

LOCATION: 1 Eden Close, London NW3 7UL

REFERENCE: TPF/00310/15

Received: 2 June 2015

WARD: Childs Hill

Expiry: 28 July 2015

CONSERVATION AREA None

APPLICANT: Stuart

AGENT: Mr Alex Mcgauley

PROPOSAL: 1 x Sycamore (Applicant's Ref T1) – Fell. Standing in area A1 of Tree Preservation Order.

RECOMMENDATION:

That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed felling of 1 x Sycamore (Applicant's Ref T1) – Standing in Area A1 of Tree Preservation Order, either:

REFUSE CONSENT for the felling of 1 x Sycamore (Applicant's Ref T1) – Fell. Standing in area A1 of Tree Preservation Order for the following reason:

The loss of the tree of special amenity value is not justified as a remedy for the alleged damage to the driveway 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 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.

Consultations

Date of Site Notice: 18th June 2015

Consultees:

Neighbours consulted: 6

Replies: None

No response received to this application but see separate report for TPF/00399/15 for objection which relates to proposed removal of the same tree

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

See Appendix 1

PLANNING APPRAISAL

1. Introduction

Two separate applications have been received for the proposed removal of the same Sycamore – they were submitted by different tree surgeons; on different dates (the first on 2nd June 2015 – registered under reference TPF/00310/15, the second on 10th July 2015 – registered as TPF/00399/15); and giving different reasons for the proposed removal. Two separate reports have therefore been prepared as a decision will need to be made for each application. However, these reports address the matters specific to each application with an appendix providing details which would be common to both reports rather than duplicating the information.

2. Appraisal

Tree and Amenity Value

See Appendix 1

Site Description

See Appendix 1

Site Plan

See Appendix 1

Background to the application

An application form proposing the felling of the Sycamore tree (applicant's ref. T1) at 1 Eden Close, London, NW3 7UL was received on the 15th May 2015. However, there were shortcomings in the information. It was indicated on the application form that “alleged damage to property” was a reason for the proposed felling of the tree, but it was not clear what damage was being alleged and no supporting documentation was provided. A request was made for additional information to clarify the nature of the alleged damage was and for any relevant mandatory supporting documentation.

The applicant responded in an e-mail dated 2nd June 2015 in which they stated: “*At box 8 it should of [sic] stated that the tree is causing structural damage to the pathway (see*

attached photo). There is no subsidence." The applicant's photograph showed the base of the subject Sycamore tree and a section of their driveway adjacent to the base of the tree. Application TPF/00310/15 was registered following receipt of this clarification.

The application

The application submitted by Mr Alex Mcgauley acting as agent for the owner of 1 Eden Close, London, NW3 7UL was registered on the 2nd June 2015.

The reason given for proposed felling of the Sycamore in section 7 of the submitted application form is: *"The client is aware that the tree is covered by a TPO however there is clear indication that the roots are touching his property, he would [sic] like to plant another tree in its place a big tree which will give him the screening he currently has, he would like to also get the new tree covered by a TPO. The new tree will be between 4-5 metres."*

In an e-mail dated 2nd June 2015 the applicant clarified:
"At box 8 it should of [sic] stated that the tree is causing structural damage to the pathway. There is no subsidence. We are very reluctant to remove the tree, but as pensioners this left could cause a hazard to us, as the path will continue to move. We shall plant a more suitable tree in its place if permission is granted to fell."

The applicant has submitted a photograph showing some minor cracking and distortion in the driveway adjacent to this tree in support of the application.

The driveway at 1 Eden Close, London, NW3 7UL is formed from brick block paving and completely surrounds the subject Sycamore tree, which stands in a small petal shaped bed – the edges of which are very close to the trunk of the tree. Inspection has found that there is some distortion within the driveway surface and also some minor cracking along the lines of mortar between the individual bricks. The distortion may be due to settlement or moisture abstraction (it should be noted that the driveway is surrounded by vegetation other than the subject Sycamore), whilst the cracking between the bricks (along the line of least resistance) may be due to small pressures from root growth. As noted above, this tree predates the building of Eden Close and the residential properties within the roadway. The landscaping drawings approved as part of the planning permission for the construction of 1 Eden Close show the subject Sycamore standing within a lawn area (see applications C11906F and C11906R/99). However, the driveway of the property was extended to its current arrangement and this has been in place since at least the 4th October 1999. It should be noted that the driveway extends almost up to the trunk of the tree and given the problems that the applicant has alleged it would appear that the driveway has not been maintained using techniques that would be appropriate for such a structure in close proximity to a mature tree. The felling of this tree to prevent the minor lifting/distortion of the adjacent brick paved driveway could be considered to be excessive. Lesser works (such as the pruning of individual roots or reduction similar to previous treatment undertaken to the tree) may mitigate against the problem without the need to remove the tree.

