

LOCATION: 61 Richmond Road, Barnet, Herts, EN5 1SF

REFERENCE: TPO/00079/13/B

Received: 08 February 2013

WARD: Oakleigh

Expiry: 05 April 2013

CONSERVATION AREA N/A

APPLICANT: MWA Arboriculture Ltd

PROPOSAL: 1 x Pine (T1 Applicants Plan) - Remove. T8 of Tree Preservation Order.

RECOMMENDATION: REFUSE

That the Council refuses consent for the following reason:

1. The loss of the tree of special amenity value is not justified as a remedy for the alleged subsidence damage on the basis of the information provided.

Consultations

Date of Press and Site Notices: 28th February 2013

Consultees:

Neighbours consulted: 9

Replies: 12 0 support 12 objections

The grounds of objection can be summarised as:

- The loss of the tree would be “damaging to the environment and undermine the green quality of the area.”
- Risk of heave
- The tree is “healthy and attractive.”
- Depletion of the natural habitat for birds and wildlife
- There are no signs of damage to the building
- Other treatment to the tree may be more appropriate at this time

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Treeworks:-

N01148Q/07/TRE – Scots Pine - Crown Lift 3 Lower Branches as Specified. T8 of Tree Preservation Order. **Conditional Approval** granted on 3rd May 2007.

PLANNING APPRAISAL

1. Introduction

This application has been submitted by MWA Arboriculture Ltd acting as agent on behalf of the owner of 61a Richmond Road, Barnet, Herts, EN5 1SF.

The application was initially submitted on the 24th January 2013. However, it was incomplete and additional supporting documentation/clarification was requested by the Council. The mandatory information was received on the 8th February 2013 and the application was registered accordingly as "1 x Pine (T1 Applicants Plan) - Remove. T8 of Tree Preservation Order."

Although initially registered as 61a Richmond Road (as per the submitted application form) as the building has been subdivided the tree is referred to as being at 61 Richmond Road.

The Tree Preservation Order was made on the 30th November 1979 and includes several individual and group designated trees within the gardens of properties in Richmond Road, York Road and Somerset Road. The Order was confirmed without modification on the 18th April 1980 pursuant to a resolution passed by the London Borough Council on the 27th February 1980. The Pine is designated T8 of the Tree Preservation Order.

2. Appraisal

Tree and Amenity Value

The Pine stands in the front garden of the property. It is growing in a planting bed which runs adjacent to the flank boundary between 61 and 59 Richmond Road. The Pine is growing at the southern end of the planting bed immediately adjacent to the roadway. It stands just over 7.5 metres from the front elevation of the building (which contains two flats 61a and 61b Richmond Road).

The Pine is among the largest of the trees within the front gardens of properties in this part of Richmond Road and is very clearly visible from along the roadway. It is also visible from the junctions with Hillside and York Road. The Pine contributes significantly to the character and appearance of the area, which includes large Victorian / Edwardian residential properties, and the prominence of the tree is accentuated by topography. The tree helps to soften the suburban appearance of this part of Richmond Road, providing year-round visual amenity given its evergreen nature. Residents have referred to the importance of the tree for local wildlife, including nesting Goldcrests.

The Pine is about 13 metres in height and is Early Mature / Mature. It has a trunk diameter of 52cm (measured at 1.5 metres above ground level). The tree has a very slight historic lean towards the south, which the branch growth indicates to be long established. The tree has had very little previous treatment except some relatively minor crown lifting. Its physiological condition appears reasonable with dense foliage of good colour showing throughout the crown. There is some - mostly very minor- deadwood apparent. The tree has a slightly unusual crown shape with two extended limbs growing towards the south/south-east.

The application

The application submissions indicate the wish to remove both the Pine, T8 of the Tree Preservation Order, and a Yew which is not included in the Order. Although TPO consent is required for treework to the Pine, as the Yew is not protected, it can be treated without reference to the Council. The reason cited on the application form for the proposed felling is *"Trees are cause of clay shrinkage subsidence damage."* The application submissions state *"An application shall be submitted to fell the trees. Property stability is expected following this tree work, which will allow property repairs to proceed in the region of £3k. The trees can be felled without risk of heave related damages occurring. If the tree work is refused then underpinning will be needed at circa £35k to counter the influence of the trees."*

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

- An Arboricultural Appraisal Report by MWA Arboriculture Limited dated 20th December 2012
- Level monitoring data for a period between 6th January 2012 and 27th October 2012 comprising 4 sets of readings, a movement sketch and graphs.
- A "Site Investigation Report" by Mat Lab Ltd dated 27th September 2012 and including a site layout, foundation exploratory hole records and penetrometer plot.
- A "Laboratory Report" by Mat Lab Ltd dated 10th October 2012 including roots analysis, moisture content and atterberg limits.
- A Technical Report of Subsidence Claim by Crawford and Company dated 5th August 2011.
- An Addendum Technical Report of Subsidence Claim by Crawford and Company dated 13th December 2012.
- An e-mail from David Mahon of MWA Arboriculture Ltd dated 8th February 2013

