

LOCATION: 50 Finchley Park, London N12 9JL

REFERENCE: TPO/00040/14/B
WARD: Woodhouse Ward
CONSERVATION AREA

Received: 03 January 2014

Expiry: 28 February 2014

APPLICANT: OCA UK Ltd

PROPOSAL: 2 x Deodar Cedar (App Ref T3 and T4) – Group G1 of Tree Preservation Order.

RECOMMENDATION:

That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed felling of 2 x Deodar Cedar (Applicant's Ref T3 and T4) – Group G1 of Tree Preservation Order, either:

SPLIT DECISION

APPROVE the felling of 1 x Deodar Cedar (Applicant's Ref T3) SUBJECT TO CONDITIONS

1. The species, size and siting of the replacement tree shall be agreed in writing with the Local Planning Authority and the tree shall be planted within 6 months (or as otherwise agreed in writing) of the commencement of the approved treatment (either wholly or in part). The replacement tree(s) shall be maintained and / or replaced as necessary until 1 new tree is established in growth.

Reason: To maintain the visual amenities of the area.

2. Within 3 months of the commencement of the approved treatment (either wholly or in part) the applicant shall inform the Local Planning Authority in writing that the work has / is being undertaken.

Reason: To maintain the visual amenities of the area.

AND

REFUSE CONSENT for the felling of 1 x Deodar Cedar (Applicant's Ref T4) for the following reason:

The loss of the tree of special amenity value is not justified as a remedy for the alleged subsidence damage on the basis of the information provided.

Or:

APPROVE SUBJECT TO CONDITIONS

1. The species, size and siting of the replacement tree(s) shall be agreed in writing with the Local Planning Authority and the tree(s) shall be planted within 6 months (or as otherwise agreed in writing) of the commencement of the approved treatment (either wholly or in part). The replacement tree(s) shall be

maintained and / or replaced as necessary until 2 new tree(s) are established in growth.

Reason: To maintain the visual amenities of the area.

2. Within 3 months of the commencement of the approved treatment (either wholly or in part) the applicant shall inform the Local Planning Authority in writing that the work has / is being undertaken.

Reason: To maintain the visual amenities of the area.

Consultations

Date of Press and Site Notices: 23rd January 2014

Consultees:

Neighbours consulted: 16

Replies: 33 0 support 33 objections (including 2 Ward Members)

The grounds of objection can be summarised as:

- Cedars have an important position selected and planted to flank an entrance of an historical estate [now North Middlesex Golf Club]
- Trees are 140 - 150 years old and are a massive part of the character of the street
- Cedars are an important and integral part of street scene
- Cedars part of the beauty of the road and the reason many drawn to live in area
- These beautiful trees are part of the beauty of our road and greatly add to the general loveliness of the street and green feel
- Many of the houses on the north side of Finchley Park were built in the 19th century and the road still retains a rural and attractive look which will be lost if trees felled
- Cedars are important historic feature also Finchley Park has some very old and individual cottages – these last remaining links to its past landscape are unique in North Finchley and offers a rare glimpse of the pre-war era
- Pleasant and striking view of Cedars from High Road and their magnificence and imposing nature evident as travel down Finchley Park
- Cedars dominate the skyline and are aesthetically very powerful
- Cedars provide a foil for the bland 1970s block of flats adjacent
- Important to character and appearance of Finchley Park
- Removal of Cedars would turn the road into another featureless, nondescript, thoroughfare
- Loss of haven for wildlife
- Trees help sustain a tremendous amount of biodiversity
- Environmental benefits in terms of improving air quality, reducing pollution, reducing windspeed, abating noise, moderating climate change
- Cedars contribute to privacy and screening between properties
- Removal of Cedars affect property values
- Any replacement planting would take many years to reach any significant height
- Silver Birch inappropriate replacement

