

LOCATION: KINGSGATE HOUSE, AMBERDEN AVENUE, FINCHLEY,
LONDON N3 3DG

REFERENCE: TPO/CA/411

WARD: Finchley Church End

PROPOSAL: To seek authority for confirmation of Tree Preservation Order, without modification.

RECOMMENDATION:

1. That the Council, under Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (which replaces Regulation 5 of the Town and Country Planning (Trees) Regulations 1999 (as amended)) confirm the Tree Preservation Order at Kingsgate House, Amberden Avenue, Finchley, London N3 3DG without modification.
2. That the objector(s) be advised of the reasons.

1. MATERIAL CONSIDERATIONS

Relevant Planning Policies and Guidance Adopted

- Development Plan – Barnet Unitary Development Plan (2006) – Policy D12
- Local Plan – Core Strategy (Examination in Public Version May 2012) – Policy CS7

Relevant Planning History

- Report of Assistant Director of Planning & Development Management dated 23rd February 2012

Background Information/Officers Comments

There have been previous planning applications in 2008 and 2010 to redevelop the former Police Section House but these were withdrawn following a number of concerns raised e.g. by Members. Pre-application discussions have recently been taking place for a different redevelopment scheme of the site. Concern was raised by officers dealing with the pre-application discussions as the proposal has significant implications for the trees, and a Tree Preservation Order was made on 23rd February 2012 on the basis that it was expedient to do so in the interests of amenity in the light of these discussions.

Section 197 of the Town and Country Planning Act 1990 (as amended) imposes a duty on the local planning authority to make such Tree Preservation Orders as appear to be necessary in the grant of planning permission. The inclusion of tree(s) in an Order renders them a material consideration in determining planning applications and allows the Council to impose conditions to afford the tree(s) protection if considered appropriate.

On 6th April 2012, the Town and Country Planning (Tree Preservation) (England) Regulations 2012 came into force. One effect of these Regulations is to cancel the provisions in every existing Tree Preservation Order (TPO) and replace with provisions in regulations (rather than the body of the Order itself) The Regulations also consolidate existing legislation that deals with procedural matters for making and administering TPOs by using powers in section 192 of the Planning Act 2008 to replace the Trees regulations introduced in 1999 and 2008 as well as subsections 198(3), (4), (6), (8) and (9), and sections 199, 201, 203 – 205 of the Town and Country Planning Act 1990. However, Regulation 26(2) provides transitional arrangements that apply to Orders that have been

made but not confirmed at the commencement date, whereby such Orders apply provisionally until confirmed by the authority and must be confirmed within six months of 6th April 2012 if they are to have long term validity.

As part of the recent discussions, a 'Pre-Development Tree Condition Survey' prepared by Peter Wilkins of Ruskings Group Consultancy based on a site visit on 3rd November 2011 was submitted. The Survey details 32 individual trees, 5 groups of trees, some hedging and shrubs. It may be noted that of the trees in the Ruskings survey, 21 individual trees and 3 groups have been excluded from the Order, being considered inappropriate for inclusion - mainly because of their condition and / or previous treatment (hedges and shrubs could not be included).

The site is approx. 1.1 hectares – the land was formerly used as allotments prior to the development of the Police Section House and historic Ordnance Survey maps show ponds / well at the site. It is understood that part of the site may have been used for watercress beds and that there are still areas of dampness in some parts (anecdotal evidence suggests parts are prone to ponding and the lower floor of Clandon Gardens properties are affected by damp). The enhanced growth of some of the trees, particularly in the Lime avenue, is likely to be attributable to the variable moisture distribution across the site.

