

**LOCATION:** 74 Greenway, London, N20 8EJ

**REFERENCE:** TPO/00314/13/B **Received:** 30 May 2013

**WARD:** Totteridge **Expiry:** 25 July 2013

**CONSERVATION AREA** N/A

**APPLICANT:** Fletchers Trees Ltd

**PROPOSAL:** 1 x Silver Birch – Fell. T86 of Tree Preservation Order.

## **RECOMMENDATION:**

### **REFUSE**

That the Council refuses consent for the following reason:

1. The loss of the tree 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: 20<sup>th</sup> June 2013

Consultees: Neighbours consulted: 5

Replies:

2 – Support – the grounds of support can be summarised as:

- “The roots have damaged a drain and paving”
- Concern about the safety of the tree and that the tree/branches may fall during stormy weather
- Light issues (and especially with regard to a street tree outside the respondent’s property)
- The tree is “a monstrosity, never looked after” and “overgrown.”
- “I have not seen similar large trees in other residential areas so close to houses.”

1 – Objection (a joint letter with one signature from two residents of the same property) – the grounds of objection can be summarised as:

- “We are totally opposed to the felling of this very old tree.”
- “Greenway used to be a lovely tree-lined street. In recent years many of the street trees have been felled without being replaced. Instead we are left with multiple ugly patches of asphalt in the pavement.”
- Lesser treatment may address concerns about the shape and size of the tree.

## **MATERIAL CONSIDERATIONS**

### Relevant Previous Planning History:

**TREN10334** – *Remove Birch standing in Area T86 of the Tree Preservation Order.* Registered 18<sup>th</sup> February 1993. **REFUSED** 31<sup>st</sup> March 1993.

**N10334A/03/TRE** – *Birch - To remove 3 brushy branches from a main branch. T86 of TPO.* Registered 29<sup>th</sup> September 2003. **CONDITIONAL APPROVAL** granted 21<sup>st</sup> November 2003.

## **PLANNING APPRAISAL**

### Appraisal

#### Tree and Amenity Value

The subject Birch stands in the front garden of 74 Greenway adjacent to the front boundary and close to the flank boundary between 74 and 76 Greenway.

The mature Birch is about 15 metres in height and has a trunk diameter of 78cm (measured at 1.5 metres above ground level). The tree has had some previous branch removals and some very minor shortening of lateral branches. In general the tree has a balanced crown shape. Its physiological condition appears reasonable with foliage of reasonable form, colour and density throughout the crown, which contains only minor deadwood and one or two snag ends (branch stubs) from the previous loss/removal of individual branches. There are no obvious major structural faults apparent.

The Birch tree is one of the largest and most prominent roadside trees in Greenway and contributes significantly to the character and appearance of the roadway, softening the urban appearance of the surrounding residential properties. It is clearly visible for a considerable distance along the roadway.

### The application

This application has been submitted by Fletchers Trees Ltd acting as agent on behalf of the owners of 74 Greenway. The reason given for the proposed felling of the Birch tree is *“To mitigate current hard surface damage to the address, the neighbour and the highway.”*

The front gardens of 74 and 76 Greenway are largely covered with hard surfacing. There is a planting bed at 74 Greenway adjacent to the flank boundary with 76 Greenway and the subject tree stands within this bed.

An Arboricultural Report dated 7<sup>th</sup> March 2013 prepared by Chris Davies of The English Garden Company Ltd was submitted in support of this application.

It is stated in the report that the author was asked to comment on the following issues:

- The health and safety of the tree and any associated risks of subsidence, drain or other damage.
- The appropriate management of the subject tree to reduce risks and/or damage.

It is noted in the Arboricultural Report that:

*“Tarmac within the highway footpath has been previously repaired and there are recent cracks in this tarmac. Brick paving that comprises the drive of the risk address is undulating and has been lifted within 5 metres of the subject tree. The neighbour’s gate pillar has a slight tilt and there is damage to the paved drive at the front of the neighbour’s property, again within 5 metres of the subject tree. Paving stones within the highway footpath as well as the kerbs have also suffered movement.”*

The damage described relates only to hard surfaces in close proximity to the tree. The author of one of the letters of support refers to “the passage from the road to my driveway has increased in height.” This is very unlikely to be attributable to the subject Birch – given that the respondent lives on the opposite side of the road to the Birch tree.

