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**APPEALS COMMITTEE
TREE PRESERVATION ORDER**

APPEALS COMMITTEE – TREE PRESERVATION ORDER

THURSDAY 23 JANUARY 2020 AT 10.45 AM – AFTER THE SITE VISIT

CONFERENCE ROOM 1 - THE FORUM

The Councillors listed below are requested to attend the above meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Membership

Councillor Mrs Bassadone (Chairman)
Councillor P Hearn (Vice-Chairman)
Councillor R Sutton

Councillor C Wyatt-Lowe
Councillor Uttley

For further information, please contact Corporate and Democratic Support on (01442) 228209.

AGENDA

- 1. MINUTES**
- 2. APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

3. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a personal interest in a matter who attends a meeting of the authority at which the matter is considered -

1. must disclose the interest at the start of the meeting or when the interest becomes apparent

and, if the interest is a disclosable pecuniary interest, or a personal interest which is also prejudicial

2. may not participate in any discussion or vote on the matter (and must withdraw to the public seating area) unless they have been granted a dispensation.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Members' Register of Interests, or is not the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal and prejudicial interests are defined in Part 2 of the Code of Conduct for Members.

[If a member is in any doubt as to whether they have an interest which should be declared they should seek the advice of the Monitoring Officer before the start of the meeting].

4. TREE PRESERVATION ORDER 575 AT LAND OPP. LAUREL BANK, NETTLEDEN ROAD, LITTLE GADDESSEN (Pages 3 - 15)

Town and Country Planning Act 1990

The Dacorum Borough Council,

Land opposite Laurel Bank, Nettleden Road, Little Gaddesden,
Berkhamsted, HP4 1PN.

Tree Preservation Order 2019 (TPO 575)

The Dacorum Borough Council in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the Dacorum Borough Council, land opposite Laurel Bank, Nettleden Road, Little Gaddesden, Berkhamsted, HP4 1PN. Tree Preservation Order 2019 (TPO 575).

Interpretation

2.— (1) In this Order “the authority” means the Dacorum Borough Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated 19th August 2019

[Signed on behalf of the Dacorum Borough Council]



Authorised by the Council to sign in that behalf]

CONFIRMATION OF ORDER

This Order was confirmed by the Dacorum Borough Council without modification on the day of

OR

This Order was confirmed by the Dacorum Borough Council, subject to the modifications indicated by, on the day of

Signed on behalf of the Dacorum Borough Council

.....

Authorised by the Council to sign in that behalf

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by the Dacorum Borough Council on the day of

Signed on behalf of the Dacorum Borough Council

.....

Authorised by the Council to sign in that behalf

VARIATION OF ORDER

This Order was varied by the Dacorum Borough Council on the day of by a variation order under reference number attached] a copy of which is

Signed on behalf of the Dacorum Borough Council

.....

Authorised by the Council to sign in that behalf

REVOCATION OF ORDER

This Order was revoked by the Dacorum Borough Council on the day of

Signed on behalf of the Dacorum Borough Council

.....

Authorised by the Council to sign in that behalf

SCHEDULE
Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1, T2, & T3	Oak	Land opposite Laurel Bank, Nettleden Road, Little Gaddesden, Berkhamsted, HP4 1PN

