

# **BARNET**

**LONDON BOROUGH**

## **COMMITTEE REPORT**

**LOCATION:** Windsor Open Space  
(Rear Of 49 Broughton Avenue)  
London  
N3 3EN

**REFERENCE:** TPP/0360/17 **Received:** 19 May 2017

**WARD:** Finchley Church End **Expiry:** 14 July 2017

**CONSERVATION AREA** None

**APPLICANT:** Mr Andrew Digby – Arboricultural Officer in Barnet Council's Greenspaces Team

**PROPOSAL:** 1 x Oak (Ezytreev Reference 424012) - Reduce specified lowest lateral scaffold limb by up to 6m leaving approx 1m of growth on each upright, (Remove deadwood and remove hanging limb), Reduce away from building to allow 4m clearance. 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 pruning of 1 x Oak (Ezytreev Reference 424012) as specified above, standing in area A1 of Tree Preservation Order, either:**

REFUSE CONSENT for the following reason:

1. The proposal will detrimentally affect the appearance of the tree of special amenity value and the specified treatment would be premature in the absence of occupation of the structure.

Or:

### **APPROVE SUBJECT TO THE FOLLOWING CONDITION**

1. The branches shall be pruned in accordance with the recommendations in British Standard BS3998:2010 (Recommendations for Tree work).

Reason: To safeguard the health of existing tree(s) which represent an important amenity feature.

That the Committee grants delegated authority to the Head of Development Management or Head of Strategic Planning to make any minor alterations, additions or

deletions to the recommended conditions and obligations as set out in this report and addendum provided this authority shall be exercised after consultation with the Chairman (or in his absence the Vice- Chairman) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

## Consultations

Date of Site Notice: 8<sup>th</sup> June 2017

Consultees:

Neighbours consulted: 0

Replies: 9                      0 support                      9 objections

Some of the comments received during the public consultation for this application to undertake treatment to an Oak tree included within a Tree Preservation Order relate to objections about the presence of a structure (referred to by some as a “mobile home”) in the rear garden of number 49 Broughton Avenue and also to retention of screening around the rear garden of 49 Broughton Avenue, rather than to the proposed treeworks *per se*.

Although there has been conflation of issues in some of the objection responses, it is necessary to disentangle the matters which can properly be taken into account in determining the appropriateness of treeworks – i.e. the impact of the proposed pruning on the Oak in the context of Windsor Open Space; and those that relate to the lawfulness or otherwise of the structure and / or screen – which are subject of separate planning enforcement investigation(s) / application(s).

Whilst the presence of the structure is a factor that has led to this current application for the proposed treeworks to the subject Oak tree, this application relates solely to the determination whether (or not) consent should be granted for the specified pruning of the tree and not to the lawfulness or otherwise of the structure or screen – representations about matters which are beyond the scope of this application have been included in a separate Appendix to this report (Appendix 1).

There has also been some misunderstanding of the status of formally submitted consultation responses citing an application reference number (e.g. representations via the public access software or addressed to the named Case Officer for an application) and correspondence sent to Greenspaces Officers, Members, and / or Enforcement Officers (e.g. in connection with enforcement investigation(s)) – such latter correspondence is not, and cannot be, considered as representations on an application for consent to treat a tree included in a Tree Preservation Order (TPO). For the avoidance of doubt, all of the representations sent to the Planning Trees team during the public consultation period for this application and marked as relating to this current treework application are included in the grounds of objection listed below and representations listed at Appendix 1 of this report.

