



COMMITTEE REPORT

LOCATION: 61 / 63 (boundary) Parson Street, London NW4 1QT

REFERENCE: TPF/00463/15

Received: 14 September 2015

WARD: Hendon

Expiry: 9 November 2015

CONSERVATION AREA n/a

APPLICANT: OCA UK Ltd

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

REFUSE CONSENT 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 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: 22nd October 2015

Consultees:

Neighbours consulted: 40

Replies: 2 0 support 2 objections

The grounds of objection can be summarised as:

- This Cedar is a landmark in Hendon
- There have been Cedar of Lebanon trees in Hendon for over 250 years but this is one of the last
- Surely it is worth £11,000 to preserve the tree (the cost of the alternative solution which would not involve felling this beautiful tree)
- The tree is much older than the house
- The owners must have known the risks when they purchased the house
- The additional cost of underpinning (instead of felling the tree) would be less than 1% of the value of the property
- Involvement of insurers
- The other two trees mentioned in the application have already been removed
- Would not wish to see this stunning tree felled unless there was no reasonable alternative
- Unclear whether felling the tree would definitely solve the problem or whether the house might need underpinning at a later date
- Also not clear whether underpinning would guarantee a solution
- Other ways to deal with the problem without having to remove the Cedar
- Cedar of historic value – used during World War II to mark flight path into Hendon Aerodrome
- Many passers-by have admired the tree through the years and many have said what a magnificent tree it is
- Increased risk of flooding if remove tree(s) and pave over gardens
- Should try alternatives first rather than “using a sledge hammer to crack a nut”

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

15/00747/FUL - Single storey side and rear extension, conversion of single dwelling house into 2 no. self contained flats at 63 Parson Street
– Approved subject to conditions 7th April 2015

H/00141/14 - Single storey side and rear extension to both properties, following demolition of existing garages at 63 - 65 Parson Street
– Approved subject to conditions 2nd June 2014

H/03906/13 - Single storey rear extension to both properties and single storey side extension to No. 65 following demolition of existing garage. [Amended description] at 63 & 65 Parson Street
– Approved subject to conditions 24th October 2013

PLANNING APPRAISAL

1. Introduction

An application form proposing removal of the Cedar of Lebanon tree (applicant's ref. T1) in the front garden of 63 Parson Street in connection with alleged damage at the property was submitted via the Planning Portal on 23rd July 2015 - however, there were shortcomings in the information – clarification was thus requested. Further information was submitted on 14th September 2015, allowing registration of the application.

On site inspection, it became apparent that the Cedar straddles the boundary of 61 and 63 Parson Street, so the application address was amended accordingly.

2. Appraisal

Trees and Amenity Value

The subject Cedar of Lebanon stands on the flank boundary between the front gardens of 61 and 63 Parson Street, approximately halfway between the public highway and the front elevations of the houses. There is a boundary wall between the two properties which has been constructed to the south-east and north-west of the tree. It is understood from the residents that this boundary wall was built about 10 years ago and has been slightly offset from the legal boundary to facilitate construction. Because of the slope, the gardens in this part of Parson Street are stepped such that the driveway at 61 Parson Street is higher than that at 63 Parson Street (there is about 0.5 metres difference between surface levels to the south-east (i.e. road side) of the trunk and about 0.75 metres to the north-west (i.e. house side), the boundary wall thus also acts as a retaining wall. It is understood that previous investigations were undertaken at 61 Parson Street with tell-tales being in place for two years – but no alleged subsidence damage was identified.

The Cedar of Lebanon is a very substantial mature tree with a large spreading canopy. It is some 6 metres in girth and 15 – 20 metres in height; it forks to 5 main stems at about 2 – 3 metres above ground level, with one central stem and one stem towards 63 Parson Street having been removed. The Cedar has been previously lifted and has some deadwood, but it appears to be in good condition with no major faults apparent; the foliage is of good form and colour.

The Cedar of Lebanon is prominently located in the streetscene. It is very clearly visible along Parson Street and is also visible from the junctions of Tenterden Grove, Ashley Lane, and Corrigan Close. Being evergreen, the tree makes a significant contribution to the streetscene throughout the year. The Cedar of Lebanon is important enough that the Highways team agreed to relocate a street light column to the opposite side of the road so as to avoid causing damage to the tree. As attested by objectors, the public amenity value of the tree is enhanced by the number of pedestrians using the area.