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
none		

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
none		

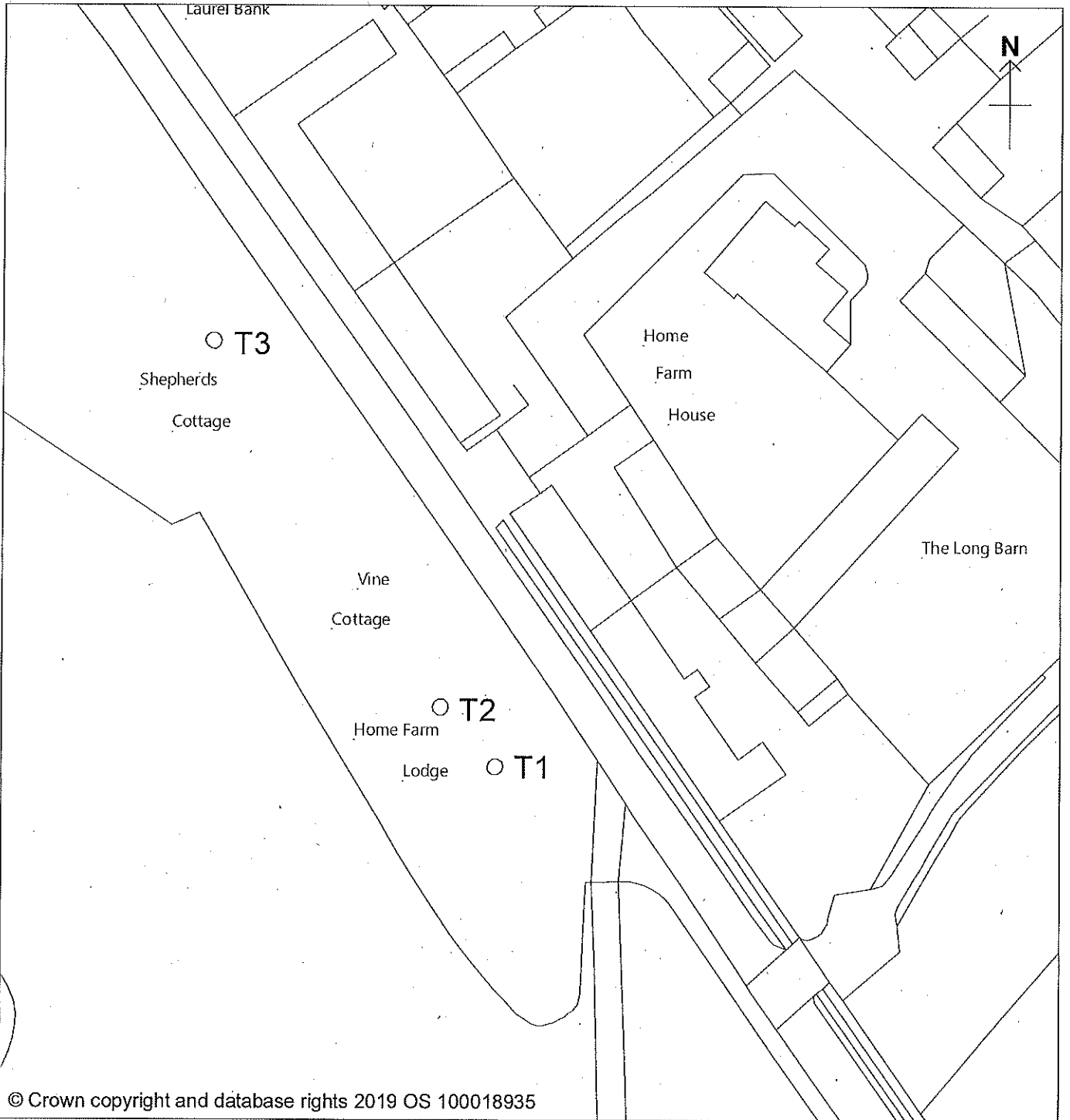
Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
none		

TREE PRESERVATION ORDER 2019

TPO 575 - Land opposite Laurel Bank, Nettleden Road, Little Gaddesden,
Berkhamsted, HP4 1PN
T1, T2, & T3 - Oak



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Development Control
Dacorum Borough Council
The Forum
Marlowes
Hemel Hempstead
Herts
HP1 1DN

1:688
Date: 13/08/2019

M. Gayer 19/8/19
Page 6

TPO Ref	2019/575
Site Address	Land opp. Laurel Bank, Nettleden Road, Little Gaddesden
Land Owner	National Trust, Ashridge Estate Office, Moneybury Hill, Ringshall, Herts
Tree Officer	Darren Hemmings

1. Recommendation

1.1 That the Tree Preservation Order (ref: TPO/2019/575) be confirmed without modification.

2. Summary

2.1 Dacorum Borough Council (DBC) served TPO/2019/575 to preserve 3 healthy oak, *Quercus robur*, from unnecessary and inappropriate pruning in contradiction of British Standard 3998. Tree Work Recommendations.

2.2 DBC received a notification to undertake works to a tree in the Little Gaddesden conservation area to conduct aggressive pruning (heavy reduction/pollarding) on a mature oak, *Quercus robur*. The reason provided was the adjacent property owners had concerns owing to the oak growing at an angle from the roadside bank and tree failure would cause property damage or injury.

2.3 A tree inspection was conducted by DBC and the oak was deemed healthy with no identifiable defects which would lead to foreseeable failure. The tree owner, the National Trust (NT), conducts annual inspections dating back to 2007 and has identified no health concerns which will lead to failure or any change in condition from their first 2007 inspection. The NT are content to carry on with annual inspections to ensure any changes in condition are identified promptly and appropriate action taken.

