

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **13th JANUARY 2015**

ADDRESS/LOCATION : **29 TEWKESBURY ROAD**

APPLICATION NO. & WARD : **14/01321/TPO**

APPLICANT : **MRS ANN LEESE**

PROPOSAL : **APPLICATION TO FELL A PROTECTED BEECH TREE**

REPORT BY : **JUSTIN HOBBS.**

NO. OF APPENDICES/ : **1. Site location plan.**
2. TPO 223.
3. Application to fell tree and supporting documentation.
4. Letter in support of the application.
5. Written representation objecting to the application.
6. Written representation objecting to the application.
7. Written representation objecting to the application.
8. Written representation objecting to the application.
9. Petition objecting to the application.

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 A site location plan is attached as appendix 1.
- 1.2 The tree subject to this application is protected by Tree Preservation Order (TPO) no 223 (29, Tewkesbury Road). The tree is listed as T2 on the schedule of the TPO. Refer to appendix 2 for a copy of the TPO.
- 1.3 The application to fell the beech tree was received 11 November 2014. The applicant's reasons for the application to fell the tree are set out in supporting documentation and members are urged to read the full extent of this in appendix 3. A summary of the reasoning is set out in the opening section of the supporting documents as:

“Nine months of the year we have the following problems which are the direct result of the beech tree

- *Pigeon droppings from end March to end October.*

- *Leaf pods during late April early May.*
- *Beech flowers during May which stick to windows, doors & vehicles.*
- *An abundance of beech nuts during September and October*
- *Complaints from the public in respect of the nuts on the public path/cycle path*
- *Leaf fall from October to December*
- *For some unknown reason, this year during the months of September and October the tree also became a haven for Jackdaws and Magpies with flocks of 20 to 30 roosting in the tree from early evening.*

In addition to the consistent issues above, we also have the damage to our retaining boundary wall, which has been caused by the roots of the beech tree”

2.0 RELEVANT PLANNING HISTORY

- 2.1 File records show that the applicant originally believed the tree was protected by a TPO in 1998 having contacted the City Council wishing to prune the tree. File records show the City Council confirmed to the applicant that the tree was not protected at that time. A TPO was not made in 1998 on this tree (and two mature lime trees in the same garden) as the applicant wished to only prune the trees, not remove them. File records also show the applicant stated that there was a protective covenant preventing tree removal. The City council has no information regarding such a covenant
- 2.2 In 2005, following extensive root damage by the applicant to a mature lime tree in the garden, resulting in its removal, the City Council served a TPO to protect the remaining lime and beech trees. TPO 223 was made 23 February 2005 and confirmed 14 July 2005.

3.0 LEGAL IMPLICATIONS

- 3.1 The Tree Preservation Order makes provision for applications to be made for consent to carry out work to or fell any of the trees protected by the Order.
- 3.2 If the Council decides to grant consent it may, where it considers appropriate, impose conditions.
- 3.3 If the Council decides to refuse consent it must give clear reason why it has done so.
- 3.4 The applicant has a right of appeal against any refusal of consent or imposition of conditions.
- 3.5 In considering applications the LPA are advised:
- (1) To assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and

(2) In light of their assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

4.0 PUBLICITY AND REPRESENTATIONS

4.1 All adjoining properties and properties directly opposite the tree were notified of the application.

4.2 The City Council has received one written response in support of the application to fell, and four written responses objecting. In addition a petition signed by 40 signatories has been received objecting to the application.

4.3 A letter in support of the application states "*The flowers from the tree do stick to windows, doors and vehicles. The nuts fall over my driveway and make it very difficult for walking over – I am 81 years of age...I am also aware that members of the public do complain about the beech nuts...During the months from September to December there is a constant round of cleaning up leaves*". Refer to appendix 4 for a full copy of the letter.

4.4 Four written responses objecting to the application to fell the tree have been received. Refer to appendices 5 – 8 for full copies. Refer to Appendix 9 for a copy of the petition. A summary of the comments includes "*The tree is of outstanding beauty admired by everyone we know and it is a large focal point of the area. It is just one of its kind in the locality. We have never heard anyone objecting to its presence, the leaves or beech nuts falling on the path/cycle path. This tree has stood in all its beauty for somewhere in the region of 100 years.*"....." *I was very surprised and dismayed to learn you had received a request for its removal and would like to give my strong objections to this proposal. As you are no doubt aware, this beautiful tree has been in place for many years and has been the source of much pleasure to many people in the vicinity as well as to passers by.*"..." *The tree is a fine tree, and we would miss it on our sky line. The tree was there many years before the house, and the owners must have known about it before they bought. We have leaves blow over onto our drive, but have no problem sweeping them up. We have no issues with any flowers or leaf pods*"....." *I would be appalled if the Beech Tree was removed when there is clearly nothing wrong with it. Native or naturalised trees are homes to many different species and in urban settings surely are even more important especially with ever-decreasing open-spaces*".

5.0 OFFICER OPINION

5.1 The beech tree is in a healthy physiological condition and is of good form and structure.

5.2 Being located on a busy main road into Gloucester the tree clearly provides significant public amenity value; it could even be described as a local

landmark tree. Its loss would be detrimental to the local environment and character of the area.

- 5.3 The results of public consultation appear to overwhelmingly support the retention of the tree.
- 5.4 Leaf fall, seed (nuts), and flowering are perhaps seasonal inconveniences to the applicant but it is your officers opinion that this does not outweigh the public amenity value of the tree, and that removing the tree on these grounds is a disproportionate response.
- 5.5 The applicants are unhappy about the presence of birds roosting in the tree and their resulting droppings on a patio area below. Again it is your officers' opinion that removing the tree on these grounds is a disproportionate response to the public amenity value the tree provides to the area.
- 5.6 The City Council has received no complaints about beech nuts lying on the footpath / cycle path.
- 5.7 The retaining wall is slightly bowed and there is cracking close to the base of the tree. However, no structural engineering survey or similar has been undertaken to determine the full extent of any damage or the role of the tree in any damage. If the tree is implicated in damage, it is likely a solution could be reached, whereby both the wall is repaired and strengthened, and the tree retained. Your officer has been involved in two other similar situations where works involved wall repair and tree retention in the City. Simply removing the tree could possibly make the situation worse and result in the wall collapsing. Removing the tree will not lead to the wall "righting itself"; if the wall needs repair it will need repairing whether the tree is removed or not. The view of the City Council's Conservation Project Officer is that "boundary wall, because of its age, is an undesignated heritage asset of local interest which the City Council would like to see retained. Agree that it should be possible to retain both the tree and the wall".
- 5.8 Given the above I recommend the application is refused.

6.0 RECOMMENDATION

- 6.1 That application 14/01321/TPO to fell the protected tree is refused for the following reason:

The tree is of considerable public amenity value by virtue of its size, form, good health and location adjacent to a busy main road. The reasons put forward for removal are either unsubstantiated, do not outweigh the public amenity value of this tree, or have alternative solutions that do not require the removal of the tree.

Decision:

Notes:

.....

.....

Person to contact: Justin Hobbs
(Tel: 396897)

14/01321/TPO, 29 Tewkesbury Road

Appendix 1 – Site Location Plan



TPO 223

**29 TEWKESBURY
ROAD**

Made: 23 February 2005

Confirmed: 14 July 2005

Town and Country Planning Act 1990

THE COUNCIL OF THE CITY OF GLOUCESTER (29 TEWKESBURY ROAD) TREE PRESERVATION ORDER 2005

The Council of the City of Gloucester in exercise of the powers conferred on them by sections 198 201 and 203 of the Town and Country Planning Act 1990 hereby make the following Order -

Citation

1. This Order may be cited as the Council of the City of Gloucester (29 Tewkesbury Road) Tree Preservation Order 2005.

Interpretation

2. In this Order "the authority" means the Council of the City of Gloucester and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on 23 February 2005.