A number of trees in the Ruskings Tree Survey have been assessed as BS5837: 2005 Category B (i.e. making a significant contribution), and it is considered appropriate to include the following trees in a Tree Preservation Order (*TPO designation italicised*):

T6 and T7 – Weeping Silver Limes, early mature trees 13m and 16m in height on the Amberden Avenue frontage of the site (*Group G2 of TPO*)

T12 – Lime – mature tree 13m in height beside the existing Kingsgate House car park, to the rear of residential properties in Kingsgate Avenue (*T2 of TPO*)

T16 - Lime - mature tree 14m in height beside the existing Kingsgate House car park, to the rear of car park for Abbey Court, Clandon Gardens (*Group G1 of TPO*)

T17 – Weeping Silver Lime - mature tree 12m in height beside the existing Kingsgate House car park, to the rear of car park for Abbey Court, Clandon Gardens (*Group G1 of TPO*)

T20 – Atlas Cedar – early mature tree 16m in height close to the boundary with Abbey Court, Clandon Gardens (*T1 of TPO*)

T8 – Red Oak – semi-mature tree 13m in height close to the northernmost site entrance on Amberden Avenue, to the rear of the service road for residential properties in Kingsgate Avenue. The Ruskings survey assessed this tree as C category but, on inspection, it is considered the quality has been undervalued. (*T3 of TPO*)

TG4 – crescent shaped double row of early mature Limes averaging 16m in height along the North Circular Road boundary, assessed collectively as B category. Whilst 'hedges' cannot be included in an Order, a TPO may be made to protect trees in hedges or an old hedge which has become a line of trees of a reasonable height and is not subject to hedgerow management – it is considered that this is applicable to the mainly Hawthorn hedge (H3), which has also been assessed as B category. Given the importance of the screening buffer of trees along the North Circular Road boundary it is considered appropriate to include the double Lime avenue together with the Horse Chestnut group (T27 – T29) and the Norway Maple group (TG5) as well as the Horse Chestnut (T24) in an area designation – for the avoidance of doubt, the area boundary is aligned with the east / south-east site boundary and thus also incorporates the trees in the 'hedge' (H3). This would allow the Council a measure of control over replacement planting if poorer quality

trees should be removed, which is considered important if the integrity of the boundary screen is to be retained. (*Area A1 of TPO*)

The trees are very clearly visible from Amberden Avenue, Abbey Court flats in Clandon Gardens, North Circular Road as indicated above. The contribution to the streetscape of some of the trees is acknowledged in the Ruskins survey. The trees provide significant screening, both to the site and between the site and surrounding residential housing and roads. In particular the double Lime avenue forms a significant screen to the busy and noisy North Circular Road – the trees provide multifunctional benefits including visual barrier; ameliorating traffic noise; filtering particulates and other pollutants; moderating windspeed; as well as environmental attributes such as wildlife habitat. The height and location of the screening is of particular relevance given the scale both of Kingsgate House and the proposed redevelopment.

Inclusion of the trees in an Order would render them a material consideration in any planning application and allow the Council to impose conditions, if appropriate, to protect the trees.

Notices were served on the persons affected by the Order in accordance with paragraph 1(a) of Regulation 3 of the Town and Country Planning (Trees) Regulations 1999 (as amended) which was in force at the time the Order was made.

An objection has been received from:-

Arboricultural Consultant on behalf of Berkeley Homes (involved in pre-application discussions for the redevelopment proposals).

The Tree Preservation Order secures the protection of the trees on a provisional basis for up to six months from the date of making, but an Order needs to be formally confirmed for it to have long-term effect. The Council is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

The objections of the Arboricultural Consultant can be summarised as:

- 1) The reasons for the making of the Order are not satisfactorily explained
 - 2) The Council has protected trees with a low amenity value that are not worthy of protection
 - 3) The Order is contrary to Government Advice regarding Expediency
- He suggests that in his opinion that “A number of the trees protected do not ‘contribute significantly to the amenity of the area’ and do not provide sufficient amenity benefit to merit their protection under a TPO”.
 - He suggests “The TPO covers the vast majority of the mature trees growing in the site, with regard to the lack of public access and location of the site within a developed area, the wider public amenity value of the majority of the trees within the site is considered to be limited. With some trees having a marginally higher value than others depending on the vantage point and views into the site from the public realm. This TPO by its almost total inclusive nature covering almost all trees growing on and close to the boundary of the site makes no effort to determine those trees with a higher value.”

