

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	11 April 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (Gaia, Widcombe Hill, Bath No. 268) Tree Preservation Order 2011
WARD:	Widcombe

AN OPEN PUBLIC ITEM

List of attachments to this report:

Plan of Site

Copy of letter of objection to the Tree Preservation Order

Copy of correspondence in support of the Tree Preservation Order

1 THE ISSUE

1.1 An objection has been received from the owners following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (Gaia, Widcombe Hill, Bath No. 268) Tree Preservation Order 2011 ("the TPO"), which was provisionally made on the 15 December 2011 to protect a group of three trees which make a significant contribution to the landscape and amenity of the area.

2 RECOMMENDATION

2.1 The Development Control Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (Gaia, Widcombe Hill, Bath No. 268) Tree Preservation Order 2011 without modification.

3 FINANCIAL IMPLICATIONS

3.1 Financial: Under the law as it stands the owner of a tree cannot claim compensation from the Council for making a tree the subject of a tree preservation order. However if the tree is covered by a tree preservation order and the Council refuses an application to fell the tree, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.

3.2 Staffing: None.

3.3 Equalities: In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.

3.4 Economic: None.

3.5 Environment: The trees which are the subject of this report make an important contribution to the landscape and amenity of the local area.

3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services and Officers from Development Control will need to take account of the trees when considering any application for development or alterations on the site which might affect the trees.

4 THE REPORT

4.1 Background

4.2 The trees which are the subject of the TPO are two mature Beech and one mature Sycamore which are within the front garden of Gaia, Widcombe Hill and are encircled within the broken black line and marked G1 on the attached plan.

4.3 A notification, reference 11/04933/TCA, was received for the felling of five trees and the reduction of a sixth which included the three trees which are the subjects of the TPO.

4.4 The trees which were included within the notification were assessed and three trees by the frontage were considered to be of sufficient visual landscape impact to be worthy of a Tree Preservation Order.

4.5 Letter of objection to the Tree Preservation Order

4.6 The Council are required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

4.7 One letter of objection has been received from the tree owners. The Committee are advised to read the letter of objection attached.

4.8 The main objections are identified and summarised below.

- i) The criteria for the making of the TPO are not met.

- ii) There are safety concerns about the current trees
- iii) The TPO prevents the residents from living in alignment with national policies and strategic objectives within the draft Core Strategy and Sustainable Community Strategy
- iv) Implicit consent to the tree works was given when planning consent was given for 11/02874/FUL

4.9 The objections to the Tree Preservation Order outlined in section 4.8 above have been considered by Officers and the following comments are made:

- i) The Councils' Arboricultural Officer has assessed the trees for amenity value as part of the TPO process and found that the trees were important within the locality making a valuable contribution to the conservation area. The trees are readily visible to the general public and are in reasonable condition with an acceptable safe useful life expectancy in excess of 20 years.
- ii) The objection letter and tree surgeons' report concentrates on the negative points relating to the trees and has not considered that trees rarely develop perfect forms and that management options such as surgery and bracing can address structural issues. The supporting information does not justify the need to fell the trees. An application to carry out management to the tree can be made under the TPO. No evidence has been provided to indicate that the trees are dead, dying or dangerous and therefore inappropriate candidates for a TPO.
- iii) The TPO is not considered to conflict with national policies or Bath and North East Somersets' specific policies or strategies. One does not override another and, as with all issues, there is a question of balance. The Council has not objected to previous tree felling proposals within the property which were included within notifications, references 10/04607/TCA; 11/03409/TCA (one Beech tree withdrawn from the proposal which is now included within the TPO) and 11/04933/TCA (included the felling of two other trees which are not within the TPO).
- iv) Implicit consent was not given for the tree works when planning consent was given for 11/02874/FUL. The application form does not refer to the solar array and, therefore, the Case Officer did not consider the solar array was part of the application and made their decision accordingly. In addition, the Design and Access Statement accompanying the application states that the existing trees will be retained and protected and no tree work was associated with the application. Should the owners intend to install the solar array under permitted development they should ensure that the siting minimises its effect on the amenity of the area, in this case the visual amenity afforded by the trees.

