



COMMITTEE REPORT

LOCATION: 3 Danescroft Gardens, London, NW4 2ND

REFERENCE: TPF/00584/15

Received: 21 August 2015

WARD: Hendon

Expiry: 16 October 2015

CONSERVATION AREA None

AP Viridian Mrs Shapiro

PLI Housing Dobbin & Sullivan Chartered Surveyors

CA G and R Tree

NT: Surgeons

AGE

NT:

PROPOSAL: 1 x Pine – Fell. Standing in Woodland W9 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 Pine – Standing in Woodland W9 of Tree Preservation Order, either:

REFUSE CONSENT for the felling of 1 x Pine for the following reason:

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.

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: 3rd September 2015

Consultees:

Neighbours consulted: 7

Replies: None

Council's Greenspaces Arboricultural team: see body of report

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Treeworks:-

W04929F/07/TRE – 1 x Pine Tree - Reduction in Density and Width by 2/3rd. Standing in Woodland W9. Registered 5th January 2007.

- **REFUSED** 13th February 2007.

W07544J/08/TRE - 1 x Pine - reduction in density by 25%. Standing in Woodland W9 of Tree Preservation Order. Registered 18th January 2008.

- **CONDITIONAL APPROVAL** 28th February 2008.

TPO/00633/12/H - 1 x Pine (T1 Applicants Plan) - Fell. Standing in Woodland W9 of Tree Preservation Order. Registered 2nd November 2011.

- **REFUSED** by the West Area Planning Sub-Committee 9th January 2013.

TPO/00102/13/H - 1 x Pine (T1 Applicants Plan) - Lift to 5m Height all round, reduce from property to give 0.5m clearance from building and balance crown all-round by lateral spread reduction of up to 1.5m (refer to photo attached to applicant's e-mail of the 19th April 2013 for "estimated shape of the after pruning"). Standing in Woodland W9 of Tree Preservation Order. Registered 25th February 2013.

- **CONDITIONAL APPROVAL** 22nd April 2013.

Development at 2/3 Danescroft Gardens since 2004:-

W07544C/04 – Demolition of existing house and infill between no.s 2 & 3, including excavation of basement. Construction of a new 4 storey 8 bedroom house with integral garage - at **2 / 3 Danescroft Gardens**. Registered 4th November 2004

- **REFUSED** 26th January 2005.

2 Danescroft Gardens

W07544D/06 - Demolition of existing house and infill between Nos. 2 & 3. Construction of a new two-storey 7 bedroom house, with rooms in the roofspace and basement. Provision of integral garage. Registered 28th April 2006

- **WITHDRAWN** 22nd August 2006.

W07544G/07 - Demolition of existing house and infill between Nos. 2 & 3 and construction of a new 2 storey 7 bedroom house, with rooms in the roofspace and basement with parking on front forecourt. Registered 9th January 2007
- **CONDITIONAL APPROVAL** 5th March 2007.

3 Danescroft Gardens

W07544E/06 - Demolition of existing side and rear extensions. Erection of single storey side extension. Part two, part three-storey rear extension. Conversion of garage to habitable room. Alterations to roof including side dormer window and rear hip to gable to facilitate a loft conversion. New front entrance canopy. New front boundary fence. Registered 6th July 2006

- **REFUSED** 14th September 2006.

W07544F/06 - Part two, part three-storey rear extension. Single storey side extension. Part covered walkway on ground floor side elevation. Alterations to roof including side dormer window to facilitate a loft conversion. New front entrance canopy. New front boundary fence. Registered 20th November 2006

- **WITHDRAWN** 15th January 2007.

W07544H/07 - Part two, part three-storey rear extension. Single storey side extension. Part covered walkway on ground floor side elevation. Alterations to roof including side dormer window to facilitate a loft conversion. Registered 2nd July 2007

- **WITHDRAWN** 13th September 2007.

H/00972/08 - Lower ground floor extension, ground floor and first floor rear extensions. Single storey side extension incorporating part covered walkway on ground floor side elevation. Alterations to roof including side dormer window and velux roof lights to facilitate a loft conversion. Registered 15th May 2008

- **CONDITIONAL APPROVAL** 10th July 2008.

H/04472/08 - Lower ground floor extension, ground floor and first floor rear extensions. Single storey side extension incorporating part covered walkway on ground floor side elevation. alterations to roof including side dormer window and velux roof lights to facilitate a loft conversion. Registered 24th November 2008

- deemed **UNLAWFUL** 19th January 2009.

H/04540/08 - Installation of a new balcony overlooking the rear garden at ground floor level. Registered 28th November 2008

- **WITHDRAWN** 22nd January 2009.

H/01840/09 - Lower ground floor extension and ground floor extensions to rear and both sides, incorporating part covered walkway on ground floor side and front elevations. First floor rear, front and side extensions. Alterations to roof including side dormer window and roof lights to facilitate a loft conversion. Registered 27th May 2009

- **CONDITIONAL APPROVAL** on the 23rd July 2009.

It should be noted that concerns about tree(s) were included in reasons for refusal and tree protection conditions imposed on the conditional approvals.

PLANNING APPRAISAL

1. Introduction

This application has been submitted by Dobbin and Sullivan acting as agent on behalf of the owner of 3 Danescroft Gardens. It was received and registered on the 21st August 2015 in respect of "1 x Pine - Fell. Standing in Woodland W9 of Tree Preservation Order."

The relevant Borough of Hendon Tree Preservation Order was made on the 4th October 1955 and confirmed by the Minister of Housing and Local Government subject to

modifications not affecting this Pine tree on the 11th July 1957. The Pine tree subject of this application stands within the boundary of Woodland W9 of the Tree Preservation Order - Woodland W9 is described as *“mixed conifers and deciduous trees consisting mainly of pine, oak and elm.”* The Building Regulations application for the development of the Danescroft Gardens cul-de-sac of 15 houses was approved in 1957.

2. Appraisal

Tree and Amenity Value

The subject Pine stands in the front garden of 3 Danescroft Gardens adjacent to the front boundary and close to the flank boundary between 3 and 4 Danescroft Gardens. The front garden is almost entirely covered with hard surfacing, with paving and a low boundary wall directly abutting the base of the Pine trunk.

The mature Pine is 16 - 18 metres in height and has a trunk diameter of 75cm (measured at 1.5 metres above ground level). The tree has a historic lean towards the east. The tree has had some previous minor lifting treatment and some of the lower lateral branches have been shortened. The tree has a slightly unbalanced lower crown, but overall its crown shape is typical of the species. Its physiological condition appears reasonable with dense foliage of mostly good colour showing throughout the crown. There is a small amount of browning foliage apparent and some minor deadwood is visible. There appears to have been no deterioration in the condition of the tree since it was inspected in February 2007, February 2008, December 2012 and April 2013 in connection with previous treework applications.

Prior to the construction of the residential properties the land was part of a woodland within Brent Park. The tree is very clearly visible and prominent from along Danescroft Gardens and is one of the most visually impressive trees within the surrounding area. It contributes significantly to the character and appearance of the roadway, helping to soften the urban form of the closely spaced detached dwellings in Danescroft Gardens and as a remnant of the parkland heritage. Being evergreen, the Pine provides year-round visual amenity.

The application

The reason given in section 7 of the submitted application form for the proposed removal of this tree is *“Due to its increasing adverse impact on nearby structures and increasing threat of more significant and dangerous damage.”*

The agent has submitted the following documents in support of the application:

- 1) A letter dated 18th August 2015 by Dobbin and Sullivan Chartered Surveyors, the contents of which can be summarised as:
 - An application was made under reference TPO/00102/13H in February 2013 to reduce the size of the tree, an application that was approved. This followed an application to fell made under reference TPO/00633/12/H, which was refused.
 - In the intervening period the damage caused by the tree has increased, hence the reason a further application to fell is being made.
 - We have considered the comments made in the Committee Report relating to the previous application to fell and commissioned specialist reports from an arboriculturalist and chartered building surveyor to support this application – the letter then discusses the contents of those reports.

2) An Arboricultural Report dated 23 April 2015 by Simon Pryce of Simon Pryce Arboriculture which concludes:

- The tree is a Monterey pine, an exceptionally fast growing Californian species. Its exact age is difficult to assess, but it is clearly younger than its size might suggest and would have been planted after the house was built. It is capable of growing considerably larger than it is at present.
- It almost certainly post-dates the TPO but, in an area defined as woodland, so is protected
- There are no signs or reports of subsidence in the house, but there is potential for it, given the tree's growth potential and the presence of London clay.
- The damage to the paving and wall has been caused by direct pressure from major roots. The damage could be repaired with materials more resistant to movement, but the tree's growth potential is too great for that to be reliable.
- The permitted pruning would increase clearance from the roof and reduce the quantity of needles, but the tree's growth rate is such that it would be an ongoing and increasing problem.
- It has not produced many cones so far, but they are large, woody and produced in clusters, so they can cause significant damage when shed.
- The tree creates an oppressive effect that could be alleviated slightly by pruning, but which will still increase as it grows.
- The tree provides some public amenity, but that is localised and the current and future problems outweigh any benefit from keeping it. Most of the problems are due to its growth rate and particular characteristics and a suitable replacement would make a comparable contribution to the area without the problems being caused by the pine.
- A new tree would be automatically protected by the woodland TPO and an individual order could be made if the council wish.