The grounds of objection to the proposed treeworks are provided below:

## Objections:

- *“I hereby raise objection against the proposed work on what is a very old, much loved and healthy oak tree. I appears that this work is only proposed because of an overly large 'mobile' structure that has been erect so close to the Windsor Open Space boundary that is in breach of the spirit, if not the word, of Planning regulations. Please will you, who have responsibility to protect our environment, start doing so.”*
- *“I am appalled that this application on an established TPO should even be considered. Oak trees such as these in my professional view should not be tampered with or touched, this is why they have a TPO on them in the first place. Such trees do not recover from such treatment especially since your planning department has disgracefully allowed building over the tree root system, this should not have been allowed. These oak trees are part of the essential 'green lung' for London and should not be tampered with at all. This work must not go ahead just to appease a rich person's whim, there are more important issues here, Oak trees have an extensive biodiversity of micro-organisms living on them, they are part of England's botanical heritage and part of the heritage for future generations.”*
- *“An oak tree with a TPO. No further comment should be needed.”*
- *“I am writing to protest in the strongest terms against this proposal which is in contravention of the spirit and the law governing tree preservation orders. This beautiful tree enhances the environment in Broughton Avenue and Windsor open space and is not in need of such drastic and probably damaging surgery. The Council is proposing this work only because it has mistakenly allowed the construction of an oversized and unsightly "mobile" home in the rear garden of 49 Broughton Avenue which is affecting the tree's root system. Rather than vandalising the tree the Council should have the courage to carry out the appropriate enforcement action to mitigate the damage this construction has caused.”*
- *“This tree has a TPO on it. It is a disgrace that the wealthy seem to ride roughshod over our cultural heritage, with the collusion of the council. The 'landowners' Having built a mobile home which is damaging the roots of this beautiful English Oak. Symbol of the strength and resilience of our sacred land. These people have no concerns for the environmental destruction of trees, which are of multiple benefit. These trees are a haven and habitat for so many creatures. Birds, bees, insects. As a London beekeeper and Eco activist I must object most strongly to this selfish destruction. Many green activists and organisation are trying to save out Trees, which are vital to the cities resident well being and help to clean out air. Perhaps the owners plan to clear their property of any living thing in order to sell with planning permission? Just a guess. Or premonition. London must look after its ancient trees. And not kow tow to the whims of the rich and influential. The council is elected to protect our heritage and safe guard our wildlife, trees and plants. Trees are the lungs of the city.”*
- *“We are writing to ask you to consider our concerns about the butchering of a beautiful healthy well over a hundred year old Oak tree to the rear of 49 Broughton Avenue N33EN. The root system is now under stress due to the amount of lorry loads of hardcore and lorry loads of topsoil, sleepers that form the base, concrete posts that hold the sleeper base together plus paving and concrete placed in the rear garden of 49 Broughton Avenue. The proposed works by The council will most*

*certainly place it under even more stress perhaps causing it to die. We were under the illusion that A TPO protects a tree from wanton damage. It is at present a healthy tree. There will be no guarantee for its future health if this is allowed to happen. It has been there for well over a 100 years and we have watched it grow and mature and enjoyed seeing it from our bedroom window every morning for the past 42 years. The views from our bedroom windows have been transformed from beautiful to painful. The only things of beauty left for us are the Oak Trees. Mr. Atwal and his wife have made several comments over the years about asking the council to cut the Oak trees down. This gives them the perfect opportunity. They have had all of their trees removed and over the years have dumped any cut branches and rubbish in to the Open Space from their garden. They have no feeling for the environment. This has been demonstrated by the removal of their natural garden and replaced with a structure, concrete and paving. It is immoral to cut the oak on the basis that it might damage a trailer that should never have been given permission to be sited so close to the boundary of WOS. From our viewpoint it feels as if Mr. Atwal is getting all that he wants and everyone who uses the WOS are his victims. Trees give us Oxygen and protect us from the ever increasing pollution in London. They house wildlife. It takes another hundred years to replace what we are losing.”*