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) and subject to article 5, 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 schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

- 5 (1) Nothing in article 4 shall prevent -
 - (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary -
 - (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or

(iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995

- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991; or
- (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

(2) In paragraph (1), "statutory undertaker" means any of the following -

a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,

a relevant airport operator (within the meaning of Part V of the Airports Act 1986)

the holder of a licence under section 6 of the Electricity Act 1989,

a public gas transporter,

the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,

a water or sewerage undertaker,

the Civil Aviation Authority or a body acting on behalf of that Authority,

the Post Office

Applications for consent under the Order

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall -

CLOSE

Trees

Final

g

Scale

This map is
unauthorised



Scale 1:1250



Tree Preservation Order No. 223
 29 Tewkesbury Road, Gloucester.
 Grid Reference SO 835 201

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationery Office, (c) Crown Copyright.
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Gloucester City Council, Licence No.078050, 2000

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application

Application of provisions of the Town and Country Planning Act 1990

7. (1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).
- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

Directions as to replanting

8. (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.
- (2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.
- (3) A direction under paragraph (1) may include requirements as to -
- (a) species;
 - (b) number of trees per hectare;
 - (c) the preparation of the relevant land prior to the replanting; and
 - (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9. (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of -
- (a) the refusal of any consent required under this Order; or
 - (b) the grant of any such consent subject to conditions,
- he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority
- (2) No claim, other than a claim made under paragraph (3), may be made under this article -
- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
 - (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person -

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

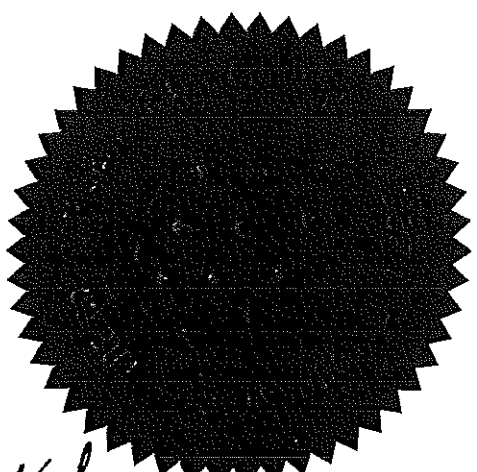
(6) In this article -

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

Dated this 23rd day of February 2005

THE COMMON SEAL of THE)
COUNCIL OF THE CITY OF)
GLOUCESTER affixed hereto is)
authenticated by the undersigned a)
person authorised by the said)
Council to act for that purpose)



[Signature]
Head of Legal Services STAZ NO
15174.

R

R

R

I

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Lime (<i>Tilia</i> sp))Both situated at 29 Tewkesbury
T2	Beech (<i>Fagus</i> sp))Road, Gloucester and adjacent to)Tewkesbury Road.

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
	None	

Groups of trees
(within a broken line on the map)

Reference on map	Description (including number of trees in the group)	Situation
	None	

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
	None	

of
y
n
is

n
n
is

is
t;

y
o

e
s
r
f
a
e

;

SCHEDULE 2

PART 1

Provisions of the Town and Country Planning Act 1990
applied with adaptations or modifications

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1) -</p> <p>(i) omit - “, in such manner as may be prescribed by a development order,”, “such” in the second place where it appears, and “as may be so prescribed”; and</p> <p>(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2) -</p> <p>(i) after “contain” insert “, as regards each such order”; and</p> <p>(ii) for paragraphs (a) and (b) substitute - “(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general consideration)	<p>(a) In subsection (1) -</p> <p>(i) substitute - “Subject to subsections (1A) and (1B), where” for “Where”; “the authority” for “a local planning authority”; “consent under a tree preservation order” for “planning permission” where those words first appear; and “consent under the order” for “planning permission” in both of the other places where those words appear;</p> <p>(ii) after “think fit”, insert - “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and</p> <p>(iii) omit “subject to sections 91 and 92,”.</p> <p>(b) After subsection (1) insert - “(1A) Where an application relates to an area of woodland</p>

S
P

S
a
fi

the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”.

(c) Omit subsections (2) and (3).

Section 75 (effect of planning permission)

(a) In subsection (1) substitute -

- (i) “Any” for the words from “Without” to “any”;
- (ii) “consent under a tree preservation order” for “planning permission to develop land”;
- (iii) “the consent” for “the permission”; and
- (iv) “the land to which the order relates” for “the land”.

(b) Omit subsections (2) and (3).

Section 78 (right to appeal against planning decisions and failure to take such decisions)

(a) In subsection (1) substitute -

- (i) “the authority” for “a local planning authority”;
- (ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;
- (iii) “consent under such an order” for “planning permission” in the second place where those words appear;
- (iv) for paragraph (c) substitute -

“(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or

(d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority.”.

(b) Omit subsection (2).

(c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” substitute -

“in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served -

(a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow;

(b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the

	<p>expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.</p> <p>(d) For subsection (4), substitute - “(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”</p> <p>(e) For subsection (5), substitute - “(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”</p>	S (
Section 79 (determination of appeals)	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute -</p> <p>(i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part 1 of Schedule 5”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission”; and</p> <p>(iii) “the authority.” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71.”</p> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p>	(1 ... S A p b ... St (1

PART II

**PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990
AS ADAPTED AND MODIFIED BY PART I**

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

- (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority. (3)
- (2) The register shall contain, as regards each such order -
- (a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.
-
- (5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order -
 - (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
 - (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

.....

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

.....

Section 78

- (1) Where the authority -
 - (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
 - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
 - (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
 - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of eight weeks beginning with the date on which the application was received by the authority,the applicant may by notice appeal to the Secretary of State.

.....

- (3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served -
 - (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of twenty-eight days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
 - (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

- (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).
- (5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

Section 79

- (1) On an appeal under section 78 the Secretary of State may -
 - (a) allow or dismiss the appeal, or
 - (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),and may deal with the application as if it had been made to him in the first instance.
- (2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

.....

- (4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

- (5) The decision of the Secretary of State on such an appeal shall be final.

.....

- (7) Schedule 6 applies to appeals under section 78.

Dated 23rd February 2005

**THE COUNCIL OF THE CITY OF
GLOUCESTER
(29 TEWKESBURY ROAD)
TREE PRESERVATION ORDER
2005**

**TOWN AND COUNTRY PLANNING
ACT 1990**

**TREE
PRESERVATION
ORDER**

relating to trees situated at 29 Tewkesbury Road,
Gloucester

IDENTIFICATION OF TREE AND DESCRIPTION OF WORK

DESCRIPTION OF WORK: PERMISSION TO FELL TREE

TREE SPECIES: MATURE COPPER BEECH (T2 ON SKETCH PLAN)

REASONS FOR WORK

On 23 June 2014, we wrote to Justin Hobbs to seek advice (Appendix 2 - copy e mail and photographs referred to in e mail enclosed). Within days of cleaning, the paved area deteriorates rapidly which is a continuous cause of frustration and annoyance (Appendix 3 - photographs taken on 26 June 2014). Nine months of the year we have the following problems which are as a direct result of the beech tree.

- Pigeon droppings from the end March to end October.
- Leaf pods during late April early May
- Beech flowers during May which stick to windows, doors and vehicles.
- An abundance of beech nuts during September and October (Appendix 4 - photograph enclosed)
- Complaints from the public in respect of nuts on the public path/cycle path
- Leaf fall from October to December (Appendix 5 - photograph enclosed)
- For some unknown reason, this year during the months of September and October the tree also became a haven for Jackdaws and Magpies with flocks of 20 to 30 roosting in the tree from early evening.

In addition to the consistent issues above we also have the damage to our retaining boundary wall, which has been caused by the roots of the beech tree, and we will have to bear the subsequent expense of rectifying that damage.

All these issues result in a great deal of cleaning, expense, anxiety and causes discomfort and pain to me personally. My husband has incurable non Hodgkins lymphoma and one of the side effects of this illness is overwhelming tiredness. As a consequence of this he is limited to what he can contribute to the work required to keep the garden in good order. I have had major surgery on my spine and have a plate in the lower part of my spine to keep it stabilised and straight. Needless to say, all the work required to maintain the garden involves bending (scraping, scrubbing, sweeping, raking) which is not conducive to my medical condition and results in me having to suffer unnecessary pain and discomfort. We have a limited income and a very limited disposable income and we are not in a financial position to employ commercial cleaners and gardeners for nine months of the year to undertake these task. For many years we have already borne the costs of the ongoing expense of cleaning the paved area (which was there before the TPO was put in place), blocked gutters and drains from the leaves and nuts. In addition to this we have the expense and inconvenience of taking the excess of nuts and leaves that cannot be accommodated by green waste to the tip. This year alone we have had to make three journeys to the tip to dispose of nine black bags of excess beech nuts.