- Cedars pre-date Golfers View (and would not have been significantly smaller than current size), so developers should have taken them into account during construction
- Removal of Cedars could destabilise neighbouring properties
- Risk of heave
- Action not appropriate if driven by insurance
- Felling is just the cheapest way that the insurers can be seen to be doing something. However that action may not actually solve the problem and could even make it worse.
- Hope other options explored and that a viable alternative found rather than destroying these iconic landmarks
- Cannot see any disturbance in soil, concrete drive or cracks in the neighbouring buildings
- Application submissions are incomplete - do not include a substantial tree blown over in high winds in December 2013; nor consider trees' historical, aesthetic or financial relevance to area; nor reassure as to future stability of neighbouring properties
- Application submissions fail to explore alternatives
- Felling of both trees is rather extreme, especially since it is just possible that they are not the cause of the damage, since although the drive way is badly cracked the kerb stones remain unaffected
- It would be a more acceptable solution to fell the tree nearest to the flats, which is in by far the poorest condition, and then monitor the situation carefully to see if there is any further deterioration in the building
- May be an argument for reducing height of eastern tree given previous pruning due to storm damage but retaining lower trunk to avoid disharmony

A number of respondents were concerned that the consultation had been limited - it was undertaken in accordance with adopted Council procedures, which exceed statutory requirements.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

N10592A/00/TRE – 2 Cedar - Remove 2 lowest branches and lift, standing in group G1 of TPO.

- Refused 6th April 2000 and appeal dismissed 29th January 2001

N10592B/01/TRE – Cedar - remove 3 sub branches; cedar - lift to 5m, shorten branches growing towards the house by up to 2m, remove 2 branches, both standing in group G1 of TPO.

- Approved 18th June 2001

N10592C/04/TRE – Deodar - Remove storm damaged limbs and deadwood. Cut back to clear house by 3m. Remove 1 limb as specified. Reduce back by 4m. Standing in Group G1 of TPO

- Refused 22nd April 2004

N10592D/04/TRE – Deodar - Remove deadwood & broken limbs. Both standing in group G1 of TPO.

- Conditional approval 22nd April 2004

N10592E/04/TRE – 1 x Deodar - Remove Storm Damaged Limbs and Deadwood. Cut back to Clear House by 2-3m. Reduce 1 x Limb by 4m as Specified. Standing in Group G1 of TPO

- Conditional approval 11th June 2004

N10592F/07/TRE – 1 x Cedar - Remove 2 Dead Branches and Reduce 2 Overlong Side Branches by 2m as Specified. Standing in Group G1 of Tree Preservation Order

- Conditional approval 4th January 2008

TPO/00325/09/B – 2 x Cedar - Remove Major Deadwood Only. G1 of Tree Preservation Order

- Exemption Notice 6th July 2009

TPO/00393/09/B – 2 x Cedar - Remove split limbs as indicated. Standing in group G1 of TPO.

- Exemption Notice 5th August 2009

TPO/00724/11/B – 1 x Cedar (Unsafe/Hazardous) - Remove (On Right Side of Drive as Face Property). Standing in Group G1 of Tree Preservation Order

- Exemption Notice 28th November 2011

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of two Cedar trees (applicant's ref. T3 and T4) in the front garden of 50 Finchley Park Road in connection with alleged property damage at Golfers View, 54 Finchley Park Road was submitted via the Planning Portal in September 2013, however, there were shortcomings in the information – clarification was thus requested. Further information was submitted, allowing registration of the application on 3rd January 2014.

50 Finchley Park is the end property of one of the early terraced houses (part of 'The Croft') built in the 19th century. According to Building Control records, 50 Finchley Park was partially underpinned in 1997 and Golfers View, a three storey block of flats, was constructed in 1976.

2. Appraisal

Trees and Amenity Value

The Cedars stand either side of the drive in the front garden of 50 Finchley Road, relatively close to the roadside frontage. They are both mature trees, some 140 – 150 years in age, which have grown in such close proximity for so long that they appear as a single canopy, rather than two individual specimens, albeit with two separate trunks. The canopy extends over the public footpath, road, and Golfers View driveway, as well as 50 Finchley Park.

