

BARNET

LONDON BOROUGH

COMMITTEE REPORT

- LOCATION:** ROADSIDE VERGE LEECROFT ROAD ADJACENT TO HERTSWOOD COURT HILLSIDE GARDENS, OLD RECTORY COURT 61 WOOD STREET, AND 2 – 36 LEECROFT ROAD, BARNET EN5
- REFERENCE:** 18/TPO/037
- WARD:** Underhill
- 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 confirms the London Borough of Barnet Roadside Verge Leecroft Road adjacent to Hertswood Court Hillside Gardens, Old Rectory Court 61 Wood Street, and 2 – 36 Leecroft Road, Barnet EN5 Tree Preservation Order 2018 without modification.
 2. That the person(s) making representations be advised of the reasons.

1. MATERIAL CONSIDERATIONS

Relevant Planning Policies and Guidance Adopted

- Local Plan – Core Strategy (Adopted September 2012) – Policy CS7
- Local Plan – Development Management Policies (Adopted September 2012) – Policy DM01

Relevant Planning History

- Report of Service Director – Planning and Building Control dated 3rd August 2018

Background Information/Officers Comments

On 25th June 2018 the Local Planning Authority (LPA) received a completed application form submitted by a tree surgeon acting on behalf of the residents at Hertswood Court Hillside Gardens, Barnet, Herts, EN5 4AU which specified treatment to trees located both at Hertswood Court and also in the roadside verge of Leecroft Road adjacent.

As the trees were within the Wood Street Conservation Area, but not in a Tree Preservation Order, two separate s211 notices of intended tree works were registered (to reflect the different sites on which the trees were standing):

- **TCP/0426/18** - “Several saplings - Cut back along chain link fence adjacent to Hertswood Court” at Leecroft Road Adjacent To Hertswood Court Hillside Gardens, Barnet, EN5 4AU.

- **TCM/0421/18** - “1 x Pine - (Deadwood), Prune back overhang to chain link fence (approx. 2.5 - 3 metres); (1 x Pine - Deadwood); Several saplings – Remove; 1 x Lime - Prune back overhang by 2 metres” at Hertswood Court, Hillside Gardens, Barnet, EN5 4AU.

For a s211 notice of intended tree works, it is necessary only to submit sufficient details to identify the subject tree(s) and the treatment(s) proposed – there is no requirement for the information to be in any particular format (e.g. on a specified application form); provide any reason for the proposal; or have any supporting documentary evidence – it is a notification (rather than a consent) procedure and, at the expiry of the statutory six week notification period, the specified treatment can be undertaken.

For these two s211 Notices, the date of registration was 25th June 2018 – thus the six week notification period would expire on 6th August 2018.

In accordance with the Town & Country Planning Act 1990 (as amended), if the Local Planning Authority wishes to control treatment of a tree subject of a s211 notice of intended tree works, it must make a Tree Preservation Order (TPO). An application for TPO consent would then be required and would be determined in accordance with the provisions of the relevant legislation.

If a tree is included in a Tree Preservation Order, formal consent for treatment is required from the Local Planning Authority (subject to certain exemption provisions set out in the legislation) – it is necessary to submit an application form; reason(s) for the proposed treatment; and specified supporting documentary evidence as set out on the application form and associated guidance notes. The TPO treework application can be consented, either with or without conditions, or refused. The applicant / agent has a right of appeal to the Planning Inspectorate against refusal or conditions and it is possible to claim compensation from the Local Planning Authority for loss or damage caused or incurred in consequence of the refusal or conditions.

Section 198 of the Town and Country Planning Act 1990 (as amended) 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’.

National Planning Practice Guidance clarifies that:

“Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified.”

- The Guidance states that “‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.”

- The Guidance suggests the following criteria should be taken into account: “*Visibility* - The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public. *Individual, collective and wider impact* - Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:
 - size and form;
 - future potential as an amenity;
 - rarity, cultural or historic value;
 - contribution to, and relationship with, the landscape; and
 - contribution to the character or appearance of a conservation area.
- In terms of expediency, the Guidance notes “It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.”

