

# **BARNET**

## **LONDON BOROUGH**

### **COMMITTEE REPORT**

- LOCATION:** LAND AT 21 – 27 RASPER ROAD, LONDON N20 0LU
- REFERENCE:** 16/TPO/038
- WARD:** Totteridge
- PROPOSAL:** To seek authority for confirmation of Tree Preservation Order, with modification to the map to omit depiction of other nearby Orders.
- 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 Land at 21 – 27 Rasper Road, London N20 0LU Tree Preservation Order 2016 with modification to the map to omit depiction of other nearby Orders.
  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 Planning Performance and Business Development Manager dated 27<sup>th</sup> September 2016
- N12981/01 - Demolition of coach house and erection of terrace of 4 houses with parking area for 4 cars - Land Fronting Rasper Road Rear Of Friern House, Friern Barnet Lane Whetstone London N20 - allowed at appeal dated 11.07.03 (and associated conditions)

### Background Information/Officers Comments

A Tree Preservation Order was made on 28<sup>th</sup> September 2016 in the interest of public amenity in the light of a request from a member of the public that an Oak be considered for possible inclusion in a Tree Preservation Order, which was received on the same day as an e-mail from a local resident wishing to remove the tree.

An Oak tree stands on land in front of relatively newly constructed houses at 21 – 27 Rasper Road. The redevelopment of the site for the “demolition of a coach house and the erection of a terrace of 4 houses” - formerly the rear garden of Friern House, a locally listed detached house at that time being renovated - was allowed at appeal (ref. N12981/01; APP/N5090/A/02/1106742). A request to include trees at the site for possible inclusion in a Tree Preservation Order was received from local residents at the time the redevelopment application was being considered by the Council (TRE/BA/GEN/102) – however, prior to the assessment of the request, all but one of the trees were removed and the remaining tree was heavily pruned; it was therefore considered inappropriate to make an Order at that time (although the planning application was refused for other reasons). In his Decision Letter, dated 11<sup>th</sup> July 2003, the Appeal Inspector noted “The development would be built in a U-shape with the middle two houses set back to allow a mature oak tree on the Rasper Road frontage to remain. I consider this tree to be an important element in the street scene and worthy of retention. I accept that the resulting staggered building line would conflict with the more uniform building line elsewhere on the road and there would be a more complex roof design when compared to the existing dwellings. However, I consider that the terrace would have an integrity that would enable it to stand in its own right and that it would not harm the character and appearance of the area.” The Inspector stated that “A landscaping scheme for the site, including a timescale for its implementation, and conditions for the protection of retained trees and the replacement of plant material are necessary to ensure a satisfactory appearance to the area” and imposed conditions accordingly. The relevant landscaping condition, which included the retention of the Oak, was approved under reference N12981E/05 on 24<sup>th</sup> March 2005.

Since that time the houses have been constructed and the mature Oak has regained a reasonable canopy, which appears to be in good health. The Oak is some 12 – 15 metres in height and contributes significantly to the streetscape, being one of the few mature trees in the vicinity. It is very clearly visible from Rasper Road, Sherwood Street, Whetstone High Road and Swan Lane. It is also visible above and between the properties from Friern Barnet Lane and its historic links with the former rear garden of Friern House are apparent.

In August / September 2016, a local resident who had bought one of the houses in November 2015 contacted both Greenspaces (responsible for Council owned / maintained trees) and various Planning teams in connection with the proposed removal of the tree in part because of concerns raised in a Homebuyer survey which noted “There is a large tree very close to the property. The roots from trees can affect the ground underneath foundations and the underground drainage when they seek and extract moisture. Whilst there is no obvious evidence of any damage having been caused, this could occur in the future. The tree will therefore require careful management. Any work may involve negotiations with neighbours and/or the Local Authority.” At a similar time, but in separate correspondence, a member of the public requested that the Oak be reconsidered for possible inclusion in a Tree Preservation Order.

There was initially some uncertainty as to responsibility for maintenance of the Oak, as the Council’s mapping system suggested it was a Council owned / maintained highways tree – however, on further investigation this proved incorrect and it was confirmed that the tree is privately owned.

Especially bearing in mind the recent date of construction and the design of the terrace with the houses having been set back around the retained tree, there is no reason to believe that the buildings were not constructed with due regard for the presence of the pre-

existing mature tree, in accordance with NHBC guidance. The caveat of the Homebuyer surveyor in respect of potential damage in future seems extremely generalist and particularly risk averse, especially in the circumstances and having confirmed that there is no obvious evidence of any damage. The removal of the tree, the important element in the streetscene, would negate the design integrity of the terrace – in the absence of the mature Oak, the staggered building line would conflict with the more uniform building line elsewhere on the road – the loss of the mature Oak would thus be detrimental to the streetscene both in its own right but also in terms of resultant incongruity of built form.

Some sympathetic pruning of the tree may be reasonable - however, as noted above, the mature Oak has high public amenity value; contributes significantly to the character and appearance of this part of Whetstone; and with appropriate cultural attention, might reasonably be expected to make a positive contribution to local amenity for the foreseeable future. It was therefore included in a Tree Preservation Order. The inclusion of the Oak in an Order would not preclude any future treatment of the tree but should prevent the removal of the tree without more detailed consideration and allow the Local Planning Authority some measure of control over the treatment of the tree into the future.

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.

A representation (comprising a letter with some attachments) has been received from an arboricultural consultant acting on behalf of the residents of 23 Rasper Road.

The Tree Preservation Order secures the protection of the tree 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 representation can be summarised as:

Arboricultural Consultant:

- “We would not dispute that the tree provides public amenity, but the reason given [for making the Order on the Regulation 5 Notice] is generic” and shows “no evidence of any structured assessment of the tree’s amenity value as per the Government guidance.”
- The Regulation 5 Notice “refers to the Council as a Corporation which, as far as I am aware, it has never been.”
- “We have no information about what was on the site before the existing building, but the tree has been present for far longer and it was clearly safeguarded with suitable measures when the existing building was constructed. It has subsequently been managed to a high standard to prevent problems, such as damage to the roof, without needing statutory protection. I gather from [from the resident] that the TPO was made after .... enquired about the tree’s status, not any proposal to remove it.”
- “The management being proposed for the tree is reasonable and will not harm the tree or reduce its amenity value, making the TPO simply adds to the administration of owning it.”

- “The tree is a middle aged sessile oak (*Quercus petraea*) growing about 4.4m from the front of the building on the line between 23 and 25, although it belongs to no.23. It is approximately 14m high and has a single trunk about 730mm in diameter that has a slight lean away from the building. The first branches start at about 6m and ascend to form the main framework of the crown, which is rounded and has a radial spread of 6m. The foliage is dense and healthy and there is no significant dead wood in the crown. There are no signs of decay or any structural defects, although the inner crown is very dense due to being formed by a relatively large number of small branches. There are no signs that the tree was damaged by the construction of the building, although there is no record of what was on the site before. There are a few old pruning cuts on the trunk where lower branches were removed in the past, but no signs of pollarding or major reduction. However the tree has been crown reduced moderately in height and spread and lower growth trimmed to clear the roof. There is no record of when that was done, but the density of the regrowth suggests that it was in about the last 3 - 4 years. The branch structure suggests that it was cut back to about the same points before that, probably to contain it to about this size.”
- “The oak is a high water demanding species growing close to the building and the local subsoil contains clay, which creates a potential for subsidence. However there are no signs or reports of any problems and the available plans show that the foundations were designed to be highly resistant to any soil shrinkage”.
- “The roots would not damage the foundations directly, but could affect lighter structures. More seriously the branches close to the roof could cause damage and reduce air flow round the building if left to grow on.”
- “In a more open location the tree could be left to grow on, but it needs active management to prevent damage to the building superstructure and maintain reasonable light and air flow. It would be beneficial to reduce it back to the previous points and thin the inner crown moderately. Regrowth would need to be cut periodically, but that would not harm the tree and would be in line with recognised good practice.”