- *“in order to establish a fair and transparent consideration of the proposal by committee members, ALL comments, whether objections or support, must be made available to members and the public as documents on the planning portal. Failure to do so will invite a formal complaint about the standard of care given to this application. Objections were sent to officers eg. Andrew Digby, Greenspaces, Sam Amoko- Adofo or Iain Sutherland Thomas. They have not appeared on the planning portal. Could you please find them and add them to the comments made by the public regarding the above application?”*
- *“The application is not correct. Andrew Digby has stated that he is the owner of the Oak Tree. Andrew Digby does not own the tree. Barnet is the owner of the tree. A new application should now be issued. This makes the current application null and void.”*
- *“I cannot see how reducing the crown of this wonderful old oak tree and removing limbs to 1m. off the boundary can save this tree. It stands in the middle of the fence and now has to contend with a heavy mobile home on its roots. This is a sad state of affairs that a wonderful tree has to be removed bit by bit to accommodate a structure that should never have been placed under it!”*
- *“Immediately outside the boundary and on Council property is a mature oak tree protected, I think, by a Tree Preservation Order. The health of this tree has been compromised both by being incorporated into the foundations of the new construction which cover part of the trunk and, of course, the root system. I note that there is an application (TPP/0360/17) to cut back some of the branches of this tree overhanging the new building in case they should fall and damage it. It may well be that branches not overlooking the applicant's property will also have to be removed to make sure it retains its stability. It seems to me - and I imagine to councillors also - that a full discussion should be held at –ctd.” [end of comment]*
- *“I thoroughly object to any work being done to a beautiful ancient tree that enhances the environment, gives us oxygen, houses wild life and should be protected by the Greenspaces team. After all is said and done it has a TPO on it*

*and stands at the entrance to Windsor Open Space. It may not live after the work has been carried out due to it's roots being covered with hardcore, concrete and an extremely heavy mobile Home. This is simply vandalism that should not be permitted. No proper surveys have been carried out on the impact of the loss of the tree to the environment. No surveys have been carried out on the effect of the water table on a flood plain once it has been severely reduced. This is Greenspaces rushing to avoid any insurance claims for damage to a structure that should never have been given consent in the first place. A prior survey to consent would have revealed the trees and their protected status thus avoiding this application.”*

The relevant matters raised are discussed in the body of the report.

## **MATERIAL CONSIDERATIONS**

### Relevant Recent Planning History:

#### Oak tree

Whilst there have been a number of previous applications for treatment of other trees in the Windsor Open Space which are also in Area A1 of the Tree Preservation Order, there have been no previous recent applications for treatment of the Oak tree that is subject of this application.

### Recent Planning Applications and Certificates at 49 Broughton Avenue, London, N3 3EN

**F/02335/09** – Retention of raised terrace and proposed new privacy screen.

- Approved subject to conditions 11<sup>th</sup> August 2009.

**16/6998/192** – Proposed lawful development certificate: - Erection of mobile home in rear of garden.

- Deemed Unlawful 24<sup>th</sup> January 2017.

**17/1267/192** – Proposed lawful development certificate: - Caravan/mobile home in rear garden.

- Deemed Lawful 14<sup>th</sup> March 2017.

**17/3448/RCU** – Erection of screening to rear of garden.

- Registered 1<sup>st</sup> June 2017 and is pending consideration.

## **PLANNING APPRAISAL**

### 1. Introduction

Windsor Open Space is a Council owned / maintained Public Open Space to the rear of residential roadways east of Holders Hill Road and west of Hendon Lane. It is within the Lower Dollis Brook Site of Borough Importance Grade II for Nature Conservation. The

Dollis Valley Green Walk - which was developed and implemented by the London Borough of Barnet in 1992, and now forms part of Walk London's extensive network of walks and provides a link in both the London LOOP and the Capital Ring – passes through Windsor Open Space and adjacent to the Oak tree that is subject of this application.

## 2. Appraisal

### Tree and Amenity Value

The subject Oak stands within the Windsor Open Space immediately adjacent to the rear boundary of 49 Broughton Avenue, London, N3 3EN. The roadway of Waverley Grove runs through the Windsor Open Space across a bridge over the Dollis Brook and the subject Oak stands approximately 10 metres north of the roadway/bridge.

The tree is visible from Waverley Grove adjacent to the flank boundary of 49 Broughton Avenue. The top of the tree is also visible from Broughton Avenue above the houses. The tree can also be seen as part of a group from within the Windsor Open Space.

Trees are an integral part of the character and appearance of the parkland. Along with the other trees and vegetation within Windsor Open Space, this Oak tree contributes to public amenity by helping to screen and soften the built form of the adjacent residential properties. In common with other mature trees, this Oak will also have benefits for the local environment – providing habitat for wildlife and helping to filter pollutants.

