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Attn. Mr Rod Cantrill, Executive Councillor
Ms Liz Bisset, Director of Customer & Community Services

Our ref: DVE1-001/RB/AC
Email: acopithorne@richardbuxton.co.uk

14 January 2011

Dear Sirs

Alexandra Gardens

As the Council will be aware, we have been advising the Alexandra Gardens Trees Group on an informal basis regarding the proposal to fell or prune London plane trees which are allegedly causing subsidence in a neighbouring property. We have now been instructed to write to you to set out briefly our views on the situation. Our clients may also be in touch direct.

It was helpful to attend the workshop on 5 January to hear the views of Dr Biddle, the tree expert instructed by the Council's insurers.

Procedure

We understand the procedure now to be as follows.

- Dr Biddle will now produce a final report.
- Council officers will then, following consideration of that information and consultation responses (which may include other expert evidence), consider the matter and make recommendations to the Planning Committee.
- The Planning Committee will then consider the matter and make recommendations for a final decision by Executive Councillor Cantrill, to be made at a meeting of the Community Services Scrutiny Committee.

We trust we have understood correctly; if not please advise.

Substance

We have not had much opportunity to have more than a cursory review of the papers here, and even then probably do not have all of them. From what we do have we

would comment that that presently there seems at least a conflict of evidence as to the effect of the trees on the property in question and what must be done about that. We note that evidence obtained by our clients (e.g. the reports by Mr David Brown and Dr Adrian Hill) come to a different conclusion to that apparently arrived at by Dr Biddle and the insurer of the property in question.

We also note that there appears to have been no engineering investigation or even costing of remedying the alleged damage to the property in question, nor of investigation (we have in mind a root barrier on the streetside of the property) as a remedial measure. Although this option was discussed only in passing at the workshop, this would preserve the trees, address the home owner's concerns, and provide the Council with protection from future claims of this kind. It surely deserves detailed exploration as an option.

Furthermore if substantial pruning were to be put forward as an option, in order for there to be meaningful consultation about that there should be montages of how the street scene would be likely to change.

Without this sort of information a consultation will be unsatisfactory (and the result potentially unlawful, for failure to take into account material considerations).

The question of investigating and costing the damage is crucially important in a case like this because notwithstanding the normal remedy of an injunction to deal with nuisances, damages may be appropriate in public interest cases (ie. where the alleged nuisance should be allowed to continue in the public interest) – and we would say that this is obviously one of those cases, where the cost of remedial works may be small in contrast to a huge if not priceless loss by felling or severely pruning the tree(s) in question.

The public interest appears to be recognised, in that Dr Biddle indicated that he appreciated felling was not a viable option. However, severe crown reduction, which Dr Biddle has recommended, is likely to be almost as unsatisfactory to our clients and other local residents as removal. The individual trees have tremendous amenity value, but particularly as a cohesive 'avenue'. Extreme pruning of one (or several) will harm significantly that amenity.

As the Council will be aware, people increasingly value green spaces and large, mature trees such as these. A decision by the Council to preserve the trees but instead agree to paying compensation to the house owners may be viewed by the majority of residents as the decision of a progressive, "green" Council.

A further aspect of the need for a structural engineering study is that as the house in question has been altered substantially in the relatively recent past, and given that the trees have been much as they are now for longer than that, there may also be grounds for arguing contributory negligence on their part in any construction work.

We trust this letter will assist the Council with its thinking on the matter. Since we have only become recently involved, if any of the above points are incorrect or it appears we have misunderstood the situation, please let us know.

Yours faithfully



Richard Buxton