As attested by the numerous consultation respondents, the trees form a very prominent feature in the streetscape – being very clearly visible along the length of Finchley Park, as well as from the junctions with High Street and Lynton Avenue – and are a significant part of the character and appearance of the area, with obvious historic importance.

When inspected more closely, the Cedar closer to the house at 50 Finchley Park (applicant's ref. T4) is approximately 15m in height, somewhat one-sided given its proximity to the other tree and some relatively minor storm damage, but in apparently reasonable condition with healthy foliage. However, the tree closest to Golfers View (applicant's ref. T3), referred to the 'eastern' tree in some consultation responses, and 'on Right Side of Drive as Face Property' in TPO/00724/11/B has been extensively reduced following significant storm damage in 2011, it is some 10 metres in height, and has minimal branches. In November 2011, the tree suffered significant storm damage with a large and structural scaffold branch breaking out creating a large cavity in the main stem beneath the over-extended upper sections of the crown; the fallen section also fractured a large horizontal branch in the process. The condition of the tree was considered so unsafe and hazardous by the tree surgeon, who advised their client that the tree was in a very dangerous condition and needed to be felled urgently (particularly in the light of its location), that an Exemption Notice was issued (TPO/00724/11/B) for the removal of the tree – although the owner hoped that complete felling of the tree might be avoided by drastic pruning. As is now apparent, although the trunk now remains, there is little else – the amenity value of this tree in its own right must therefore be questioned as the prominent canopy so visible in the streetscene is not due to the Cedar closer to Golfers View (applicant's ref. T3) but is almost wholly the canopy of the western Cedar (applicant's ref. T4).

The application

The application submitted by OCA UK Ltd was registered on 3rd January 2014. The reasons for the proposed removal of the two Cedar trees (applicant's reference T3 and T4) cited on the application form are:

- 1. The above tree works are proposed as a remedy to the differential foundation movement at [Golfers View] and to ensure the long-term stability of the building.*
- 2. The above tree works are proposed to limit the extent and need for extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs are likely to vary between £10,000 and £40,000 depending upon whether the trees can be removed or have to remain.*
- 3. The above tree works are proposed to limit the duration of any claim period and therefore allow the landowner their right to peaceful enjoyment of their property.*
- 4. It is the case that an alternative to felling such as pruning or significant 'pollarding' of the tree would not provide a reliable or sustainable remedy to the subsidence in this case. We do not consider that any other potential means of mitigation, including root barriers, would be effective or appropriate in the circumstances.*
- 5. I consider that in this specific instance the planting of a container grown Silver Birch tree, 10 – 12cm stem diameter at a location in the front garden of the above at a distance of no closer than 9m to any property, would be a suitable replacement.*

The supporting documentation comprised:

- OCA Arboricultural Assessment Report dated 13 September 2013 based on survey dated 05 July 2015 [sic] including Cunningham Lindsey Engineering Appraisal Report dated 22 February 2013 and CET Safehouse Ltd 'Factual Report of Investigation' dated 13 September 2012, CET Safehouse Ltd 'Drainage Report' dated 06 March 2012 and level monitoring 21/03/12 - 02/08/13
- Updated level monitoring to 28/11/13.
- A heave calculation

The Council's Structural Engineer having assessed the information and inspected the site, noted:

Trees

*The OCA report shows the locations trees. Their report shows; the Cedar tree T3 at a distance of 13m from the building and 14m high, the Cedar tree T4 at a distance of 18m from the building and 17m high. Both are located in the garden of 50 Finchley Park
The cedar tree T3 has been heavily pollarded, I understand this was carried out in December 2011 following storm damage.*

The Cedar trees are noted as being significantly older than the building.

