

SUPPLEMENTARY REPORT No.1

Reference Number: 11/00107/ENOTH2
Applicants Name: Osborne Interiors Ltd
Application Type: Enforcement Report
Application Description: Removal of trees
Location: Land adjacent to 12 Cumberland Avenue, Helensburgh

SUMMARY

This report is to bring to update Members on additional information received regarding the site at land adjacent to 12 Cumberland Avenue, Helensburgh covered by TPO 16/04. Members are asked to note the contents of the report and agree the recommendations set out below.

BACKGROUND AND CURRENT SITUATION

Since the earlier report was prepared for consideration at the meeting of the PPSL on 18 May 2011 additional information has been received from the owners of the site. The additional information consists of the following each of which is summarised below. Also included are responses from Alison McIlroy, Service Officer - Grounds & Horticulture, Marina Curran-Colthart, Local Biodiversity Officer and Peter Robertson, Chief Solicitor - Central Services/Litigation

Letter dated 13 May 2011 from Alan Motion Tree Consulting Ltd enclosing earlier reports on the condition of trees on the site at 12 Cumberland Avenue, Helensburgh

I have consistently advised since December 2006 that the plantation of larch trees is becoming progressively unstable, and that trees will continue to collapse due to a combination of wind and stem decay. Every winter since 2006 trees have collapsed in moderate winds. In February 2011 one tree collapsed across the boundary into the rear garden of property in Frazer Avenue. In response to this, and in order to comply with the legal requirements of the Occupiers Liability (Scotland) Act 1960, the decision has been taken to remove all trees within falling distance of the site boundaries. In my opinion this is prudent and responsible action, and is urgently necessary for safety reasons.

The felling that has been carried out has confirmed the widespread presence of stem decay within trees. A significant proportion of the felled stems exhibit central columns of decay caused by *Heterobasidion annosum*. This fungus spreads by root contact and is the most significant cause of root and butt decay within conifer plantations. Infected trees become progressively weakened and increasingly prone to stem snap. The prevalence of decay in the plantation is demonstrated by the fact that the vast majority of trees that have failed over the past 5 years have failed by stem snap rather than through uprooting. Alan McIndoe and Chris Johnson of West Coast Cutters confirmed the difficulty associated with felling the trees in a controlled manner due to the presence of decay.

The decay is readily identifiable in many of the cut stumps, and can be detected in many of the remaining stems by visual assessment. The plantation is behaving in exactly the way that was predicted in my report of December 2006. As trees are lost, more gaps occur in the canopy leading to increased wind penetration and turbulence, and an increasing risk of further tree loss. Although this pattern of tree loss is entirely predictable, the loss of individual trees due to weather conditions remains entirely unpredictable. It would be false to suggest that wind damage would only be expected during periods of winter storms. Trees regularly fail during summer months because of weather conditions, including thundery squalls and prolonged periods of still, dry air.

As I have made clear in earlier reports, the removal of trees from the plantation, and especially when removing trees from wind firm edges, will significantly increase the likelihood of further trees suffering from wind damage. I will repeat, for the avoidance of any doubt, that the removal of individual trees from within a plantation that has established and grown as a unit is neither prudent nor responsible action. This can only lead to an increased likelihood of tree failure, creating an increased safety risk to any person or property within the fall zone of any tree. The removal of the 20m strip from around the boundary removes the risk of trees falling into gardens or onto the public road, but it significantly increases the risk of remaining trees collapsing within the woodland. As long as the owner is unable to completely exclude access by third parties, the only reasonable course of action is to clear the remainder of the larch.

The current felling operations are being carried out under the exemption contained in Section 160 (6)(a) of the Town and Country Planning (Scotland) Act 1997, in that the work is urgently necessary in the interests of safety. Argyll and Bute Council has been given adequate notice of the intention to undertake the works; has been given evidence of the necessity of the works extending over a period in excess of five years; and its appointed officer responsible for providing advisory services to the council in respect of trees has agreed that the works are necessary. Given all of the above, I recommend that the work continues until you are satisfied that your obligations under occupiers' liability are fulfilled. In my opinion that would be once the remainder of the larch trees (and other conifers deemed to be unstable) are felled.

Report by West Coast Group Ltd

Following a site meeting with members of the Council and the landowner with his representative, also present were representatives from WCC West Coast Group Ltd & Alan Motion (chartered Forester) on Tuesday the 10th May 2011 from 10am to 11am, I was asked to produce a short report on the condition of the Larch trees within Cumberland Avenue Woodland. The woodland consists mainly of Larch with an average diameter at breast height of 26, and an average height of 20-25m, with occasional hardwoods on the boundaries and within the woodland itself.

The Larch have matured to an age and height where removal is advisable (to comply with health and safety regulations and with regards the occupiers liability (Scotland) act 1960), with most having butt rot, possibly *Heterobasidion annosum*, and others being wind damaged. Hardwood trees on site should be retained where possible. On inspecting some of the windblown trees the rooting depth of most of the failed trees appears to be 30-60cm. The most recent windblown tree also shows signs of root rot & stem decay.

Forest Research - Biological control of conifer root and butt rot states that: Most conifers planted in the UK during the past 100 years (a period of intensive afforestation) are susceptible to root and butt-rotting attacks by the basidiomycete fungus *Heterobasidion annosum* (formerly known as *Fomes annosus*). This decay fungus infects coniferous crops by colonising the recently cut stumps created in thinning or clear-cutting operations. The fungus grows down through the stump roots and across into any roots of nearby living trees which happen to be in contact. It can result in killing of pines on vulnerable sites, and decay in the lower stems of many other coniferous species. Whilst carrying out works to remove larch from the boundary of Fraser Avenue it was discovered that approximately 6 out of 10 trees felled had brown rot in the stems, this also caused the snapping of several trees whilst undertaking removal works requiring the use for winches to ensure safe takedown of trees near boundaries and areas close to public footpaths & gardens.

The main concern with this area of the woodland is the recent failure of a Larch tree which potentially could have landed on a children's playhouse of house number 28. The only reason this tree did not cause significant damage to persons or property was due to its relatively low height approx. 10-15m and the B.T cable that managed to hold the tree. The lack of maintenance carried out by the previous owners, i.e. removing only dead or windblown trees, has left the woodland today containing a majority of larch trees which are tall with poor crowns as the trees have had to grow towards the light due to the density of the planting, resulting in some 20-25m tall larch trees that have relatively narrow trunks.

Conclusion

Due to condition and age of the stand, and to comply with health and safety regulations, under the Occupiers' Liability (Scotland) Act 1960, I would have no hesitation in recommending the removal of larch from this woodland.

Letter dated 16 May 2011 from Margery Osborne

My name is Margery Osborne and I am a local businesswoman residing in Helensburgh, a town in which I have lived for over fifty years. For almost forty of those years I have been a Director of a Building Development Company which is Helensburgh based. During that time the company has built over sixty new homes as well as adding to the commercial development and employment in the town. In a private capacity as an individual I am the joint owner, with Mr Thomas Paterson, of a piece of ground known as W2, Cumberland Avenue, the trees on which are governed by the terms of TPO 16/04.

I am writing to each of you personally to appraise you of recent developments in respect of public safety issues concerning the trees on this land. I note from the Council's website that for Wednesday's PPSL Committee meeting there is an agenda item 9, 06/0076/ENFOTH, and assume that you will be discussing W2, Cumberland Avenue under this item as this is the same reference number on recent correspondence to me from Mr. Howard Young, Senior Planner, Argyll and Bute Council. It is difficult for me to know what information to provide to you because I have no idea what enforcement action you will be asked to consider on the 18th. However, I will try to give you as much up to date information as possible so that you can take an informed decision on whatever action officers are asking you to condone.

Each of you will appreciate that landowners have a duty of care under "The Occupiers Liability (Scotland) Act 1960" to protect persons entering any site which may be hazardous in respect of public safety. The Council has acknowledged that the Cumberland Avenue site is a danger to the public and has allowed us to fence the site for safety reasons. The land has been fenced for three years. The land contains larch planted as a crop over fifty years ago and in December 2006 the council refused an application to clear fell the trees when it was requested to do so in the interests of safety.

Recently two trees have fallen over on to the rear gardens of Frazer Avenue and as part of a general safety check by West Coast Cutters we received a report dated 14th April showing use of the site by others for rearing livestock, growing vegetables and by children as a general play area. A notice was sent to the occupants of Frazer Avenue, the various encroachments were cleared and a letter dated 7th April was received from Mr Lane of 14 Frazer Avenue. An urgent meeting was called by our agent to consider this letter and after considering the fact that children were clearly playing in the wood, the unstable nature of the trees and the numerous alarming arboricultural reports in respect of the trees, I took the decision to fell in accordance with the West Coast Cutters' report. Our agent notified the Council on Tuesday 26th April and felling began on Monday 3rd May, the first date on which we could secure tree surgeons on site.

During this felling it became clear that many of the trees, which appeared healthy, were rotting in the centre and the trees were reacting in a manner which was described by the tree surgeons as 'unpredictable' and they advised that the rest of the site needed to be assessed. On Tuesday 10th of May, Mr. Paterson and my agent convened a site meeting with West Coast Cutters, Alan Motion FCIF, Alison McIlroy, Argyll and Bute Council's Roads and Amenity Services Service Officer – Grounds and Horticulture, and Howard Young, Argyll and Bute Council Senior Planner, Allan MacIndoe the Author of the West Coast Cutters' report and Chris Johnston of West Coast Cutters.

During this meeting, after the tree experts had explained the dynamics of the woodland, it was agreed by Alison McIlroy and all the arboriculturalists that, urgently, in the interests of safety, the remaining larch must be felled. Howard Young, Senior Planner, was the only person present not

to support this decision. I agreed to stop felling if the Council would accept the risk but this was refused. In the interests of safety it was the owners' decision to continue felling. Reports are attached which justify this action. I would ask the Committee to note that during this meeting a medium sized branch fell and narrowly missed Howard Young. If this branch had hit Mr. Young there is no doubt that injury would have occurred.

I have agreed to continue negotiations to develop this site and my agent is also exploring a number of avenues for mitigation in accordance with LPREC2, but in the meantime I have to protect the people of Helensburgh from dangerous trees. There is no requirement to replant trees removed in the urgent interests of safety under the woodland TPO 16/04 but I have made it clear in recent discussions that I am prepared to consider planting trees in the locality to compensate for the removal of the larch. I wish my legacy to be that I have contributed to the development of the area, as well as providing employment for a local workforce, not to be remembered as the woman whose trees killed a family who had chosen to make their home in Frazer Avenue.

I continue to be perplexed at the actions of Argyll and Bute Council and the failure of officers to understand my untenable position given the professional advice I have been given. I have tried to engage in open and transparent discussions with planning officers to no avail and I find myself in a position of having to write to each of you with regards to enforcement action which is totally inappropriate and an unnecessary waste of public resources. In fact, if this action is being sought under reference 06/0076/ENFOTH against Osborne Interiors Ltd. it will be invalid as that company has never owned the land. Previously enforcement action was taken against Osborne Interiors Ltd. for the replacement of trees on this site which were removed in the interests of safety and this was rejected by the Directorate for Planning and Environmental Appeals (DPEA) on the 4th March 2008 and never resubmitted by Argyll and Bute Council.

I can assure you that the felling of these trees was not undertaken lightly but we have been pleasantly surprised by the support we have received from the residents of Frazer Avenue and I understand that local residents, including Mr. McShane, have written to the council expressing their support. I am gratified that many people like Mr. McShane understand why I have had to fell dangerous trees and I am grateful that they have passed on their appreciation to myself and Mr. Paterson and commended us for the way in which we have moved swiftly to remove professionally condemned trees from the vicinity of their homes.

I would now respectfully ask that the Committee Members take some time to consider the submitted reports and accept that these trees were urgently felled in the interests of safety and agree to take no enforcement action in respect of this site

Scanned copies of various correspondence from the owners with adjoining residents and the Council.

The above are available for inspection by Members.

Alison McIlroy, Service Officer - Grounds & Horticulture

I have been involved in assessing tree safety at Cumberland Avenue for some 6-7 years.

The make up of the trees species at Cumberland Avenue is largely Larix decidua, (larch) a tree much used in commercial forestry. Other species on site are Chamaecyparis, Pinus and mixed broadleaves including Prunus Quercus Betula and Fraxinus Cherry Oak Birch and Ash. The site is estimated to have been planted in 1960 by the previous owners of the site and has been left unmanaged. In commercial forestry this site would have been thinned to allow good growth of timber to maximise market value. Felling would have occurred as part of a long term management plan realising a timber crop and then action would have been carried out in line with ongoing management plans to develop commercial and /or broadleaved woodland.

In the case of this site, as no commercial plan was ever laid out, the trees have been left unmanaged and have now reached a stage where their growth, the site condition and a spreading record of disease has made felling the only sensible option for the larch.

The removal of trees likely to fall on adjacent houses identified has opened up a cut edge within the site and therefore has increased the risk that the others will fall. As the site has not been secured to robustly discourage access there is undoubtedly a risk that anyone accessing the site may be in danger from falling trees or debris from the remaining trees. Other trees on site will be exposed to wind and weather conditions they have not previously adapted to.

