

21 October 2009

Mr Chris Leyland  
Tree Officer - City Development  
Oxford City Council  
10 St Ebbes  
Oxford OX1 1PP

Planning application 09/02175/FUL

Dear Mr Leyland,

*26 Lathbury Road*

Thank you for your letter of 6 October sent under your reference 09/01956/FUL. I reply under the reference assigned to the re-submitted application, so that I may ask you to revise the report that you made for the earlier application before submitting it in respect of the application dated 7 October 2009. So as to avoid any question of the relevance of my earlier letter to this present application (which is in material terms the same as the last), I enclose a copy.

You have kindly agreed with several of the points that I made in my letter to Mr Caldicutt of 22 September and I agree with your observation that the oak tree (T909 in the applicant's papers) is the significant tree most affected by the application scheme. But I would not wish it to be inferred that the other trees on the plot will go unaffected, and to this end I enclose a plan that I have constructed using the applicant's information in accordance with the British Standard method that you have referred to, to produce the Standard's Tree Constraints Plan (TCP).

In making this plan I have not accepted the applicant's A, B and C Tree categorisation. No confidence can be given to this categorisation owing to his mistaken assessment of T909, which you have accepted. This categorisation must always be subjective, but there is clear evidence to demonstrate not only the vigour of the trees on this plot, but also of their continuing rapid growth. The image overleaf provides an example of just how vigorous the growth of these trees has recently been.

Please let me explain how I have made this image, for it reveals a great deal. In September 2006, about a year (if I remember correctly) after several trees on the site were pruned including an ash and an oak, I took a photograph of the house from Lathbury Road. That is the clear image that you see on the photograph. Then a couple of week-ends ago, I took a photograph from precisely the same viewpoint. This second image I manipulated first by making it negative, scaling it precisely (using the roofs and chimneys of the house – you will see that I have left a vestigial margin so that the accuracy of this process can be verified), fading it a little, and then superimposing it over the 2006 image. What this image therefore shows in the "corona" is the amount of growth that has been put on by the trees

and shrubs over the last 3 years. I think you will agree with me that all the growth has been prolific, save for an ornamental conifer in the distance (it stands in the neighbouring garden) which is sickly and which has put on no growth at all. (If you examine the image closely, you will see that the apparent *downward* growth of the oak tree in the foreground is the result in part of the additional weight of the boughs causing increased flexure.) I can, of course, repeat this process if you would like to see me do it.



I hope that you will agree with me that this image provides a striking demonstration that the trees and shrubs on this site are not static but in growth, and that account of this needs to be taken into account when considering recommendations for the *sustainable retention of the boundary trees*, a criterion which the Council has accepted in the internal memorandum from Mr Crofton-Briggs to Ms Fettiplace dated 4 October 2009 as being “a crucial requirement”. And I think you will also agree with me, having made the observation yourself, that the new gable proposed for this house would actually penetrate the tree canopy of the oak tree on the south boundary, a tree which we agree is the “significant tree most affected by the application scheme”, to use your words. Now if it is accepted that this extension will require the oak tree to be cut back, it must also be accepted that what has to be cut back is a tree that is not now in its natural state, but a tree that has already been substantially reduced following the consent given in 2005<sup>1</sup>. What you appear to be recommending therefore is a further reduction in the canopy of a tree that *has already been substantially dismembered*. I suggest that this cannot be reconciled with the Council policy of sustainable retention, let alone the inevitable harm done to the “valuable contribution” which this tree makes to

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1 See City Council consents to “Fell yew, false acacia, and laburnum trees and prune ash and oak trees” (05/00957/CAT), and “Prune oak, beech and two chestnut trees” (05/01479/CAT).

the “visual amenity afforded to external public views”, which is a further criterion of assessment elucidated in the internal memorandum that I have referred to.

Once a conservation area has been designated, a planning authority is required to have regard to the desirability of preserving or enhancing its character or appearance, in exercising in relation to land within the area any of its functions under the planning Acts.<sup>2</sup> It follows that a planning authority must have particular regard to trees in carrying out those functions, including:

- *its response to notifications that will involve changes to trees;*
- *the determination of applications for planning applications that will involve changes to trees,*

for it has been recognised by the courts that trees are a significant element in the character and appearance of areas, both urban and rural, and which may in some instances (and I would suggest beyond any doubt, in this area) contribute significantly to the justification for the designation of the conservation area. The authority is:

*“Buildings are part of their surroundings. They are to be seen in their setting. Trees may do much to enhance the interest, and to make them special”.*<sup>3</sup>

And as I said in my last letter, it is a requirement of the Local Plan, which must be adhered to by this planning authority under section 38(6) of the Planning and Compensation Act unless material considerations indicate otherwise, that