The mature Cedar predates the properties that now occupy this part of Parson Street and is of a considerable age. The Cedar is shown as a specimen tree standing in the grounds of Downage (the large house that originally stood on the land) in the historic Ordnance Survey map dating from 1896, so it would have been a large tree more than one hundred ago. There is anecdotal evidence that this Cedar is the last survivor of three Cedars that were used to identify the flight path back to Hendon Aerodrome during the Second World War – the 1955 Tree Preservation Order map designates three individual Cedars in close proximity: the subject tree at 61/63 Parson Street; one between what is now 1 and 2 Tenterden Close NW4 1TJ; and the third by Glenmore, Tenterden Grove NW4 1TH which

would have aligned as an arrowhead pointing directly to the airfield - but the Head of Archives at the RAF Museum had not heard of this. Whether or not the Cedar was used as a marker during the War, there can be no doubt of its historic interest – its very size is testament to its age, and it is possibly the largest Cedar in the borough. The three Cedars were retained when the area was redeveloped subsequent to the large Victorian houses and gardens that predated the current residential housing (perhaps from which Cedars Close derives its name). There is also a historic link with Cedar of Lebanon trees and this part of Hendon in that the famous botanist, Peter Collinson, (1694 – 1768) acted as agent in obtaining 1000 Cedar of Lebanon trees for Goodwood that had been raised “from cones of the great tree at Hendon Place” in 1761.

The very large evergreen canopy of the Cedar helps attenuate the impact of heavy rainfall, reducing the amount of direct run-off via surface water drainage systems and increasing the amount of slow infiltration into the surrounding ground from droplets trickling more gradually from the foliage, branches, and trunk – thus helping to reduce the risk of flash flooding. In addition, the Cedar will have a role in combatting air pollution - foliage will adsorb some particulates and gaseous pollutants – of value given the heavy vehicle usage at certain times of day of Parson Street and the nearby Great North Way (A1 dual carriageway).

The Cedar of Lebanon is considered to be of special amenity value - in terms of its visual contribution to the streetscape; its environmental contribution to e.g. air quality and rainwater infiltration; and its historical significance. As noted by objectors, the Cedar provides very significant public amenity in a number of different ways – historic; environmental; and social (local landmark, iconic). It contributes significantly to the character and appearance of this part of Hendon. If it was removed any replacement planting would take many years to attain a similar size and stature and its historic attributes would be lost - thus there would be considerable detriment to public amenity for decades and substantial harm to the character and appearance of the area.

The application

The application submitted by OCA UK Ltd instructed by Oriel Services Ltd on behalf of the building insurers of 63 Parson Street was registered on 14th September 2015. The reasons for the proposed removal of the Cedar of Lebanon (applicant's reference T1) cited on the application form are:

- 1. The above tree works are proposed as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building.*
- 2. The above tree works are proposed to limit the 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 £14,000 and £25,000, depending upon whether the tree/s 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 the 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. *We are satisfied that the evidence obtained following completion of our Arboricultural Implication Assessment report completed in November 2014, clearly links the Cedar of Lebanon tree T1 as the cause of damage to the above mentioned address.*

The supporting documentation comprised:

- Cunningham Lindsey Engineering Appraisal Report dated 22nd October 2014
- CET Levels Monitoring dated 22nd June 2015 (5 readings 10/10/14 – 16/6/15)
- OCA Arboricultural Assessment Report dated 17th November 2014
- CET Site Investigation Factual Report dated 2nd October 2014
- OCA Statement of Reasons undated
- OCA Site Plan dated 10th November 2014
- Clarification received 14th September 2015 that:
 1. **Further information in relation to the damage and previous repairs.**
 - 1.1 *We are not aware of any previous repairs or underpinning. The trial pit has confirmed that the affected area has not been underpinned.*
 - 1.2 *The geological survey maps indicate that the strata to be sand & gravel overlying London Clay.*
 - 1.3 *Unfortunately, we have no photos or sketch plans on the damage.*
 2. **Has any vegetation works been completed since our report was commission?**
The future risk vegetation was removed January 2015
 3. **Your comments our Structural Engineer has noted that there is limited soil testing in the zone of the roots (because of the high coarse content?)?**
The made ground to 1.0m is not suitable for soil testing. In addition the sand and gravel content in the clay down to 2.5m made the samples unsuitable for atterberg testing.
 4. **Heave Calculation:**
A heave calculation is not possible given that no testing possible on the samples to 2.5m. The sand and gravel content would however suggest heave would be unlikely.
- CET Levels Monitoring updated to 17th August 2015 (6 readings 10/10/14 – 11/8/15)
- Clarification received 27th October 2015 that:

"I don't think it would be appropriate to obtain moisture contents within a remote borehole at we may not be comparing soils with similar characteristics. I have therefore undertaken a heave assessment based on the moisture contents within the borehole compared against a control moisture content taken as the onset of desiccation ie 0.4 x LL. This also equates to the moisture content of the clay at depth beneath the influence of the roots.