- He states “We do not believe that the removal of the protected trees ‘would have a significant impact on the local environment and its enjoyment by the public’.”
- He suggests “We do not consider that all the trees that are subject to the TPO are of sufficient merit to be incorporated in the comprehensive design associated with the re-development of this site.”
- He notes “The amenity value of the trees has not materially changed over recent months or years, and in recent months in light of the discussions with the LA the risk has in fact decreased and consequently we question the timing and expediency of this TPO.” Further, “Due to its timing, if the TPO’d trees are to be retained this TPO is a significant potential constraint which will have a considerable impact on the proposed re-development of this site.”

In response the Council's Tree and Landscaping Officer comments as follows:

(i) Section 198 of the Act empowers a local planning authority to make a Tree Preservation Order if it appears to be ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’ - it is to be noted that the Act does not define ‘amenity’; nor does it prescribe the circumstances in which it is in the interests of amenity to make an Order; nor does it define ‘tree’ or ‘woodland’; nor does it place a minimum size limit on tree(s). Neither the legislation nor the Guidance prescribes exactly the method for assessing amenity. The ‘amenity value’ of the trees has been assessed with reference to both the Arboricultural Consultant’s own survey and Officer’s own inspection.

(ii) The Order has been made because it is considered that the trees listed in the first schedule makes a significant contribution to the character and appearance of the area and are capable of providing public amenity for some considerable time. The TPO specifies individual trees, groups, and an area - the area designation is considered appropriate given the B categorisation of both the double avenue of Limes (TG4) and ‘Hawthorn hedge’ which incorporates a number of trees (H3), particularly as the Ruskins report has surveyed and assessed these trees collectively, rather than individually.

