



COMMITTEE REPORT

LOCATION: 1 St Marys Green, London, N2 0UZ.

REFERENCE: TPF/00543/15 **Received:** 11 August 2015
WARD: East Finchley **Expiry:** 6 October 2015
CONSERVATION AREA None

APPLICANT: Viridian Housing
AGENT: G and R Tree Surgeons

PROPOSAL: 1 x Sycamore (applicant's ref. T1) - Fell. T21 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) – T21 of Tree Preservation Order, either:

REFUSE CONSENT for the felling of 1 x Sycamore (applicant's ref T1) – Fell. T21 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 boundary wall 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 12 months 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(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 Site Notice: 27th August 2015

Consultees:

Neighbours consulted: 20

Replies: None

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

C17339/07/TRE – “1 x Cypress - Reduce in Size by 33%. T22 of Tree Preservation Order. 1 x Sycamore - Reduce in Size by 33%, Shape. T21 of Tree Preservation Order” at 1 St Marys Green, London, N2 0UZ.

Refused – 22/11/2007

C17339A/07/TRE - 1 x Cypress - Reduce in Height by 0.5m. T22 of Tree Preservation Order. 1 x Sycamore - Thin by 25%, Deadwood. T21 of Tree Preservation Order at 1 St Marys Green, London, N2 0UZ.

Conditional Approval – 08/01/2008

PLANNING APPRAISAL

1. Introduction

The London Borough of Barnet (Convent of the Good Shepherd, East End Road, N2) Tree Preservation Order 1975 was made on the 27th June 1975 and confirmed without modification on the 19th December 1975 pursuant to a resolution passed by the London Borough Council on the 8th October 1975. The Order, which includes various individually and group designated trees, was made in connection with proposed redevelopment of the Convent land for residential housing. Thomas More Way, Benedict Way, Cecilia Close, St Mary's Green, Clare Close, Dunstan Close and Helen Close were constructed in the late 1970s / early 1980s. Juliana Close was constructed later in the 1990s / 2000s. A number of the trees were retained when the housing estate was developed and it is characterised by terraced housing blocks set in communal green areas with mature trees.

1 St Mary's Green is shown on an Ordnance Survey map dated 1983. It is a 3 storey brick end-terrace property located close to the junction with Clare Close. The side and rear of the property is surrounded by a stepped brick wall 1.5 - 2 metres in height, on top of which is mesh fencing. Adjacent to the property is one of the communal greens with a number of mature trees.

2. Appraisal

Tree and Amenity Value

The Sycamore is a mature tree approximately 16/17 metres in height, standing adjacent to the rear boundary of the rear garden. The tree has been previously thinned and lifted to about 7/8 metres above ground level – although there has been some regrowth, it has a high and slightly sparse crown relative to its size. The Sycamore has a historic trunk lean to the east/south-east. Dense Ivy growing on top of the rear boundary wall made close inspection of part of the trunk difficult but, although there is some deadwood and localised

decay at some previous pruning points, the tree appears to be in reasonable condition with healthy foliage.

The Sycamore is clearly visible from a number of locations (including communal landscaped areas) within St Mary's Green, Clare Close and Thomas More Way. It contributes to the general character and appearance of the area, helping to screen and soften the built form of the adjacent residential dwellings. The tree was included in the Tree Preservation Order prior to the redevelopment of the Convent of the Good Shepherd site and was retained during the construction of the estate. The retained mature trees (such as this Sycamore) within the gardens and communal green areas add a sense of maturity to the residential development and help integrate the newer properties into the surrounding area.

The application

The application, submitted by G and R Tree Surgeons acting as agent for Viridian Housing, was registered on the 11th August 2015.

Although indicating elsewhere on the application form that "alleged damage to property" is not a reason for this application, the reason given for proposed felling of the Sycamore in section 7 of the submitted form is: "*Causing damage to boundary wall – which is becoming a safety issue.*" The only supporting documentation was photographs.

As noted above, this tree predates the building of St Mary's Green and, given the date of construction, the design and construction of the dwellings and associated structures should have had due regard to the presence and future growth of this and other mature trees in the vicinity. It would have been possible to construct a wall in the vicinity of tree(s) using techniques that would minimise future damage of both the wall and tree(s).

