

LOCATION: 42 Station Road, Barnet, Herts, EN5 1QH

REFERENCE: TPO/00556/12/B **Received:** 03 October 2012
WARD: High Barnet **Expiry:** 28 November 2012
CONSERVATION AREA N/A

APPLICANT: Marishal Thompson and Co

PROPOSAL: 1 x Cedar (T2 Applicants Plan) – Fell. T63 of Tree Preservation Order.

RECOMMENDATION: APPROVE SUBJECT TO CONDITIONS

That the Council grants consent to remove 1 x Cedar (T2 Applicants Plan) - Fell. T63 of Tree Preservation Order, at 42 Station Road, Barnet, Herts, EN5 1QH, subject to the following 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 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 Press and Site Notices: 18th October 2012

Consultees: Neighbours consulted: 12

Replies: 4 individual letters and 1 petition with 17 signatures

All respondents object to the proposed removal of the Cedar tree. Two of the individual letter of objection were received after the consultation period had expired.

The grounds of objection can be summarised as:

- Impact on the urban environment with the loss of an attractive mature tree
- Loss of privacy
- Depletion of the natural habitat for birds and wildlife
- The tree is *"healthy and of no risk to safety."*
- Risk of heave
- *"It has been pointed out that the only sure remedy is to underpin the affected property, as it has not been proven that the tree roots are to blame. Indeed the felling of the Sycamore 3 years ago has not improved matters and a recent drain survey showed no root ingress. In fact the main subsidence is to the front elevation on the south side, away from the trees. The damage to this two storey*

hybrid building is much more likely to have been caused by the disparity between building and foundation techniques in Victorian and modern times. A leaking sewer pipe in the neighbouring property at number 44 will also have had an adverse effect."

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Treeworks:-

TREN00206E – Remove deadwood of Deodar standing in area T63; remove deadwood of Oak standing in area T61 and remove Maple (dead) standing in area G31 of Tree Preservation Order. Exemption Notice issued on the 08/08/1994

Development of the Coach House:-

Application **N00206H** – Extensions to side and roof of coach house and conversion to form 1 bedroom dwelling house - was registered on the 9th August 1995 and was granted

CONDITIONAL APPROVAL on the 5th December 1995.

PLANNING APPRAISAL

1. Introduction

This application has been submitted by Marishal Thompson and Co acting as agent on behalf of Crawford and Company - loss adjustors dealing with a claim on the Buildings Insurance for The Coach House 42D Station Road, Barnet, Herts, EN5 1QH.

The application was initially submitted on the 9th August 2012. However, it was incomplete and additional supporting documentation/clarification was requested by the Council. All of the mandatory information was received on the 3rd October 2012 and the application was therefore registered in respect of "1 x Cedar (T2 Applicant's Plan) - Fell. T63 of Tree Preservation Order."

The Tree Preservation Order was made on the 29th January 1969 and includes several individual and group designated trees within the grounds of properties along Station Road New Barnet EN5 and environs. The Order was confirmed by the Minister of Housing and Local Government subject to modifications not affecting the Cedar tree subject of this application on the 27th October 1969. The Cedar is designated T63 of the Tree Preservation Order.

2. Appraisal

Tree and Amenity Value

The subject Cedar stands in the communal rear garden of 42 Station Road close to the flank boundary with 40 Station Road. It stands just over 13 metres from the rear elevation of the main building at 42 Station Road (which contains 42A, 42B and 42C Station Road). The Cedar is 10.3 metres from the north-east corner of The Coach House 42D Station Road. As noted above The Coach House was extended and converted into a residential property in the mid-1990's. The extension was to the western flank of the building and the Cedar tree is about 13 metres away from the newer part of The Coach House.

The Cedar is about 19 metres in height and is mature. It has a trunk diameter of 76cm when measured at 1.5 metres above ground level. The tree has a historic trunk lean towards the east. The trunk straightens at about 6 metres from the ground. The tree has a slightly one-sided lower crown due to the proximity of a mature Walnut tree that is also growing within the garden of 42 Station Road. The tree has had very little previous treatment. Its physiological condition appears reasonable with dense foliage of good colour showing throughout the crown. There is some - mostly minor- deadwood apparent. This includes one hanging dead branch. There is some crossing and rubbing of low secondary branches. The tree has a forked leader and this has affected its crown shape to the detriment of its visual appearance. The trunk diameter of the Cedar does not indicate that it is significantly older than the Victorian property, it is likely to be roughly contemporaneous.

The Cedar tree is among the largest of the trees within the rear gardens of properties in Station Road New Barnet. It is visible and prominent above and between buildings along a stretch of Station Road, Lytton Road and is very clearly visible from Duncan Close and its junction with Plantagenet Road. The tree helps to soften the urban appearance of this part of Station Road, helping to provide a sense of scale for the large residential buildings. The tree provides year-round visual amenity given its evergreen nature. The tree affords some privacy to residential properties and residents have referred to the importance of the tree for local wildlife.

