

## APPENDIX 1

Code No. and Date Received	Name and Address of Applicant	Description and Location of Proposed Development
13/0341/TCA 09.05.2013	Caerphilly County Borough Council Head Of Engineering Services Directorate Of The Environment Ty Pontllanfraith Blackwood NP12 2YW	Fell London Plane tree and treat stump to prevent regrowth Land Adjacent To 1 Tyn Y Graig Terrace Llanbradach Caerphilly CF83 3LT

**APPLICATION TYPE:** Tree in Conservation Area

### SITE AND DEVELOPMENT

Location and Site description: The tree is located within the pavement to the southern boundary of 1 Tyn Y Graig Terrace, Llanbradach. The base of this tree is approximately 300-500mm away from a stone outbuilding, which forms part of the boundary of 1 Tyn Y Graig Terrace Llanbradach. The surrounding area is predominantly residential and within a conservation area.

Development: Fell London Plane tree and treat stump to prevent re-growth. This is a notification in respect of a tree within a conservation area, and gives the Local Planning Authority the opportunity to impose a Tree Preservation Order if appropriate.

Dimensions: The tree is approximately 20m in height with a crown spread of 17 m and a stem diameter of 1.3m at 1.5m above ground level.

### PLANNING HISTORY

No previous planning history.

### POLICY

### LOCAL DEVELOPMENT PLAN

Site Allocation: The site is within a conservation area, and within the settlement boundaries.

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Policies:

SP10 (Conservation of Natural Heritage).  
CW6 (Trees, Woodland and Hedgerow Protection).

NATIONAL POLICY

Welsh Office Circular 61/96 Planning and the Historic Environment: Historic Buildings and Conservation Areas contains advice in respect of trees in conservation areas. It states that, '...in view of the contribution that trees can make to the character and appearance of a conservation area, there is special provision for trees in conservation areas which are not the subject of tree preservation orders.'

ENVIRONMENTAL IMPACT ASSESSMENT

Did the application have to be screened for an EIA? No.

Was an EIA required? Not applicable.

COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? Not applicable.

CONSULTATION

Conservation & Design Officer - Raises no objections to the loss of the tree but would expect a new tree of the same species to replace it.

Senior Arboricultural Officer (Trees) - Raises no objection subject to a replacement tree being planted at a suitable location either within or immediately adjacent to the Conservation Area Boundary.

ADVERTISEMENT

Extent of advertisement: Three neighbours notified, site notice posted.

Response: None.

Summary of observations: Not applicable.

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### SECTION 17 CRIME AND DISORDER ACT

What is the likely effect of the determination of this application on the need for the Local Planning Authority to do all it reasonably can to prevent crime and disorder in its area? There are no specific crime and disorder issues in this instance.

### EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species? Based on current evidence, this is unlikely to be a significant issue in this case, but the Council's Ecologist has advised that the tree provides suitable nesting bird habitat, and therefore the tree should not be removed from March to July unless the Local Planning Authority indicates otherwise.

### ANALYSIS

The application to remove this tree is made by the Head of Engineering Services as the tree is situated on Highway land. The reason for recommending the removal of the tree stems from a complaint from an adjacent householder that the tree roots have caused damage to an outbuilding. The purpose of the notification is to allow the Council to consider whether a Tree Preservation Order (TPO) should be made.

A TPO is made to ensure that a tree with some significant value is preserved. If the tree is growing on land owned or controlled by the Council it can protect it by virtue of its ownership of the tree and the land. There are also legal difficulties in that a Council cannot serve notice on itself e.g. we do not serve enforcement notices in respect of land owned by the Council.

In deciding on whether or not to make a TPO the Council has to consider the expediency of making an order, Section 198 (1) of the Town and Country Planning Act 1990 states that "If it appears to a Local Planning Authority that it is expedient in the interests of amenity" a TPO can be made. In deciding whether something is expedient cost considerations may be taken into account and in considering whether or not something is expedient the Local Planning Authority need not limit itself to material planning considerations.

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## Application 13/0341/TCA Continued

Trees undoubtedly positively add to the character and appearance of a conservation area and its setting, however, if there are concerns over potentially harmful stability issues upon neighbouring houses and the encroachment of the overhanging tree into the neighbour's garden and daylight concerns, for example, then there is a requirement to evaluate what is in the best interest for the buildings against what is in the best interests of the tree and the surrounding area.

The application relates to a mature London Plane Tree approximately 90 years old and approximately 20m in height with a crown spread of 17m and a stem diameter of 1.3m at 1.5m above ground level is situated within the highway verge. The base of this tree is approximately 300-500mm away from a stone outbuilding, which forms part of the boundary of No 1 Tyn Y Graig Terrace Llanbradach. This is an attractive tree in good health and vigour, which makes a significant contribution to the visual amenity of the Conservation Area and which could live for another 150 years.

