

**LOCATION:** 14 Woodside Avenue, London, N12 8BG

**REFERENCE:** TPO/00238/13/B      **Received:** 30 April 2013  
**WARD:** Totteridge      **Expiry:** 25 June 2013  
**CONSERVATION AREA** N/A

**APPLICANT:** Tally-Ho Landscape Contracts Ltd

**PROPOSAL:** 1 x Sycamore, 1 x Plane and 1 x Evergreen Oak – Fell. Standing in Group G131 of Tree Preservation Order.

## **RECOMMENDATION: REFUSE**

That the Council refuses consent for the following reason:

1. The loss of three trees of special amenity value is not justified as a remedy for the alleged property damage on the basis of the information provided.

## **Consultations**

Date of Press and Site Notices: 16<sup>th</sup> May 2013

Consultees: Neighbours consulted: 8

Replies: None

## **MATERIAL CONSIDERATIONS**

### Relevant Recent Planning History:

#### Treeworks:-

**TREN04373C** – *Remove - London Plane, Sycamore, Evergreen Oak - Standing in group G131 of TPO.* Registered 7<sup>th</sup> October 1998. **REFUSED** 12<sup>th</sup> November 1998.

**TREN04373E** – *An application to undertake works to London Plane tree in Group G131 of Tree Preservation Order necessary to lay a duct within the adjacent footpath as indicated on Plan Dwg. No.R82 C08.* Registered 27<sup>th</sup> June 1997. **CONDITIONAL APPROVAL** granted 1<sup>st</sup> September 1997.

**TREN04373F** – *Holm Oak - Reduce in size by 25%, thin and re-shape - Standing in group G131 of TPO.* Registered 8<sup>th</sup> October 1998. **REFUSED** 20<sup>th</sup> November 1998.

**N04373G/00/TRE** – *Holm Oak, London Plane - remove deadwood, standing in group G131 of TPO.* Registered 17<sup>th</sup> May 2000. **EXEMPTION NOTICE** issued 23<sup>rd</sup> May 2000.

**N04373H/00/TRE** – *Holm Oak, London Plane - reduce in size by 15%, thin and re-shape. standing in group G131 of Tree Preservation Order. Registered 17<sup>th</sup> May 2000. **CONDITIONAL APPROVAL** granted 19<sup>th</sup> July 2000.*

**N04373K/04/TRE** – *London Plane, Holm Oak - Crown Thin 30% and Reshape. Standing in Group G131 of Tree Preservation Order. Registered 21<sup>st</sup> June 2004. **CONDITIONAL APPROVAL** granted 16<sup>th</sup> August 2004.*

**N04373P/07/TRE** – *1 x Oak - Reduce back to Old Pollard Points. Standing in Group G131 of Tree Preservation Order. Registered 1<sup>st</sup> March 2007. **CONDITIONAL APPROVAL** granted 16<sup>th</sup> April 2007.*

**N04373Q/07/TRE** – *1 x Oak - Remove. Standing in Group G131 of Tree Preservation Order. Registered 1<sup>st</sup> March 2007. **REFUSED** 16<sup>th</sup> April 2007.*

**N04373R/07/TRE** – *1 x Acer - Crown Reduce by 3-4m to Old Pollard Points. 1 x Platanus Hispanica - Crown Reduce by 2-3m. Standing in Group G131 of Tree Preservation Order. Registered 1<sup>st</sup> June 2007. **CONDITIONAL APPROVAL** granted 10<sup>th</sup> July 2007.*

**TPO/00234/12/B** - *1 x Plane (T2 Applicants Plan) - Reduce by 30%. 1 x Acer (T3 Applicants Plan) - Thin by 15% and remove dead stubs. Standing in Group G131 of Tree Preservation Order. Registered 12<sup>th</sup> April 2012. **CONDITIONAL APPROVAL** granted 29<sup>th</sup> May 2012.*

## **PLANNING APPRAISAL**

### 1. Introduction

This application has been submitted by Tally-Ho Landscapes Contracts Ltd acting as agent on behalf of the owners of 14 Woodside Avenue.