The application

The reason given for this application to fell the Cedar tree - T63 of the Tree Preservation Order is *"The tree identified for remedial works has been implicated as a contributory factor in subsidence damage related to clay shrinkage."*

The agent has submitted the following documentary evidence in support of this application:

- A "Technical Report on a Subsidence Claim" by Crawford and Company dated 9th March 2010
- An "Addendum Technical Report" by Crawford and Company dated 23rd July 2012
- A "Site Investigation Report" by Mat Lab Ltd dated 25th March 2010 and including a site and drainage layout, CCTV survey details, foundation exploratory hole records, a quotation and specification for repairs to the drainage system.
- A "Laboratory Report" by Mat Lab dated 12th April 2010 including roots analysis, moisture content and atterberg limits.
- Levels monitoring data for a period between 29th January 2011 and 16th June 2012 comprising 9 sets of readings.
- Crack monitoring data for a period between 8th March 2010 and 29th March 2012 comprising 12 sets of readings
- An undated "Arboricultural Report" by Marishal Thompson
- A "Technical Report on a Subsidence Claim by Crawford and Company dated 21st October 2006 (and relating to a previous subsidence claim at The Coach House 42D Station Road)
- An "Arboricultural Report by Marishal Thompson dated 10th March 2007 (and relating to a previous subsidence claim at The Coach House 42D Station Road)
- E-mails dated 3rd October 2012, 11th October 2012 and 16th November 2012

It may be noted that no Tree Preservation Order applications were registered in respect of the previous subsidence allegations relating to The Coach House 42D Station Road.

No heave calculations were provided.

The Council's Structural Engineer has visited the site and assessed the information. The Council's Structural Engineer's observations can be summarised as:-

- cause of damage shallow foundation and tree root action. The extension on deep foundations is relatively stable, original foundations affected by tree root action. The differential movement between the two sections of the building will increase the severity of the damage.
- the location of the damage to the property is consistent with the location of the Cedar tree.
- Cedar tree roots were found in the borehole nearest to the tree.
- the Cedar is the most prominent tree nearest to the building.
- Level monitoring results are consistent with tree root action where the monitoring point nearest to the Cedar exhibits maximum seasonal movement.

The Council's structural Engineer has noted that the foundations for the extension accord with the NHBC guidance and that the Council's Building Control records confirm that the extension passed Buildings Regulations.

Trial pit EH/1 was dug adjacent to the north-west corner of The Coach House (by the extension of the building). Trial pit EH/2 was dug adjacent to the north-east corner of The Coach House (by part of the original building). Soil samples found roots particularly in EH/2.

The Cedrus roots belong to the Cedar tree that is subject of this application. Other roots found belong to Sycamore and Apple trees that were not included in the Tree Preservation Order and are no longer present in the garden.

The Council's Structural Engineer has confirmed that the monitoring results are consistent with tree related subsidence and implicate the Cedar tree subject of this application as a causative factor. The pattern of damage to the property is also consistent with the location of the Cedar tree.

The Council's Structural Engineer has concluded that, whilst the differential foundations between the original and extended parts of The Coach House will have increased the severity of the damage, the Cedar tree that is subject of this application appears to be materially contributing to the damage.

The Council's Structural Engineer has advised that "drains cannot be implicated as the soil is desiccated." It therefore follows that if the drains are repaired it would be likely to exacerbate the damage to The Coach House.

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.

Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides that compensation is payable for loss or damage in consequence of refusal of consent, grant of consent subject to conditions or refusal of any consent, agreement or

approval required under such a condition. 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 this case the applicant has indicated that *"provided the tree management is approved and works are carried out expeditiously, we anticipate that superstructure repairs and decorations only will be required. If the tree management is not carried out, it may be necessary to consider a much more costly and disruptive scheme of stabilisation, such as underpinning. Budget estimates are presently as follows:- Superstructure repairs and decorations - £6,400 Underpinning and repairs" - £60,000.*

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 pursuant to Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012. It is to be noted that the Council's Structural Engineer has concluded that the Cedar tree is implicated in subsidence damage to the property of The Coach House 42D Station Road. Hence there is likely to be a compensation liability (the applicant indicates repair works would be an extra £53,600 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.

CONCLUSION

Marishal Thompson (acting as agent for loss adjustors dealing with a subsidence claim at The Coach House 42D Station Road) are proposing to fell a Cedar tree standing within the communal rear garden of 42 Station Road. The tree is T63 of the Tree Preservation Order. The reason for the proposed felling of this tree is *"The tree identified for remedial works has been implicated as a contributory factor in subsidence damage related to clay shrinkage."*

The Council's Structural Engineer has assessed the supporting documentary evidence and concluded that the Cedar tree is implicated in subsidence damage to The Coach House. The Council's Structural Engineer has suggested that underpinning would be required to stabilise the building if the tree is retained.