There was a small street tree opposite Golfers View, not shown on the OCA plan, which was blown down in December 2013.

Damage

The damage is to the front left hand side corner of Golfers View, 54 Finchley Park. The damage was first reported in Jun 2010 and the damage worsened in September 2011.

The property was inspected on the 19/2/14, during the inspection there was access to ground floor flat 1. The damage consists of internal cracks to flat 1 up to 4mm wide and external cracks up to 1mm, resident advised the external cracks were larger and have closed up recently.

The cracking is consistent with subsidence of the foundations to the front left corner of the block.

There was no access to the first floor flat 4, however we were advised the internal cracking has been repaired in this flat.

Damage is classified as category 2 in accordance with BRE Digest 251.

Subsoil investigations

CET carried out subsoil investigations on 5/3/12 and 13/9/12. This consisted of a trial pit and borehole to the left hand side of the property in each visit.

Results of the investigation were as follows;

- 1. The foundations are 1200mm deep.*
- 2. Stiff brown Clay was encountered for the full depth of the borehole.*
- 3. Roots extend to 3.8m depth.*
- 4. Cedar tree roots identified to 3.8m depth.*

Soil Testing

The soil analysis results indicate the clay soil to have a medium to high shrink potential and indicate desiccation at 2m depth.

A ground heave prediction has been undertaken indicating a ground heave potential of 11mm.

Monitoring

Level monitoring has been carried out from 21/3/12 to 22/11/13. An independent stable datum has not been used, instead location 1 on the front right hand corner has been relied upon to compare

movement in the rest of the building. Location 1 is unlikely to be fully stable as the check datum monitoring point exhibits 2mm of movement.

The level monitoring results for 2012 show relatively small movements; this is most likely due to the unusually wet summer. However the level monitoring results for 2013 are consistent with enhanced seasonal movement with a maximum movement of 6mm at the front left corner.

During the site inspection it was noted there are crack monitoring points located externally, results of the crack monitoring have not been provided.

Drainage

The drains appear to be in a poor condition and the drain survey could not be completed.

However the trial pits and boreholes were dry and the cyclical pattern of movement demonstrated by the monitoring indicates the underground drainage was not implicated in the damage; water leaking from drainage usually causes progressive widening of the cracks.

Conclusion

The site investigation results indicate the front left corner of Golfers View has suffered a minor episode of subsidence damage and the most likely cause is root action from the Cedar trees.

The damage was first reported in June 2010 and worsened in September 2011. Subsequent to this the nearest Cedar tree was pollarded in December 2011 due to storm damage. The pollarding of T3 will have significantly reduced the effect of the tree on the soil beneath the foundations of Golfers View.

A ground heave assessment should be undertaken on all the properties within the influence zone of cedar T4 before its removal is considered.

The results of the crack monitoring should be requested considering the lack of a stable datum for the level monitoring.

The applicant was asked to provide information to address these last two points and responded:

1. Attached for your reference is the heave calculation for our insured's property. We are unable to offer any indemnity against damage occurring to the other properties in the area, as results of removal the Atlas Cedar trees T3 & T4. This is because, in order to carry out a heave calculation, the soils beneath the foundations of each of the properties would need to be tested. As we have not carried out these necessary soil tests at the other properties in the area, we are unable to provide you with a heave assessment or calculation.
2. Our client has confirmed that no crack monitoring has been instructed on this matter.