*“Planning Permission will not be granted for any proposal that involves major surgery to protected trees if it will have a significant effect on public amenity, unless such action can be shown to be good arboricultural practice.”*

It is perfectly lawful (in principle) for a planning authority to refuse planning permission for a proposal on the grounds of its effect on trees<sup>4</sup>, and it is also suggested that

*“Once a development proposal of any consequence is first broached with planning authority, the relevant officer of the authority should go and inspect the site and the neighbourhood, and see (amongst other things, no doubt) whether there is any tree or woodland which looks as if it might be of value in amenity terms. If there is, he or she should contact the officer dealing with tree matters to see whether a preservation order should be placed on the tree or woodland, to ensure its retention – or, if such an order is already in existence, whether the tree or woodland should still be retained. Any survey that has already been prepared will obviously greatly assist this assessment. Generally, no*

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2 *Planning (Listed Building and Conservation Areas) Act 1990, s.72.*

3 *R v Canterbury City Council, ex p. Halford* [1992] 2 PLR 137, per McCullough J at p. 144B.

4 *The Law of Trees, Forests and Hedgerows*, Mynors C, 2002, para 15.8.2.

*development should be allowed so close to any of the trees to be retained that to construct it would require intrusion within the protected zone around those trees.”<sup>5</sup>*

It should be born in mind that if consent is given to the planning application currently under consideration, regarding any matter that is not specifically conditioned, that consent has been given to any work reasonably necessary to achieve the object of the planning consent. It should also be born in mind that once consent is given to a construction that is near to trees, then the land owner would be entitled to presume that the planning authority had taken into account the future effects of its consent when giving that consent to the application.

*Nor should future effects be forgotten – in some cases, elaborate precautions are taken (including the imposition of a tree preservation order) to protect a valuable tree from the effect of constructing a new house nearby; but within a few years the occupiers of the house are seeking consent under the order for the removal of the tree, on the grounds that it has now grown to the point where it is overshadowing the garden, or causing the foundations to subside. In such a situation, it may be very difficult for the planning authority to resist granting consent; but that should have been foreseen when it was originally considering whether to grant permission for the house.<sup>6</sup>*

BS 5837:2005 is more strident. It says:

*Trees can occupy a substantial part of a development site and because of their potential size can have a major influence on the planning and use of the site. Existing trees of good quality and value can greatly enhance new development, such as by providing an immediate appearance of maturity. However, trees can also be a constraint. Layouts sited poorly in relation to retained trees, or the retention of trees of an inappropriate size or species may be resented by future occupiers and no amount of legal protection will ensure their retention and survival. To avoid such problems and to ensure a harmonious relationship between trees and structures, careful planning and expert advice is needed on their juxtaposition.<sup>7</sup>*

It should not be necessary to repeat here, or to argue for, the amenity value of the trees on the land subject to this present application, for the Council has itself acknowledged their importance on many occasions, most recently being in the internal memorandum of 4 October where Mr Crofton-Briggs says:

*“The landscape benefit of this group is its function as a cohesive screen along the Woodstock Road, and as a component of the wider tree canopy cover of the area. Extensive mature tree cover is a significant feature of the character and appearance of the*

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5 Mynors, *ibid*

6 Mynors, paragraph 15.8.4.

7 Paragraph 3.1.1

*North Oxford Victorian Garden Suburb Conservation Area... The tree group is estimated to have in excess of 40-years useful life expectancy (BS 5837:2005 top categorisation), without further planting. Two specimen beech trees and an English oak standing along the southern boundary with Lathbury Road also make valuable contributions to visual amenity afforded to external public views."*

It is submitted that the test which the planning authority must apply is whether this application, on consideration of the arboricultural assessment that it must require under paragraph 4.7.4 of the Local Plan, the development proposals and its own assessment, has "a significant impact on the existing trees".<sup>8</sup> Not only does this proposal impact on the existing canopy of the trees, it also impacts upon the future growth of the trees and upon the zone of their root growth, both present and future. In order to assess the zone of likely root growth, the calculation for the Root Protection Area of BS 5837:2005 may be used, or the perhaps more widely accepted rule of thumb may be applied which is:

*For an open-grown tree, "the boundary of the root zone will be below the outermost limit of the branch spread, or at a distance equal to half the height of the tree, whichever is the further from the tree."<sup>9</sup> For trees that are not open-grown, such as on the edge of a copse or next to an impervious surface, the boundary is taken as being equal to the height of the tree in the area where free root growth is possible.*

Below I show a drawing of the proposed west end of the house in juxtaposition with the existing trees, a relationship that is not shown in the information provided by the application, but made exclusively from information provided in the



8 There is good reason to refuse this application on these grounds alone, for this application "does not include adequate information about [the] existing trees".