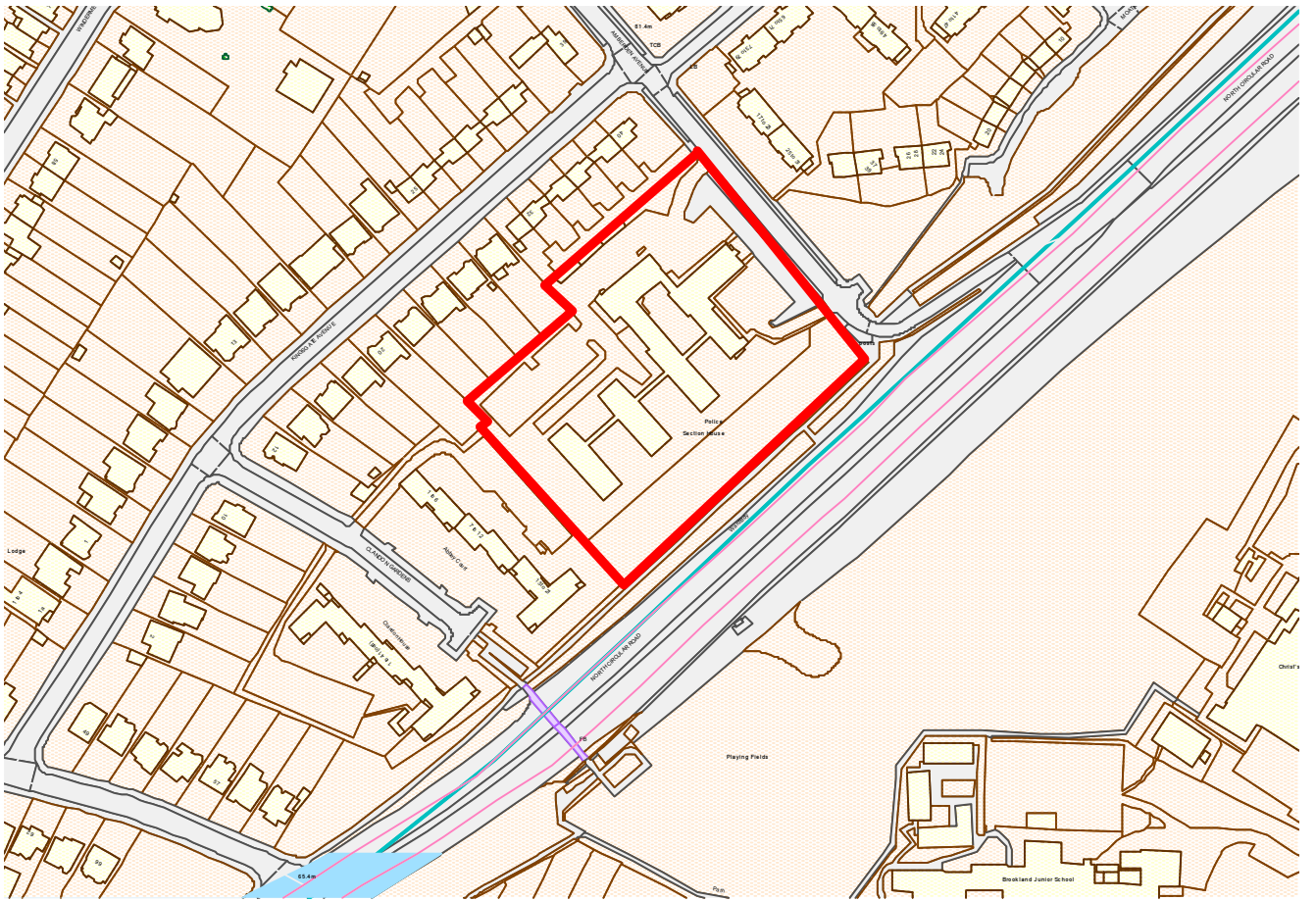
(iii) The Consultant’s assessment of the trees’ ‘Current Amenity Value viewed from the Public Realm’ seems to be based on visibility in isolation of any other benefits (such as screening, filtering noise and pollutants, wildlife habitat, environmental functions such as moderating windspeed and climate change mitigation). His assessment seems to have limited regard for the context and is contradictory in some places. For example, the contention in respect of the double row of Limes (TG4) “The amenity value of this vegetation is considered to be limited in comparison to the boundary hedge H3 and the local Authority owned trees beyond the site boundary in the public realm.” is countermanded by his assessment of both TG4 and H3 as BS5837: 2005 category B2 (i.e. landscape value and in such a condition as to make a significant contribution – a minimum of 20 years is suggested). It certainly does not seem that his assessment has included the views from the well-used footbridge over the North Circular linking Clandon Gardens with the playing fields; Christ’s College and Brooklands Schools; and Connaught Drive. Nor does it appear that he has considered views through the site from existing accesses.

(iv) The objection conflates the separate procedures of confirmation of the Tree Preservation Order and assessment of planning application for redevelopment. If it is considered that, because of implications for trees, a planning permission should be refused or granted subject to conditions to protect the trees, a Tree Preservation Order should be in place in accordance with the planning legislation. Confirmation of the Order would render the trees a material consideration in any planning application - the merit of trees and appropriateness of retention would be taken into account when assessing the planning application.

(v) Notwithstanding the ongoing pre-application discussions, the Tree Preservation Order was made in February 2012, when the Council became aware of the sale of land by the Metropolitan Police to Berkeley Homes, because it was considered that the risk / threat to the trees had increased.

2. CONCLUSION

The confirmation of the Tree Preservation Order is considered appropriate in the light of discussions about proposed redevelopment at Kingsgate House. For the reasons set out above, it is considered the identified trees contributes significantly to public amenity, and given normal arboricultural attention are capable of providing amenity value for a considerable time. It is therefore recommended that the Order be confirmed without modification.



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