

**MEETING****EAST AREA PLANNING SUB-COMMITTEE****DATE AND TIME****THURSDAY 8TH MAY, 2014****AT 7.00 PM****VENUE****HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
8.1	LAND ADJACENT TO ST RONANS, NETHER STREET, LONDON, N3 1QY - TPO/CA/241	1 - 6

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**LOCATION:** Land adjacent to St Ronans, Nether Street, London, N3 1QY

**REFERENCE:** TPO/CA/241

**WARD:** West Finchley

**PROPOSAL:** To seek authority for confirmation of Tree Preservation Order, without modification.

**RECOMMENDATION:** 1. That the Council, under Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 confirm the London Borough of Barnet, Land adjacent to St Ronans, Nether Street, London, N3 1QY Tree Preservation Order 2014 without modification.

2. That the objector(s) be advised of the reasons.

**1. MATERIAL CONSIDERATIONS**

Relevant Planning Policies and Guidance Adopted

- Local Plan – Core Strategy (Adopted September 2012) – Policy CS7
- Local Plan – Development Management Policies (Adopted September 2012) – Policy DM01

Relevant Planning History

- Report of Assistant Director - Development Management and Building Control dated 10<sup>th</sup> February 2014
- F/05184/13 – Land Adjacent to St Ronans, Nether Street, London, N3 1QY – Erection of 1no. single family dwelling including lower ground level following demolition of existing garage/workshop. Hard and soft landscaping.
  - Refused under delegated powers
  - Decision Notice issued 19<sup>th</sup> December 2013
  - Appeal start date 14<sup>th</sup> February 2014 – currently awaiting appeal decision

Background Information/Officers Comments

A Tree Preservation Order was made on 10<sup>th</sup> February 2014 on the basis that it was expedient to do so in the interests of amenity in the light of a planning application for redevelopment of Land Adjacent to St Ronans, Nether Street, London, N3 1QY which had recently be determined and included tree reasons for refusal.

The proposal for *“Erection of 1no. single family dwelling including lower ground level following demolition of existing garage/workshop. Hard and soft landscaping.”* (F/05184/13) was considered to have significant detrimental implications for a prominent Lime tree. Two of the reasons for refusal were:

- 1 The proposal will result in damage which may be severe enough to cause loss of a tree of special amenity value to the detriment of the character of this part of Finchley contrary to Policies CS1 and CS5 of the Core Strategy (2012), Policy DM01 of the Development Management Policies DPD (2012) and the Adopted

Residential Design Guidance SPD (2013).

- 2 The proposal by reason of the proximity of the canopy of the adjacent Lime Tree would fail to provide suitable levels of light, outlook and general standards of residential amenity for future occupiers of the unit contrary to policy DM01 of the Development management Policies DPD (2012) and the Adopted Residential Design Guidance SPD (2013).

The Lime is a large mature tree located close to the Nether Street footpath – it is very clearly visible from much of this part of Nether Street; The Grove; the footpath to Dollis Park; and the junctions with Crescent Road and Dollis Road; as well as the railway line. The Lime contributes significantly to the streetscene, with long distance views being accentuated by the topography, and it may be noted that this part of Nether Street is very frequently used by pedestrians because of the proximity to both Finchley Central Station and Finchley Church End town centre. The Lime has been previously lifted, especially over the highway and neighbouring outbuildings, and has been tipped back in the past – but appears to be in reasonable condition with no major faults apparent. It is very prominently located and is important to softening the streetscape, screening, as well as providing a sense of scale to the large built form. Also, given its proximity to the railway line, it contributes to filtering pollutants and helping to counteract noise.

The Lime is considered to be of significant public amenity value and, with appropriate cultural attention, might reasonably be expected to make a positive contribution to local amenity for the foreseeable future.

It appeared from the application submissions that the Lime was growing just outside the site – however, subsequent inspection indicated that the tree was immediately adjacent to, but inside, the boundary fencing. It was therefore unclear whether the tree was wholly within the planning application site, if it straddled the legal land boundary hence is in joint ownership with Northern Line (High Barnet branch), or was wholly on the railway land as suggested in the application submissions.

If the Lime is located on the railway land as originally suggested, it might not have been appropriate to include it in a Tree Preservation Order because of the exemption provisions within the legislation in respect of treeworks on statutory undertakers' operational land. However, such exemption would not be relevant to a tree within the boundary fencing of the application site. Once it became apparent that the tree was, at very least partly, in private ownership and furthermore there was a desire to undertake pruning work to reduce the size of the tree, it was considered reasonable to make an Order.