9 Mynors, para 5.9.1.

application documents. The oak on the right (T.909) is not open grown, being adjacent to the street, and the root zone should therefore be taken to extend to the same distance to the north as the (original) height of this tree, some 3m higher than it now is. Nevertheless, it is sufficient to show the tree at its lopped height, and to apply the rule of thumb as if the tree was open-growth to show how far this new extension will intrude into its root zone. The beech tree (T.931) is similarly affected.

Overleaf is a Tree Constraints Plan. In green, the RPA for each significant tree has been plotted using the applicant's consultant's data. However, these RPAs are shown as being circular irrespective of the likely morphology and disposition of the roots, taking into account other trees, roads, structures and underground services. It should be noted that in the submitted tables of data, the units for the "stem diameter" used are centimetres and not millimetres, and the last column does not show the RPA but the radius of the RPA, as if the actual RPA could be a circle centred upon the trunk. This cannot be in such a place as this where trees are crowded, where there are hard impervious surfaces, and where there are existing foundations.

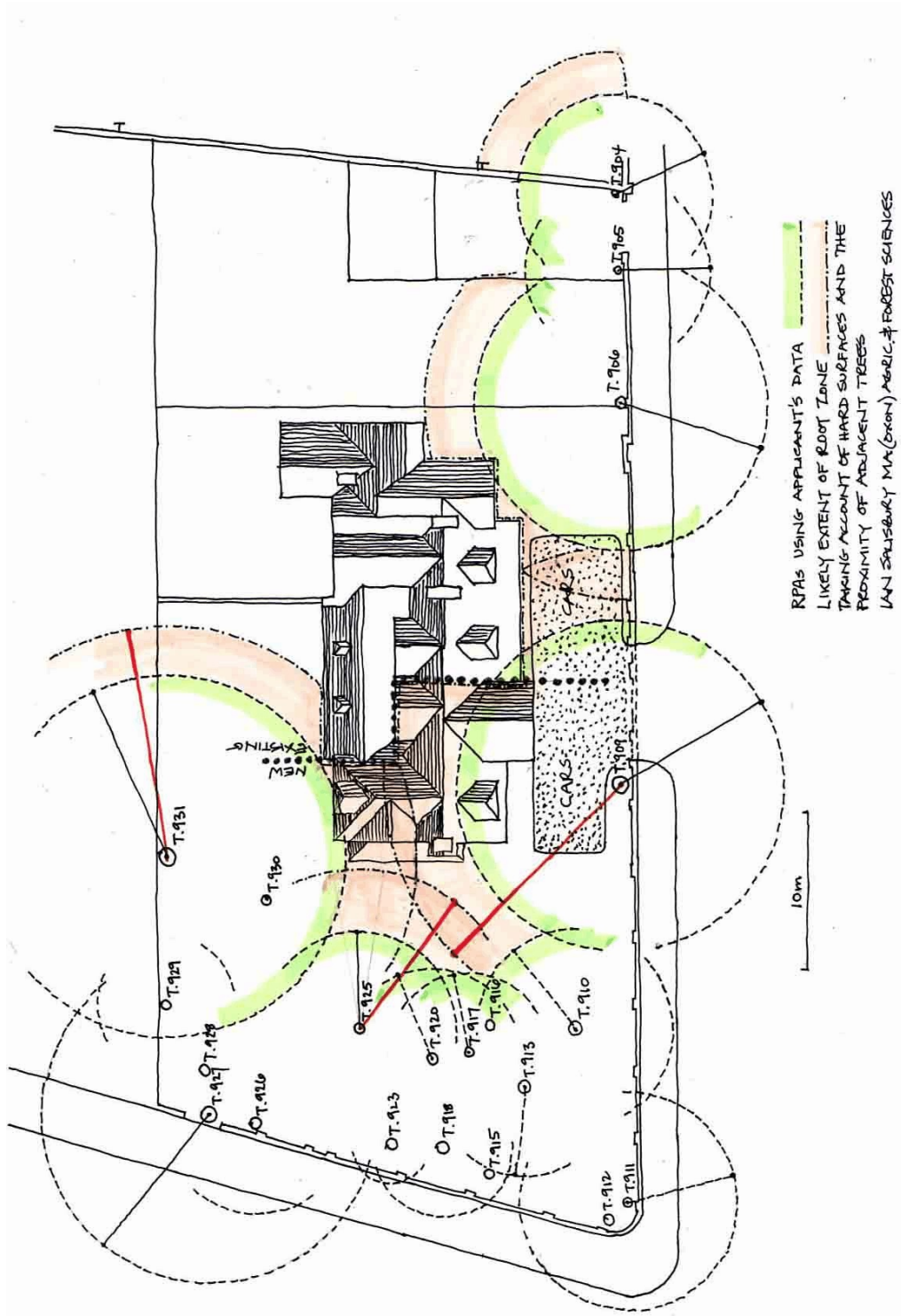
In fact, none of these trees can be considered to be "open grown" within the meaning of the British Standard. The oak tree T.909 has 50% of its potential root area covered with tarmac, and in consequence the fibrous roots will reach out further to where there is open ground to the north. As will be noticed, this includes most of the ground that it is intended to build upon. T.925, the horse chestnut (that was overlooked in the application drawings) is likely to be in competition for moisture from both the oak and the beech T.931, and it is not surprising that during the late summer, this was one of the first horse chestnuts in the area to show stress and damage caused by the leaf miner *Cameraria ohridella*.