The three trees are not directly in front of the property but off centre towards the east. With the felling of other trees within the property it should be possible to position the solar array to reduce the impact of shading.

Letters of objection to the notification and in support of the TPO are attached.

4.10 Relevant History

- 4.11 - 10/04607/TCA - Remove deadwood and one single branch of Ash, remove a group of Holly trees and 1 x Lawson Cypress, crown lift by up to 4m from ground level of dominant Beech, and remove a line of five young Lawson Cypress trees. NO OBJECTION
- 4.12 11/02874/FUL - Erection of a single storey front extension and alterations to external openings to compliment the new internal layout. PERMITTED
- 4.13 11/03409/TCA - Remove 1no. branch from Ash. Felling of one Beech withdrawn from notice. NO OBJECTION
- 4.14 11/04933/TCA – Fell four Beech; fell one Sycamore and reduce height of one Beech. NO OBJECTION IN PART (TPO made on two Beech and one Sycamore).

5.0 LEGAL AND POLICY FRAMEWORK

Tree Preservation Order

5.1 A tree preservation order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a tree preservation order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

5.2 The law on tree preservation orders is in Part VIII of the Town and Country Planning Act 1990 and in the Town and Country Planning (Trees) Regulations 1999

5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands considered to be under threat. This is in keeping with Government guidance, and takes account of the visual impact of the trees and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.

5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the trees. The TPO was made on 15 December 2011. This took effect immediately and continues in force for a period of six months.

Planning Policy

5.6 Bath and North East Somerset Local Plan including minerals & waste policies 2007

C2.22 'Trees are an important part of our natural life support system: they have a vital role to play in the sustainability of our urban and rural areas. They benefit:

- the local economy – creating potential for employment, encouraging inward investment, bringing in tourism and adding value to property;
- the local environment by reducing the effects of air pollution and storm water run off, reducing energy consumption through moderation of the local climate, and providing a wide range of wildlife habitats;
- the social fabric in terms of recreation and education’

C2.23 ‘Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing’

C2.25 ‘Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree’

6. CONCLUSION

6.1 The trees make a significant contribution to the landscape and amenity of this part of the Bath.

6.2 Confirmation of the TPO would ensure the retention of the trees. Should it be found in the future that it would be unreasonable to retain the trees the Council will then be able to ensure that a replacement tree of a similar species is planted.

6.3 In keeping with the Council’s commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

Contact person	Jane Brewer 01225 477505
Background papers	The file containing the provisional Tree Preservation Order, relevant site notes, documentation and correspondence can be viewed by contacting Jane Brewer on the above telephone number.

