

**Chestnut View, Old Mill Lane, Bray SL6 2BG**

1. Background:

Tree Preservation Order (TPO) 37 of 2008 was created in July 2008 on land at Chestnut View, Old Mill Lane, Bray. Prior to the initiation of the TPO a Planning Condition (Condition 15 of Consent 418765) existed, prohibiting the cutting down, topping or lopping of trees at the property, without the prior consent of the local planning authority. The TPO was initiated following a request from Mr Michael Brade, the owner of Chestnut View, for permission to fell a Douglas Fir tree and a Walnut tree in his rear garden. The proposed works were considered to be inappropriate and it was therefore expedient to serve a TPO to protect the trees.

The Order relates to a Douglas Fir and a Walnut as per the specification below:

- T1 Douglas Fir (*Pseudotsuga menziessi*). Located in the rear garden adjacent to the boundary with Westfield Lodge.
- T2 Walnut (*Juglans sp*). Located in the rear garden adjacent to the boundary with Pipers End.

2. Objections:

One letter of objection was received in respect of the Order, from Mr Michael Brade, the owner of Chestnut View. His objection is summarised below:

- T1 Douglas Fir is situated to the south east of the property and T2 Walnut is situated to the northwest. Both trees are approx 50/60 feet high and were probably planted when the present site was part of a larger property. Now that the rear garden of Chestnut View is much smaller, the trees, which are more suitable to a forest, almost totally exclude any sun. The grass, which is unable to grow, consists almost entirely of moss. When neighbouring gardens are bathed in sun, Chestnut View's garden is almost entirely in shade.

3. Responses to the objection and justification for the Order:

Under the Town and Country Planning Act (1990) local authorities may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area. The Act does not define amenity, nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, a TPO should be used to protect selected trees and woodlands if their removal would have a significant impact upon the local environment and its enjoyment by the public. Local planning authorities should be able to show that a reasonable degree of public benefit would accrue before the TPO is made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath. Trees may be worthy of preservation, amongst other reasons, for their intrinsic beauty or for their contribution to the landscape. In this case the trees that have been protected can be viewed from public vantage points along Old Mill Lane and to the rear from River Gardens. While they may not be visible in their entirety they are an important skyline feature and contribute to the amenity, aesthetic and landscape value of the local area.

The local planning authority may create a TPO when it is believed there is a risk of a tree being cut down or pruned in ways that would have a significant impact on the amenity of the area. Prior to the initiation of the TPO a Planning Condition (Condition 15 of Consent 418765 dated 7<sup>th</sup> November 1986) existed, prohibiting the cutting down, topping or lopping of trees on the property, without the prior consent of the local planning authority. In June 2008 Mr Brade, the owner of Chestnut View, applied to the Council for permission to fell the Douglas Fir and Walnut in his rear garden. Following an assessment by one of the Council's Arboricultural Officers it was considered that the trees were in a good condition and their loss would be detrimental to the amenity of both Chestnut View and the surrounding area. They are prominent trees in the landscape enhancing the character of the area and its setting and worthy of

retention. The proposed removal of the trees was therefore considered to be inappropriate. Government guidance recommends that planning conditions should not be used to protect trees long term; the correct mechanism for doing so is with the use of TPO's. Breaching a planning condition does not carry the same penalties as for a breach of a TPO and is therefore much less of a deterrent to carrying out inappropriate works. It was therefore expedient to initiate a TPO to protect the Douglas Fir and the Walnut.

In response to Mr Brade's objection to the TPO on the grounds of the shading that the trees cause, the Walnut tree (T2) growing in the northwest corner of the property, should block little if any direct sunlight as it is not in the main path of the sun as it moves from east to west. However, the tree is currently engulfed in ivy, which makes the canopy appear denser than it needs to be and this situation could be improved if the ivy stems were to be severed at the base of the tree and allowed to die back naturally. The Council would also consider allowing some pruning works to the Walnut, namely the removal of the lower branches to give a clearance of a maximum of 2.5m over the ground, and crown thinning to a maximum of 10% to include dead, diseased and crossing/rubbing branches. If these works were carried out, this would lighten the tree crown, reducing the perception of shade.

The Douglas Fir (T1) is situated on the south east side of the property and therefore should only reduce the available direct sunlight in certain parts of the garden for a small proportion of the day. There are many areas outside the influence of this tree that would receive sunlight. The felling of trees in order to gain more sunlight is not generally sufficient justification to warrant the removal of an important tree. Furthermore, some shade is normally regarded as desirable especially during the height of summer when temperatures and ultra violet radiation levels are high.

Some grass species may struggle to grow directly underneath the crown spreads of some trees, but there are grasses available that do tolerate low light conditions and so may be better suited to the areas of concern.

The creation of the TPO should not hinder the appropriate maintenance of the trees but is intended to encourage and coordinate their management in accordance with good arboricultural practice while preserving public amenity. The Council is not liable for matters relating to the normal management of a protected tree, but the Tree Section is able to offer free arboricultural advice to owners of protected trees. Anyone can apply to undertake works to a protected tree, there is no fee levied to submit an application for works to protected trees or a limit on applications made. The local planning authority would not unreasonably withhold consent for tree works which accord with good arboricultural practice, but should consent be refused any applicant has the right of appeal against the decision.

#### 4. Sustainable Development Implications:

In terms of the sustainable development policy the recommendation contained in the report will have the following significant beneficial sustainable development implications: A positive impact on the natural environment by retaining the tree stock.

**RECOMMENDATION that Tree Preservation Order 37 of 2008 is confirmed without amendment.**