The tree is situated in our garden 24 inches in distance from a 7 foot retaining boundary wall that supports our garden and the roots of the tree have impacted on the wall causing it to fracture (Appendix 6 - photographs enclosed). Our property and garden is three/ four foot higher than the public foot path and A38 road which run along the outside of this boundary retaining wall. Approximately 22 years ago the same section of the wall that is currently being affected by the roots collapsed due to the roots of this tree impacting on the structure. This section of the wall was rebuilt and the lower part of the wall was strengthened at that time to prevent further damage. Obviously, as the wall has incurred further damaged from the tree roots this was not effective and the roots will obviously continue to be problematic due to its close proximity to the wall.

This problem came to light when Paul Knight, tree surgeon from Choppers Tree Services came to look at the tree and noticed that the roots of the tree were damaging the wall. On 5 July 2014 we wrote to Justin Hobbs explaining the situation and to ask if he could come and look at the problem and give us his expert opinion (Appendix 7 - Copy of letter to Justin Hobbs). On 16 July 2014 we received an e mail response from Mr Hobbs (Appendix 8 - copy e mail enclosed). On 17 July 2014 Martin Jenkins (Arboriculturist from Stroud Tree Maintenance) visited at our request to assess the situation and he verbally confirmed that the damage to the wall was being caused by the roots of the beech tree and suggested that we contact the tree officer to come and look at the situation. Following his visit I telephoned Justin Hobbs who visited the property on 24 July 2014. Mr Hobbs was very helpful and did not deny that the damage was being caused by the tree roots. He explained that structures could be repaired by bridging the wall to accommodate the roots of the tree. However, he recognised that the wall was very old and we would need to employ a specialist builder to undertake the work. Mr Hobbs was kind enough to look into this and followed up with the enclosed e mail (Appendix 9 – copy e mail enclosed).

We contacted Spencers Traditional Builders and they visited on 13 August 2014. However, irrespective of stating they would provide a quote for the work required no quote arrived. We advised them of this and were told that a quote would be sent but they failed to do so. We contacted Longlevens Contractors and explained the work required but they failed to turn up as arranged. We rearranged and they failed to turn up on a second occasion. We have also contacted Glynn Mann Construction and C&P Builders all of which failed to visit. Finally we contacted M.J. Cale from Pendock who advised us that they were too busy to take on any additional work. Unfortunately, we are unable to force builders to assess the work and provide us with quotes. Needless to say, we are at a loss and can only assume that builders are reluctant to undertake the repair of the wall due to the tree being covered by a TPO and the constraints that this puts on them.

The wall is possibly 80 - 100 years old and quite possibly was the boundary wall of a large old house in times gone by and been part of the street scene since its erection. As stated in the e mail from Mr Hobbs (Appendix 9) the wall has a degree of protection as an undesignated heritage asset and we are unsure if a bridge repair would be permissible. The bridge would have to be at least four foot high to accommodate one large root that is visibly impacting on the wall. It is unknown how wide it would have to be and this type of repair would undoubtedly spoil the original character and appearance of the wall and would be unsightly from the street. We have a typical copper beech that has a typical beech root system (elephant foot) and as such common sense tells us that more than one mature large root is impacting on the wall and it is only a matter of time before further damage is caused. Therefore, we beg to question how many roots are expected to be bridged and at what cost and to whose financial expense. We know that, as owners of the tree, we are expected to bear the costs, however, our freedom of choice has been removed from us and has been replaced with the burden of a TPO. When we purchased this property in 1998 no TPOs were in place, and indeed, we would not have purchased if they had been. We specifically chose this property because it is a bungalow and its location. We have spent 16 years putting the property and garden into good order and making it easily manageable in readiness for our retirement. We remain bewildered as to why the trees in our garden had TPOs placed on them without enough forethought of the impact the large roots of a mature trees would have on the retaining boundary wall when they are in such close proximity. Even the most uneducated layman can see that it would be impossible for the roots not to impact on the wall and as such any damage caused to the wall would be the financial burden of the owner irrespective of their financial position. Is this fair and reasonable?

This whole situation has now become intolerable and the tree has become a total nuisance to us whereby it is impacting on the quality of our daily life. We can no longer sustain the physical, mental and financial burden that the tree has put us under and will continue to place on us. We are in the latter years of our life and feel we have the right to live our life as peacefully and as happily as possible. We feel we have the right to enjoy our property and be able to relax in our own garden not be enslaved to it by a tree. We do not feel that we should have to tolerate or live with the persistent unpleasantness of pigeon droppings nor

spend our retirement constantly cleaning up. Equally we do not think that we should have to worry and be anxious about further damage being caused to the wall by the roots of the tree and the financial burden it would place on us. In view of all the aforementioned we feel that this tree has now become untenable.

PROPOSAL FOR PLANTING REPLACEMENT

We have a small urban garden and we also have a large mature lime tree (shown as T1 on the enclosed sketch plan) which is also covered by a TPO. For your information this tree is only 21 inches in distance from the retaining boundary wall. In view of the size and shape of our garden we cannot see where a tree could be placed where the roots would not impact on either the retaining wall or the structure of the bungalow in time. However, we are open to any suggestions you may wish to make.

From: Ann Leese [mailto:randaleese@yahoo.com]
Sent: 23 June 2014 15:24
To: Justin Hobbs
Subject: 29 Tewkesbury Road, Gloucester GL2 9AY

Dear Justin

I am writing to you to ask if you can help and advise on a problem that we have been experiencing with pigeons roosting in the beech tree over the last 3 – 4 years. This problem has increased year on year and has now become unbearable and it is impacting on the quality of our daily life. We have tried various ways of deterring the pigeons all to no avail. The measures that we have taken are as follows:

- 1) Ensured there is no food source for the pigeons in the garden. We do not grow fruit or vegetables. Other than the beech nuts on the beech tree we do not have any plants, shrubs or trees that bear fruit or berries and we have no bird feeders in the garden.
- 2) Over the last couple of years we have hung over 50 reflective discs in the tree as we understood that this was a deterrent but it had no impact on the pigeons
- 3) Two years ago we purchased life sized solar powered owls with moving heads and eyes that shine brightly at night. These have been moved to various positions every other day so the pigeons do not get used to them but once again this has no impact on the pigeons.
- 4) We have a number of windmills around the garden to deter them from perching on fencing etc.
- 5) We have put pepper, cinnamon and cayenne pepper on a bird table as a deterrent as we were advised that they do not like these spices. No impact.
- 6) When we see pigeons in the garden during the day we make sudden sharp noises like clapping to shoo them away.

Having tirelessly tried the above methods over the last few years we cannot think of anything else that we can do to discourage these birds.

We have not tried spikes or netting as I am sure you will agree that these methods would be totally impractical for a very large mature beech tree.

As previously mentioned the problem has been escalating over the last few years and irrespective of scraping and sweeping the area almost daily we now have to do a major cleaning job every 3 to 4 weeks. This involves scraping, sweeping, bleaching and jet washing. This process is time consuming (approx 4 to 5 hours), exhausting and costly. We are on a water meter and the additional cleaning of this area has resulted in our water bill increasing by £8.00 per month over the last few years plus the cost of bleach and electricity. The situation is very frustrating and all our efforts to keep it clean is thankless as the problem returns by the next morning and goes down hill rapidly which is making our life miserable.

We have three young grandchildren as well as two cats and a small dog and there is a concern in respect of any disease or health risk associated with pigeon droppings.

To enable you to fully understand the extent of the problem I have taken some images of the area affected – this area underwent a major clean 4 weeks ago and almost daily cleaning has taken place since then. This area has today had **another** major clean and I have also enclosed images following this clean so that you can see that it is impossible to remove all the stains left by the pigeon droppings, irrespective of scrubbing with neat bleach prior to jet washing.

We had hoped after 16 years of bringing the property and garden up together and having reached retirement our garden would be a haven and a pleasure but we feel that this situation is depriving us of such enjoyment. I am sure that once you have seen these images you will understand why we feel this way and why it has become intolerable for us. Needless to say, we cannot even consider selling and moving as no one in their right mind would want to purchase this problem.

Therefore, any advice that you can provide to assist with this problem would be very much appreciated.