The Oak is a mature tree about 18 metres in height and with a trunk diameter of 95cm (measured over the bark at 1.5 metres above ground level). The crown of the tree has been previously lifted to about 4-5 metres from ground level. The lowest limb (proposed for reduction) arises just below this level from the south-eastern side of the trunk and extends towards the garden of 49 Broughton Avenue. There has been some previous reduction to branches arising from this limb. The tree has had some previous breakage of branches/limbs and a limb on the southern side of the tree arising from the trunk at about 6-7 metres from ground level ends in a tear as a result of previous breakage. Below this there are some old wounds/apparently localised pockets of rot which have resulted from the historic loss of other branches. The proximity of other adjacent trees and the previous loss of limbs/branches have affected the crown shape of this tree - the crown of the tree is unbalanced with a bias towards the south/south-east (i.e. the garden of 49 Broughton Avenue and Waverley Grove roadside). On the eastern side of the trunk at about 8-9 metres from ground level there is a small cavity/bird hole. The physiological condition of the tree appears reasonable with foliage of normal form, density and colour throughout its crown. There is some deadwood apparent (the majority of the deadwood is very minor) and a very small amount of dieback at the tips of a few branches.

### The application

The application in respect of proposed treatment to an Oak tree standing in the Windsor Open Space to the rear of 49 Broughton Avenue, London, N3 3EN was received via the Planning Portal on the 19<sup>th</sup> May 2017. The Oak, identified in the Greenspaces' Ezytreev records as Reference 424012, stands in Area A1 of the Tree Preservation Order. The application form, three photographs of the tree and a plan identifying its location were

submitted on behalf of the London Borough of Barnet by Mr Andrew Digby, an Arboricultural Officer in the Council's Greenspaces and Streets Team – who have responsibility for trees that are owned/maintained by the Council. The application was valid upon receipt and registered accordingly.

The reason for the proposed treatment of the Oak cited on the application form is:

*“In view of the change in land use underneath the canopy of a mature TPO'd Oak tree that has previously had large branch/limb loss as a result of storm damage. It is now appropriate to limit the Councils risk by reducing the crown of this tree and to remove the deadwood and split hanging branch.”*

The submitted photographs show the limb proposed for reduction and also the proximity of that limb to the structure in the rear garden of 49 Broughton Avenue.

Having read the objections to the application, the applicant, in an e-mail dated 28<sup>th</sup> June 2017 clarified:

*“Many of the objections are talking as if the tree will be removed which is not the case. Others are talking about the hard-core foundations of the temporary development which is not under my control. The bulk of the objection are based on the development rather than the tree works... I'm just recommending the works from an unbiased point of view based on safety and the increased risk that the Council has as the tree owner that I am responsible for. There is no collusion with the resident and the works recommended are the minimal extent that I would consider to reduce the risk. It's not like we are pollarding the tree or reducing it heavily. We are removing the weak point and reduce the target zone. If my recommendations to reduce the risk of the tree are not upheld there may be a liability issue that the planning department will need to consider should the tree fail in the future.”*

A further e-mail followed on 4<sup>th</sup> July 2017, which included additional photographs and information:

*“The tree was inspected on the 05/05/2017 by A.Digby & G.Thornhill as a result of two separate enquiries; One regarding a complaint about the temporary structure that has been erected underneath the crown of the tree, with concerns for the trees health. The other enquiry was from Mr Atwal owner of [49] Broughton Avenue whom logged an enquiry with the Parks Department requesting the tree to be inspected by a Tree Officer due to branches falling off.*

*The tree inspection found minor deadwood which is typical of this species and age of tree, not a major concern but common to remove it if a target is underneath the canopy and if other aerial pruning works are planned.*