To which the Council's Structural Engineer has commented:

1. *Partial underpinning was carried out to no. 50 and therefore this property should be resistant to the effects of ground heave if the trees were removed. However, no. 48 appears to be a similar distance from the trees as Golfers View (where ground heave was assessed) and therefore would potentially be at risk from the effects of ground heave. To quantify the risk it would be necessary to carry out a site investigation at no. 48.*
2. *Someone has taken the trouble to fix monitoring studs across the external cracks at Golfers View therefore I am surprised no readings have been taken.*

The cracks are described as being within BRE Category 2 - BRE Digest 251 *Assessment of damage in low-rise buildings* includes a 'Classification of visible damage to walls with particular reference to ease of repair of plaster and brickwork or masonry'. It describes category 2 damage as "*Cracks easily filled. Recurrent cracks can be masked by suitable linings. Cracks not necessarily visible externally; some external repointing may be required to ensure weather-tightness. Doors and windows may stick and require easing and adjusting. Typical crack widths up to 5mm.*" The BRE Digest concludes "Category 2 defines the stage above which repair work requires the services of a builder. For domestic dwellings, which constitute the majority of cases, damage at or below Category 2 does not normally justify remedial work other than restoration of the appearance of the building. For the cause of damage at this level to be accurately identified it may be necessary to conduct detailed examinations of the structure, its materials, the foundations and the local clear ground conditions. Consequently, unless there are clear indications that damage is progressing to a higher level it may be expensive and inappropriate to carry out extensive work for what amounts to aesthetic damage."

It is understood that there are currently two affected flats – one of which has already been internally repaired by the resident.

It is to be noted that the damage was first reported in June 2010 and worsened in September 2011 – predating the storm damage to the Cedar – and it is understood that external cracks have recently closed up. But it is unclear to what extent this may have been influenced by the drastic pruning undertaken to the closer Cedar (applicant's ref T3), what may be attributable to weather, or to a combination of factors. It should, however, be noted that level monitoring carried out after the extensive treeworks is consistent with enhanced seasonal movement.

The level monitoring has not been undertaken from a stable datum, and although monitoring studs were evident, the applicant confirmed that no crack monitoring had been instructed.

The heave potential for Golfers View has been calculated as 11mm. Partial underpinning was carried out to no. 50 and therefore this property should be resistant to the effects of ground heave if the trees were removed. However, no. 48 appears to be a similar distance from the trees as Golfers View and therefore would potentially be at risk from the effects of ground heave. The applicant confirmed that soil testing had not been undertaken at other properties hence they were unable to provide a heave assessment / calculation or to offer any indemnity against damage occurring to the other properties in the area.

The drains appear to be in poor condition, but the trial pits and boreholes were dry and the cyclical pattern of movement indicates that underground drainage is not implicated in the damage.

However, irrespective of potential implication in property damage, an Exemption Notice has previously been issued for the removal of the Cedar closer to Golfers View / the eastern tree / applicant's ref T3 because of storm damage. Although the trunk is currently retained, the vast majority of the canopy has been removed and, in isolation, the public amenity value of this tree is considered minimal. In these circumstances, it would not be reasonable to refuse consent for the removal of this Cedar – subject to replacement planting (which would also have been required had the tree been removed following the storm in 2011).

The applicant's supporting documentation does not attempt to differentiate between the alleged involvements of either of the Cedars separately – the proposal is the removal of both Cedars. The applicant has made no analysis of the potential to remove the closer Cedar to the damaged area of Golfers View whilst leaving the second Cedar in situ, or proposing lesser works, then monitoring and assessing the impact of such action.

Given the importance of the Cedar canopy in the streetscene, it may be considered appropriate to remove the Cedar closer to Golfers View (subject of Exemption Notice TPO/00724/11/B) then monitor the impact of the action prior to assessing whether further action such as pruning or felling the other Cedar (closer to the building at 50 Finchley Park / the western tree / applicant's ref T4) would be justifiable / necessary.

Given that the damage is assessed as BRE Category 2, there is some suggestion that the cracking is stable / closing, the potential unreliability of the level monitoring, and the potential heave implications, it may be questioned whether the proposed removal of both of the TPO Cedars at this juncture is excessive / premature.

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.

