

LOCATION: ELM PARK, ELM TERRACE, CRICKLEWOOD, LONDON NW2
NW11

REFERENCE: TPO/CA/419

WARD: Childs Hill

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 Tree Preservation Order at Elm Park, Elm Terrace, Cricklewood, London NW2 NW11 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 Acting Assistant Director of Planning & Development Management dated 28th August 2013
- F/01393/13 – The Castle, 452 Finchley Road, London, NW11 8DG – Demolition of the existing building and erection of a six storey building over a basement level to provide 13 self-contained units. Including A1 (retail) and B1 (Office space) at ground floor level. New car parking spaces, cycle parking, provision of refuse stores and alterations to increase width of access road.

Background Information/Officers Comments

A Tree Preservation Order was made on 29th August 2013 on the basis that it was expedient to do so in the interests of amenity in the light of a planning application for redevelopment at The Castle, 452 Finchley Road, London, NW11 8DG for “Demolition of the existing building and erection of a six storey building over a basement level to provide 13 self-contained units. Including A1 (retail) and B1 (Office space) at ground floor level. New car parking spaces, cycle parking, provision of refuse stores and alterations to increase width of access road.” (F/01393/13). Officers had raised concerns as the proposal had significant implications for adjacent trees, both in their own right and in the context of the impact on the character and appearance of Elm Park Public Open Space.

Some arboricultural information was submitted as part of the planning application, and Council Tree Officers from both Greenspaces (who have responsibility for Council owned / maintained trees in the adjoining Elm Park Public Open Space) and Planning Support inspected the trees.

There is some uncertainty about the extent of land ownership – Elm Park was originally entirely Council owned, but in 1988 planning permission was granted for the conversion of

the site of public toilets to a district gas governor kiosk (C09946). There is chain-link fencing around the gas building and park railings are outwith this fencing. Some of the trees are within the area bounded by the park railings, others are between the railings and chain-link fencing.

There is a group of three mature Horse Chestnuts in close proximity to The Castle Hotel (north-east boundary of gas building area), with trunk diameters between 80 – 90cm, a mature Cherry adjacent to the corner, and a mid-aged Sycamore along the eastern flank boundary. These trees form a cohesive group visually, serving as an important visual screen between the busy urban area of the Finchley Road and Castle Hotel and the relative tranquillity of the Elm Park public open space. They are important to softening the streetscape and provide a sense of scale to the large built form. The group of trees is considered to have very high public amenity value and the collective public amenity value of the group is much greater than the individual trees.

These trees are very clearly visible from Elm Park, Elm Terrace, Hermitage Lane, from Finchley Road junction, and as a group from West Heath Gardens to the rear.

The trees are Council owned / maintained (being within the Park) but it was considered appropriate to include them in an Order to strengthen the Council's control over treatment of the trees - particularly in planning terms. The Council's Greenspaces Arboricultural Officers have agreed to the inclusion of these five trees (3 Horse Chestnut, Cherry and Sycamore) in an Order. As the trees form a cohesive group, they have been designated as a group (G1) in the Tree Preservation Order.

The trees are considered to be of significant public amenity value and, with appropriate cultural attention, these trees might reasonably be expected to make a positive contribution to local amenity for the foreseeable future and have therefore been included in a Tree Preservation Order in accordance with Section 197 of the Town and Country Planning Act 1990 (as amended). Inclusion of the trees in an Order renders them a material consideration in any planning application and allows the Council to impose conditions, if appropriate, to protect the trees.

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:-

Arboricultural Consultant on behalf of Elpo Ltd, applicant for the 'Castle' redevelopment proposals (submitted via Planning Consultant).

The Tree Preservation Order secures the protection of the trees 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 Arboricultural Consultant can be summarised as:

- After citing from paragraphs 3.2 and 3.3 of the Government guidance *Tree Preservation Orders: A Guide to the Law and Good Practice 2000 (as amended)* he suggests that one Horse Chestnut (his reference D) is

unsuitable for inclusion in an Order because of its condition; and that one Horse Chestnut (his reference A) and the Cherry (his reference B) are unlikely to become good individual specimens or contribute significantly as part of a group feature and are thus unsuitable for inclusion.