*Prior to the inspection I [Andrew Digby] was aware that this tree has dropped sizeable branches in the past, attached are images of the tear (Tear 1 & 2 taken at the time of inspection) where a large limb fell on the opposite side to 59 Broughton Ave. The crown is now unbalanced due to this limb falling (See Unbalanced 1), leaving the large lower limb that is proposed for pruning overhanging the temporary habitable structure. This limb appears to be now overextended as previously it was sheltered and growing to reach for light it is now more exposed and potentially could be subsiding with it partially supported*

*by the conifers underneath. The proposed reduction in length of this limb by up to 6m is to reduce its weight taking it to a suitable growth points, this reduction includes reducing the upright branches leaving approximately 1m uprights which will also aid in reducing the weight on this limb.*

*See annotated photos for approximate pruning points (Anno 1 & 2).*

*The tree inspection highlighted previous tears in the upper crown and a bird hole which indicated some crown decay. See (Defects and estimated crown reduction attachment)*

*Additionally a THREATS (Tree Hazard Rating, Evaluation And Treatment System) hazard calculation was carried out to determine the risk. The tree scored 480" [corresponding to Remediate within 3 months, reinspect after gales in the meantime (Force 7+)].*

The additional photographs showed the tear at the end of the limb which has previously broken, that at present the tree has an unbalanced crown shape, annotated photographs showing the proposed reduction of branches at the end of the lowest limb and annotated photographs showing some of the defects within the crown of the Oak tree that have led the applicant to apply for the proposed treeworks.

Mr Andy Tipping (The Trees and Woodlands Manager of the Council's Greenspaces and Street Team) also added the following statement in the e-mail of the 4<sup>th</sup> July 2017:

*"My only comment on this case relates to the fundamental principles of trees and risk. Tree hazards can become risks based on their 'target', previously this was a back garden that would have been subject to occasional occupation form family members. The new building here which we understand will be occupied by an elderly person, will have almost 100% occupancy (including during storms and high winds) and therefore we now have an increased risk should branches fall from this tree. What we are proposing is to reduce this risk.*

*A far as the placement of the building, this was carried out I understand under Permitted Development rights and is not for us to comment, all we have to do is manage this dynamic situation. I understand that no roots were excavated endangering tree stability and therefore there is no concern regarding this either."*

It may be noted that one of the sizeable branches that dropped within the last year still lies *in situ* on the Windsor Open Space side of the boundary – it came down as a result of strong winds, in circumstances completely unrelated to works being undertaken at 49 Broughton Avenue. Further, it should be observed that the e-mail from Andy Tipping confirms that there is no concern about root severance endangering tree stability.

### 3. The proposed treeworks in the context of the site.

The structure at the end of the rear garden of 49 Broughton Avenue has not been constructed pursuant to any planning permission having been approved by the Council as Local Planning Authority (LPA) – thus the LPA has not able to make a formal prior determination as to whether the location, methodology, size and implementation of the structure would be contrary to planning policies, detrimental to wildlife, or damaging to tree(s) included in a Tree Preservation Order. Instead, the structure has been installed



pursuant to Certificate(s) of Lawfulness – which can only take account of whether or not it benefits from “Permitted Development” rights or is otherwise not a “development” for which planning permission is required. Consideration of a certificate of lawfulness is one of law rather than of the merits of a structure.

In this case, the placement of a caravan/mobile home in the rear garden of 49 Broughton Avenue was considered to be Lawful and exempt from planning control under Lawful Development Certificate 17/1267/192 on 14<sup>th</sup> March 2017. Consideration of the Lawful Development Certificate could not take account of any potential impact on the trees in Windsor Open Space included in the Tree Preservation Order; or any impact on neighbours; or any other environmental factors – because the LPA could only determine whether or not the submitted information demonstrated the lawfulness of the structure.

There has been detailed planning enforcement investigation undertaken in response to concerns raised by Members and local residents – which have concluded that, at present, with the exception of the rear boundary fence, the activities taking place on site are deemed lawful. A planning application has been registered under reference 17/3448/RCU for retention of the rear boundary fence and is currently under consideration – it is entirely separate from the current treeworks application. The planning enforcement investigation, too, is entirely separate from the current treeworks application.