The application was initially submitted attached to an e-mail dated 22<sup>nd</sup> February 2013, however, it was incomplete and additional supporting documentation/clarification was requested by the Council. All of the mandatory information was received on the 30<sup>th</sup> April 2013 and the application was registered in respect of "1 x Lime, 1 x Plane and 1 x Evergreen Oak – Fell. Standing in Group G131 of Tree Preservation Order."

Following the site visit it has become apparent that the Lime referred to in the applicant's submissions has been mis-identified and the tree is actually a Sycamore.

The relevant Tree Preservation Order was made on the 18<sup>th</sup> October 1968 and confirmed by authority of the Secretary of State (Department of Environment) 13<sup>th</sup> September 1971.

The first schedule of the Order describes Group G131 as including 1 London Plane, 1 Lime, 1 Yew, 1 Holly Oak. The Tree Preservation Order map shows Group G131 of the Order as being located adjacent to the front boundary of 14 Woodside Avenue. Regulation 3 (4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 states:– "In the case of any discrepancy between the map contained in, or annexed to, an

*order and the specification contained in the Schedule to that order, the map shall prevail.”* (it should be noted that this Regulation supercedes a similar provision contained in Article 2 of the original Order).

The Sycamore tree is standing within the boundary of Group G131 as shown on the Tree Preservation Order plan. It has a trunk of a similar size to the London Plane and the Evergreen Oak and the three trees are considered to be of a similar age. They have been growing together for a number of decades and form a distinct grouping with a common crown. It appears that the Sycamore may have been mis-identified in the first schedule of the Tree Preservation Order and with reference to Regulation 3 (4) noted above is included within group G131 of the Tree Preservation Order. It should be noted that the Sycamore tree has been the subject of several previous applications for treework (see “Relevant Recent Planning History” above).

The proposal has been amended in respect of the Sycamore.

## 2. Appraisal

### Tree and Amenity Value

The Plane tree is about 14 metres in height. Previously reduced (there are two tiers of reduction) with significant regrowth. Foliage of reasonable form, density and colour. No obvious major structural faults. Trunk lean away from the road which straightens at the crown break circa 4 metres from the ground.

The Sycamore is about 10 metres in height. Previously reduced and thinned. There has been regrowth from the previous treeworks. The tree is suppressed by the Plane but has foliage of reasonable form, density and colour with no obvious major structural faults apparent.

The Oak is about 12/13 metres in height and is mature. It has also had some previous reduction treatment and thinning from which there has been regrowth. It has a one sided crown and is suppressed by the adjacent Plane. Foliage is of good form, density and colour and there are no obvious major structural faults apparent.

This group of three trees appears to considerably predate the relatively recent construction of the current front boundary wall and driveway at 14 Woodside Avenue. An estimate of their age suggests that these trees may have formed part of the original landscaping when the property was built (historical ordnance survey data indicates that the property was built between 1914 and 1935). The three trees form a distinct grouping with a common crown. They are some of the few large roadside trees left along the southern portion of Woodside Avenue and as such contribute significantly to softening the urban appearance of the residential properties and busy roadway. They are highly visible from along the roadway. Given its evergreen nature the Oak provides year-round interest.

### The application

The reason given for the proposed felling of these three trees in section 7 of the submitted application form is *“we had an inspection on the manhole inspection chamber where there was evidence of roots going through the chamber. We have cut these back and now have*

*removed them. Also there is major movement in the drive way where the tree roots are heading towards the house and boundary walls. I believe the client has already done some root tracing in previous years and this has reappeared again. They are very concerned about subsidence to the house. The front boundary wall there are two sets of piers each side of the drive way. All 4 piers have been damaged and they are loose and there is major movement in the front boundary wall as well. I believe this wall has been re-built in recent years previously due to the trees causing the movement. I have spoken to the client that there are TPO's on the site and advised them that if you do give permission to fell the trees, that we would plant 3 new trees to the same area and to put down some root barriers when we do the planting. We would put in trees which would give less problems with the surrounding areas.*