Notices were served on the persons affected by the Order in accordance with paragraph 1(a) of Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations.

An objection has been received from:-

Applicant for the 'Land Adjacent to St Ronans, Nether Street, London, N3 1QY' redevelopment proposals (F/05184/13).

The Tree Preservation Order secures the protection of the tree on a provisional basis for up to six months from the date of making, but an Order needs to be formally confirmed for

it to have long-term effect. The Council is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

The objections of the applicant for the redevelopment can be summarised as:

- Concern about the timing of the making of the Tree Preservation Order
  - Suggesting it “was not because of its special amenity value but simply to justify a planning refusal given at the [site]”.
  - “Whereas I accept if a tree is of special amenity value a tree preservation order should be made, this is clearly not the case in this situation. The tree has been a predominant feature in this area for well over 100 years and at no time previously has any thought been given to its special amenity value. The tree was brought to the Council’s attention with an application submitted at the above site on 8 November 2013 and was an important factor within the refusal notice issued on 19 December 2013. Although the tree was one of the primary reasons the application was refused, still no thought was given by the planning Department to issue a tree preservation order. I have appealed against the planning decision as information regarding the tree was incorrect and as a result of this appeal, and I would suggest in order to justify the decision of the planning Department, only now has thought been given to a tree preservation order.”
- The canopy of the tree prevents suitable light levels from reaching the existing workshop within the site causing poor amenity values
- The branches extending over the public highway could cause a danger to high sided vehicles
- Any branches falling onto the London Underground railway line would be dangerous
- “Irrespective of whether branches should be cut back above [the site], the branches would obviously need to be constantly cut back both above the public highway and adjacent underground line. Due to the position of the tree it needs to be constantly monitored and lopping, so a tree preservation order should not be made on this tree.”
- “A tree preservation order placed on a tree in this position could have very dangerous consequences and could be deemed as highly irresponsible action taken by the Council.”

In response the Council's Tree and Environment Officer comments as follows:

- (i) The Order was made once it became apparent that the tree was either wholly or at least partly in private ownership and furthermore there was a desire to undertake pruning work to reduce the size of the tree. It may be noted that the Tree Preservation Order was formally made on 10<sup>th</sup> February 2014 and copies served on the land owners and Transport for London the same day by recorded delivery, with neighbouring properties being served by hand delivery on 11<sup>th</sup> February 2014. However, the Council did not receive the appeal against the refusal of planning permission for the proposed redevelopment until the 12<sup>th</sup> February 2014. Whilst possibly appearing coincidental, the timing of the Order was independent of, and predated, the appeal.

- (ii) Section 198 of the Act empowers a local planning authority to make a Tree Preservation Order if it appears to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. National Planning Practice Guidance clarifies that "Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified."
- The Guidance states that "'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future."
  - The Guidance suggests the following criteria should be taken into account: "*Visibility* - The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public. *Individual, collective and wider impact* - Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:
    - size and form;
    - future potential as an amenity;
    - rarity, cultural or historic value;
    - contribution to, and relationship with, the landscape; and
    - contribution to the character or appearance of a conservation area.
  - In terms of expediency, the Guidance notes "It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution."

The making of the Order was considered justifiable both on grounds of amenity and expediency. As set out above, the tree is considered to be of significant public amenity value – visually and environmentally - and it should be noted that the objector himself states that the Lime *has been a predominant feature in this area for well over 100 years.*

- (iii) It is unclear what the objector means by the canopy 'causing poor amenity values', he is perhaps referring to private rather than public amenity – however, the existing workshop appears to have no windows, being more of a partially open shed, and is boarded up.
- (iv) The inclusion of the Lime in a Tree Preservation Order should not make any difference to the regular inspection and maintenance in accordance with good arboricultural practice of a privately owned tree. Confirmation of the Order would not preclude application, where necessary, for consent to prune a tree included in a Tree Preservation Order being submitted to the Council, in accordance with the planning legislation - for example, an application to lift low branches to provide clearance for high sided vehicles. Such application would be considered on its merits on the basis of the information submitted at the time. However, it would allow the Council some measure of control over treatment that was considered excessive.
- (v) There is no foundation for the suggestion that the inclusion of the Lime in a Tree Preservation Order “could have very dangerous consequences and could be deemed as highly irresponsible action taken by the Council.” Whilst the objector’s suggestion that “the branches would obviously need to be constantly cut back” is considered an exaggeration, there is no reason to believe that consent would be refused for treatment in accordance with good arboricultural practice (and, in any event, there is an appeal procedure as well as exemption provisions for e.g. removal of deadwood) – any such consequences would result from a failure to make an application or otherwise accord with the legislation, rather than the Order itself.