2.4 As 3 x oaks are growing out of the roadside bank it was justifiable to serve TPO/2019/575 for all 3 trees.

3. Site Description

3.1 The site is within a conservation area and considered rural in character with limited residential properties. The trees are located on a roadside bank adjacent to the highway (Nettleden Road) serving Little Gaddesden village. There are a limited number of residential properties located on the opposite side of the highway to TPO/2019/575 trees.

3.2 All trees have considerable public amenity being clearly identifiable from the highway and nearby bridle path, forming the frontage of Cromer Wood within the Ashridge Estate.

4. Service of Tree Preservation Order

4.1 A previous notification to do works to trees in a Conservation Area (4/01575/15/TCA) was received to 'Reduce back to previous levels'. This constituted a 10% reduction to all three oaks and was approved.

4.2 A further notification to do works to trees in a Conservation Area (4/01750/19/TCA) was received to 'Heavily reduce / pollard using veteranisation techniques' on the largest oak (T3). This led to serving TPO575.

5. Legislation and Policies

5.1 Town & Country Planning Act (1990) as

- Town & Country Planning Act (1990) as amended – Part VIII
- Town & Country Planning (Tree Preservation) (England) Regulations 2012.

5.2 National Policy Guidance

- National Planning Policy Framework (NPPF): paras 170 and 175.
- National Planning Policy Guidance (NPPG): Section 8: "Natural Environment" and Section 36: "Tree Preservation Orders and trees in conservation areas"

5.3 Adopted Core Strategy (adopted 2013)

- Policy CS13: Quality of the Public Realm
- Policy CS25: Landscape Character
- Policy CS26: Green Infrastructure

5.4 Saved Policies of the Dacorum Borough Local Plan (1991-2011)

- Policy 99: Preservation of Trees, Hedgerows and Woodlands

6. Representations

Consultation comments received

6.1 Objections to TPO/2019/575 were received from Mr Dan Graham (Home Farm Lodge), Mr J A Corner (Laurel Bank), and Mr S L Buchanan-Barrow (Shepard's Cottage). Objections to TPO/2019/575 focused on the potential of a leaning mature oak to cause property damage and injury if failure occurred. Mr Dan Graham's objection was supported by Councillor Terry Douris.

Response to consultation comments

6.2 Resulting correspondence from DBC aimed to justify TPO/2019/575 as both historic and recent inspections had identified no safety concerns from the oak trees by both DBC and the National Trust (NT). In addition, no sound arboricultural reason was established by the objectors as to the need to conduct such drastic pruning (pollarding) and a request by DBC that if arboricultural evidence identifying defects which would likely lead to failure be submitted for appropriate consideration. No sound arboricultural evidence has been received by DBC to date.

7. Considerations

Introduction

7.1 Local planning authorities can make a Tree Preservation Order if it appears to them to be '*expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area*'. (s.198(1) of the Town & Country Planning Act (1990) as amended). It is therefore necessary to consider the amenity value of trees subject to this TPO, as well as the expediency of confirming the TPO.

Visibility

7.2 Being part of the Chilterns Area of Outstanding Natural Beauty (ANOB), Little Gaddesden has a predominantly wooded characteristic. The trees are clearly visible from the highway and nearby bridleway, and this prominence gives them significant importance in the locality. Owing to the narrow width of the carriageway and adjacent Cromer Wood trees are not visible over a long distance.

7.3 As the trees are located towards the highway frontage of Cromer Wood they are visible by all vehicle traffic entering and existing the southerly access of Little Gaddesden using the Nettleden Road.

Individual, collective and wider impact

7.5 All trees are considered mature and are of sufficient size to offer significant presence to the immediate character of the conservation area and wider landscape.

7.6 Tree pollarding/crown removal will reduce the treed landscape and lead to a more open characteristic when entering Little Gaddesden along Nettleden Road, to the detriment of Chilterns ANOB character.

Other factors

7.7 All trees are native and offer significant benefit to endemic local wildlife and Cromer Wood, as a whole.

7.8 Oak sequester significant amounts of carbon from the atmosphere compared with other tree species, reducing the impact of climate change.

Expediency of confirming the TPO

7.9 All trees are at immediate risk of being inappropriately pruned, not in accordance with current best practice guidance British Standard 3998: 2010. Tree Work Recommendations.

7.10 Although the NT is considered a responsible tree owner pressure from local home owners has led to this TPO being served. Confirmation of the TPO/2019/575 will enable NT to resist future challenges from residential owners more robustly where similar tree conflict is present merely by threat of TPOs being served and confirmed.

8. Conclusions

8.1 The three oak trees subject to this TPO appeal are mature and healthy specimens that complement the street scene entering Little Gaddesden and make a very positive contribution to the amenity of the area. Therefore, TPO/2019/575 should be confirmed to ensure the preservation of these oak trees from inappropriate arboricultural pruning.