The indicated heave of 54mm is theoretical and does not in our experience indicate the actual amount of heave/recovery that occurs following tree removal. I don't believe the theoretical amount of heave indicated suggest that there will be a significant issue following tree removal. Insurers would in any case be prepared to deal with any damage resulting from heave should this occur. Insurers preference would be for the tree to be removed to prevent ongoing seasonal movement/damage under the influence of the tree. If the tree is not removed then we would have to consider underpinning as a means to maintain stability and may seek to recover these costs should the application to fell be unsuccessful".

The damage is described in the Engineering Appraisal Report as:

- The boundary wall appeared to be being lifted by large tree
- Depression to the paving
- Tapered vertical and stepped cracking externally with slight internal cracking to bay located at the front left hand corner of the house
- The level of damage is slight, and is classified as category 2 in accordance with BRE Digest 251

In respect of heave, the Engineering Appraisal Report notes “It is therefore my opinion that the desiccation represents purely seasonal desiccation rather than persistent moisture deficit and I am not of the opinion that long term heave will result should the Cedar tree be removed. In addition I am not of the opinion that heave of the clay subsoil is a threat to adjacent property.” The responses to requests for a ground heave assessment ‘as the Cedar predates the properties in this part of Parson Street by a considerable period’ are cited above.

The houses that occupy this part of Parson Street were constructed between the two World Wars on the site of a previous large residential property. The Cedar of Lebanon was retained when the redevelopment took place and the tree predates the present housing by a number of decades. Not only were the houses built with the Cedar in situ, but the much more recent boundary wall and paving are more than a hundred years younger than the tree – it is therefore obviously possible to construct a boundary wall and lay pavements in the presence of a large pre-existing tree, but appropriate techniques need to be used to ensure a harmonious relationship between the tree and structures that can be sustained in the long term.

It is understood that the boundary wall was built about 10 years ago and the damage has apparently been noted only within the last two years. The damage takes the form of cracking and displacement mainly along mortar lines, both of the end pier adjacent to the highway boundary and more particularly close to the tree. The wall directly abuts the trunk and the bark has started to envelop part of the closest brick. No foundation details have been provided for the wall.

Our Structural Engineer having assessed the information notes in respect of the boundary wall:

1. *The damage to the boundary wall is consistent with subsidence of foundations and direct bearing pressure from tree growth.*
2. *The most likely cause of damage to the boundary wall is subsidence of the shallow foundations due to tree root action and inadequate allowance for future tree growth when the wall was constructed.*
3. *The wall appears to be of relatively recent construction and therefore should have taken into account the current guidance for building near trees.*

Herringbone brick pavements cover almost all of the front garden area of 63 Parson Street, and there is some undulation evident, particularly near to the base of the trunk. The surfacing extends very close to the trunk and does not appear to have lain with sufficient

regard for the growth of the very large Cedar which predates the pavements by decades, if not centuries. It is possible to repair / replace the paving using appropriate techniques without felling the tree.

In respect of the damage to the bay, our Structural Engineer notes:

1. *The external cracking to the front bay is considered slight, approximately 2mm wide, and appears to be old damage.*
2. *The monitoring results indicate the cracking to the bay is due to tree root action.*

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 unclear why the author of the Engineering Appraisal Report suggests that "...the desiccation represents purely seasonal desiccation rather than persistent moisture deficit and I am not of the opinion that long term heave will result should the Cedar tree be removed". The age and size of the Cedar are such that a persistent moisture deficit is likely to have been present since at least Victorian times. Given the tree's significant age, the houses are likely to have been built on ground that was already desiccated and rehydration may have potential to result in heave. Our Structural Engineer requested a heave assessment and notes:

1. *In the absence of soil test results from a control borehole the assumptions used in the ground heave calculation are reasonable but does make the heave assessment less reliable.*
2. *A ground heave of 54mm is significant and is likely to cause further damage to the property. I note the insurer is prepared to deal with any further damage to this property, however has the risk of heave damage to other nearby properties been assessed, the closest being no.61.*

61 and 63 Parson Street are both semi-detached properties. 59 and 61 Parson Street form one pair of semis, 63 and 65 comprise the adjacent pair (there are adjoining garages creating a link between 61 and 63). There are thus potential implications for several properties if the calculated "ground heave of 54mm is significant and is likely to cause further damage".