The risk of falling trees is increased by removal of those trees protecting them; however, the risk must be managed. I cannot make detailed comment on the requirement of any publicity liability the owner may have other than to identify the level of risk and make recommendation that the best control of the risk is to harvest the site which would effectively remove the danger of falling trees and debris. A site where trees are felled and felling debris is left is not however necessarily safe as trip and trap hazards are naturally created. The felling of a site in commercial terms would be followed by steps within and organised long term management plan. There does not appear to be such a plan for this site.

In summary I agree with arbour principals outlined in external reports provided to planning officers in terms of felling proposals for site. There does however seem to be no defined plan for the future of the site defined as significant as green space. Although natural regeneration of trees species may occur due to the proximity of broad leaved trees, without proper management a number of undesirable species will also colonise the site once it is opened up to light and air . A robust plan for management is therefore important to ensure the site continues to offer amenity in the area.

Marina Curran-Colthart, Local Biodiversity Officer

If trees are deemed as unsafe to the public, then there are of course exemptions that allow certain work to continue; in section 4-2 (c) of the *'Wildlife and Countryside Act 1981 (as amended) it states, that it does not constitute an offence if the act can be show to be the incidental result of an otherwise lawful operation, and could not reasonably have been avoided. There are also exceptions for incidents where disturbance or destruction of birds or their nests is necessary as a matter of public health and safety; while a similar allowance can be made, where the act is necessary for conservation reasons'*.

Re. Bats: there was survey done some time ago (perhaps 6 years ago) and bats were discovered to be using the woodland as a feeding area. As woodlands grow and change, trees through age and natural forces can accommodate bats by providing crevices and holes large enough to host them.

Presence of bats in hazardous trees:

Assessment:

A tree with MEDIUM bat potential will display some or all of the following features:

- Some small cracks or crevices.
- Low ivy cover.
- Deadwood in canopy or stem.
- Snagged branches.

If bats or their roosts are confirmed to be present within a tree that needs to be felled, or sections of it dismantled immediately on the grounds of public safety and there is no time to consult a bat licensed professional, operations should follow these mitigation measures:

1. Prior to work commencing, or as soon as possible afterwards, evidence (written and photographic) of the tree's hazardous nature should be gathered.
2. If a climber's entry into the tree has the potential to disturb, remove or destroy a feature with bat potential, such as a large section of loose bark, an alternative method of entry should be investigated such as a Mobile Elevated Work Platform (MEWP) or ladder.
3. Work should be conducted in a highly sensitive manner and, unless completely unavoidable, known roosts and timber with bat potential should not be directly sawn through. If such timber is removed, it should be lowered to the ground and left at the base of the tree permanently - or for at least 48 hours. Where it is impractical to lower potential or known bat roosts, piles of brash or logs can be used to soften the impact of them hitting the ground.
4. Attempts should be made to return any timber containing roosts back to a similar position and height by strapping to a nearby presence.*
5. An individual holding a Natural England bat licence should be contacted and informed of the situation as soon as possible to advise on any further mitigation

No. 5 Applies to SNH.

Peter Robertson, Chief Solicitor - Central Services/Litigation

The proposal is to remove larch but retain deciduous and presumably re-open the site. Given that Mr Motion recommends this I think we will have complied with the requirement to allow trees to be removed in the interests of safety. Assuming that is done normal public rights of access under the Land Reform (Sc) Act 2003 would apply and fencing could be removed by the owners.

ASSESSMENT

Section 160 (6) of the Town and Country Planning (Scotland) Act 1997 is the legal test in terms of the uprooting, felling or lopping of trees. It states that nothing shall prevent such actions where they are "urgently necessary in the interests of safety".

The site has been fenced off with herris fencing to prevent access from Cumberland Avenue. However, the rest of the site isn't and it is considered that it would be difficult to prevent any public access to the site. Where trees in a woodland TPO are removed for safety reasons there is no requirement to replant. In the letter from Mrs Osborne she does indicate compensatory planting. However, this has been clarified to mean that that no replanting will be done other than as part of the development of houses on both sites as part of compensatory planting. It should be noted that the Council is not in a position to agree this and it be part of future discussions. As such, given the reports submitted and the comments from the Service Officer - Grounds & Horticulture it is considered that the remaining Larch trees only should be felled, that the remaining deciduous specimens be retained and recorded by the Council and that with the removal of the safety issue a note be put to the owners indicating that the herris fencing should be removed.

RECOMMENDATION

It is recommended that Members note the content of this report, agree that the remaining Larch trees should be felled in the interests of safety as the owners cannot fully limit public access particularly from Fraser Avenue, agree that prior to this the deciduous trees of value in the TPO site be recorded and that with the removal of the safety issue a note be put to the owners indicating that the herris fencing should be removed and highlight their responsibilities in terms of birds and bats as outline above.

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