implies that this is nothing other than a punitive measure following the removal of a Willow tree from the south-west corner of the site (refer to paragraph 3 of the attached). It should be noted that the willow tree was not protected by a TPO, and did not require prior approval from the Council to remove it. The tree was removed at the request of neighbouring residents who were concerned that the tree was causing damage to their property.

The baseline landscape assessment carried out on this site in May 2008 (which has been copied to you under separate cover) identified the trees in question as having little amenity value and their presence offered visual value only because there was no other significant planting across the site.

The trees stand within one metre of the existing car park surface and within four metres of each other (their canopies are inter-twined). T2 is the larger of the two with a maximum height of eight metres; T1 is approximately two metres shorter.

The baseline landscape assessment notes that if the trees are lost from the site, there is nothing of vital ecological or visual amenity significance that would diminish or devalue the landscape and environmental importance of the site.

It is considered that the landscape and environmental importance of the site can be better enhanced through a detailed landscape strategy to be submitted as part of the redevelopment proposals for the site. The landscape strategy could include the introduction of an appropriate number of specimen tree species (suggested minimum size 25-30cm girth) and other planting in appropriate locations within the site to be agreed with the local authority. This would improve habitat creation across the site and prove to be more sustainable for the long-term ecological investment in the site.

It is proposed that details regarding the landscape proposals will be submitted as part of the forthcoming application to redevelop the site, which has been the subject of pre-application discussions with officers. The delivery of the landscape strategy could be secured by appropriate conditions attached to a planning permission.

We would also suggest that the planning submission be accompanied by an appropriate landscape management and maintenance plan for the most valuable landscape feature on the site, namely the native-specie hedge defining the northern-most boundary of the site.

In summary, it is considered that the two ash trees do not constitute a significant visual or amenity value. We therefore request that the local authority do not impose the TPO's on these trees, with the assurance that a detailed landscape strategy submitted as part of the forthcoming redevelopment scheme will provide improved landscaping and habitat opportunities within the site, beyond that which would be achieved through imposing the TPO's.

I look forward to hearing from you shortly with regard to this matter. Meanwhile, if you have any queries regarding the above, please do not hesitate to contact me.

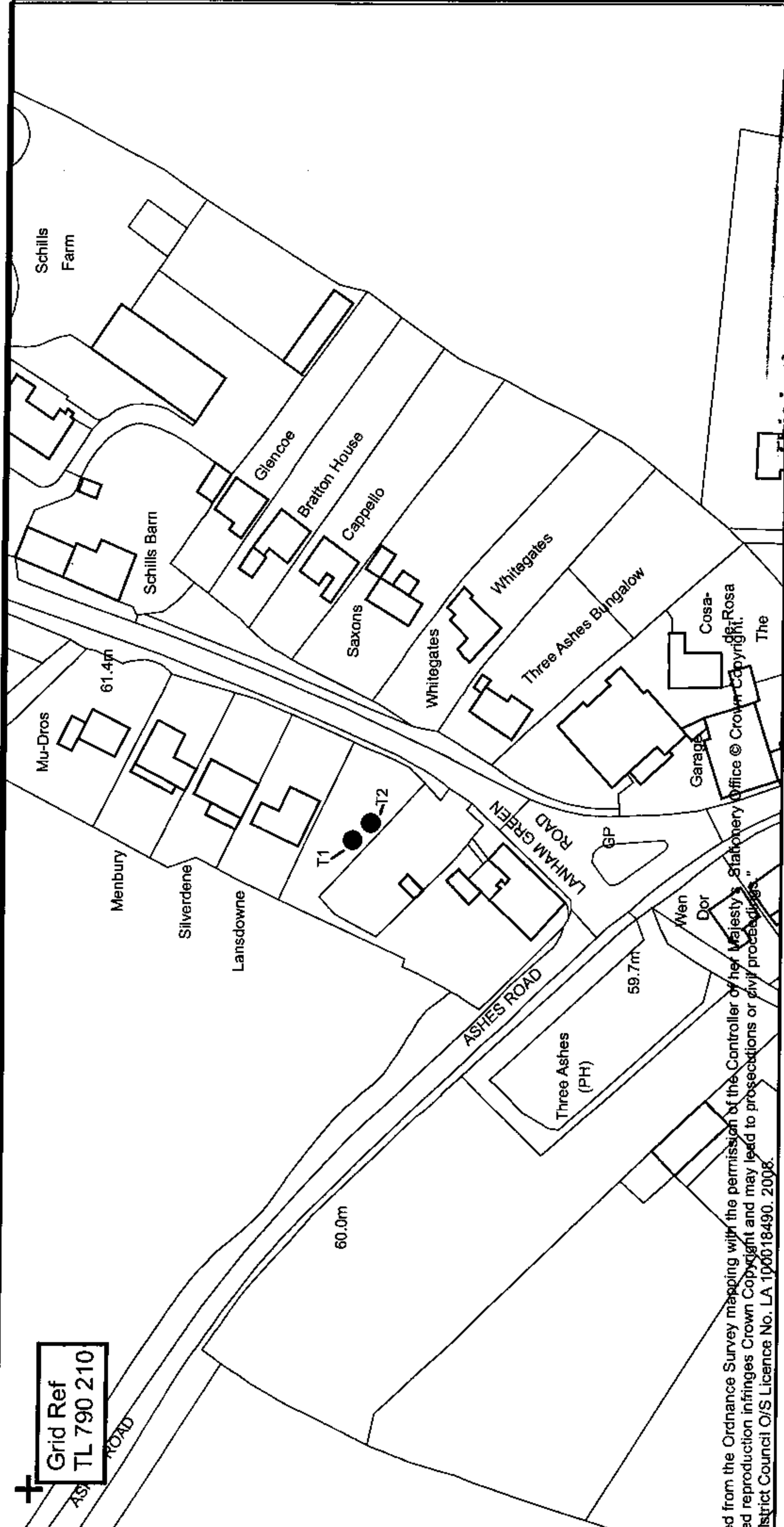
Yours sincerely,



Nigel Thorne MS, FRSA, FCI, PPLI
Consultant Landscape Architect



Grid Ref
TL 790 210



Planning Department

Date: MAY 2009

Ref: 116-4-648

Drawn: BH

Scale: 1:1250
TL 7921

This is the map referred to in the
Braintree District Council Tree
Preservation Order No. 11A/2008

11A/2008

[Signature]
.....
Authorised Signatory

TREE PRESERVATION ORDER 11A/2008

ADJACENT TO NORTH EAST BOUNDARY OF THE CAR PARK
THREE ASHES PUBLIC HOUSE
CRESSING