The current treeworks application, which is proposed by Greenspaces who have responsibility for Council owned / maintained trees as “now appropriate to limit the Council’s risk” has two aspects – one in relation to the ‘making good’, removal of deadwood and a hanging limb that results from previous storm damage; the other in respect of pruning back to provide clearance of the structure which is nearing completion.

The ‘making good’ by pruning back to suitable growth points storm damaged limbs / branches (particularly where a tree is close to a footpath or other area of high usage) accords with good arboricultural practice. The proposed removal of deadwood and hanging limb could be undertaken pursuant to exemption provisions in the Town and Country Planning (Tree Preservation ) (England) Regulations 2012. The lowest limb has had some previous branch reduction many years ago from which there has been subsequent regrowth – the proposed reduction of the specified lowest lateral scaffold limb by up to 6m leaving approx. 1m of growth on each upright would not exceed these previous reduction points.

It is also proposed to reduce away from the new structure to allow 4 metres’ clearance. Such treatment may have the result of making the structure more visible in the streetscape, as currently the Oak’s lower canopy contributes to making the structure less obtrusive.

It could be argued that the potential impact on TPO tree(s) could have been taken into account if the construction of the structure had been subject of formal planning permission and, if appropriate, conditions could have been imposed to safeguard them – whereas, because of permitted development rights, the Council is having to react to a landowner’s choice to position a structure beneath overhanging branches of pre-existing trees. In this

regard, there may be some difference in terms of potential liability in respect of treeworks that would be reasonable on arboricultural grounds for branches overhanging a garden; as against the additional works attributable to the structure that has been positioned beneath the trees without the Council being able to influence the siting or implementation (particularly if the structure has resulted in any damage being caused to the tree during installation).

Further, in terms of the fundamental principles of trees and risk management and their responsibility for managing a dynamic situation, the Greenspaces' Trees and Woodlands Manager has pointed out that "Tree hazards can become risks based on their 'target', previously this was a back garden that would have been subject to occasional occupation from family members. The new building here which we understand will be occupied by an elderly person, will have almost 100% occupancy (including during storms and high winds) and therefore we now have an increased risk should branches fall from this tree. What we are proposing is to reduce this risk." It should be noted that the structure has not yet been completed and is currently unoccupied. Whilst there may be a reasonable expectation that it would be occupied in due course, basing a treework specification on an assumption as to the nature of a future inhabitant may, arguably, be premature? Indeed, taking up occupation may be a relevant factor in respect of potential enforcement action.

Notwithstanding some of the consultation responses, the Greenspaces team is proposing to prune the Oak – not to remove it; nor is there any reason to believe that the proposed pruning as specified would result in the tree's demise.

The proposed pruning works would be extremely unlikely to have any significant impact on wildlife or the wider environment, especially given the Oak is an edge tree in a large Public Open Space parkland site with a wide diversity of habitats – however, if consent is granted, the Decision Notice would include the following informative: *"Any and all works carried out in pursuance of this consent / notice will be subject to the duties, obligations and criminal offences contained in the Wildlife and Countryside Act 1981 (as amended). Failure to comply with the provisions of the Wildlife and Countryside Act 1981 (as amended) may result in a criminal prosecution."*

#### 4. Legislative background

As the Oak is included in a Tree Preservation Order, formal consent is required for its treatment from the Council (as Local Planning Authority) in accordance with the provisions of the tree preservation legislation. In addition to this statutory requirement, the trees at Windsor Open Space are under the direct control of the Council's Greenspaces team which has responsibility for Council owned / maintained trees.

The Council, as a responsible landowner, adheres to nationally acknowledged National Tree Safety Group guidance on what is expected in terms of fulfilling moral and legal responsibilities with respect to management of Council owned / maintained trees. Under both civil and criminal law, an owner of land on which a tree stands has responsibilities for the health and safety of those on or near the land and has potential liabilities arising from the falling of a tree or branch. The civil law gives rise to duties and potential liabilities to pay damages in the event of a breach of those duties. The criminal law gives rise to the risk of prosecution in the event of an infringement of the criminal law. Generally, the civil

law duty is to take reasonable care for the safety of those who may come within the vicinity of the tree, the standard of care being that of 'the reasonable and prudent landowner' – the tree owner is not, however, expected to guarantee that the tree is safe. The Greenspaces contention "*If my recommendations to reduce the risk of the tree are not upheld there may be a liability issue that the planning department will need to consider should the tree fail in the future*" is slightly inaccurate in that, as this application is being determined by Members, any potential liability would accrue to the Council rather than the planning department.