The Council's Structural Engineer has assessed the information. The following points may be observed:

BRE Digest 251 *Assessment of damage in low-rise buildings* includes a 'Classification of visible damage to walls with particular reference to ease of repair of plaster and brickwork or masonry'. The Council's Structural Engineer has noted that: "the damage to the building is consistent with category 2 of table 1, BRE 251: slight; where cracks are smaller than 5mm and can be easily filled. Some external re-pointing might be required to ensure water tightness as per the BRE 251 recommendations." It should be noted that the Digest concludes *"Category 2 defines the stage above which repair work requires the services of a builder. For domestic dwellings, which constitute the majority of cases, damage at or below Category 2 does not normally justify remedial work other than restoration of the appearance of the building. For the cause of damage at this level to be accurately identified it may be necessary to conduct detailed examinations of the structure, its materials, the foundations and the local clear ground conditions. Consequently, unless there are clear indications that damage is progressing to a higher level it may be expensive and inappropriate to carry out extensive work for what amounts to aesthetic damage."*

Although the applicant contends *"The trees can be felled without risk of heave related damages occurring"* no heave calculations were provided.

The soil samples taken from the Trial pit EH/1 were not desiccated and during the site investigations water entered the borehole at 1.3 metres depth.

The Council's Structural Engineer has noted that "according to the meteorological office data recordings the summer of 2012 was very wet with 110.8, of rain in June then it carried on raining to lesser amounts until the soil investigation was carried out in September."

Drainage runs were not marked on the submitted plans; however, there is a drainage inspection chamber adjacent to the flank wall of the property and within 4 metres of the corner of the building where the damage was noted.

The Pine is shown to be at 7.6 metres distance from the building, the multi-stemmed Yew to be 2.7m distance. It should be noted that the Yew is much closer to the property than the Pine and both are moderate water demand trees.

On the basis of the submitted information the Council's Structural Engineer concludes:-

- *"Although the soil was not desiccated at the time of the soil investigations; the slight shrinking and swelling of the soil can still be observed on the graphical representation of the level monitoring.*
- *Based on the data provided; it seems the damage to the building is too small to implicate the Pine. However; if weather conditions were different the level monitoring results would have indicated a more pronounce shrinkage and swelling of the soil.*
- *Although roots of the Yew were not identified, the tree still draws moisture from the soil.*
- *As there was ingress of water to the trial hole we would recommend carrying our a drain survey to rule out."*

Whilst the unusually wet summer of 2012 may have affected the investigation results, on the basis of the submitted information the Council's Structural Engineer considers that there is currently insufficient evidence to implicate the Pine tree subject of this application in subsidence damage to the building at 61 Richmond Road.

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.

This application is being referred to Members for decision because one of the exceptions to the Delegated Powers of the Assistant Director of Planning and Development Management is “where she / he considers that an application should be refused where such a decision will result in the Council being made liable for payment of compensation”.

In this case the applicant has indicated that *“An application shall be submitted to fell the trees. Property stability is expected following this tree work, which will allow property repairs to proceed in the region of £3k. The trees can be felled without risk of heave related damages occurring. If the tree work is refused then underpinning will be needed at circa £35k to counter the influence of the trees.”*

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 “based on the data provided; it seems the damage to the building is too small to implicate the Pine.” However, the Council’s Structural Engineer has also referred to the potential influence of the weather conditions. As noted above there may be a compensation liability if consent for the proposed felling is refused (the applicant indicates repair works would be an extra £32,000 if the tree is retained).

COMMENTS ON THE GROUNDS OF OBJECTION

Matters addressed in the body of the report.

CONCLUSION

MWA Arboriculture Ltd (acting as agent on behalf of the owner of 61a Richmond Road, Barnet, Herts, EN5 1SF) are proposing to fell a Pine tree standing within the front garden of 61 Richmond Road. The tree is T8 of the Tree Preservation Order. The reason for the proposed felling of this tree is *“Trees are cause of clay shrinkage subsidence damage.”*

The Council's Structural Engineer has assessed the supporting documentary evidence and concluded that the damage to the building is too small to implicate the Pine and has recommended that the unprotected Yew tree be removed and a survey of the drains be carried out to check whether leaking drainage is having an effect on the property.

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 Richmond Road. However, as noted above there may be a compensation liability if consent for the proposed felling is refused. The Council must decide whether it is prepared to refuse consent to the proposed felling and

face a possible compensation claim or allow the felling subject to replacement planting – which may go some way to mitigating the loss in the longer term.

SITE LOCATION PLAN: 61 Richmond Road, Barnet, Herts, EN5 1SF

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