- Suggests that an application to remove Horse Chestnut A and Cherry B on grounds of good management would be successful at appeal and so it would be inappropriate to include them in an Order.
- Suggests Horse Chestnut D has areas of decay and appears to be infected with Bleeding Canker
- Suggests Order is redesignated to include only two individual trees (Horse Chestnut C and Sycamore E) rather than a group containing five trees.
- Suggests that two of the trees (Horse Chestnut A and Sycamore E) appear to be in the curtilage of client's property, and two other trees (Horse Chestnuts C and D) located in the park have canopies overhanging the boundary which may infringe on their rights to peacefully enjoy the property – inclusion of unsuitable trees in an Order is a disproportionate application of authority and a direct infringement of the human rights of the owner (European Court of Human Rights First Protocol – Article 1).

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

- (i) The Arboricultural Consultant has mis-identified the Horse Chestnut trees included in the Order:
 - The young Horse Chestnut (his reference A) is not included in the Order
 - A mature Horse Chestnut to the north-west of his reference D is included in the Order but has not been appraised by the Consultant.

The delegated report on the basis of which the Order was made refers to a “group of three mature Horse Chestnuts in close proximity to The Castle Hotel (north-east boundary of gas building area), with trunk diameters between 80 – 90cm” and the associated sketch plan clearly differentiates between the young Horse Chestnut towards the roadside frontage and the three mature Horse Chestnuts.
- (ii) The Cherry (his reference B) has grown in close proximity to the other mature trees for a considerable number of years, such that visually it forms an intrinsic part of the group. Likewise, the Horse Chestnut (his reference D) is an integral part of the group. It may be noted that both the Cherry and Horse Chestnut stand within the Council maintained Elm Park - Greenspaces officers responsible for the public open space have chosen to retain the trees in situ through the years and have agreed to their inclusion in the Order. It is not considered appropriate to exclude Council owned / maintained trees from an Order because a consultant, without any responsibility for the maintenance of the trees or Park, suggests an alternative form of management which he is in no position to implement.
- (iii) Confirmation of the Order would not preclude an application, where necessary, for consent to prune / fell a tree included in a Tree Preservation Order being submitted to the Local Planning Authority, in accordance with the planning legislation. Such application would be considered on its merits on the basis of the information submitted at the time.

- (iv) Whilst the ownership of the trees may be uncertain (at least in the case of the trees standing between the park railings and chain-link fence) – but the trees stand on land that was originally Council owned and may now have passed into the ownership of National Grid Gas Plc; it is unclear why it is suggested that trees A and E (excluded young Horse Chestnut and Sycamore) appear to be in the curtilage of the client's property. The relevance of this is even more unclear as the consultant himself suggests that Sycamore E should be included in a [redesignated] Order, and Horse Chestnut A was excluded anyway.
- (v) 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' - it is to be noted that the Act does not define 'amenity'; nor does it prescribe the circumstances in which it is in the interests of amenity to make an Order; nor does it define 'tree' or 'woodland'; nor does it place a minimum size limit on tree(s). Neither the legislation nor the Guidance prescribes exactly the method for assessing amenity. It is 'amenity' that is paramount; on this basis tree ownership is irrelevant. Particularly in an urban location, the canopies of many trees overhang boundaries – exclusion of trees from a Tree Preservation Order for such reason would have significant implications for the protection of vast numbers of urban trees. Further, it is questionable whose rights of peaceful enjoyment of property are being infringed if the protection potentially offered by a Tree Preservation Order (i.e. in terms of planning controls and conditions) is not available to otherwise appropriate trees, simply because of their location, when a neighbouring land owner puts forward a proposal which has significant detrimental impacts to trees near to boundaries.

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 The Castle, 452 Finchley Road, London, NW11 8DG. As set out above, it is considered the trees identified in the Order contribute significantly to public amenity, and given normal arboricultural attention are capable of providing amenity value for a considerable time. It is therefore recommended that the Order be confirmed without modification.