The LPA received eleven objections to the proposed treatment of trees standing in the roadside verge of Leecroft Road (subject of TCP/0426/18). The grounds for objection can be summarised as:

- Leecroft Road is a private road and is maintained by the Leecroft Road Residents Association (LRRRA). No permission has been sought from or granted by LRRRA to carry out work to trees within the Leecroft Road verge.
- Hertswood Court have previously tried to “decimate” the trees in the roadside verge which LRRRA have prevented/resisted.
- The canopy of trees at the top of the road are very important in making the roadway a “*desirable place to live, both visually and to the many species of birds and wildlife we enjoy.*”
- “*There is no attempt to define which "saplings" need cutting back (e.g. diameter of less than 5cm) and I fear they will interpret this very liberally and cut back mature trees.*”
- “*The road itself dates back to 1895, possibly older and although there have been buildings since then, the majority of the vegetation, trees and wildlife are well established. In a suburb under extreme pressure to develop, this is one haven of peace which should be protected and allowed to flourish, not cut down as seems to be the true intention!*”
- “*The LRRRA has been maintaining Leecroft Road for many years. All the residents in the road belong to the Association and contribute to the maintenance fund. Leecroft is an unadopted road and led initially over 100 years ago to a farm now the site of Thomas Watson Cottage Homes. The upper part of the road is included in the*

Wood Street conservation area and we have tried to maintain the road in its original state to reflect its historical importance with the conservation area. It is one of the few “country lanes” within Barnet...We (...) wish to object to the planning proposal on the grounds that cutting down the natural regrowth that any wooded area undergoes over time will change the nature of the road within the conservation area. In addition, a number of the larger trees in Leecroft Road have Tree Preservation Orders attached. We point out the Hertswood Court is a relatively new building, and the owners must have known that Leecroft Road at the rear of their property was in a conservation area...As an association we spend c£4k per annum in maintaining the road voluntarily contributes by the residents. Barnet Homes is one of the contributors. In doing so we wish to maintain the principles of conservation in Leecroft as one to the last country lanes in Barnet.”

On site inspection, it was evident that the trees standing within the verge adjacent to Leecroft Road are of a variety of species (including Pine, Sycamore, Maple, Prunus sp. Laburnum and Holly) and ages – ranging from mature trees some 15M in height to young saplings. Individually some of the specimens are of poor form and (in some cases) condition. However, collectively the trees provide a healthy group canopy framing both sides of the roadway leading from the roundabout at the top of the roadway to the bend in the roadway curving past the property of Winyatts Leecroft Road. The trees thus have a collective amenity value that exceeds the value of the individual trees.

As noted in objections received, there are several trees in the vicinity that are already included within a Tree Preservation Order (including those standing at Old Rectory Court 61 Wood Street, Winyatts Leecroft Road and 19 The Croft). However, the trees standing in the roadside verge of Leecroft Road have not been previously assessed for possible inclusion within the existing Tree Preservation Orders.

The trees in the Leecroft Road verge were not assessed during the making of The London Borough of Barnet (Wood Street Barnet, Herts, - Part 1) Tree Preservation Order 1976 - at that time some sites were not assessed because of the nature of the land-use or ownership. The land on one side of the top of Leecroft Road was in Council ownership, the other in institutional use. The London Borough of Barnet (61 Wood Street, Barnet) Tree Preservation Order 1980 only considered trees at that site in connection with redevelopment (the site is now the residential property of Old Rectory Court).

Section 4.4 of the Wood Street Conservation Area Character Appraisal Statement (adopted July 2007) notes:

“Trees make a very important contribution to the character and appearance of the conservation area. Whilst there is a notable absence of street trees, except at the eastern end of Wood Street in front of the Barnet Museum building, hedged and treed boundaries make a significant contribution to the street scene, impacting particularly on long and short range views. They are especially important as the onlooker progresses westwards along Wood Street, providing a strong green barrier to the traffic and a sense of enclosure in the street. They also mark the beginning of a more rural and open character to the conservation area as it leads towards the edges of Hertfordshire. The most notable tree groups within the conservation area are marked on the Townscape Appraisal Map, but the following have perhaps the greatest impact:

- *Good tree boundary from Bells Hill to Hillside Gardens*
- *Hedge and tree boundary to properties at the extreme west of Wood Street (north side)*
- *Tree boundary to Whalebones Park*

- *Various specimen trees in formally laid out parks*
- *Mature trees and specimens at St John the Baptist Church Hillside*

The trees in the roadside verge of Leecroft Road are clearly visible from the roundabouts at the busy junction between Leecroft Road, Wood Street, Union Street and The Avenue. They contribute significantly to the eastern end of the “Good tree boundary from Bells Hill to Hillside Gardens” (it should be noted that trees adjacent to the top of Leecroft Road are shown in two of the photographs displayed in the Character Appraisal Statement).

As referred to by objectors, the top of Leecroft Road retains the character of a “country lane” and the trees are key in maintaining this almost rural appearance in a densely built location. Significant tree loss/removals from the roadside verge would be of significant detriment to the appearance of the roadway impacting on the long and short range views from the busy Wood Street junction and be of significant harm to the character and appearance of this part of the Conservation Area.

At section 6.5 of the Conservation Area Character Appraisal Statement the key characteristics of “Area 5: Bells Hill (includes the south side of Wood Street)” are listed. Among these “key characteristics” are:

- “Good collection of locally listed buildings set behind substantial hedge and tree boundary found between Leecroft Road and Bells Hill, including the old council offices at no. 61 (formerly the Old Rectory and now flats), the group of locally listed dwellings between nos. 63 and 81, and the picturesque cottages of nos.125-129 Wood Street, all locally listed.”

The trees standing in the roadside verge at the top of Leecroft Road are essential in maintaining and enhancing this part of the Conservation Area as part of the “tree boundary.”

Although the trees currently standing within the roadside verge are not old enough to have been present when Leecroft Road was first constructed in the late 19th Century, they are vital in preserving the character and appearance of the top of this roadway and this part of the Wood Street Conservation Area.

The trees have a common canopy and collective amenity value that exceeds the value of the individual specimens. It is important that the saplings within the verge are retained to maintain the appearance of the roadway in the longer term by naturally replacing mature trees (some of which are in poor condition) as they are lost. Given appropriate silvicultural attention this area of trees is capable of contributing significantly to public amenity for a number of decades.

The Tree Preservation Order was made on 3rd August 2018 in the interest of public amenity following receipt of objections from local residents in connection with a s211 Notice of Intent to undertake treatment to several trees adjacent to Hertswood Court. The making of the Order was considered justifiable both on grounds of amenity and expediency. The Order relates to a designated ‘area’ of trees standing on the verges of the northern end of Leecroft Road - beside Hertswood Court, 2 – 36 Leecroft Road, and Old Rectory Court - to the Wood Street junction.

Notices were served on the persons affected by the Order in accordance with paragraph 1(a) of Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations.

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 following representations were received from a Leecroft Road resident in support of the Tree Preservation Order:

- *“I fully support the above TPO in Leecroft Road Barnet.”*

3 letters of representation objecting to the Tree Preservation Order were received from Hertswood Court residents. The grounds of objection raised in the representations are as follows:

- *“I must express my surprise that Barnet Council has acted with such haste in issuing tree preservation orders. Is it now the policy that every and all trees, regardless of where they grow, can have a preservation order? If that is the case then we are indeed in trouble with all the self seeded trees that grow uninvited throughout the Borough.”*
- *“The trees on Leecroft Road have been badly neglected, branches are rotten, overhang other properties and in many instances are festooned with ivy, which will in turn damage the woodland trees for which preservation orders have been issued.”*
- *“You have a duty to all the residents of the Borough, not just people who wish to exert influence and enforce their will on others. I want my property protected from invasive species and the Council has a duty to see that this is the cases.”*
- *“There are two items that detract from the character and scenic interest of the area. That is because the ivy and (evergreen) holly currently growing are not a natural part of such an area. They both appear to be very much more recent additions and were probably planted by birds and then self-seeded. The ivy, if left without any control, will in due course overwhelm the natural trees that form this special amenity. Some of these trees are looking close to dying and will break with the weight of the ivy. Those that are stronger will eventually end up all looking the same – like ivy! The holly that has grown has dominated the other lower bushes and appears to be taking nutrient from both trees and bushes. To maintain the attractive nature of the area a significant cull of the holly trees and bushes should be undertaken. In future years Barnet Council should ensure that these undesirable elements are kept to a minimum as part of normal attention based on silvicultural principles.”*
- *“My other area of concern relates to who is responsible for controlling those branches from the natural trees growing in the area which start to grow over other properties or the road itself and lower branches covering footpaths, thus becoming a potential danger to the public. As far as I am aware the effect of the existing TPO*

is that no attempt is made to control the way the trees in the area develop. The TPO should require the relevant authority (i.e. landowner) to provide an annual report on the actions that have been taken to maintain the special amenity value of the area.”