8.2 Confirmation of TPO/2019/575 will provide clarity to the NT Ashridge Estate that DBC will not support conservation area applications for inappropriate pruning works contrary to arboricultural best practice. It is expected confirmation of this Order will afford greater levels of protection to trees managed by NT Ashridge Estate from landowner pressure to perform acts of inappropriate pruning or felling by threat of serving and confirming TPOs.

8.3 Failure to confirm TPO/2019/575 may set a precedent and lead to further applications for inappropriate pruning or tree felling where homeowners concerns contradict arboricultural best practice.

9. RECOMMENDATION – That the Tree Preservation Order (ref: TPO/2019/575) be confirmed without modification for the reasons stated above.

COMMENTS RECEIVED FROM OBJECTORS TO THE SERVING OF THE TPO

Borough Councillor for Ashridge Ward (05/09/19 Cllr Douris):

I write in support of Dan Graham's objection to this proposal and share the same views that he has expressed in his letter to DBC dated 28th August.

Home Farm Lodge, Little Gaddesden:

28/08/19

I write in response to your notice of the making of the above TPO. The three trees identified on the plan have for a number of years been of concern to me and the owners of the adjacent properties as in our view they constitute a real threat to our properties. This has not been reduced by the recent minor works to T1 and T2 carried out on behalf of the National Trust.

In consequence of many years of, inadequate or any proper, management of the woodland these trees have been permitted to grow on the road side as opposed to the woodland side of the bank opposite the cottages. Furthermore as will be apparent from any proper inspection each of them is growing at an angle and is now of a height which makes it inevitable that should it fall it would cause substantial damage to properties on the other side of the road namely our properties.

Far from "providing considerable amenity value" these trees are a disaster waiting to happen and as soon as they are removed the better. The woodland between these trees and The Golden Valley is of considerable amenity value in particular the woodland the other side of the bank which contains Beech and Oak of merit which would in time fill the gaps left by the removal of the three trees.

I accordingly object to the making of the Order and request Dacorum Borough Council not to confirm it.

25/10/19

Thank you for your letter dated 10th October in response to my letter of 28th August objecting to the proposed tree preservation order for the three Oaks opposite the four cottages alongside Nettleden Road at Home Farm.

Nothing you say in your letter persuades me as a layman in arboricultural terms that the three oaks in question do not pose a considerable threat to the cottages despite regular inspection. In particular your statement that, "the field of arboriculture does not accept that growing at an angle is in itself considered a defect or one which would lead to mechanical failure" seems totally to ignore gravity and Newton's Laws of motion.

Clearly growing at an angle shifts a tree's centre of gravity from being wholly contained within the trunk to, in these cases, wholly outside it thus placing strain on the trunk itself and the roots which they would not normally endure.

In your letter you state that the trees offer amenity value owing to their high visibility and stature within the landscape of Little Gaddesden. The trees are visible over a distance of less than 100 yards and only have stature because they are so close to the road. Removal of the trees would not cause any or any material loss of amenity value given the surrounding National trust woodland.

I see no reason to withdraw my objection to the TPO. The trees have been allowed to grow in the wrong place by the National Trust as a result of a lack of proper management of the woodland in the past. The recent light trimming of the trees has in no way alleviated our fears.

I also fail to see why there is any need for a specific TPO when the trees in question are all within the Conservation Area which I understand means that all trees within the area are treated as being subject to a TPO.

Laurel Bank, Nettleden Road, Little Gaddesden:

15/09/19

I strongly object this order. The tree opposite my house, Laurel Bank, is dangerous and is a threat to the safety of my property and family. My neighbour at Shepherds Cottage has been liaising with the National Trust, prior to the TPO, regarding the safety of the trees and the necessary works that are required. The National Trust agree that works need to be done to the tree and that it is indeed dangerous to properties and their residents. Contrary to the tree having 'considerable public amenity value', the National Trust have categorized the tree in their 'High Risk' zone thereby concluding that the tree opposite our properties is most likely to cause damage to property and/or life.

I understand from my neighbour that the National Trust agree that whilst preserving the heritage of the trees is a priority they have a responsibility to ensure the safety of our families and plan to perform a necessary reduction to the tree. If the tree opposite my house fell on my property causing structural damage and/or personal injury or death of a family member then I would have no choice but to commence legal action against Dacorum Council for financial damages and I will legally pursue individual relevant council employees for corporate manslaughter.