The boundary wall around 1 St Marys Green, London, N2 0UZ is of brick construction between 1.5 and 2 metres high (17 courses the last of which is a course of headers). The land on which the wall has been constructed slopes - with the highest point being the south-eastern corner of the property. The wall has therefore been constructed with short sections of wall between brick piers giving it a "stepped" appearance.

The submitted photographs show some cracking adjacent to a brick pier on the southern elevation of the wall near to the south-eastern corner. During site inspection, it was noted that there were cracks adjacent to the piers and also in the corners of the wall along both its eastern and southern length. It was also noted that repairs had been undertaken to the wall in the form of strengthening bars having been added across the damaged sections and the cracks having been filled and repointed.

Our Structural Engineer has assessed the information and advised that the wall does not appear to have been constructed with due regard for thermal and moisture restrained movement or trees. Damage to the boundary wall takes the form of both vertical and diagonal cracking. There is vertical cracking adjacent to joints in the wall with some of this damage being quite a distance from the tree. External boundary walls are subject to a higher thermal range than in a building, hence movement joints in a wall tend to be closer together (about 6 metres apart) than in a building. The vertical cracking observed is consistent with damage caused by thermal and moisture restrained movement. Diagonal cracking may be related to the influence of vegetation – but in addition to the Sycamore

there is other vegetation in the vicinity of the wall including small trees shrubs and Ivy (and it may be noted that no monitoring data indicating seasonal movement has been provided).

Given that repairs have been undertaken to the wall and that damage appears to have occurred as a result of thermal and moisture restrained movement it may be considered that the felling of this tree on the basis of the reasons and evidence put forward in support of the application is excessive.

Whilst diagonal cracking in the wall on the eastern elevation near to the subject Sycamore may have been caused by vegetation (although there is nothing in the application submissions to prove that the Sycamore is the causal factor in the damage), this tree predates the construction of the wall (indeed the estate). The wall should therefore have been constructed with due regard for the presence of the tree (as well as thermal and moisture restrained movement) - allowing the removal of a TPO tree because of a poorly constructed boundary wall in close proximity to tree(s) may appear to set a precedent with significant implications.

In addition, the removal of this tree may not prevent future cracking and damage to the wall as most of the damage (if not all) appears to have occurred as a result of thermal and moisture restrained movement.

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.

Given the reason put forward for the proposed removal of this tree and the limited space available for replacement planting it is unlikely that any replacement planting would be allowed to achieve the same overall size, habit and contribution to public amenity as the subject Sycamore.

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.

This application is being referred to Members for decision because one of the exceptions to the Delegated Powers of the Service 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 reason given in section 7 of the submitted application form for the proposed removal of this tree is “causing damage to boundary wall – which is becoming a safety issue.” As noted above repairs have already been undertaken to the wall. No indication has been provided regarding the likely cost of any future/further 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(s) 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

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 application submitted by G and R Tree Surgeons acting as agent for Viridian Housing proposes the felling of a Sycamore tree standing in the rear garden of 1 St Marys Green,

London, N2 0UZ because of its alleged implication in damage to the boundary wall surrounding the property.

The proposed felling of the Sycamore would be of detriment to public amenity.

In addition, given the reason for this application and the available space it is unlikely that any replacement planting would be allowed to reach the same overall size, habit and contribution to public amenity as the subject Sycamore.

The removal of this tree could not be justified with regard to the condition/health of the tree.

The Sycamore predates the construction of 1 St Marys Green, London, N2 0UZ and the boundary wall around the property. It would have been possible to construct a wall in the vicinity of a mature tree using techniques that will minimise future damage to both the tree(s) and the wall.

The wall around the boundary of 1 St Marys Green, London, N2 0UZ does not appear to have been constructed appropriately. Our Structural Engineer has advised that the vertical cracking is indicative of damage to a wall that has been constructed with insufficient regard to the higher thermal range that an external wall will experience (when compared with a building).

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 wall 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 (it should be noted that repairs have already been undertaken to the wall and there would be no liability for the repairs that have already been undertaken. However, no indication of the cost of any future repairs 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.

Site Plan