- *“Trees, like all living plants need to be maintained. The residents (or who so ever) is responsible for the maintenance of the trees on Leecroft Road have singularly failed to fulfil this obligation.”*
- *“Self-seeded, ash, sycamore, wild cherry and ivy have been allowed to proliferate to the detriment of the adjacent property. No attempt has been made to clear any of the detritus from ageing trees and any attempt on the part of the residents of the adjacent property have been met with threats and intimidation.”*
- *“I wish to establish that I have the right to protect my property from the invasion of those self seeded trees without threats of legal action. This in no way affects the rightful status of the planted trees on Leecroft Road. I have the same rights as any other member of this community and outcomes should not be determined by individual resources or influence.”*

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

- (i) The representation in support suggests that resident(s), too, consider that the trees have high public amenity value. Objectors, too, refer to the “character and scenic interest of the area”, “attractive nature of the area”, and “special amenity value of the area”.
- (ii) The contention that “Barnet Council has acted with such haste in issuing tree preservation orders” seems based on a lack of awareness of legislative constraints in respect of protected trees – specifically that if an Order was to be made in response to the s211 Notice, it was necessary so to do prior to the expiry of the six week notification period on Monday 6th August 2018 (the Order was made on Friday 3rd August 2018).
- (iii) There also appears to be a misunderstanding as to the circumstances of the making of the Order – which was not at the behest of “people who wish to exert influence and enforce their will on others” but, as set out in the report, in response to a particular set of circumstances in the light of an assessment of the public amenity value of the area of trees taking account of the adopted Wood Street Conservation Area Character Appraisal Statement.
- (iv) The generalisation about protection relating to “every and all trees” is misplaced – the Order relates to a designated area of roadside trees standing in a stretch of verge about 100 metres in length and 15 metres in width within the boundary of the Wood Street Conservation Area.
- (v) Whilst it is accepted that there is some variation in the conditions of the trees, the Tree Preservation Order was specifically made as an ‘area’ designation as it is considered that the collective public amenity value of the trees in the roadside verge is much greater than the individual trees. It is considered that the integrity of the landscape feature contributes significantly to maintaining the rural character and appearance of this part of the Wood

Street Conservation Area. Removal of deadwood and unsafe branches may become necessary as part of routine maintenance works into the future. Confirmation of the Order would not preclude an application, where necessary, for consent to prune / fell a tree included in a Tree Preservation Order being submitted to the Council, in accordance with the planning legislation.

- (vi) The inclusion of trees in an Order does not prevent treeworks being undertaken, but means that application(s) for consent for treatment of the designated trees need to be submitted in accordance with planning legislation. Each application would be considered on its merits on the basis of the information submitted at the time and there is no reason to believe that consent would be refused for treatment in accordance with good arboricultural practice.
- (vii) It should further be noted that there are no restrictions on who can submit a treeworks application – and we often receive applications from neighbours or their agents. Hence, if a neighbour had concerns about e.g. overhanging branches for which the tree owner(s) declined to take any action, the resident or a tree surgeon on his / her behalf could submit an application which, as with all applications, would be considered on its own merits taking account of the reason(s) put forward for the proposed treatment and any supporting documentary evidence. In such circumstances, if Tree Preservation Order consent were to be granted, the applicant / agent would be advised to consult with and where necessary obtain the permission of the owner before taking any further action with regard to the treatment (as the LPA consent would not supersede ownership rights).
- (viii) The inclusion of trees in an Order does allow the Local Planning Authority (LPA) some measure of control over treatment – in that it can refuse pruning or felling which it considers inappropriate / excessive - but there is an appeal procedure if an applicant is aggrieved by the decision, as well as various specified exemption provisions.
- (ix) However, these powers are reactive rather than pro-active – so whilst the LPA can now approve / refuse application(s); it cannot require that somebody submits an application, nor that any consented treework is implemented – i.e. the making / confirmation of the Tree Preservation Order does not provide the LPA with the right (power or duty) to insist that treework is carried out.
- (x) There is an exemption provision in the tree preservation legislation which relates to removal of deadwood. Treatment of Ivy (a climber) and shrubs is also exempt from tree preservation legislation.
- (xi) Some of the objections show misunderstanding of the legislative provisions relating to the Tree Preservation Order. The inclusion of trees in an Order would not transfer responsibility for the management of the trees from landowner(s) to the Council. Nor does it provide the Council with:
 - Power to require that “property is protected from invasive species”
 - A “duty to see that this is the case”

- Power to “ensure that these undesirable elements are kept to a minimum”
- Power to “require the relevant authority (i.e. landowner) to provide an annual report on the actions that have been taken to maintain the special amenity value of the area”

As set out above, the Order is considered to be ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’. There is local support for the Order and the grounds of objection seem largely based on misunderstanding of tree preservation legislation.

2. EQUALITIES AND DIVERSITY ISSUES

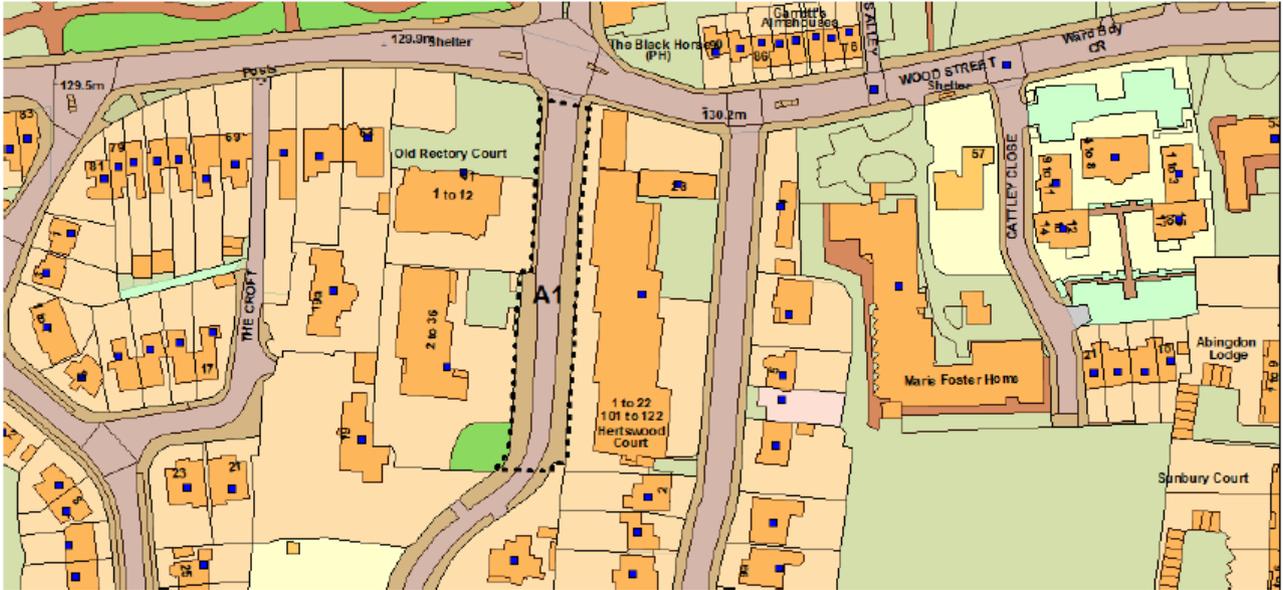
The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender 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 confirmation of the Order would have a significant impact on any of the groups as noted in the Act.

3. CONCLUSION

The Tree Preservation Order was made on 3rd August 2018 in the interest of public amenity following receipt of objections from local residents in connection with a s211 Notice of Intent to undertake treatment to several trees adjacent to Hertswood Court. The making of the Order was considered justifiable both on grounds of amenity and expediency. The Order relates to a designated ‘area’ of trees standing on the verges of the northern end of Leecroft Road - beside Hertswood Court, 2 – 36 Leecroft Road, and Old Rectory Court - to the Wood Street junction.

The confirmation of the Tree Preservation Order is considered reasonable in the interests of public amenity and would allow the Local Planning Authority some measure of control over treework that is considered excessive. As set out above, it is considered the trees in area A1 identified in the Order contribute significantly to public amenity as well as to the character and appearance of the Wood Street Conservation Area 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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