3) A survey report by P J Seeley Associates Chartered Surveyors dated 10th July 2015. This report concludes and recommends:

- In general there is [sic] no visible evidence of CURRENT serious structural or foundation related damage related to the subject tree applicable to the front of the three houses [2, 3 and 4 Danescroft Gardens] although there is some limited stress cracking and misalignments.
- There is extensive damage to some of the roof areas and extensive areas of pavings and walls.
- I do however expect that due to the close proximity and size of the tree that it is only a matter of time before tree root related foundation subsidence movement occurs to the [sic] one or more of the three properties.
- The tree is also leaning quite alarmingly towards the front of no 3 and less so towards No 2 and I have serious concerns about the risk of the tree falling over in severe wind conditions particularly if from direction to assist the angle of misalignment.
- I would consider that due to the size and location of the tree that the failure of the tree could lead to possible loss of life or limb notwithstanding of course to extensive property damage.
- I would recommend that the subject tree be removed (in accordance with tree expert advice how to do so) to reduce the risk to buildings and persons.

- In relation to its amenity value a replacement tree of more suitable type and growth pattern could be provided if this is considered necessary.

The Arboricultural Solutions Arboricultural Report, submitted with the two most recent previous applications to treat this tree (references TPO/00633/12/H and TPO/00102/13/H), identified the tree as a Corsican Pine.

However, Simon Pryce's Arboricultural Report submitted with this current application has identified the tree as a Monterey Pine - which appears to be correct (the tree is a 'three-needle Pine'). He has stated that Monterey Pine trees have an "*exceptionally high growth rate*" and estimated that the tree is younger than the construction of properties in Danescroft Gardens and the Tree Preservation Order, although accepting that the tree is still protected by the Woodland Tree Preservation Order. Simon Pryce has further stated: "*the tree is capable of growing considerably larger than it is at present within a relatively short time. In older trees height growth slows, but the crowns spread, becoming much wider in proportion and the trunk continues to increase in diameter. It is not unusual for older trees to reach heights of well over 20m with radial spreads of 10m or more and trunk diameters of 1.5-2m.*"

Simon Pryce has acknowledged that the Pine tree is mature but that its exact age is difficult to assess. He has confirmed that in older trees the height growth slows and the tree becomes much wider. My own measurements (taken in connection with previous applications and using the same equipment), indicate it has grown by a maximum of 2-3 metres in height since February 2007, but that the rate at which its height is increasing has slowed, there being no appreciable difference since 2012. It has, however, become noticeably "wider." It would be possible to determine the exact age of the tree by taking a core sample and counting the growth rings. However, this is not necessary as there is no dispute that this tree is included within the Tree Preservation Order.

It is clear from the Tree Preservation Order that Pine trees were present within Brent Park prior to the construction of Danescroft Gardens - the first schedule of the Order states that the woodland Order (W9) includes "Mixed conifers and deciduous trees consisting mainly of Pine, Oak and Elm." Monterey Pine was introduced to Britain in the 19th century.

Although advising that there is potential for the tree to cause subsidence (based on visual inspection and in the absence of excavation or detailed investigations), both Simon Pryce and P J Seeley have stated in their reports that they are unaware of any current subsidence damage attributable to the subject Pine.

Both Simon Pryce's and P J Seeley's reports provide details of damage to the dwarf wall at the front of the property, paving within the front garden of the property and paving outside the property (3 Danescroft Gardens). It appears that the existing driveway and front boundary wall of 3 Danescroft Gardens have not been constructed with sufficient regard for the proximity and future growth of this tree. There is much less lifting and distortion of the Public Highway than the hard surfacing at 3 Danescroft Gardens.

In his report Mr Pryce provides details of how this damage could be repaired: "*It would be necessary to dispense with the section of wall next to the tree's trunk and allow space for further growth. The paving could be relaid and there are surfaces, such as resin bonded gravel or block paving on sand, that would accommodate root growth better than concrete*

slabs, but the tree's growth potential is such that any surface would suffer some distortion and need repairing from time to time. Given this tree's growth potential the damage could become much more severe, even with materials that would accommodate movement and pavement would be affected far more severely than at present."

The Council's Greenspaces Arboricultural Officer declined to support the application to fell the Pine as in his view "the tree is of high amenity and the repairs to the surfacing can easily be repaired with temporary solutions at low cost or alternatively a full resurfacing of the surrounding area could be carried out with a flexible material", adding "Whilst the damage is unpleasant it appears not to have been repaired over time, the existing materials are weathers and not suitable for their purpose. The tree itself is healthy and has no major defects to note so it could not be removed on this basis or any claims about its health would easily be dismissed..... damage is likely due to the driveway being constructed with loose pavers and was not constructed properly with a sub-base sufficient to restrict surface root growth.....The driveway could be repaired with porous self binding materials or a flexible material like flexipave. Paving slabs are an unsuitable material to have around bases of trees."

It would not be reasonable to allow the removal of a healthy tree included in an Order purely because a homeowner did not want to undertake any maintenance of a driveway or wall in close proximity to that tree.