In October 2010 the Council's Tree Officer was contacted by the owner of No 1 Tyn Y Graig Terrace, who wanted the council to remove the tree, which he believed was responsible for damage to his outbuilding. A site meeting was arranged, at which the Tree Officer noted that the exterior stone work of the building appeared to be in a poor condition, repointed in several places with a variety of mortars and that there was evidence that the exterior wall had until recently been covered with Ivy. The Tree Officer discussed with the owner the possible removal of the tree or repair works to the outbuilding, which would bridge, using concrete lintels, any tree roots which extended beneath the outbuilding, thereby allowing the tree to remain.

Officers from the Council's Building Control team also visited the site and noted a small protrusion in the floor of the outbuilding, which in their opinion may have been caused by the root structure of the tree. It was also noted that all cracking in the exterior wall of the building had taken place between the new and original masonry. Their conclusion was that the tree, together with the recently removed Ivy and a lack of historical maintenance may have been a contributing factor to the cracking.

The Council's Insurance Risk Section were consulted and their advice was that either the tree should be removed and any claim settled, or the claim could be settled and the tree retained in which case any future claims would not be covered by the Council's insurance and would have to be borne by the appropriate department.

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Throughout 2011 there were several exchanges of letters, between the Head of Regeneration and Planning and the complainant, but no action by the Council to remove the tree. In August 2011 DAS Legal Insurance Company Ltd acting on behalf of the claimant submitted two quotations from local builders to the value of £1,905 and £2,480 for the repair of the outbuilding. The Planning Division responded in December 2011 stating that the situation had been reconsidered but that the Council's opinion remained that tree had not caused the damage to the out building.

In February 2012 Lyons Davidson Solicitors acting on behalf of the complainant wrote to the authority to seek damages for the costs of repairs to the outbuilding and an injunction for the removal and or maintenance of the tree.

Following a meeting between the Head of Regeneration and Planning and the Council's Legal and Insurance Section it was agreed that, to date, the complainant had failed to submit sufficient evidence to substantiate the claim. In repudiating the claim the Insurance Risk section recommend that the complainant had a survey undertaken by an Arboricultural Consultant experienced in insurance and subsidence claims.

The survey was undertaken in July 2012 by S.J Stephens Associates Ltd. The survey concluded that it was "more likely than not that the tree roots have been the most significant factor causing the deterioration of the building." The consultant went on to say, " to prevent future structural damage the tree must either be removed, or repair work undertaken in such a way as to allow further root expansion." The consultant also stated, that a structural engineer needed to specify this work, which should also include a series of specified measures to protect the tree. This report was accepted by the Head of Regeneration and Planning Officer as a means of repairing the building and ensuring the retention of the tree.

In August 2012 the Council's Insurance Risk Section wrote to the claimant's solicitors asking the claimant to provide a detailed estimate for the works to be carried out in accordance with the report by S.J Stephens Associates Ltd., so that the Council would be able to ascertain the exact cost of the additional works and settle the matter.

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## Application 13/0341/TCA Continued

The claimant's solicitors responded advising that they had taken advice from a Structural Engineer who believed that the Arboriculturalists advice was flawed. The Structural Engineer believed that to undertake repairs as recommended, would only be a short-term solution. He felt that to achieve a permanent solution it would be necessary to re-build the outbuilding on a piled structure with a suspended floor slab or demolish the outbuilding and re-build it elsewhere in the garden, both of which would be at significant cost.

A further report by a firm of consulting engineers was received in March 2013 outlining the operations required to achieve a satisfactory long-term design solution for the repair of the outbuilding, whilst allowing the tree to remain. The budget cost for this work was estimated at £40,350 + VAT.

Even if the Council accepts this estimate and agrees to the works identified in the Consulting Engineer's report, because the Council has been put on notice that the tree roots may continue to affect the building, the insurance cover will be void, as it will not act upon a foreseeable risk. In addition there remains the possibility that if the tree is retained and the repair works undertaken, the claimant may still take out an injunction, which will force the Council to remove the tree.

If the tree is removed, the insurance section will cover the cost of the removal of the tree, and the basic repairs then required to the outbuilding, at an estimated cost of £5,000. The solicitor's costs and expert fees would also be met from the insurance budget. If the tree is allowed to remain in situ, then firstly the cost to the Council has been estimated at £40,350 + VAT, together with costs and disbursements. However, should further damage be caused to either the complainant's house or to other houses in the vicinity of the tree, then it is likely that future costs could run into tens of thousands of pounds for repairs and legal costs.

To conclude, the role of the Planning Committee in this case is to decide whether or not a TPO should be made in respect of this tree. In view of the above information it is considered that the amenity value of the tree within the conservation area would not outweigh its adverse amenity and structural impact on the neighbouring house. To retain the tree would also result in significant costs to the Council and an ongoing risk of further costs and litigation. Taking all those factors into account, it is not expedient to make a TPO in this case. Furthermore, the Local Planning Authority do not impose TPO's on their own trees.

**RECOMMENDATION** that the tree is not protected by a Tree Preservation Order.

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