Both the driveways at 74 and 76 Greenway are constructed from brick paving and there are some small areas (close to the Birch tree) of these driveways where the brick paving has slightly lifted, at most the edge of some of the bricks has risen about 2cm.

A brick pillar constructed adjacent to the front boundary of 76 Greenway and about half a metre from the trunk of the Birch tree has a slight tilt away from the road. No information about the construction and foundations depth of this brick pillar has been provided and there does not appear to be any evidence in the submitted Arboricultural Report to demonstrate that the Birch is a causative factor in the tilt of the brick pillar and the report contains no mention of any need to repair this brick pillar.

An estimate of the age of the Birch suggests that it clearly predates construction of both driveways and the brick pillar at 76 Greenway. It appears that these existing driveways (and maybe also the brick pillar) have not been constructed with sufficient regard for the proximity and future growth of this tree.

An Arboricultural Officer in the Council’s Greenspaces and Streets Team was consulted in respect of the minor damage to the public highway and declined to support the application to fell the Birch.

The author of the Arboricultural Report submitted in support of this application contends: *“It would not be possible to repair the paving whilst roots remain beneath and it would need an application to the Council (likely needing to be supported by a detailed methodology for the works) and for consent to be granted under the TPO for any root pruning to take place. Therefore, whilst the tree remains, repairs to the hard surfaces are unfeasible and the damage will almost certainly worsen in extent and significance as the roots continue to grow.”*

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 close to trees using appropriate construction techniques to prevent future damage and the contention that it would not be possible to repair the paving whilst roots remain beneath it is incorrect. Indeed if such a contention were true it would have significant implications for the retention of all trees adjacent to any hard surface (e.g. street trees, and trees adjacent to driveways, patios, etc) and it may also be noted that the author of the Arboricultural Report suggests that if the tree remains then pruning could be an alternative.

Whilst the author of the letter of support has concerns that during “*very stormy*” weather the tree “*might fall and hurt someone,*” it should be noted that neither the author of the Arboricultural Report, nor the tree surgeon agent who submitted the application have highlighted any concerns over the condition of the tree in the submitted information. During my own inspection I found the physiological condition of the tree to be reasonable and there were no major structural faults apparent. It would not be reasonable to allow the felling of an apparently healthy protected tree based purely on the generalised fears of a resident that the tree may fall during an extreme weather event.

There is nothing in the submitted Arboricultural Report to suggest that the Birch tree is implicated in any subsidence damage to property or damaged drains. Neither of these reasons has been cited by the applicant/agent for the proposed felling and none of the mandatory supporting documentation that would have been required for such an application has been submitted. Whilst the objector has stated that “the roots have damaged a drain.” The Council has received no evidence to support this contention and it would not be reasonable to allow the removal of this tree based on unsubstantiated claims of “damage to a drain.”

It would not be reasonable to allow the removal of a protected tree purely to allow more light to reach a given location. It should be noted that the author of a letter of support also refers to loss of a light from a street tree outside their property.

There is no mention of any replacement planting within the submissions for this application. The reasons put forward for this application and the statements made in the submitted Arboricultural Report would appear to suggest that no replacement planting is proposed should the removal of the subject Birch be allowed.

It is not considered that the removal of the Birch tree is necessary to enable the repair/replacement of the driveway at 74/76 Greenway and that the complete removal of the tree to enable such repairs/replacement is excessive.

#### 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. The driveways would need to be repaired / replaced if the Birch were to be felled or not. As any potential compensation liability would be limited to loss or damage in consequence of the Council's decision, it would not extend to making good the initial damage – but may include the difference between the cost of repairs if the tree is retained compared with if the Birch were to be removed.

## **COMMENTS ON THE GROUNDS OF REPRESENTATION**

Dealt with in the body of the report above.

## **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 a Silver Birch tree standing within the front garden of 74 Greenway adjacent to the roadway. The reason for the proposed felling of this tree is *“To mitigate current hard surface damage to the address, the neighbour and the highway.”* A report by an arboricultural consultant has been submitted in support of this application.

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 the Birch. Repair of the privately owned driveways could be undertaken using appropriate techniques without the removal of the tree.

The tree is considered to be of public amenity value and its loss would be of significant detriment to the character and appearance of Greenway. 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 the Birch is reasonable and that it would be justifiable to refuse this application. However, the decision is referred to Members because of the potential compensation implications.