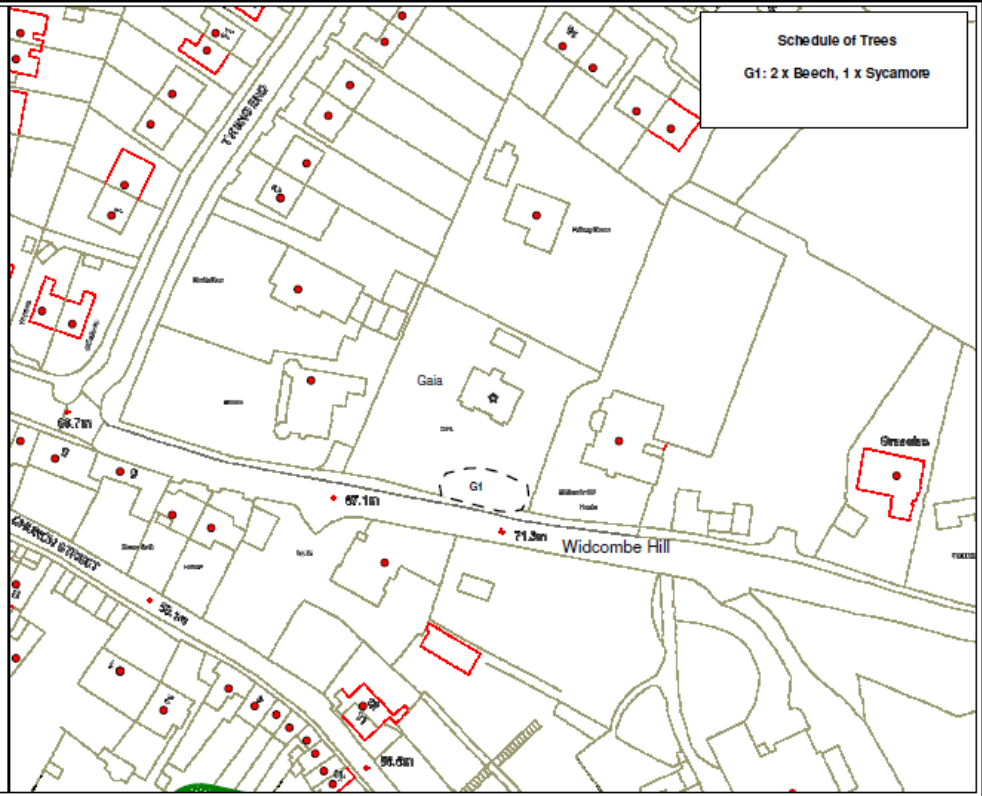
Scale 1:1000
Date: December 2011
Plan No: 500/268
Grid Ref: ST 759 641

Title:
TOWN AND COUNTRY
PLANNING ACT 1990
BATH AND NORTH EAST
SOMERSET COUNCIL
(Gaia, Widcombe Hill,
Bath No. 268)
TREE PRESERVATION
ORDER 2011

I hereby certify that this
plan referred to in the
BATH AND NORTH
EAST SOMERSET
COUNCIL
(Gaia, Widcombe Hill,
Bath No. 268)
TREE PRESERVATION
ORDER 2011



Divisional Director,
Planning & Transport Development



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office
© Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Licence number 100023334

FOR THE PROMPT ATTENTION OF MISS JANE BAEWEA, SENIOR ARBORICULTURIST

We, the under-signed support the objections raised by Mr. & Mrs. Bowers of Halfway House, Wilscombe Hill for permission to remove native woodlands trees at the bottom of the drive, bordering Gaia.

This is a designated conservation area, & as such, should be protected by conservation laws. These trees have been "in situ" for decades.

We confirm that a condition of any applications for removal or trimming of trees should, by law, involve consultation with neighbours or affected parties. We understand that this is not so, at the present time.

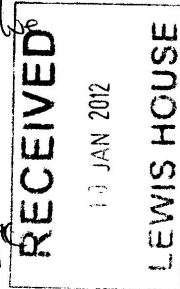
We also confirm that we wish the tree protection orders issued on the mature trees at the front of Gaia to be extended at the end of the six-months specified.

As Wilscombe is a Conservation Area putting particular emphasis on the preservation of trees we do not agree with the proposal to fell 3 trees on the property as detailed. B.A.A. Wilscombe Hill Bath.

Unless it is essential - which in this case we do not think applies - we do not agree with felling any trees when the area has an ever increasing level of pollution as the volume of traffic rises. The environment and wildlife must be protected.

T.P. WELSH - A. Heston

J. Wilscombe Hill
Retl. B.A.A. Ltd.



-----Original Message-----

From: Development Control
Sent: 30 November 2011 14:00
To: Ian Gilchrist (Cllr)
Subject: "Application Comments"

(Cllr) Ian Gilchrist, you have been sent this email because you or somebody else has submitted a comment on a Planning Application to Bath and North East Somerset Council using your email address.

A summary of your comments is provided below.

