

## REPORT OF THE HEAD OF PLANNING AND REGENERATION

### APPEALS AND REVIEW COMMITTEE 27 January 2020

#### BOROUGH OF CHARNWOOD (161 SWITHLAND LANE ROTHLEY) TREE PRESERVATION ORDER 2019 - PROVISIONAL

#### 1.0 Introduction

#### 1.1 Background

A S211 Notice, also known as a Conservation Area Notice for tree works P/19/0911/2 was received seeking to fell the tree, a Redwood *Sequoia sempervirens*. Root heave of the neighbour's tennis court surface at 163 was cited. However, the tennis court surface is old and degraded with cracks well beyond the root zone of influence as well as some root heave and is clearly in need of replacement. If the owners resurfaced the court they could design the restored surface to minimise the risk of localized disturbance heave and without loss of this feature tree. Removal of the tree would yield a significant adverse impact on the landscape character of this part of the Conservation Area. The tree is vulnerable to felling to the detriment of the amenity of the area.

#### Reason for TPO

To ensure the tree, within the garden and which make a significant contribution to the visual amenity of the area as a backdrop to the house, is properly protected and retained in a satisfactory manner.

#### 1.2 The Site

The site is the rear garden to a 161 Swithland Lane. The neighbouring garden with the tennis court is 163 Swithland Lane.

#### 1.3 Condition of the tree

The tree is an early mature specimen and in good physiological condition with good vigor. It is relatively unusual and an interesting feature which merits retention. The amenity value of tree is high by virtue of its species, form, size which extends above the ridge line of houses, and thus visibility. This species is iconic and where possible and practicable worthy of formal protection. The tree contributes to the Character and appearance of the Conservation Area.

#### 2.0 The Objections to the Order

An objection was received from Hill-Fort Tree Services on behalf of the owners of 163 Swithland Lane.

1. It [ the tree] is vigorous and has aggressive root system that has encroached upon the neighbouring property and caused substantial damage to the adjacent tennis court. The tennis court has been in disuse for the last 6 years or so due to the damage caused by the tree roots making the court unplayable and a danger to users.
2. The court was resurfaced 14 years ago and is due resurfacing, but its degradation due to tree root damage makes resurfacing impossible. The court requires remedial repair to damage caused by tree roots before any resurfacing can take place.
3. Mr Ashman states he "can see that there could possibly be an engineered solution (subject to an engineer's positive advice) where perhaps a substantial reinforced concrete root barrier could be installed to deflect tree roots. However this would, I anticipate, require an increase in court height (building up above the current damage, and very substantial amounts of infill, concrete and steel that would be at great cost both to the those footing the bill and to the environment.

No other representations have been made in relation to the Order.

### 3.0 Response to the Objections

1. The tree species is not particularly aggressive. The tennis court is colonised by moss and algae. The standard lifespan of a tennis court is 15-30 years depending on the construction. Any court will naturally deteriorate over time. Regular maintenance will slow that deterioration but will not prevent it. In the case of private tennis courts if they are neglected the need for resurfacing will occur sooner. The tree surgeon stated the court was laid in 1950s. The design, materials and specifications have dramatically changed over the course of 60 years used for court. The age of the court is almost 60 years old. It was not relaid but only the wearing course resurfaced. No evidence in terms of a tennis court specialists was submitted to back up the claims that the court was irreparable due to the tree rather than merely due to its age and changes in the ground conditions.
2. I do not dispute that current court cannot be re-surfaced.
3. I note Mr Ashman statement on the possibility of an engineered solution. That was my main point. I would further argue that a court the construction of which is 60 years or more old needs a complete redesign and fresh construction.
4. I dispute the need to redesign is solely driven by the effects of the tree but that the age of the basic court construction drives the need for a full and complete refurbishment or reconstruction regardless of whether the tree is felled or not. Therefore I dispute that a claim for compensation under Part 6, Compensation, of the 'The Town and Country Planning (Tree Preservation) (England) Regulations 2012 would be justified. The reason is because no specialist evidence was submitted as part of the objection. Furthermore Part 6 of the Regulations relates to a refusal decision to fell for an application and where

"a person establishes that loss or damage has been caused or incurred **in consequence of—**

(a)

**the refusal of any consent** required under these Regulations.

The S211 decision pathway cannot grant 'consent' nor can it 'refuse'.

#### 4.0 Conclusion

Removing the Order by failing to confirm it at this appeal and review committee would mean the tree would be felled.

The committee is therefore recommended to confirm the Order without modification.

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## APPENDIX A

## Tennis Court specialists

<https://fossecontracts.co.uk/tennis/>

<http://www.tennis2000.co.uk/court-resurfacing.htm>

## APPENDIX B

## AERIAL PHOTOGRAPH Google Maps



From Swithland Lane



From Gypsy Lane