In view of the heave implications, the damage having been assessed as BRE Category 2, and the potential to replace / repair both the wall and the paving with the tree retained, it may be questioned whether the proposed removal of the TPO Cedar of Lebanon 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 agent has indicated that *"estimated repair costs are likely to vary between £14,000 and £25,000, depending upon whether the tree/s can be removed or have to remain"* and *"If the tree is not removed then we would have to consider underpinning as a means to maintain stability and may seek to recover these costs should the application to fell be unsuccessful"*.

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 our Structural Engineer has noted *"The most likely cause of damage to the boundary wall is subsidence of the shallow foundations due to tree root action"* and *"The monitoring results indicate the cracking to the bay is due to tree root action"*.

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 Cedar of Lebanon'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 the tree's removal, there is likely to be a compensation liability (the applicant indicates repair works would be some extra £11,000 if the tree is retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION

Matters addressed in the body of the report. The OCA recommended 'Vegetation management to address risk of future subsidence' removal of a Sycamore and Beech tree both growing in a small bed on the other side of the frontage of 63 Parson Street was implemented in January 2015 – these trees were not included in a Tree Preservation Order.

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 is seeking consent for the felling of the prominent mature Cedar of Lebanon standing on the flank boundary between the front gardens of 61 and 63 Parson Street, it being alleged that the tree is implicated in property damage at 63 Parson Street.

The application was submitted by OCA UK Ltd and registered on 14th September 2015.

The proposed felling of the Cedar would be significantly detrimental to the streetscene and would result in the loss of a substantial mature tree of historic interest.

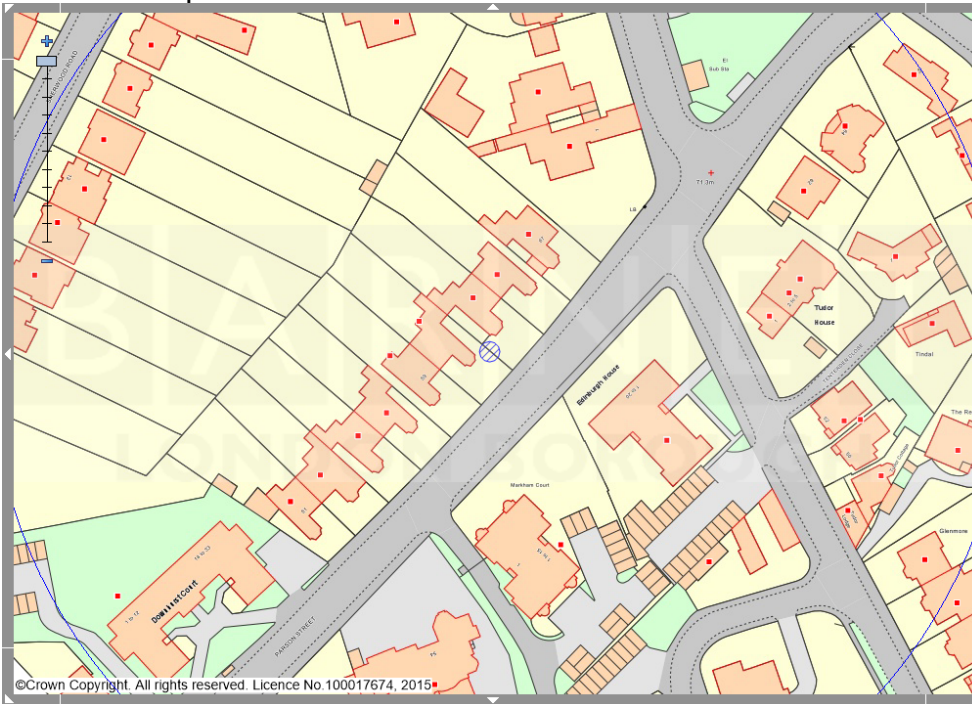
Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree, it is necessary to consider whether or not the proposed felling is justified as a remedy for the alleged subsidence damage on the basis of the information provided, particularly in the light of the Structural Engineers' concerns about heave.

If it is concluded on the balance of probabilities that the Cedar of Lebanon'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 the tree's removal, there is likely to be a compensation liability (the applicant indicates repair works would be some extra £11,000 if the tree is retained) if consent for the proposed felling is refused.

However, particularly given the amenity value of the tree, 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.

Site location plan:



Extract from 1896 Ordnance Survey map:

