

- 5.2 The tree that is the subject of this Tree Preservation Order is located within the front garden of White House, Rectory Hill, East Bergholt. This property is a Grade II listed building originally dating from approximately 1750 which has been extended on at least two subsequent occasions – once in the 1930’s, and again in 2002. The entire curtilage of White House is sited within East Bergholt Conservation Area and Dedham Vale Area of Outstanding Natural Beauty.
- 5.3 The tree in question, T1, is an early mature specimen of Copper Beech estimated to be between 75 and 100 years old. It is approximately 20 metres in height with a balanced crown extending between 7 and 8.5 metres from the stem, which had a measured diameter of 72 centimetres. The tree is of outstanding form and displays no obvious external indicators of decay, instability or disease.
- 5.4 T1 is a very important amenity specimen. It dominates its location, providing an excellent visual amenity to White House, other local residents and pedestrian and vehicular users of Rectory Hill. The tree complements the setting of the listed building and, as seen from a distance, visually blends with other mature trees to enhance the quality of East Bergholt Conservation Area. The significance of T1 is reinforced by an objective assessment using the Helliwell System (a nationally recognised arboricultural appraisal method) that confirms its quality and importance. Under this system the tree has been scored at 2016 points (trees of 100 points or more are normally considered worthy of protection by a Tree Preservation Order).
- 5.5 The serving of this TPO has been prompted by the receipt of a Section 211 Notice (Town and Country Planning Act 1990) to fell the tree. The notification has been submitted by Cameron Taylor Structural Engineers working on behalf of a buildings insurance firm who claim that the tree is the primary cause of subsidence damage to White House. The Local Planning Authority, supported by East Bergholt Parish Council, considers the tree to be of significant public amenity value and as such it should be afforded the statutory protection by the making of a Tree Preservation Order in the interests of maintaining the visual amenity of the area.
- 5.6 The owners of White House, Mr and Mrs Butterworth support the serving of the Tree Preservation Order and have confirmed this in writing. Additionally, seven letters of support for the serving of the Tree Preservation Order have been received from adjacent property owners.
- 5.7 One letter of objection to the making of TPO BT00405 has been received from Mr Best of Davies Chartered Loss Adjusters who are acting as agents to the buildings insurers of White House. Mr Best’s objection is summarised as follows:-
- (a) Structural damage has been caused to White House. T1 is responsible for this damage and it should be felled to prevent further damage occurring.
 - (b) If T1 is felled, repair works will be restricted to the super-structure of the existing building. However, if the tree remains in situ it is likely that a partial underpinning scheme will be required to stabilise the building. Davies Chartered Loss Adjusters will seek to recover any resulting increased costs from Babergh District Council.
- 5.8 Rob Hyland, MB Eng, one of the Council’s Building Control Surveyors has been consulted and the responses to the objections are as follows:-

- (a) The report dated 21 December 2005 and prepared by Cameron Taylor for Davies Loss Adjusters does not provide any conclusive evidence that T1 is the cause of the damage to White House. The wide variation in the findings between the two close trial holes TH1 and TH2 suggests that further investigation is required to confirm the cause of the building movement. Further trial holes remote from the areas of building damage and influence zone of the vegetation would enable a more accurate assessment of the soil conditions and possible causes of the damage. Interestingly, the sample recovered from the trial hole TH1 (nearest to the Beech tree) had a greater moisture content than one recovered at a similar depth from TH2.

The Cameron Taylor report indicates that large roots were found in trial hole TH1, adjacent to the damaged part of the building. The only roots identified in their report were from the Wisteria and in a clay sample with a low moisture content. A report prepared by Marishal Thompson and Co (environmental risk advisors instructed by Cameron Taylor) dated 19 September 2006 states that roots from T1 have been identified beneath the foundations, but no further information has been provided regarding their size and location. Furthermore, the Marishal Thompson and Co report, paragraph 5.0, "Opinion" makes reference to additional information received from the Engineer, but which may not have been made available to Babergh District Council.

The Cameron Taylor report, paragraph 5.04, refers to low precipitation levels. However samples from TH2 indicate that moisture was present. Paragraph 6.02 states that no significant movement has been noted in the last twelve months. This information needs clarification.

Lastly, the effect of heave damage has not been taken into account and there is no evidence that this factor has been properly considered.

- (b) The reports prepared by Cameron Taylor and Marishal Thompson and Co do not provide conclusive evidence that the Beech is the cause of the damage to White House. Therefore, if the tree is retained and the building is underpinned as then argued necessary by Davies Chartered Loss Adjusters, it would be difficult to prove that the tree removal alone would have prevented further damage.

5.9 The following implications of Human Rights legislation should be considered:-

- (a) Article 1 of Protocol 1 "The right to peaceful enjoyment of possessions and protection of property" – appropriate if the individuals' rights to enjoyment of their property are affected.
- (b) Article 8 "The right to respect for private and family life, home and correspondence" – appropriate if the condition of the tree is causing a safety risk, hazard or health problem at the homes of the individuals.

Articles 1 and 8 apply as it has been alleged that the tree is causing damage to the property. Any violation of rights under Articles 1 and 8 must be proportionate to the action of confirming the tree preservation order. Members should be mindful of the response of the Council's Building Control Surveyor as stated above that there is no proof that the tree is causing damage to the property. Members should reach their own conclusions.

As far as Article 8 is concerned, at present there has been no evidence put forward to suggest that the tree poses a reasonably foreseeable future risk to persons or property. If the tree unexpectedly becomes dangerous there are exemptions within the TPO legislation to allow tree owners or others to resolve the problem to an extent proportionate to abate the danger. Furthermore, provisions exist within the TPO legislation to permit tree owners and others to apply to the Local Authority to undertake surgery. Each application is assessed on its appropriateness to the situation, and if the Local Authority refuses permission to proceed with requested surgery, the applicant may appeal to the Department for Communities and Local Government. There are no fees payable to the Local Authority for the submission of TPO applications or TPO refusal appeals.

6. **APPENDICES**

- (a) Copy of TPO BT00405
- (b) Copy of letter from Davies Loss Adjusters 28 November 2006
- (c) Copy of Cameron Taylor report 21 December 2005
- (d) Copy of Marishal Thompson report 19 December 2006

7. **BACKGROUND PAPERS REFERRED TO:**

None.

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