*As it is the piers are very dangerous at the moment and I think you should have an inspection of the site yourself.*

*All surrounding walls have been from suffered subsidence as well and in places they have been retaken down and re-built again with new foundations.*

*Also I have been told that the public foot path outside the property has already been reinstated twice and just has been completed for the third time recently due to the tree roots causing movement in the paving slabs and making very dangerous for the public to walk on. They have now cleared all the tree roots to this area and reinstated the public foot path as well.*

*Also since our first e-mail Mr Nicholas from Barnet building control was on site and told us to take down the piers."*

As noted above, the application was initially incomplete. Following receipt of the incomplete application the Council sent an e-mail to the agent requesting that they clarify whether they are alleging that the trees are implicated in:

- 1) Alleged subsidence damage, or
- 2) Alleged other property damage.

The agent was also advised that in either case they were required to submit supporting documentary evidence set out in section 8 of the standard application form and associated guidance notes.

A report by BCS Consulting - Civil and Structural Engineers and Party Wall Surveyors – was subsequently submitted in support of this application. The following is noted in the report:

- Cracking in excess of 5mm in width has developed within the brick retaining wall and piers.
- Previous repairs to the wall have re-opened
- The brick piers to the front wall are not plumb and are leaning out into the public footpath.
- Roots have penetrated through the walls of the inspection chamber and the pipe-work that runs into the main sewer within the public highway does not run a suitable fall to allow for the proper discharge of the foul water.

There is nothing in the submitted Engineer's Report to suggest that the trees are implicated in any subsidence damage to property and none of the mandatory supporting documentation required to support such an application has been received. Whilst the agent has stated that their clients (the owners of the property) "*are very concerned about subsidence to the house*" the Council has received no evidence of any subsidence damage to the house and it would not be reasonable to allow the removal of these three trees based on unsubstantiated claims/fears about subsidence damage.

At the time of my inspection there appeared to be no significant damage to the public footpath. An Arboricultural Officer in the Council's Greenspaces and Streets Team was consulted in respect of the impact to the public highway and declined to support the application to fell these three trees. There did appear to be some minor distortions in the driveway of 14 Woodside Avenue. It should be noted that the submitted engineers report makes no mention of any damage to either the public footpath or the driveway at 14 Woodside Avenue and the Council has received no evidence in the application submissions to demonstrate that the subject trees are causative factors in damage to adjacent hard surfaces.

The submitted engineer's report concludes that:

- The three trees with the front garden have caused structural damage to the brick retaining walls
- The root action of these trees has also caused damage to the underground drainage system preventing proper discharge of the foul water into the main sewer.

The author of the engineers report recommends that the three trees should be removed and that following their removal *“full structural repairs of the brickwork should be undertaken and the under ground drainage re-laid to allow for the proper discharge of the foul water into the main sewer.”*

The submitted engineers report contains no information about the foundations and design of the front boundary wall at 14 Woodside Avenue and the Council has no records relating to its construction. An estimate of the age of the trees suggests that they clearly predate construction of the front boundary wall and it appears that this structure has not been constructed with sufficient regard for the proximity and future growth of these trees.

The Council's Structural Engineer has visited the site and reviewed the application submissions. He has made the following comments:

1. *The damage to the front wall is consistent with direct bearing pressure being exerted by the growth of the plane tree next to the wall. The root growth of the lime and oak tree may be contributory factors.*
2. *The wall has been repaired recently and the height of the piers raised.*
3. *The trees appear to pre-date the construction of the wall, and when the wall was built clearly the builder did not make sufficient allowance for the future growth of the tree.*
4. *The front wall and piers appear to be stable at the moment. However if further movement occurs, which is likely in the current situation, the wall and piers could become unstable and be a danger to pedestrians.*

The Council's Structural Engineer has suggested that the removal of the London Plane may be sufficient to mitigate against damage to the wall. The three trees subject of this application have been growing together for a number of decades and their crowns have developed in such a way that the loss of one tree would spoil the visual appearance of the rest of the grouping, leaving the remaining trees with unbalanced crown shapes. The loss of one tree will also alter the wind stresses acting upon the remaining trees which could be of detriment to their health.