The tree is considered to be of public amenity value and its loss would be detrimental to the character and appearance of this part of Station Road. However, the Council's Structural Engineer has reviewed the evidence submitted and concluded that the tree is likely to be implicated in the damage to The Coach House 42D Station Road. The Council must decide whether it is prepared to refuse consent to the proposed felling and face a

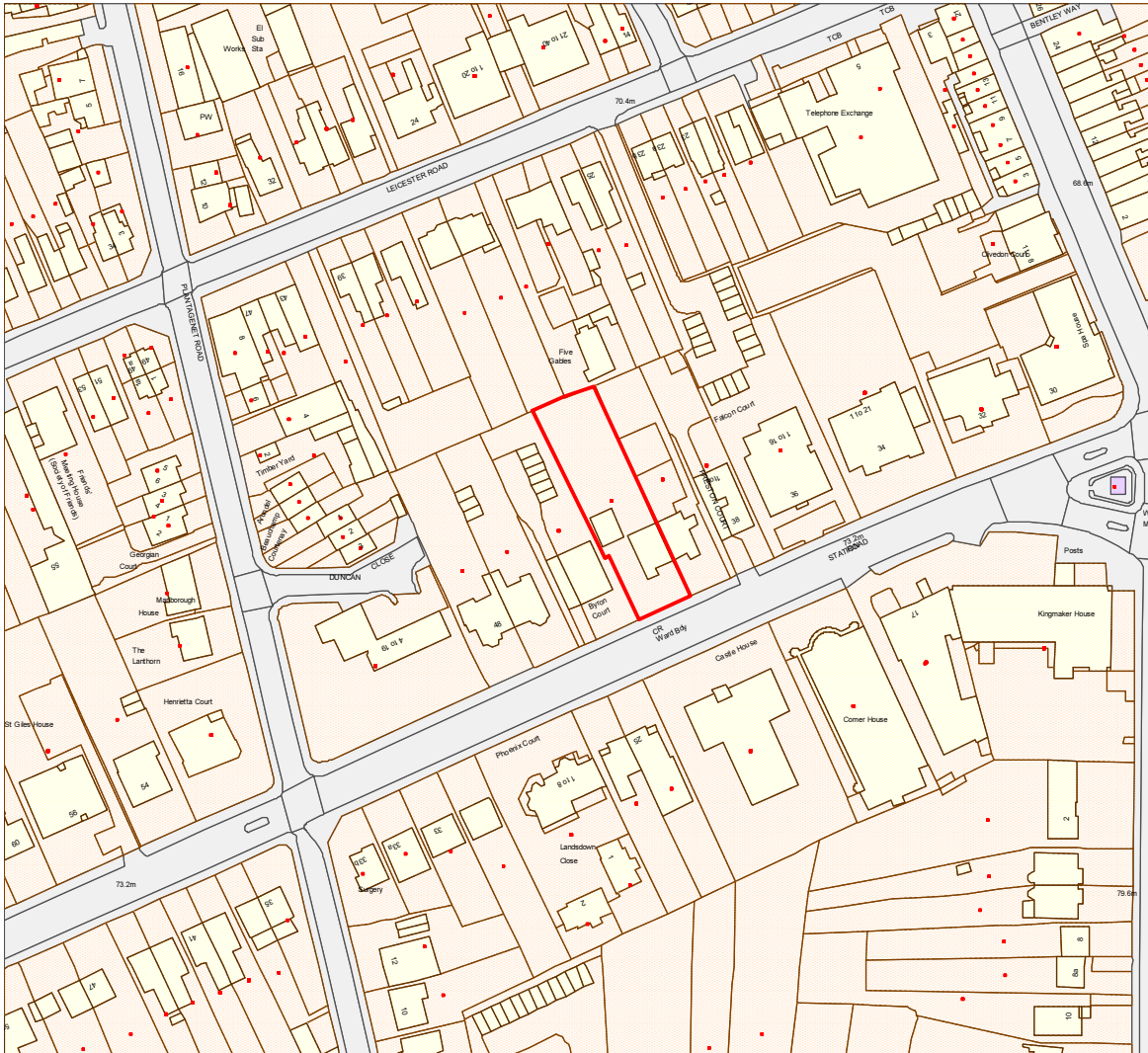
compensation claim potentially in excess of £53,000 or allow the felling subject to replacement planting – which may go some way to mitigating the loss in the longer term. Given the high risk that the Council would be liable to pay compensation in excess of £53,000 if consent is refused for the felling of the tree, it is recommended that consent is granted subject to a replacement planting condition.

SITE LOCATION PLAN:

42 Station Road, Barnet, Herts, EN5 1QH

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