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provide that compensation is payable for loss or damage in consequence of refusal of consent or grant subject to conditions. 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. In accordance with the 2012 Regulations, it is not possible to issue an Article 5 Certificate confirming that the tree is considered to have 'outstanding' or 'special' amenity value which would remove the Council's liability under the Order to pay compensation for loss or damage incurred as a result of its decision.

In this case the applicant has indicated that "the estimated repair costs are likely to vary between £10,000 and £40,000 depending upon whether the trees can be removed or have to remain." It is unclear whether these figures take account of the internal repairs already undertaken at one flat. There has been no assessment of the variation between estimated repair costs if one Cedar is removed and the other retained.

The Court has held that the proper test in claims for alleged tree-related property damage was whether the tree roots were the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage'. The standard is 'on the balance of probabilities' rather than the criminal test of 'beyond all reasonable doubt'.

In accordance with the Tree Preservation legislation, the Council must either approve or refuse the application i.e. proposed felling. The Council as Local Planning Authority has no powers to require lesser works or a programme of cyclical pruning management that may

reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the tree is so high that the proposed felling is not justified on the basis of the reason put forward together with the supporting documentary evidence, such that TPO consent is refused, there may be liability to pay compensation. It is to be noted that the Council's Structural Engineer has noted "*The site investigation results indicate the front left corner of Golfers View has suffered a minor episode of subsidence damage and the most likely cause is root action from the Cedar trees.*" albeit that "*The pollarding of T3 will have significantly reduced the effect of the tree on the soil beneath the foundations of Golfers View.*"

The compensation liability arises for loss or damage in consequence of a refusal of consent or grant subject to conditions - a direct causal link has to be established between the decision giving rise to the claim and the loss or damage claimed for (having regard to the application and the documents and particulars accompanying it). Thus the cost of rectifying any damage that occurs before the date of the decision would not be subject of a compensation payment.

If it is concluded that the felling of the Cedar tree subject of the previous Exemption Notice would address the problem regardless of the proposed removal of the other Cedar, or if the damage was attributable to other causes; it may be argued that loss or damage would not be in consequence of a refusal of TPO consent to fell.

However, if it is concluded on the balance of probabilities that both of the Cedar's roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by both of the trees' removal, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £30,000 if the trees are retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION

Matters addressed in the body of the report.

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 application would have a significant impact on any of the groups as noted in the Act.

CONCLUSION

The applicant, OCA UK Ltd, arboricultural consultant on behalf of the building insurers of Golfers View, proposes to fell two Cedar trees standing in the front garden of 50 Finchley Park because of their alleged implication in subsidence damage to Golfers View.

The proposed felling of both of the Cedars would be significantly detrimental to the streetscene, however, an Exemption Notice has previously been issued for the removal of one of the Cedars following storm damage in November 2011.

The Council's Structural Engineer has assessed the supporting documentary evidence and has noted "*The site investigation results indicate the front left corner of Golfers View has suffered a minor episode of subsidence damage and the most likely cause is root action from the Cedar trees.*" albeit that "*The pollarding of T3 will have significantly reduced the effect of the tree on the soil beneath the foundations of Golfers View.*"

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree(s) and the importance to the character and appearance of Finchley Park, it is necessary to consider whether or not the proposed felling is justified as a remedy for the alleged subsidence damage on the basis of the information provided, particularly in the light of the Structural Engineer's concerns.

If it is concluded on the balance of probabilities that both the Cedar's roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by both the trees' removal, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £30,000 if the trees are retained) if consent for the proposed felling is refused – however, this figure makes no allowance for a potential split decision.

However, particularly given the amenity value of the tree canopy, if it is concluded that the felling of the eastern Cedar tree (applicant's ref. T3, subject of Exemption Notice TPO/00724/11/B) would address the problem regardless of the proposed removal of the other Cedar, or if the damage was attributable to other causes; it may be argued that loss or damage would not be in consequence of a refusal of TPO consent to fell, and that it would be justifiable to refuse the application to fell the western Cedar (applicant's ref. T4).