Yours sincerely

Roy & Ann Leese

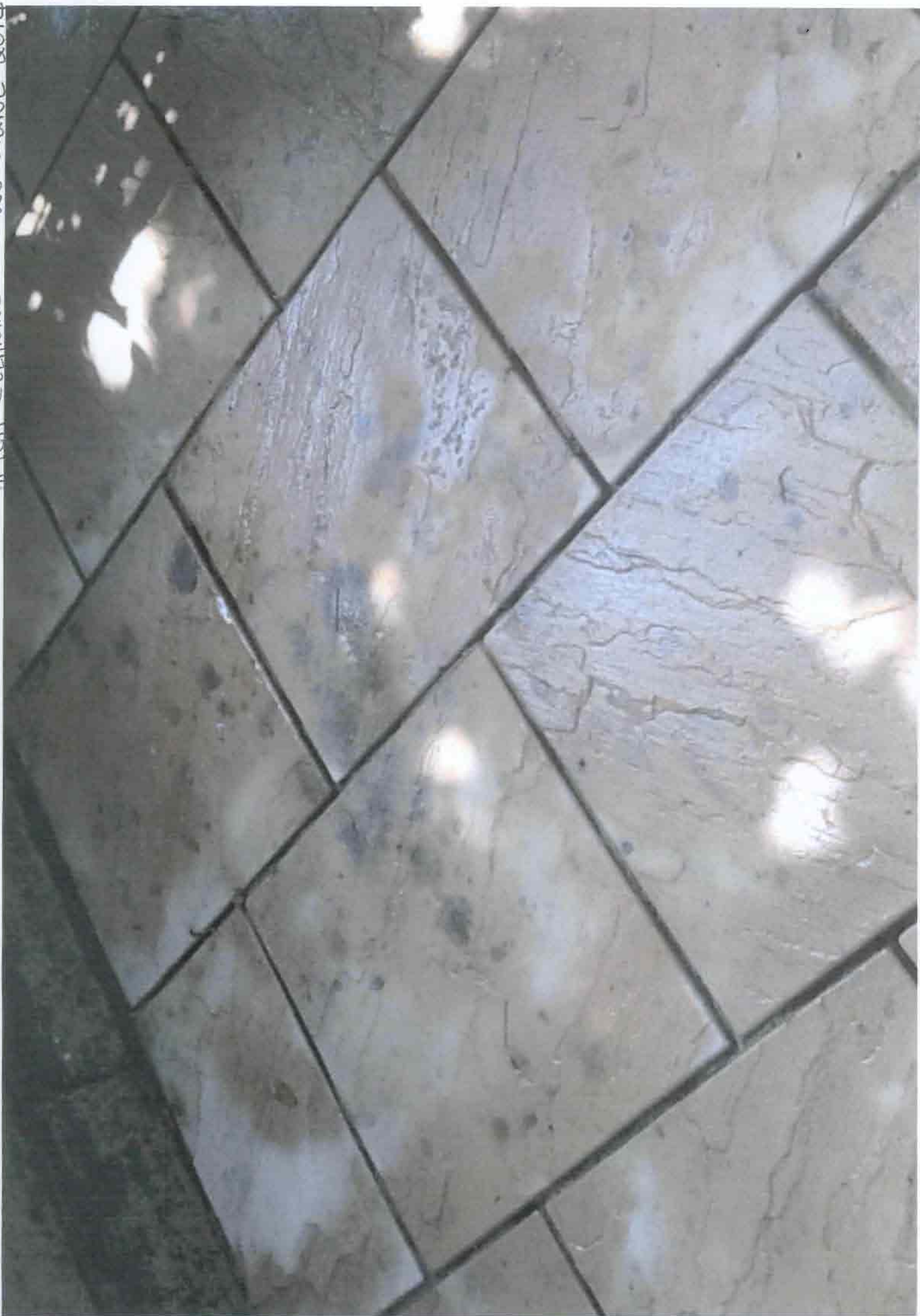
23RD JUNE 2014



23 June 2014



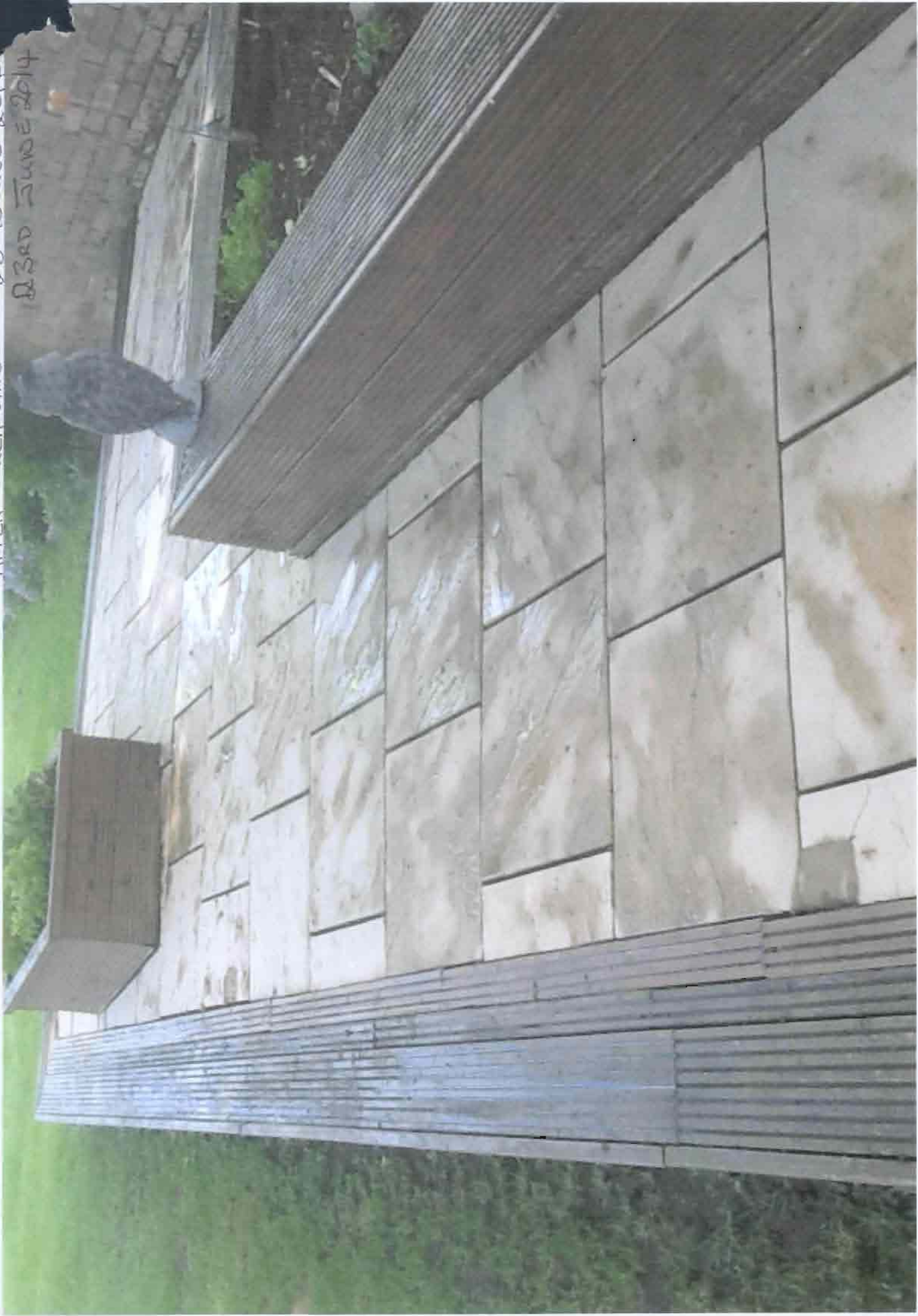
AFTER CLEANING 23 JUNE 2014



AFTER CLEANING

23 JUNE 2014

123RD JUNE 2014



Appendix 3 -

26 June 2014



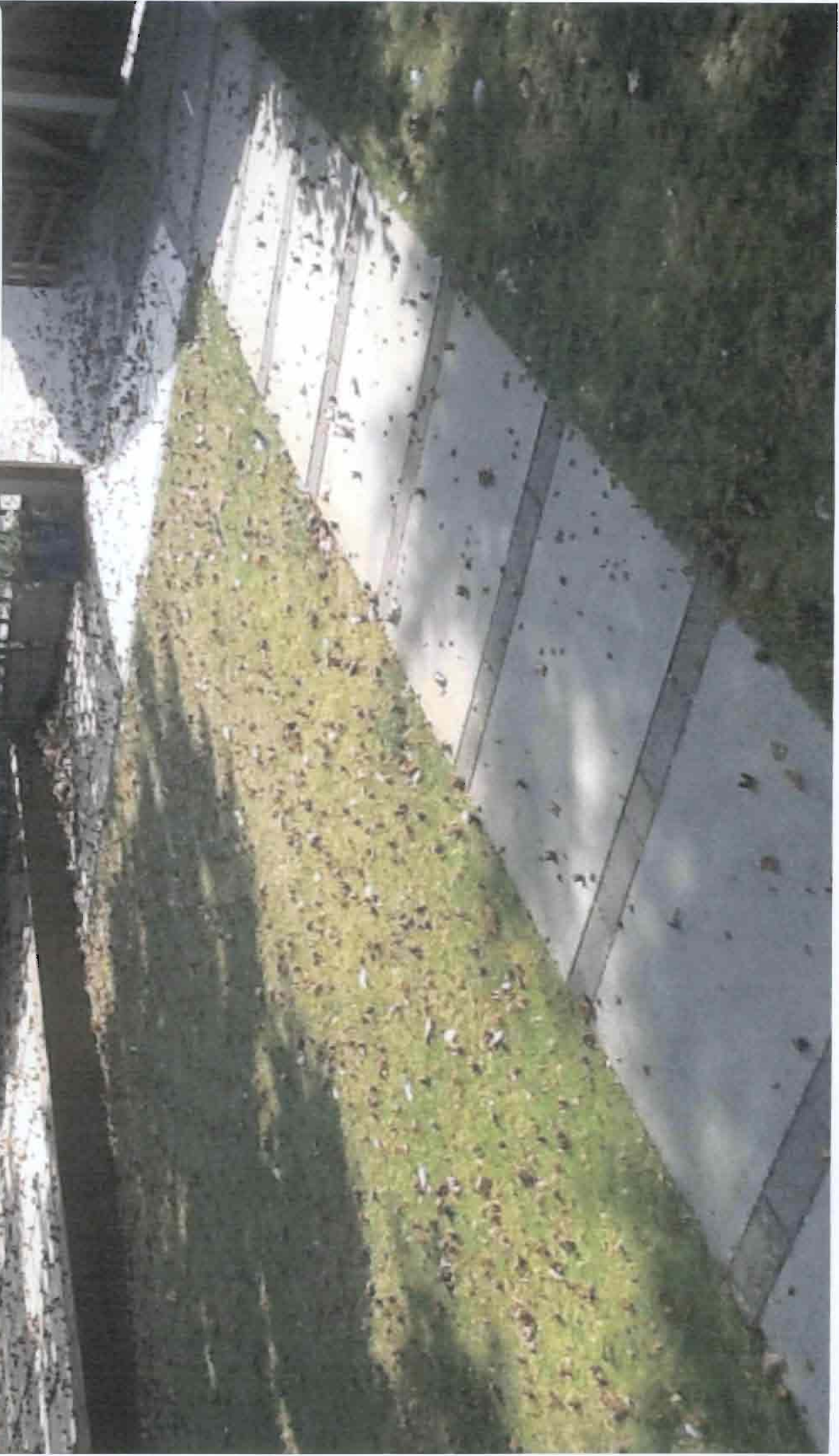


WASING LINE
AREA



Appendix 4

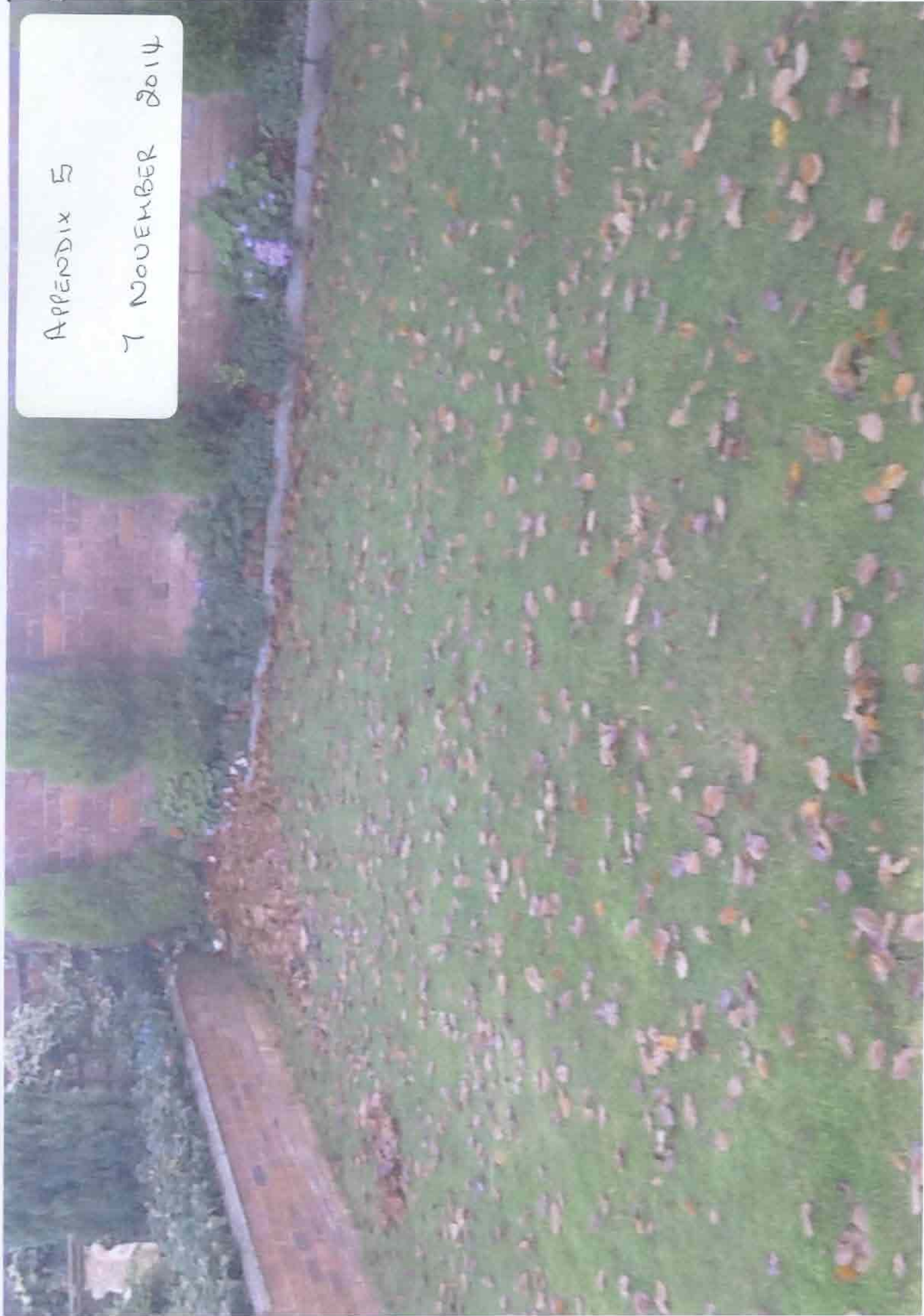
5 OCTOBER 2014

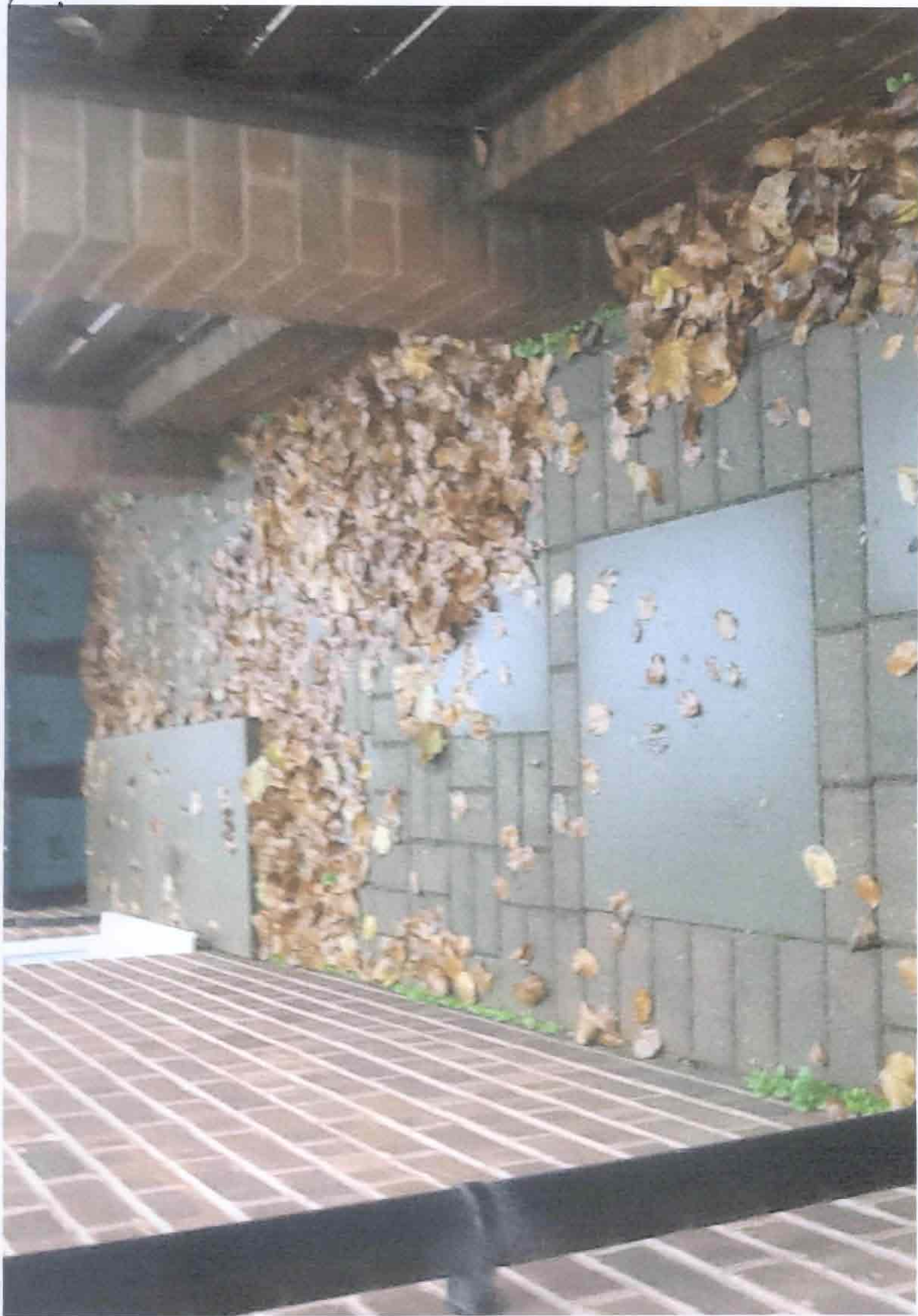




APPENDIX E

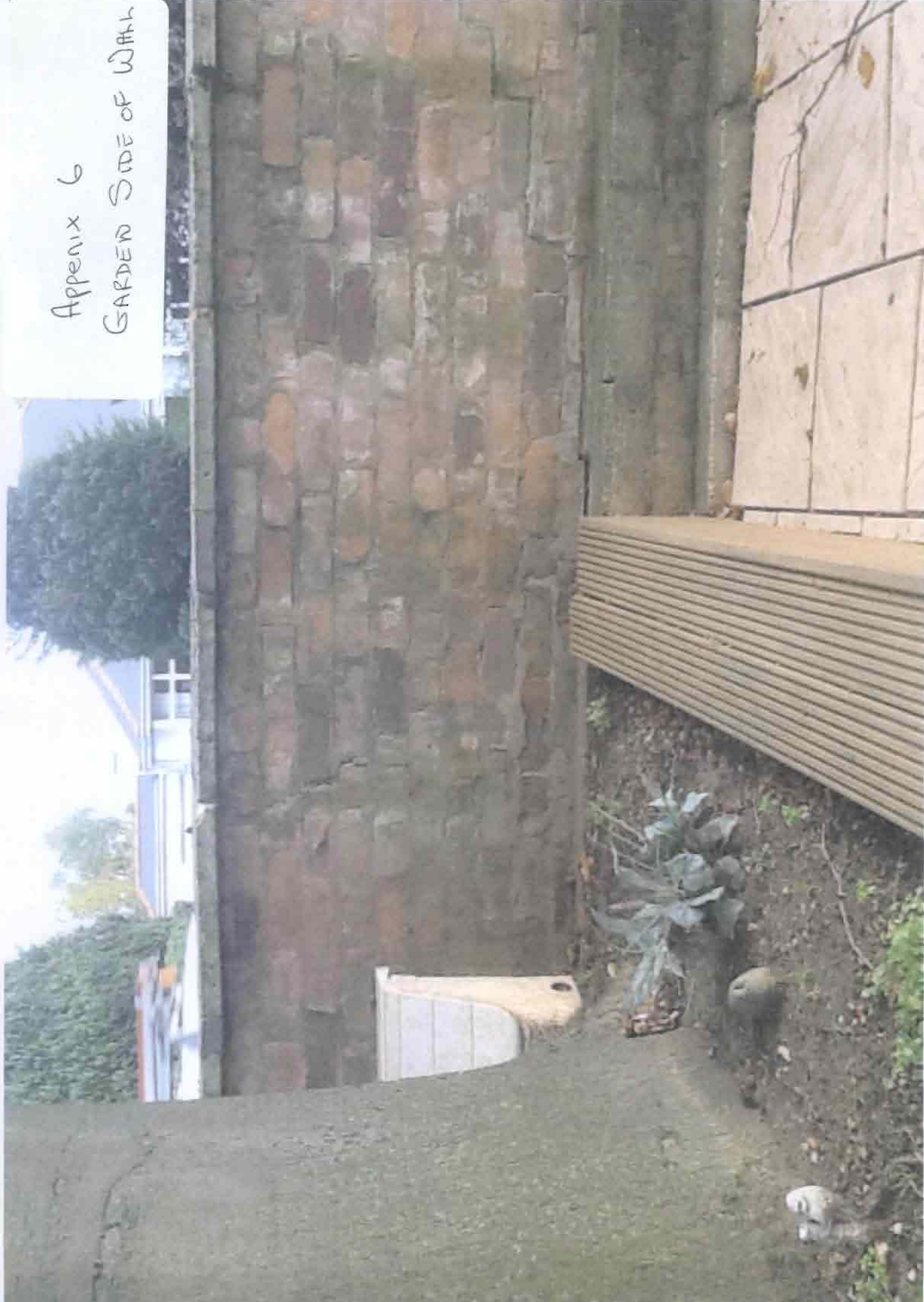
7 NOVEMBER 2014





Appendix 6

GARDEN SIDE OF WALL



Appendix 6
Coping Stone



APPENDIX 6

STREET SIDE OF WALL



Mr Roy & Ann Leese
29 Tewkesbury Road, Gloucester, GL2 9AY

Mr Justin Hobbs
Tree Officer (Planning)
Gloucester City Council
Herbert Warehouse
The Docks
Gloucester GL1 2EQ

Delivered by hand 7 July 2014

5 July 2014

Dear Justin

Whilst awaiting a response to the e mail that we sent to you on 23 June 2014, we have continued to seek a resolution to the problem we have with the pigeons.

On Tuesday 1 July 2014 we consulted NBC Bird and Pest Control and as a result of that we have been advised that very little can be done to stop pigeons from roosting in trees. We understood from them that even drastic measures of culling is only a short term solution (matter of weeks) as other pigeons will move into the tree. However, we were advised that the problem could be alleviated to a small degree if the tree was cut back as pigeons prefer very dense places to roost and do not like to be seen or have too much sunlight.

We followed this advice and contacted a tree surgeon to come and provide us with a quote prior to making an application for permission. The tree surgeon came on 3 July 2014 and his recommendation was that the tree should be cut one third in height and canopy. Unfortunately, during the course of the assessment a far more serious problem came to light whereby it appears that the roots of the beech tree are substantially impacting on the retaining boundary wall behind the tree. There are large vertical cracks in the wall and the wall has moved where these cracks appear. The movement is obvious as the wall either side of the cracks is not even (the wall on one side of the crack protrudes more than the wall on the other side of the crack). The wall is double skinned and the cracks appear on both sides of the wall. The section of the wall that is affected was rebuilt approximately 22 years ago and the lower part of that section was strengthened at the same time. Needless to say, this finding is causing us to be gravely concerned and we are worried that the section of the wall affected will fall. The retaining boundary wall is 7/8ft high and runs along a cycle/public footpath which is well used on a daily basis but has a very heavy footfall during the rugby season which I presume will be much heavier during the world cup. The carriageway is also very busy and one of the main entrances/exits to and from the city. It is also one of the main entrances/exits to St Oswalds Business Park and a substantial number of large lorries use this road to deliver to the business park on a daily and nightly basis which, on occasions, the larger heavier lorries can cause vibrations. Also the council road sweeper lorry cleans along this footpath next to the wall on a regular basis. The last thing we want is for anyone to be injured should this wall give way.

In view of our concerns we wondered if you would be kind enough to come and look at the problem and give us your expert opinion of this situation.

I have taken some pictures of the wall and I enclose them for your information.

Yours sincerely

Roy and Ann Leese

Justin Hobbs

Jul 15

To: me

Dear Mr & Mrs Leese

Thank you for your email and subsequent letter of 5th July.

Please accept my apologies for the delay in responding, it's been a rather busy time.

It sounds like you have researched your issues with pigeons very thoroughly and unfortunately I can offer no more advice or methods of deterring them in addition to what you have already found out.

With regards to the wall I am not structural engineer but across the city I have been involved with several examples whereby a wall damaged by tree roots has been repaired in a way to accommodate the existing roots and prevent further damage to the wall. Perhaps you speak to a builder and discuss a solution.

Regards

Justin Hobbs

Tree Officer Tech Cert (Ahor.A)

Justin Hobbs

Aug 1

To: me

CC: Caroline Ansell

Hello Mr & Mrs Leese

Further to our site meeting recently (and our email up and running again at last!) I can now come back to you with further information.

Your boundary wall is not "listed" as such but is afforded a degree of protection as an "undesigned heritage asset" – I have copied in Caroline Ansell our heritage conservation officer who will be able to advise further about this.

Caroline has also advised that there is a local specialist builder who may be able to assist you further regarding possible works to your wall. The contact details are: Spencers Traditional Builder, Berrowside, Wickridge Street, Ashleworth, GL19 4JW tel 01452 700832.

Regards

Justin Hobbs

Tree Officer Tech Cert (Aber-A)

Gloucester City Council T 01452 396897

Herbert Warehouse F 01452 396668



Mr J Hobbs
Gloucester City Council
Herbert Warehouse
Gloucester Docks
GL1 2EQ

25 November 2014

Your ref: 14/01321/TPO

Dear Mr Hobbs

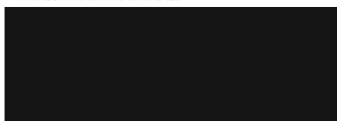
Location: 29 Tewkesbury Road, Gloucester

I am writing in response to your letter dated 21 November 2014 in respect of felling the beech tree at the above address.

I am in support of the felling of the tree. The pigeon droppings do not have a direct affect on me personally but it is not a situation that I would not want to have to deal with. The flowers from the tree (which are very sticky) do stick to the windows, doors and vehicles. The nuts fall over my driveway and make it very difficult for walking over – I am 81 years of age and have a problem with my one foot and this situation is not helpful to me. I am also aware that members of the public do complain about the beech nuts on the public path. During the months from September to December there is a constant round of cleaning up the leaves which get everywhere.

I have lived here for over 30 years and the wall collapsed several years ago as a result of the roots from the beech tree and one part of the wall had to be completely rebuilt so I am not surprised that roots have caused further damage.

Yours sincerely



Mrs June Mullinger

Dear Sir,

We would like to object to the felling of the Beech tree at 29, Tewkesbury Road for the following reasons.

The tree is of outstanding beauty admired by everyone we know and it is a large focal point of the area.

It is just one of its kind in the locality.

We have never heard anyone objecting to its presence, the leaves or beech nuts falling on the path/cycle path.

This tree has stood in all its beauty for somewhere in the region of 100 years. That's longer than our neighbour or their bungalow have been around. Everyone who lived there before accepted the inconvenience that having trees in your garden brings, why should they be any different?

We do question that the neighbours' boundary wall is being damaged by the roots of the tree.

It's a fact that birds nest in trees but to say there are flocks of 20 to 30 roosting in the tree is a total exaggeration, Today, on checking, there were two pigeons and six Jackdaws who visited the tree.

To say that that there were complaints from the public about Beech nuts on the path/cycle path, we find difficult to understand as the entrance to the neighbours' property is via a little lane in Westfield Terrace. When we have a new postman on our round they are always knocking on our door to find out where number 29 is because the entrance is concealed. Consequently, if members of the public were to complain, they would be more likely to knock on our door as our gate is in Tewkesbury Road but we have NEVER had anyone seeking the entrance of number 29. Could you please let us know how many members of the public have complained to the council about this matter and where is the evidence of this?.

Our neighbours also complain that Beech flowers stick to their car. In fact, their car is parked at the other end of their property, well away from the tree, on the other side of their bungalow.

This neighbour has already cut down a similar protected tree, without permission, to take down this tree also would be a travesty of justice.

There are other properties locally that have trees in their gardens that add beauty to our area, would the residents also be allowed to fell their trees?

Gardens without trees would surely be detrimental to the environment.

For us, this tree brings beauty all year round, majestic in its stature, stunning in its fullness.

We know, from talking to other neighbours in the past, how much it brings to them, particularly our elderly neighbour who enjoys nothing more than to see this tree through her window with admiration and affection.

Could we please request that we are kept updated on this matter and if there is a public enquiry that we are informed of its time/date.

With many thanks,

John and Sue Geis.

Dear Mr Hobbs

Reference : 14/01321/TPO, Beech Tree 29 Tewkesbury Road, Gloucester GL2 9AY

Thank you for your letter dated 21st November 2014 regarding the above 'protected' tree. I was very surprised and dismayed to learn you had received a request for its removal and would like to give my strong objections to this proposal.

As you are no doubt aware, this beautiful tree has been in place for many years and has been the source of much pleasure to many people in the vicinity as well as to passers by.

Personally, I have no reason to complain about what is, after all, the outcome of Nature's natural cycle for most deciduous trees ie) nuts, flowers etc, and the subsequent necessity of having to clear these is surely a small price to pay for the pleasure given by the sight of such a magnificent specimen.

I would also like point out that similar complaints could be made regarding the whole length of pavement in this area where many trees overhang the pavement.

Trusting that you will decide to retain the 'protected' status of this beautiful natural feature.

Yours sincerely,

Patricia Trevett.

(27 Tewkesbury Rd)

Dear Mr Hobbs

Thank you for your letter of the 21 November regarding the above. We are James Cook and Jane Davies of 20 Tewkesbury Rd GL2 9DT.

We would like to make the following comments

The tree is a fine tree, and we would miss it on our sky line. The tree was there many years before the house, and the owners must have known about it before they bought. We have leaves blow over onto our drive, but have no problem sweeping them up. We have no issues with any flowers or leaf pods.

We have no objection to it being properly pollarded by a tree surgeon, as it is large, and does need to be kept under control.

James Cook and Jane Davies
20 Tewkesbury Rd
Gloucester
GL2 9DT
Sent from my iPad

Ref: 14/01321/TPO

Hi Justin

I would be appalled if the Beech Tree was removed when there is clearly nothing wrong with it. Reasons 1-7 are just petty complaints and if they felled the tree for these reasons alone then every tree could fall under this argument which is ridiculous. There is a minor point about the wall but you can't tell me they weren't aware of the proximity of the tree to the wall and could have done something earlier to reinforce the wall; not the tree's fault. Native or naturalised trees are homes to many different species and in urban settings surely are even more important especially with ever-decreasing open-spaces. It has been shown that the natural environment is good for our well-being, tree's being a major part of this. And of course the general aesthetic appeal of a large flourishing tree.

Many of the falling leaves from this tree get blown up my drive and I have no problem clearing them up for recycling.

Beech mast is a good source of food for several small mammals and birds; because of their longevity they can support a number of fungi, lichens and mosses also dead-wood specialist insects. Leaves support many moth species caterpillars.

If they wanted to keep the tree in check then pollarding is one compromise which ensures the further longevity of the tree and can then be re-pollarded periodically.

Regards

Colin Edmonds



11th December 2014

Your Reference - 14/01321/TPO

Dear Mr Hobbs

Please find enclosed a petition signed by many people opposing the proposed felling of the Beech Tree at 29 Tewkesbury Road. We did not have anyone we asked agreeing with their proposal and every one who signed did so readily.

Your Sincerely



John and Sue Geis

Dear sir,

We the undersigned would like to object to the proposed felling of the Beech Tree at no 29 Tewkesbury Road. For us this tree is a thing of beauty and only enhances the local environment.

NAME

ADDRESS

SIGNATURE

DATE

Rose MERRETT

1.11.2014.

Doreen Jones

1.12.2014

Dee Hargrave

1-12-2014

mandy kee

1-12-2014.

KARA DAVIS

1/12/14

Phil Morris

1/12/14

Joy Doyle

1/12/14

ALISON ANDREWS

1.12.14

Laura Andrews

1.12.14

Sandy Robertson

1.12.14

DIANE STANBURY

5.12.14

Dear sir,

We the undersigned would like to object to the proposed felling of the Beech Tree at no 29 Tewkesbury Road. For us this tree is a thing of beauty and only enhances the local environment.

NAME

ADDRESS

SIGNATURE

DATE

PAULA TURNER

1/12/2014

Val Hammond

1/12/2014

RACHEL HOWLS

3.12.14

Rachel Leighton

3.12.14

ALISON DAW

3.12.14

Alison Lewis

3.12.14

Jane Gregory

3/12/14

Monica Lloyd

3/12/14.

Frances Mitchell

3.12.14

Robin Hooper

4.12.14

Debra Grills

4.12.14

Dear sir,

We the undersigned would like to object to the proposed felling of the Beech Tree at no 29 Tewkesbury Road. For us this tree is a thing of beauty and only enhances the local environment.

NAME

ADDRESS

SIGNATURE

DATE

Sonia Affrasi

4.12.14

Michelle Kilburn

4.12.14

Sarah Colterell

4.12.14

Nicola Sutton

4.12.14

CHRIS LEISBRANDT

4.12.14

STEPHANIE LEISBRANDT

4.12.14

ALLAN JOHN TAYLOR

4/12/2014

MEL TILLING

~~4~~ 5.12.14

G Lee

5.12.14

HELEN LEESON

5.12.14

Jim Crownshaw

5.12.14

Dear sir,

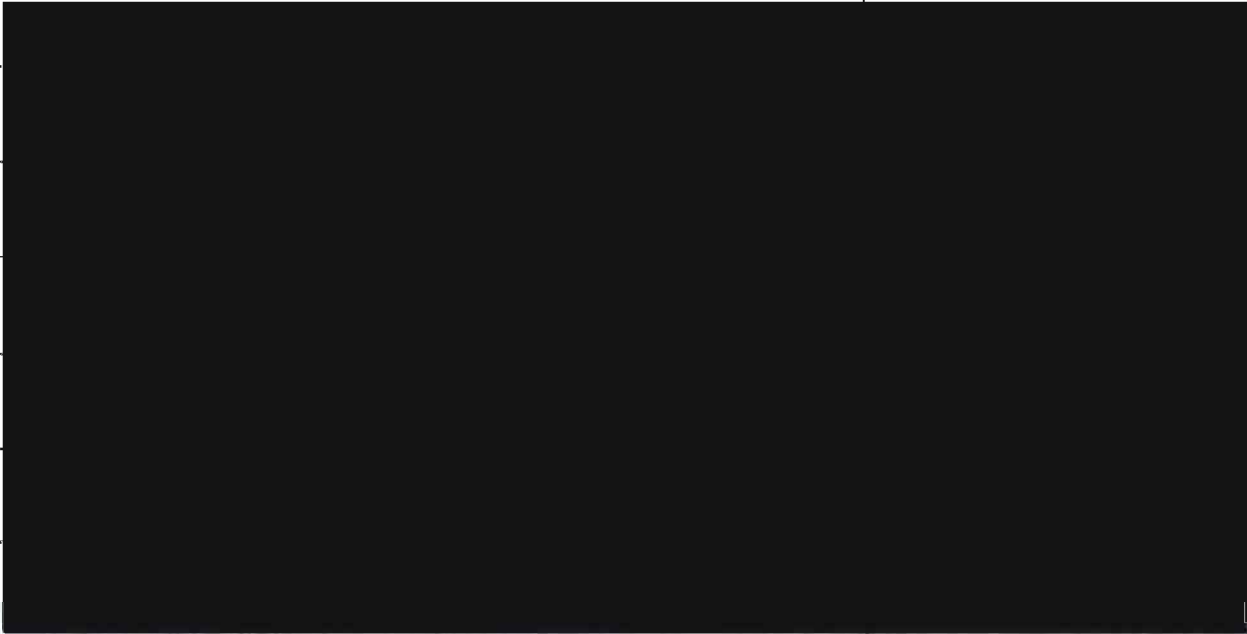
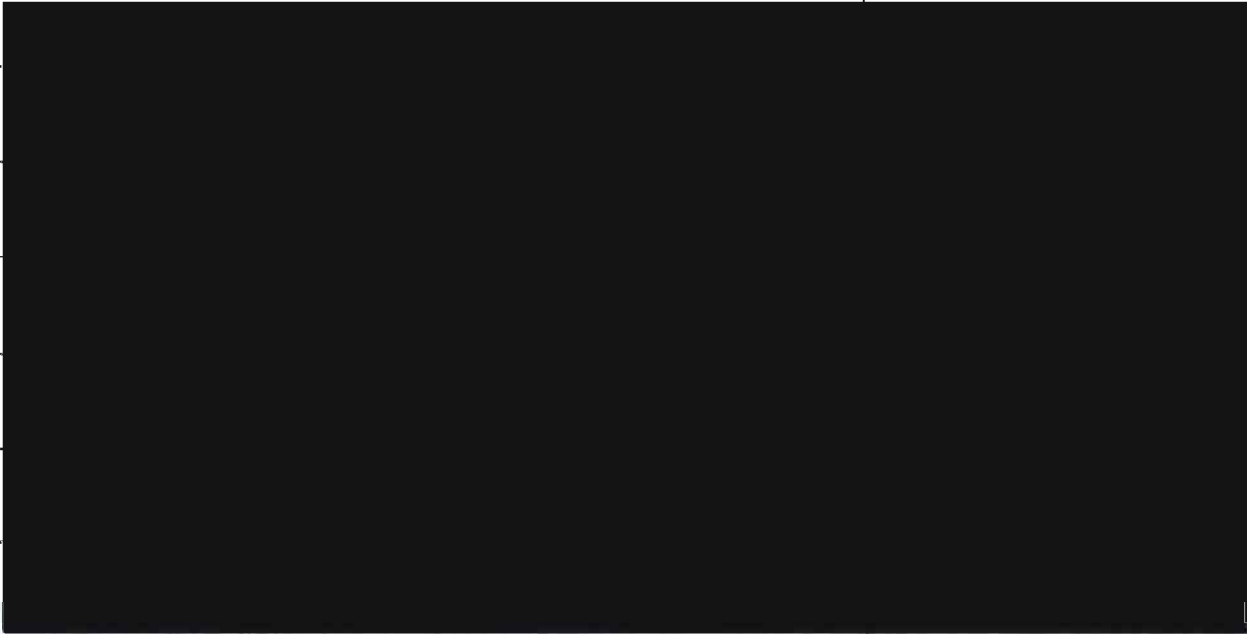
We the undersigned would like to object to the proposed felling of the Beech Tree at no 29 Tewkesbury Road. For us this tree is a thing of beauty and only enhances the local enviroment.

NAME

ADDRESS

SIGNATURE

DATE

NAME	ADDRESS	SIGNATURE	DATE
Jeannie SENDAU			8/12/14
JOHN SENDAU			8/12/14
MARIAN DE LAS CASAS			8/12/14
Nicky Hughes			8/12/14
Ray Lee - Lee			.. .
Anna Lambury			10/12/14
Sue Geis			10/12/14