

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**LICENSING AND APPEALS COMMITTEE**

**Minutes of a meeting held in the Council Offices, Gernon Road, Letchworth Garden City  
on 28 September 2009 at 7.00p.m.**

**MINUTES**

**PRESENT:** *Councillors: Tom Brindley (Chairman), Melissa Davey, Lorna Kercher and Marilyn Kirkland.*

**IN ATTENDANCE:** *Solicitor, Planning Control and Conservation Manager, Area Planning Officer (Hitchin) and Senior Committee and Member Services Officer.*

**ALSO PRESENT:** Objectors: Mr Andrew Fisher – 25 Talbot Street, Hitchin (owner of 39 Grays Lane, Hitchin).  
Mr Henry Girling – Consultant Arboriculturalist, appointed by Local Planning Authority (NHDC).

**1. APOLOGY FOR ABSENCE**

An apology for absence was received from Councillor Alan Bardett.

**2. ELECTION OF CHAIRMAN**

Upon being proposed and seconded, it was

**RESOLVED:** That Councillor Tom Brindley be elected as Chairman for the meeting.

**3. PROCEDURE**

The Chairman ascertained that all parties present were satisfied to adhere to the suggested procedure as circulated with the agenda for the meeting.

**4. TREE PRESERVATION ORDER REF. NO. 179 (2009) – 39 GRAYS LANE, HITCHIN**

In accordance with the agreed procedure, the Chairman established that the following people were appearing before the Licensing and Appeals Committee:

Objectors to the Tree Preservation Order: Mr Andrew Fisher (owner of 39 Grays Lane, Hitchin)

Officers: Mary Caldwell – Planning Control & Conservation Manager  
Tom Rea – Area Planning Officer

Arboriculturalist: Mr Henry Girling (supporting the Local Planning Authority's case)

The Licensing and Appeals Committee received a report of the Planning Control and Conservation Manager presented by the Area Planning Officer (Hitchin) which summarised the background to the making of the Tree Preservation Order (TPO).

The Area Planning Officer (Hitchin) stated that, in March 2009, planning officers were asked to provide pre-application advice concerning a proposal to demolish No. 39 Grays Lane, Hitchin and replace it with a detached dwelling. Planning Officers considered that an atlantic cedar tree located within the front garden of the property was of high public amenity value and could be adversely affected or lost as a result of redevelopment of the site. The Council's Tree Strategy Officer confirmed that the tree was a nice specimen, in good general health, and worthy of a TPO. A provisional TPO, a copy of which was attached as Appendix A to the report, was duly served on 7 May 2009.

In April 2009, a planning application (ref: 09/00785/1) for the demolition of the dwelling at No. 39 Grays Lane, Hitchin and its replacement with a larger dwelling, was received by the Local Planning Authority and registered on 12 May 2009. Following the submission of amended plans on 14 July 2009, which showed the proposed dwelling moved 2 metres further back into the site, a second driveway access deleted and the atlantic cedar tree the subject of the provisional TPO retained, planning permission was granted for the development on 14 August 2009. The Planning Officers' delegated approval form, together with approved plan no. 19185A 104 Rev C was attached as Appendix C to the report.

The Local Planning Authority had received a formal objection from the owners of 39 Grays Lane to the provisional TPO, with a request that it be withdrawn. A full copy of the owners' letter, which included a landscape report by Choros landscape architects and representations from 4 local residents all opposed to the TPO, were attached as Appendix B to the report. The objections to the confirmation of the TPO could be summarised as follows:

- The cedar tree was too large for a domestic dwelling and had outgrown its environment;
- The tree was affecting the growth of a flowering cherry tree located in the footpath at the front of the property;
- The tree was adversely affecting the existing property, adjoining property and telephone lines;
- Consultants' advice was that within 10 years the tree would outgrow its allotted space and root run;
- The tree was an inappropriate specimen in a domestic situation and was more suited to a parkland setting; and
- The retention of the tree would place an unnecessary financial burden on the occupiers of the property through constant professional maintenance.

In view of the comments received from the owners of the property, their professional agents and other residents, the Local Planning Authority commissioned and obtained an independent report from a professional arboriculturalist, Mr Henry Girling M. Arb. (RFS). F. Arbor. A., C. Env., and a copy of this report was attached at Appendix D to the report. Members were asked to note the addendum to the report concerning the issues of life expectancy of the tree and tree maintenance issues.

The Area Planning Officer (Hitchin) asked Member to note the firm conclusion drawn by Mr Henry Girling that TPO No. 179 should be confirmed. Whilst the issues raised by the owners of the property and local residents were acknowledged, it was clear that with professional maintenance of the cedar tree, its amenity value would be expected to continue for at least 20 years (ref: H. Girling report, 2/7/09).

Mr Henry Girling commented that the cedar tree the subject of the TPO contributed to the value of life in Hitchin, and that its destruction would be detrimental to the area. Whilst acknowledging that it would be a matter of opinion as to whether or not the tree should be retained, Mr Girling stated that all parties to the hearing agreed that it was an "A" quality tree. He re-iterated his conclusion that the TPO should be confirmed.

The Chairman, Members of the Committee and objector to the TPO then put questions to the Area Planning Officer and Consultant Arboriculturalist.

The Legal Advisor clarified to the Committee that, should the TPO be confirmed, then its validity could not be challenged in any legal proceedings, except by way of an application to the High Court within 6 weeks of the date of confirmation of the TPO. An application to the High Court may be made by any person who was aggrieved by a TPO on the grounds:

- (1) That the TPO was not within the powers of the Town & Country Planning Act 1990; or

(2) That the requirements of the said Act or supporting Regulations had not been complied with in relation to the TPO.

The Legal Advisor further explained that, should the TPO be confirmed, the objector could appeal to the Secretary of State should the Local Planning Authority refuse him consent to cut down or carry out work on a protected tree.

The objector presented his case, and stated that he did not object to the tree, but merely to its presence in the garden of 39 Grays Lane. He considered it to be totally inappropriate for the location, and commented that there were over 90 other trees in the road. He had suggested and was still prepared to plant a Japanese Maple tree in place of the Cedar tree, should the TPO be not confirmed.

The objector stated that the tree made the dwelling extremely dark, and that pruning of the tree would thicken its core, thereby further reducing the natural light to the property. He advised that the TPO guidelines stressed that TPOs should be used to protect selected trees and woodlands of significant value and amenity to the local environment. He considered the word "significant" to be important in this context, and was of the opinion the cedar tree was not significant in this context.

The Chairman, Members of the Committee, Area Planning Officer and Landscape Architect then put questions to the objector.

The Chairman then gave the Area Planning Officer, the Arboriculturalist and objector the opportunity to make a final statement to the Committee in support of their views.

To assist the Committee in its deliberations, the Legal Advisor read out in their entirety Paragraphs 3.2 and 3.3, relating to "Amenity", of "Tree Preservation Orders: A Guide to Law and Good Practice", published by the Department of Communities and Local Government in 2000.

Members of the Licensing and Appeals Committee gave their views and decision regarding the application in open forum. The Committee considered that removal of the tree would not result in a significant impact on the local environment and its enjoyment by the public. Members further considered that the tree was unsuitable for its location in a not very large residential garden, and would be more suited to an open parkland setting. The Committee was also mindful that the objector had offered to plant a more appropriate species in place of the cedar tree.

**RESOLVED:** That NHDC Tree Preservation Order No. 179 (2009) – 39 Grays Lane, Hitchin, be not confirmed.

**REASON FOR DECISION:** As stated in the final paragraph of the preamble to Minute 4 above.

The meeting closed at 7.50pm.

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Chairman