The tree predates the construction of the house and driveway and was also included within a TPO prior to the building of 1 Eden Close. The presence and future growth of this TPO tree should therefore have been material considerations during the design, construction and maintenance of the driveway. There are techniques that could be employed during the construction and maintenance of a hard surface close to tree(s) to minimise damage/future

damage to the tree(s) and hard surface (e.g. allowing sufficient space around the trunk of the tree(s) for future trunk growth, use of a suitable compressible layer to minimise distortion/cracking in the hard surface, making sure that the surface is sufficiently permeable to allow moisture and air to reach treeroots). Allowing the removal of a TPO tree because a hard surface had been installed in close proximity to the tree and then not maintained using appropriate techniques may appear to set a precedent that have serious implications for the future of tree preservation.

In addition, the removal of this tree may not prevent future cracking and distortion of the driveway as there is a significant amount of other vegetation around the driveway (some of this has the potential to grow in size considerably).

The tree appears in reasonable physiological and structural condition and its removal could not be justified with regard to the condition/health of the tree.

The agent has stated that if the subject Sycamore were to be removed the owner of the property would be keen to plant a replacement "big tree which will give him the screening he currently has, he would like to also get the new tree covered by a TPO. The new tree will be between 4-5 metres." As noted by the objector any replacement tree would take a considerable period of time to reach the overall size and shape and provide the same level of screening as the subject Sycamore. In addition, there are only very small soft landscaped areas in the front garden of this property, any replacement planting in a similar location to the subject Sycamore is likely to require the removal of additional vegetation already at the site and there may be problems in the establishment of any replacement planting especially given the reason put forward for this application.

3. Legislative background

See Appendix 1

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 the applicant has stated: "the tree is causing structural damage to the pathway." No indication has been provided regarding the likely cost of any repairs.

The Court has held that the proper test in claims for alleged tree-related property damage was whether the tree was the 'effective and substantial' cause of the damage or alternatively whether it '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. 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.

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 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 the Sycamore tree is the 'effective and substantial' cause of the damage or alternatively whether it 'materially contributed to the damage' and that the damage would be addressed by the tree's removal, there is likely to be a compensation liability.

COMMENTS ON THE GROUNDS OF OBJECTION

Not applicable

EQUALITIES AND DIVERSITY ISSUES

See Appendix 1

CONCLUSION

The application submitted by Mr Alex Mcgauley acting as agent for the owner of 1 Eden Close, London, NW3 7UL proposes the felling of a Sycamore tree standing in the front garden area of 1 Eden Close, London, NW3 7UL because of its alleged implication in damage to the driveway surrounding the tree.

The proposed felling of the Sycamore would be of detriment to public amenity. In addition, there is likely to be problems with the establishment of any replacement planting in the front garden area of the property.

The Sycamore predates the construction of 1 Eden Close, London, NW3 7UL and the driveway at the property. It is possible to construct a hard surface in close proximity to tree(s) using techniques that will minimise future damage to both the tree(s) and driveway surface. It does not appear that the driveway at 1 Eden Close, London, NW3 7UL has been maintained with due regard for the presence and future growth of the subject Sycamore tree.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree, it is necessary to consider whether or not the proposed felling is justified as a remedy for the alleged damage to the driveway on the basis of the information provided.

If it is concluded on the balance of probabilities that the Sycamore is the 'effective and substantial' cause of the damage or alternatively whether it 'materially contributed to the damage' and that the damage would be addressed by the trees' removal, there is likely to be a compensation liability (no indication of the cost of repairs to the driveway has been submitted with this application) if consent for the proposed felling is refused.

However, if it is concluded that 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 Sycamore.

It may be considered that lesser treatment could address concerns raised by the applicant/agent and an informative added to the Decision Notice accordingly.

The removal of this tree could not be justified with regard to arboricultural reasons.