In the PJ Seeley's report it is also noted that the property of 3 Danescroft Gardens has "cracked glazing and warped opening sashes to bay window of front reception which is closest to the subject tree...Stress cracking to partition wall to side wall of the reception room near cornicing line and also vertical hairline cracking above door opening. The area is again is [sic] closest to the subject tree." The author of the Seeley report speculates that these are due to "underlying tree roots and/or the effects of the same." Again this speculation appears to be based purely on a visual inspection and the Council has not been made aware of any investigations to determine the exact cause of the damage noted in the Seeley report.

The Seeley report also notes the following damage to the roofs of 2, 3 and 4 Danescroft Gardens:

- The flat roof to the front lower area of 2 and 3 Danescroft Gardens is in poor order and water penetration was noted. The roof has a "heavy covering" of Pine needles – which "could allow outlets to become blocked."
- The roof tiles at the front of 3 Danescroft Gardens are being damaged by direct contact with the branches of the tree.
- The guttering of 3 and 4 Danescroft Gardens could be affected by Pine needles dropped by the subject tree.
- The flat roof covering at 4 Danescroft Gardens has been recently replaced. The owners state it was in poor condition and "implicated blocked outlets" The property has suffered some damage from water penetration.

It is considered that the clearance of fallen foliage from guttering and to prevent the blockage of outlets should form part of normal householder maintenance and it would not be reasonable to allow the removal of a healthy tree included in an Order purely because its foliage had fallen into a gutter/blocked outlets. It may be noted that there are guards available which fit around guttering and restrict fallen foliage from getting into the guttering/outlets.

Consent was granted in 2013 (see TPO/00102/13/H), allowing pruning of the Pine to provide clearance from the property of 3 Danescroft Gardens and prevent friction damage - such pruning would restrict the spread of the canopy. However, the consented works do not appear to have been implemented. It would not be reasonable to allow the removal of a healthy tree included in an Order purely because the owner did not want to undertake maintenance of the tree (for which consent has been granted).

Although both of the Chartered Surveyors have raised concerns that the tree has a trunk lean and may fall into the adjacent properties, Mr Pryce has noted in his arboricultural report that: *"there are no obvious signs of recent movement in the ground, although the bare earth and fractured masonry at the base would not necessarily show that"* and the recommendations in his report are not based on any concern over the condition of the tree. Inspection has found that the trunk lean is of historic origin and there is nothing to suggest that this represents an unacceptable risk in relation to the adjacent property. It should be noted that healthy many trees have trunk leans and it would not be reasonable to allow the removal of a healthy tree included in an Order because it had a historic trunk lean or because it was in falling distance of a property – allowing the removal of tree for such a reason would have serious implications for the future of tree preservation / management in the Borough.

In section 7 of the submitted application form it is stated that "my client would be prepared to plant a smaller type of tree, such as Japanese Maple. Alternatively a larger replacement, such as Scots Pine, could be planted in number 2 [Danescroft Gardens]."

Given the reasons put forward for this application, any replacement tree would be of smaller stature both at planting and (if allowed to develop) ultimately. The Japanese Maple suggested by the agent is considerably smaller in size and habit as the subject Pine, it also has a shorter lifespan.

For the replacement planting to have any long term potential and contribution to public amenity, the repair/replacement of the existing driveway and boundary wall would need to take account of the future growth of the replacement tree and therefore constructed using appropriate techniques.

It would not be possible to impose a condition requiring the planting of a replacement tree on the neighbouring property.

It is not considered that the removal of the Pine tree is necessary to enable to repair/replacement of the driveway and front boundary wall at 3 Danescroft Gardens. It should be noted that the replacement of the driveway and front boundary wall was included as part of the proposals for a number of the most recent planning applications for

redevelopment at numbers 2 and 3 Danescroft Gardens (see above). The Pine tree subject of this application is detailed to be retained during these redevelopment proposals.

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 "Due to its increasing adverse impact on nearby structures and increasing threat of more significant and dangerous damage." 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 Pine 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 Included in body of 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

It is proposed to fell a Pine tree standing within the front garden of 3 Danescroft Gardens adjacent to the roadway. The reason for the proposed felling of this tree is *“Due to its increasing adverse impact on nearby structures and increasing threat of more significant and dangerous damage.”*

A letter dated 18th August 2015 by Dobbin and Sullivan Chartered Surveyors, an Arboricultural Report dated 23 April 2015 by Simon Pryce of Simon Pryce Arboriculture and A report by Seeleys Chartered Surveyors dated 10th July 2015 have been submitted in support of this application.

The tree is considered to be of public amenity value and its loss would be of significant detriment to the character and appearance of Danescroft Gardens.

The decision is referred to Members in accordance with the Council's Delegated Powers exception provisions.