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.

In this case, the proposed treatment may have some impact on the appearance of the lower canopy of the tree and render the structure in the rear garden at 49 Broughton Avenue more visible in the street scene, especially when viewed from Waverley Grove. In the light of this assessment, a decision needs to be made as to whether or not the proposal is justified having regard to:

- The previous storm damage and history of branch failure
- The appropriateness of seeking to reduce the risk to the Council in the event of future branch failure
- The appropriateness of granting consent to the proposed treatment prior to occupation of the structure
- The appropriateness of the specified treatment or whether other treatment may address concerns about potential liability to the Council

In accordance with the Tree Preservation legislation, the Council as Local Planning Authority (LPA) must either approve or refuse the application i.e. proposed specified pruning. The LPA has no powers to require lesser works or a programme of cyclical pruning management that may reduce the risk – however, the Council in its Greenspaces' capacity as tree owner and with responsibility for maintenance does have powers to undertake lesser works or a programme of cyclical pruning management that may reduce the risk of alleged tree-related property damage (subject to appropriate Tree Preservation Order consent).

## **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**

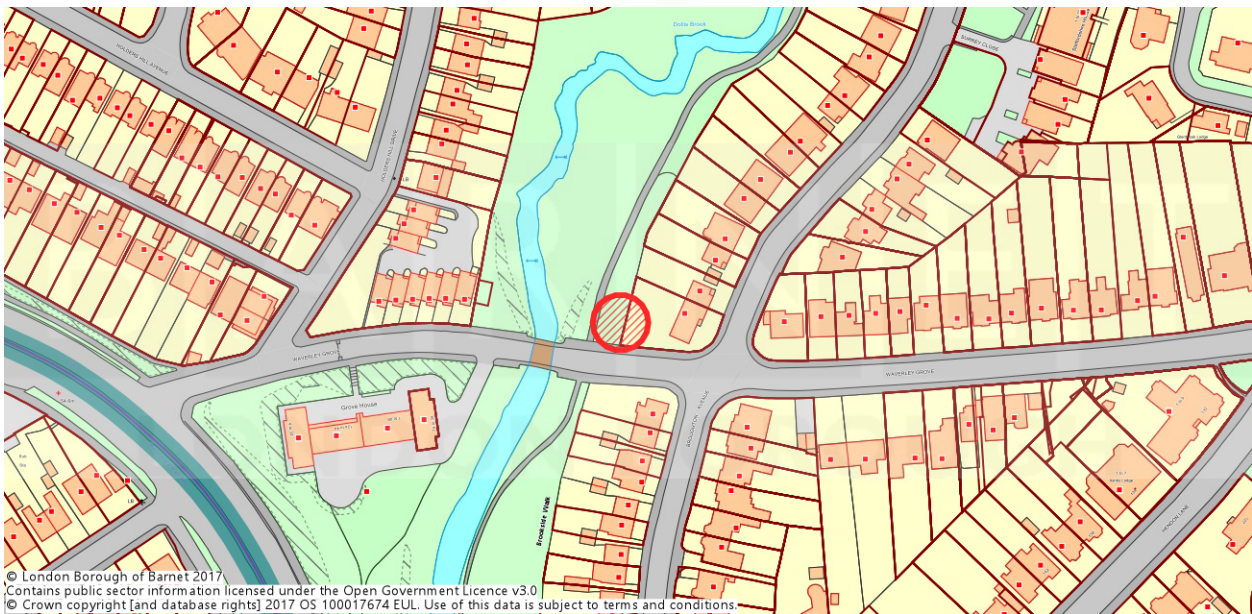
The applicant, Andrew Digby as Greenspaces Arboricultural Officer on behalf of the Council, proposes to prune the mature Oak standing in Windsor Open Space to the rear of 49 Broughton Avenue by reducing the specified lowest lateral scaffold limb by up to 6m leaving approx. 1m of growth on each upright, (removing deadwood and hanging limb), reducing away from building to allow 4m clearance.