The British Standard BS 5837:2012 'Trees in relation to design, demolition and construction – Recommendations' contains advice on special engineering for foundations and the construction of permanent hard surfacing in close proximity to existing trees. It is

possible to install hard surfaces and walls close to trees using appropriate construction techniques to prevent future damage.

It should be noted that the front boundary wall and brick piers have been repaired since the submission of this application without any treeworks having been undertaken.

It is considered that the driveway at 14 Woodside Avenue could also be repaired (if necessary) without the need to remove the trees subject of this application.

The agent has stated that prior to the application being submitted *“we had an inspection on the manhole inspection chamber where there was evidence of roots going through the chamber. We have cut these back and now have removed them.”* Intact drainage apparatus will not generally be penetrated by tree roots. However, the British Standard BS5837:2012 advises that *“water leaking from damaged drains and sewers encourages localised root growth; roots are then likely to enter a drain or sewer through the defect and proliferate, causing blockage and enlarging of the initial defect. Provided they are further from trees than the distances stipulated in Table A.1 [which recommends that a minimum distance of 3 metres be provided between large mature trees and services], intact drains are not likely to suffer direct damage and will not attract roots.”* The trees subject of this application are all further than 3 metres from the manhole inspection chamber mentioned by the agent.

Repair of the drainage system could be undertaken without the need to remove the three subject trees.

### 3. Legislative background

Government guidance advises that when determining the application the Council should (1) assess the amenity value of the tree and the likely impact of the proposal on the amenity of the area, and (2) in the light of that assessment, consider whether or not the proposal is justified, having regard to the reasons put forward in support of it. It should also consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.

Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides that compensation is payable for loss or damage in consequence of refusal of consent, grant of consent subject to conditions or refusal of any consent, agreement or approval required under such a condition. The provisions include that compensation shall be payable to a person for loss or damage which, having regard to the application and the documents and particulars accompanying it, was reasonably foreseeable when consent was refused or was granted subject to conditions.

This application is being referred to Members for decision because one of the exceptions to the Delegated Powers of the Assistant Director of Planning and Development Management is “where she / he considers that an application should be refused where such a decision will result in the Council being made liable for payment of compensation”.

In this case, there is no indication of any potential compensation figure. In addition it should be noted that the compensation liability relates only to “loss or damage which, having regard to the application and the documents and particulars accompanying it, was reasonably foreseeable when consent was refused or was granted subject to conditions” and repairs have already been undertaken.

## **COMMENTS ON THE GROUNDS OF OBJECTION N/A.**

### **EQUALITIES AND DIVERSITY ISSUES**

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies is set out in Section 149 of the Act. The duty 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 above act but do not believe that the application would have a significant impact on any of the groups as noted in the Act.

### **CONCLUSION**

It is proposed to fell three trees (a Sycamore, a Plane and an Evergreen Oak) standing in the front garden of 14 Woodside Avenue in a raised planting bed adjacent to the front boundary of the property. The reason for the proposed felling of these three trees can be summarised as: the trees are implicated in damage to surrounding hard surfaces, walls and drains.

A report by BCS Consulting has been submitted in support of this application.

There is no significant damage to the public footpath. Repair of the public footpath would be a matter for the Council and it may be noted that the relevant Arboricultural Officer in the Council's Greenspaces and Streets Team declined to support the application to fell these trees. Repair of the wall, drain and (if necessary) privately owned driveway could be undertaken using appropriate techniques without the removal of the trees. It should be noted that repairs have been undertaken to the wall and roots removed from the manhole inspection chamber.

The trees are considered to be of public amenity value and their loss would be of significant detriment to the character and appearance of Woodside Avenue. On the basis of the public amenity value and the reasons put forward in support of the application, it is not considered that the felling of these three trees is reasonable and that it would be justifiable to refuse this application. However, the decision is referred to Members in accordance with the Council's Delegated Powers exception provisions.