Comments were submitted at 30/11/2011 13:48:30

Application Summary

Application Number:
11/04933/TCA

Address:
Gaia, Widcombe Hill, Widcombe, Bath, BA2 6AE

Proposal:
Various Tree Works

Case Officer:
Jane Brewer

Customer Details

Name:
(Cllr) Ian Gilchrist

Address:
24 Horseshoe Walk
Bath

PostCode:
BA2 6DF

Telephone No.:
01225-334775

ian_gilchrist@bathnes.gov.uk

Comments

Submission Type:

S - Support

Comments:

I have been to see the site at the request of the applicants and would like to support their submission on the grounds that:

1) removal of the trees will enable more (solar PV) electricity to be generated from the roof installation;

2) cultivation of vegetables in the garden is likely to be more successful if the trees are removed.

Both of these points are in line with the Council's stated sustainability aims.

FOR THE PROMPT ATTENTION OF MISS JANE BAWEA, SENIOR ARBORICULTURIST

We, the under-signed support the objections raised by Mr. & Mrs. Bowers of Halfway House, Widcombe Hill for permission to remove mature woodlands trees at the bottom of the drive, bordering Gaia.

This is a designated conservation area, & as such, should be protected by conservation laws. These trees have been "in situ" for decades.

We confirm that a condition of any applications for removal or trimming of trees should, by law, involve consultation with neighbours or affected parties. We understand that this is not so, at the present time.

We also confirm that we wish the tree protection orders issued on the mature trees at the front of Gaia to be extended at the end of the six-months specified.

It is always regrettable when mature trees are felled, particularly in a conservation area. I do not support the removal of the trees in question. I do however, support the tree protection order on the mature trees at the front of Gaia. The removal of these would greatly disfigure this area of Widcombe Hill

E. M. Lopes

Hillside

Widcombe Hill Bath BA26A

Halfway House,
Widcombe Hill,
BATH
BA1 3LQ

19th January 2012

Jane Brewer,
Senior Arboriculturalist,
BANES Planning Services
PO Box 5006
BA1 1JG

Dear Jane Brewer:

We are writing to express our full support for the Tree Preservation Order which has been issued and notified to us regarding Trees on the land at Gaia, Widcombe Hill (TPO Reference: 2011 Gaia, Widcombe Hill, Bath, No. 268). We would urge the authority to give permanence to the TPO.

The TPO covers a group of trees G1, consisting of 2 Beech and 1 Sycamore within the front garden of Gaia. These are labelled T1, T2 and T3.

These are mature trees and are a long standing feature of the local area. We have been residents at the neighbouring property of Halfway House for over 30 years and these trees have added to the local amenity throughout this time. The trees contribute to the woodland character of the area and the pleasant environment and visual character and attractiveness of this part of Widcombe.

They help to provide shelter and protection from traffic noise and pollution from Widcombe Hill for the surrounding properties in Widcombe Hill and Tying End.

The trees are very prominent and visible from the surrounding area, with the slopes of Widcombe Hill contributing to the attractions of Bath as a world renowned city. This area lies close to the National Trust Bath Skyline Walk and these trees contribute to the quality of the surrounding vistas. Widcombe Hill is a popular area used for travel and walking by the city's residents, University Students, and visitors alike. Bath is a World Heritage Site and we note that *the green setting of the city within a hollow in the hills* is a key reason for achieving this status. The current management plan for the Bath World Heritage Site (2010-2016) includes *ensuring that landscape and natural elements of the site and its setting are protected, acknowledged, understood and managed*. Bath and North East Somerset have also published a setting study for the site. The protection of trees therefore supports and is necessitated by the World Heritage status. Failing to give permanence to this TPO will therefore be in direct conflict with published Local Authority requirements for the city.

Mature trees of this stature take many decades to grow and these trees are therefore an irreplaceable feature of the local environment. Their loss would have a permanent impact on the environmental and ecological characteristics of the area including loss of habitat and greenery, and an increase in the carbon dioxide footprint.