I sincerely hope that the Council review their decision to implement a Tree Preservation Order and furthermore agree to the necessary works to the trees to ensure the safety of local residents and our properties prior to the winter weather.

Shepherd's Cottage, Little Gaddesden (27/11/19 Mr Buchanan-Burrow):

16/09/19

I am in receipt of your letter and associated documents dated 19 August 2019 informing me of the temporary tree protection order you have placed upon the tree opposite my house and I must object most strongly to any such measure.

For the last year we have been in correspondence with the National trust concerning how much work should be undertaken to this tree to make it safe for us and our adjoining neighbours.

As custodians of our heritage, be it buildings or estates, the National trust have a responsibility to do everything within their power to ensure this heritage is preserved for future generations.

The Trust have stated however that whilst this preservation is of great importance to them, their over-riding concern must be for the protection of human life on their land. As such, the tree in question is categorised as very high Zone 1 which means it is certain to cause damage to property and possibly life if it were to fall, as it is very near to residential properties. It is for this reason that the Trust's

current application is to reduce the height of the tree to below the height of our houses, probably by carrying out a coronet cut and make a “significant reduction” to the height.

The tree opposite Laurel Bank and Shepherd’s Cottage leans at an angle of some 40 degrees from the vertical and grows out of the side of a bank so the roots do not even penetrate straight down. As the ground next to the tree is a large ditch, it become alternatively water logged when it rains then hard when it dries out such that the stability of the ground is also threatened.

Were it to fail the size of the tree would mean that it would completely demolish our houses, which are of historic interest and could cause life threatening injuries to the occupants. If this were the case my estate would seek legal compensation from the Council for both losses.

If the Trust’s first concern is for the protection of life, should the Council not follow suit? We are not asking for the tree to be up rooted, merely reduced to a safe height.

I assume that whilst the Council make their final decision, the Trust are still permitted to prune the tree in accordance with the original planning permission granted last January.

I hope however that the Council seriously reconsider their current position, put themselves in our shoes and approve the application to carry out the more significant work to the tree so we and our neighbours are not under this permanent threat.

20/10/19

With regards to your letter dated 10 October 2019, I would respond as follows.

All trees may be superficially inspected annually above ground but that is not where the problem will lie. No one has investigated below ground by carrying even the most cursory inspection. The Trust however have sufficient concern to record in writing that the trees should be subject to “significant reduction”.

Had such an inspection taken place, which clearly it has not partly due to the overgrown stinging nettles covering the area, it would have become apparent that the ground is waterlogged, a common occurrence, but then in summer it dries and shrinks and therefore its ability to retain a root structure is vastly reduced.

Further, how can a tree growing out of a bank be structurally sound? The reason the tree is growing at an angle may in part be due to the fact that it is seeking the light as you say, but more significantly it is purely because it first seeded in the bank and was therefore forced to grow at an angle. The other similar trees to which you refer are inevitably giving similar concerns to other residents.

If your inspection had been that thorough, you would also have noticed that in fact the tree opposite my house has not recently been pruned, for whilst the Trust did prune the other two trees in the area, they delayed the work to my tree awaiting this approval so all intended work was carried out in one operation.

Whilst varying qualities of inspection may take place annually, earlier this year they did not stop a significant bough falling across a bridle path opposite my house, which would undoubtedly have caused loss of life had anyone been unfortunate enough to walk underneath it at the time.

I note you refer to possible “significant property damage” but make no reference to the possibility of “significant loss of life”, or is this of no concern to you? How can you take the ‘balance view” to which you refer when judging human life against a tree? This may be a risk you and your insurers are happy to take, but I am not.

I did not request the felling of the tree, but merely sought to have it reduced in accordance with the plans of the National Trust.

I therefore do not agree with your stance and do not withdraw my objection. All my comments still apply.

27/11/19

I acknowledge receipt of your letter dated 13 November 2019 and note its contents.

I also note that your decisions are based purely upon visual evidence above ground but that no investigation has been taken below ground.

From a quick inspection of other recently fallen trees in the area, there would appear to be no above ground evidence of possible decline in the canopy either but still they fell, so your argument gives me no comfort.

Perhaps if you could send me a copy of your technical report it might help to allay my fears, failing which I and my neighbours look forwards to having the opportunity to discuss the matter more fully at your January hearing.

Landowner comments (The National Trust)

14/10/19

The trees in question continue to be surveyed, in line with our National Trust Tree Safety Management programme. At present we have no concerns about the condition of the trees and our assessments indicate that there are no faults that would lead to a likely collapse.

We will continue to survey and monitor the trees and will carry out any remedial works deemed necessary.