With the incidence of bleeding canker now sharply increasing, stressed horse chestnuts such as this tree must be considered to be already at risk from this fungus. Any further stress is likely to increase the incidence of this pathogen, and endanger the tree. T.931, the large beech tree, is also not "open grown", for not only are there large trees to the west of it, but there are also trees to the north and west in the adjoining garden of 136 Woodstock Road, which the applicant has not shown. These trees will drive the fibrous roots of the beech south and east, as shown on the plan. In fact it will be seen from this plan how important the present open space of the garden will be for the nurture and watering of these trees.

When I last wrote I said I would not trouble you with the effect of these trees on overshadowing the extended dwelling, but having now recognised that the applicant will be entitled to apply to have these trees pruned on the grounds that the local authority will be expected to take future growth into account, and having demonstrated that these trees are actively growing, I think that it is important that you do advise the Members of the Council of the effect of the Council's decision, if it were to approve this application, on the future expectation of the users of this property.

Concerning the proposed driveway and potential root compression, you indicate that you are prepared to accept a "no-dig" solution as defined by Arboricultural practice Note 12, involving the deployment of a 3-dimensional cellular confinement system with "no dig". This, of course, will mean that the surface of the car parking

Tree constraints plan



area will have to be raised by 150mm to accommodate this cellular material.<sup>10</sup> That change in level will provide insuperable difficulties at the footpath crossover and at the meeting of the car parking area and the house. For you will notice from the south elevation that the existing eaves of the house next to the car park are already as is practically possible. Any reduction by at least a further 150mm (but more likely nearer 200mm when the porous top surfacing is taking into account) will effectively bring the height of that eaves down to stooping level. The solution proposed by condition for hard surfaces is not feasible. In fact, there is no “no dig” solution that is feasible.

In the memorandum, Mr Crofton-Briggs properly mentions services, and for this reason I have included in the tree constraint plan the RPA of the trees at the eastern end of the plot. This shows that there is no area that is now free of the root zone that would be available for excavation.

Concerning working on site, BS 5837:2005 is explicitly cautionary. It says:

*A tree may take a century to reach maturity but it can be damaged or felled in a few minutes. Such damage is frequently caused unwittingly because of failure to appreciate the vulnerability of trees, particularly the root system, and how easily and often insidiously they can be damaged. Irreparable damage is frequently done to existing trees in the first few days of a contractor's occupation of a site. The early erection of tree protection to form the construction exclusion zone before works commence on site is essential as the only way to prevent damage being caused to retained trees by operations in their vicinity.*<sup>11</sup>

In respect of contractor operations, the only way that these trees cannot be damaged is to ensure *that no digging takes place on the site whatsoever, including for the laying of foundations, and that all contractors vehicles should be excluded from the area of vulnerability shown on the TCP.*

Bearing all of the above in mind, I respectfully disagree that this application should be approved because all of the arboricultural implications can be dealt with by way of conditions. They cannot, for the following reasons:

1. The proposal would involve significant and repetitive tree surgery.
2. The proposal would involve damage to the roots, by the built works, by the car parking and by contractors' vehicles.
3. The proposal would thereby place the health of the trees at risk.
4. The proposal would harm the public amenity.
5. The proposal would breach the policies of the Local Plan.

It is clear that on the basis of the risk to these trees, recognised as having special amenity value in the conservation area, that this application should be refused. I would be grateful if you would take the matters raised in this letter into account

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10 For example, Terram Eroccl 25/15, 150mm being the minimum recommended depth for the use of this product for private car parking, light use.

11 Paragraph 3.1.2.

and make your recommendation to the North Area Committee on that basis, revising the views that were expressed in relation to application 09/01956/FUL accordingly.

By separate letter I have applied for the Council to protect the trees on the site by imposing on each and every significant tree a Tree Protection Order. It is expedient to do so in the interests of the amenity that has been discussed in this and my earlier letter of 22 September.

Yours sincerely,

Ian Salisbury