The reason cited on the application form for the proposed treatment is *“In view of the change in land use underneath the canopy of a mature TPO’d Oak tree that has previously had large branch/limb loss as a result of storm damage. It is now appropriate to limit the Councils risk by reducing the crown of this tree and to remove the deadwood and split hanging branch.”*

The proposed treatment of the Oak may have some impact on the appearance of the lower canopy of the tree and render the structure at 49 Broughton Avenue more visible in the streetscene – but some of the proposed treework would be exempt from TPO control and the reduction back to previous pruning points of an overextended limb and making good storm damaged limbs / branches accords with good practice and would be reasonable on arboricultural grounds for branches overhanging any garden. The proposed pruning would be extremely unlikely to have any impact on wildlife, nor is there any reason to believe that the specified treatment would result in the death of the tree.

If it is concluded that “it is appropriate to limit the Council’s risk” by the specified pruning, conditional approval should be granted for the application (and the ‘wildlife’ informative would be included on the Decision Notice).

However, given the amenity value of the tree, if it is concluded that on the basis of available information that the proposed treatment as specified is excessive and has not been demonstrated to be necessary at this time; it would be justifiable to refuse the application.



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### Appendix 1

Some of the representations received during the public consultation period relate to matters beyond the scope of this application – seemingly referring to the screening and / or structure – rather than to treatment of an Oak tree included within a Tree Preservation Order.

The below comments appear to relate to the application form submitted for application 17/3448/RCU – “Erection of screening to rear of garden” and not to the treework application that is currently being considered:

*“I am writing to ask how this application can actually be accepted as a statement of fact when the answers below given by the Applicant are not true? This makes his application null and void.*

*11-Foul sewage*

*Are you proposing to connect to the existing drainage system?*

*Applicant Answer No*

*The applicant has done this.*

*12- Assessment of Flood Risk*

*Is your proposal within 20m of a watercourse?*

*Applicant Answer No*

*Dollis Brook is less than 20m. Away from his fence*

*Within an area of risk of flooding*

*Applicant Answer No*

*Dollis Brook floods in wet winters. It is a known Flood Plain and the Environment Agency should have been contacted and their Flood maps used to determine the siting of the mobile home.*

*13-biodiversity and Geological conservation*

*Are there protected species on land adjacent to the site?*

*Applicant Answer No*

*It is a significant wildlife corridor that his screen backs on to. The Windsor Open Space  
There are two oak trees with TPO's on them*

*Important Habitats*

*Applicant Answer No*

*No survey was done to determine habitats. Several species of birds nest in the trees.*

*Trees and Hedges*

*Applicant answer No*

*What happened to the Oak Trees and other trees bordering his screen?*

*A full tree survey is required if there are trees of importance in the area that might be important as part of the landscape character*

*Applicant answer No*

*No tree survey has been carried out to determine the effect of this screen and the loss of light to the undergrowth.*

*Either the Applicant does.” [end of comment]*

The following comments appear to relate to the construction of the “mobile home” and not to the application for treatment of the subject Oak tree:

*“My objections are to the construction itself and not only to the screening and to the pruning of the Oak tree.*

*The new building seems to be a backland development framed in the way it is in order to evade any restrictions on such building. Rather more than the screening should be considered: the whole project should be referred to the Area Planning Committee for its decision.*

*What has been erected in the back garden of 49 Broughton Avenue appears to be a large immobilised 'mobile' trailer the wheels of which, if they are still attached, lie beneath fixed paving in front of the building which itself leads to a new access gate in the side fence of the property. The rear garden of 49 slopes steeply towards the public footpath - part of the Dollis Valley Green Walk. To provide a level standing for building this has been built up by at least 1m. at its closest to the fence separating the owner's garden from Council property and the walk.”*