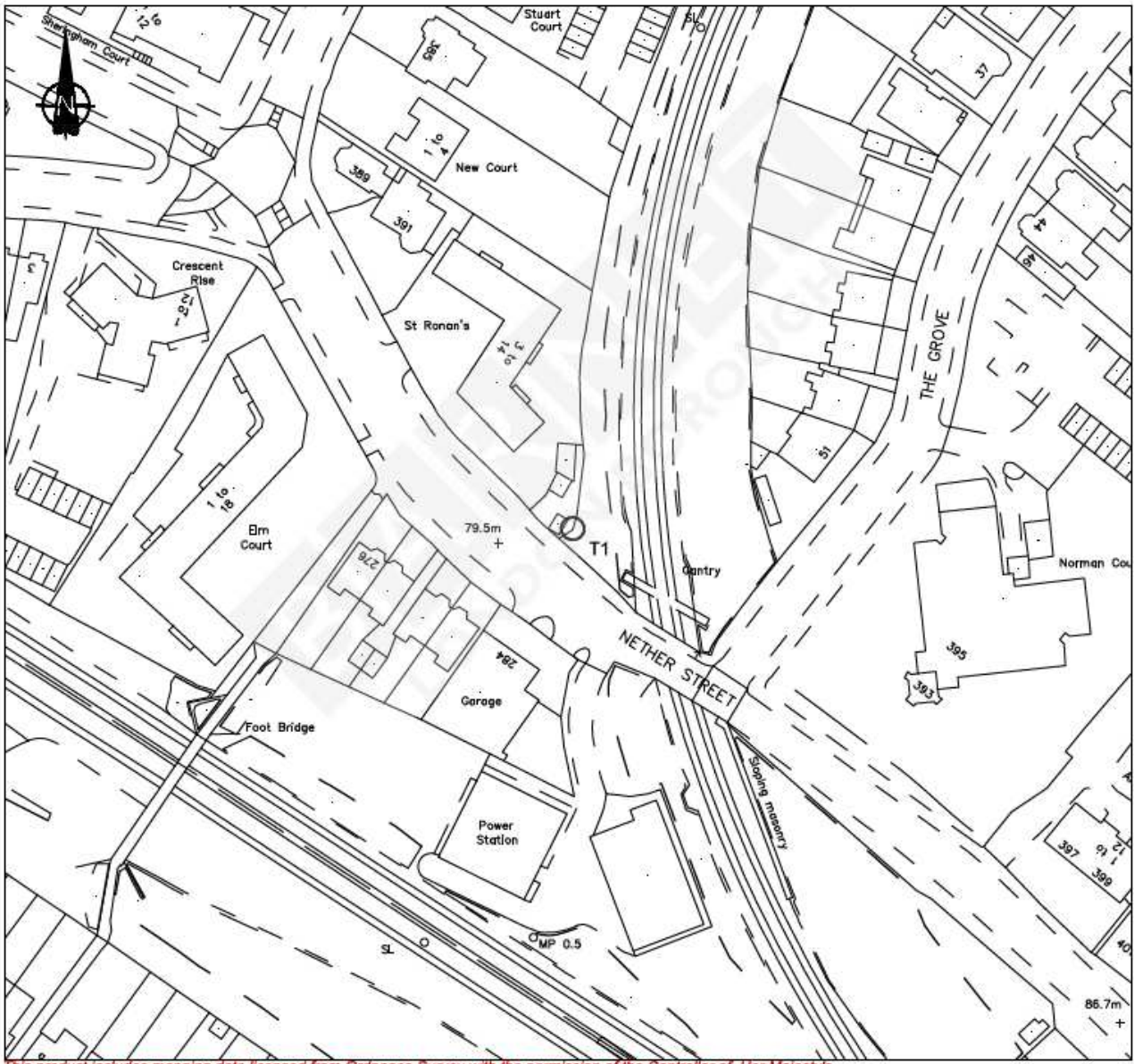
## **2. EQUALITIES AND DIVERSITY ISSUES**

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

The Council have considered the Act but do not believe that the confirmation of the Order would have a significant impact on any of the groups as noted in the Act.

## **3. CONCLUSION**

The confirmation of the Tree Preservation Order is considered appropriate in the light of development proposals for land adjacent to St Ronans, Nether Street, London, N3 1QY. As set out above, it is considered the Lime tree identified in the Order contributes significantly to public amenity, and given normal arboricultural attention is capable of providing amenity value for a considerable time. It is therefore recommended that the Order be confirmed without modification.



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