I note that the applicant for tree work to fell these trees has mentioned intended installation of Solar Panels as a reason for this action. I would therefore like to draw the authority and planning office's attention to the fact that the installation of these Solar Panels formed an explicit part of a planning application which has been granted for building work at Gaia. This application explicitly stated that no supporting tree work is required. (Clearly any such work should have been declared as part of the planning application in response to the explicit question on the application form.) Any argument regarding the need for tree work to support use of Solar Panels is therefore either spurious or fraudulent.

We have separately registered our objection to the Gaia application for tree work which has prompted this TPO. We would like to see the remaining trees (T4, T5 and T6) falling within the Gaia tree work application also protected e.g. via a Tree Preservation Order. This is because these trees also bear similar characteristics and the same reasons for their preservation apply. All trees are in good health and have never presented any problem. We have supporting advice from a qualified Tree specialist based on inspection from our land (The owner of Gaia has refused any request for access for closer inspection). We would therefore also propose the extension of the existing TPO to also include these additional trees.

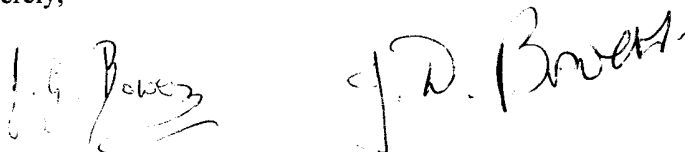
Finally we would like to emphasise again that any loss or cutting of the Trees subject to this Tree Protection Order would have a major impact:

- on individuals in the surrounding properties,
- on the local community,
- and on a world heritage city

We know that many local residents are also supportive of this TPO. We urge you to make the TPO referenced above permanent.

We look forward to a positive response.

Yours sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is 'J.G. Bowers' and the signature on the right is 'J.D. Bowers'. Both are written in a cursive, somewhat stylized hand.

Mr J. D. Bowers and Mrs J. G. Bowers

FOR THE PROMPT ATTENTION OF MISS JANE BAEWEA, SENIOR ARBORICULTURALIST

We, the under-signed support the objections raised by Mr. & Mrs. Bowers of Halfway House, Widcombe Hill for permission to remove mature woodlands trees at the bottom of the drive, bordering Gaia.

This is a designated conservation area, & as such, should be protected by conservation laws. These trees have been "in situ" for decades.

We confirm that a condition of any applications for removal or trimming of trees should, by law, involve consultation with neighbours or affected parties. We understand that this is not so, at the present time.

We also confirm that we wish the tree protection orders issued on the mature trees at the front of Gaia to be extended at the end of the six-months specified.

We would not be happy if the trees in question are felled, it seems a shame to fell two healthy mature trees for the reasons given

Mr. and Mrs L. Price

"Greenways"

Widcombe Hill

Bath.



Rear Admiral Austin Lockyer



The Old Malt House
3 Widcombe Hill
Bath BA2 6AD
01225 466815

Friday, 13 January '12

ON LINE REFERENCE 11/04933/GCA

for the attention of Mrs Jane Brewer

My wife and I fully support
the objections raised by Mr and Mrs
Brewer of Halfway House, Widcombe
Hill for permission to remove mature
trees at the bottom of the drive
bordering Gavia your letter of
16 December 2011 (Gavia, Widcombe
Hill, Bath No. 268) refers.

Austin Lockyer

FOR THE PROMPT ATTENTION OF MISS JANE BAEWER, SENIOR ARBORICULTURIST

We, the under-signed support the objections raised by Mr. & Mrs. Bowers of Halfway House, Widcombe Hill for permission to remove mature woodlands trees at the bottom of the drive, bordering Gaia.

This is a designated conservation area, & as such, should be protected by conservation laws. These trees have been "in situ" for decades.

We confirm that a condition of any applications for removal or trimming of trees should, by law, involve consultation with neighbours or affected parties. We understand that this is not so, at the present time.

We also confirm that we wish the tree protection orders issued on the mature trees at the front of Gaia to be extended at the end of the six-months specified.

MR. GEORGE
"
MRS. CAROL BARBER
GREENLEA,
WIDCOMBE HILL,
BATH BA2

Jan Baewer
"