Resident:

- When we bought the property we received legal advice that the tree was not included in a Tree Preservation Order – we do not “understand why the Council suddenly decided that this tree has amenity value after all these years or how this was assessed.”
- “We understand that the properties at 21 – 27 Rasper Road were built around 10 – 11 years ago and as part of the development, there was a condition that the tree will only need to be kept for five years. If the tree indeed has amenity value, we do question why a TPO was not issued then and why the requirement was to keep the tree for such a relatively short period of time?”
- “The tree is located very close ... to the properties ... whilst the branches are growing and getting very close to these particular properties, posing risks to their occupants.”
- “The tree is harvesting a flock of birds and consequently has led to:

- Bird feather and droppings to the surrounding area which posing a health risk and hygienic issue. They may also have triggered eczema..... [resident] is in the process of getting blood test to see if suffering from bird dander and oak allergy
- Heighten the risks of any bird flu”
- There have been cases of dog fouling “causing further hygiene issues and poses the question about amenity value.”
- “We contacted the Council just to double check what actions that we are indeed allowed to undertake with regards to this tree ..... we have also sought professional advice ..... in order to investigate further about the risks from the tree and from the remedial actions .... We are frustrated with the conflicting advice we have received”.

Resident’s Consultant Dermatologist:

- “Thanks for your recent email and photo. Sorry to hear that your skin has flared. There are a number of things that can trigger endogenous eczema and it is possible that animal dander (feathers and dust) could have set you off if you are allergic to these. I am more than happy to see you again if that would help. Alternatively, you could request that your GP undertakes an IgE rast test to birds.”

There was also part of the Greenspaces’ e-mail trail referred to above – albeit none of the correspondence with the Planning Trees team.

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

- (i) The Arboricultural Consultant acknowledges the Oak provides public amenity.
- (ii) Although the Regulation 5 Notice only includes a generic standard paragraph, it should be noted that a more detailed assessment of the amenity value of the tree was undertaken which formed part of the delegated report pursuant to which the Order was made. Indeed, much of the assessment is included in the first seven paragraphs of the Background Information / Officers Comments of this Committee Report.
- (iii) The term “Corporation” is a historic legacy from old legal documents used when differentiating between Members and the body corporate. The London Borough of Barnet has a Corporate Plan. Notwithstanding the term in the Notice, the Order itself makes reference to “the authority” and “the council”.
- (iv) As noted above, the appeal granted consent for redevelopment of the site following demolition of the coach house which previously formed part of the grounds of Friern House – the coach house is shown on the 1896 Ordnance Survey map; prior to this the 1878 Ordnance Survey map shows a different building which had been removed by the time of the 1896 map; one of the trees shown on the 1878 map roughly corresponds with the position of the Oak.

- (v) As the Arboricultural Consultant acknowledges, the Oak pre-dates the present buildings “and it was clearly safeguarded with suitable measures when the existing building was constructed”; also “there are no signs or reports of any problems and the available plans show that the foundations were designed to be highly resistant to any soil shrinkage”.
- (vi) It does, however, appear that the Arboricultural Consultant was misdirected by his client in the contention that the enquiry was “about the tree’s status, not any proposal to remove it.” On 14<sup>th</sup> September 2016, the Planning team received an e-mail which included the statement “We intend to remove the oak tree in front of our property and want to make sure that it will not cause any issue.”
- (vii) Inclusion of the Oak in a Tree Preservation Order would not preclude application(s) for consent to treat a tree included in a Tree Preservation Order being submitted to the Council, in accordance with the planning legislation. Such application would be considered on its merits on the basis of the information submitted at the time. However, it would allow the Council some measure of control over treatment that was considered excessive – such as the removal indicated in the resident’s e-mail. It may be noted that the specification included in the Arboricultural Consultant’s Report (one of the representation attachments) has not been submitted as a treework application, so there has been no opportunity for the Council to formally consider whether or not “The management being proposed for the tree is reasonable and will not harm the tree or reduce its amenity value”.
- (viii) The resident appears to have somewhat misunderstood the landscaping condition – which required that written Council approval would be required for any treework and replacement planting needed for five years – it did not mean that after the expiry of that period that all landscaping could be removed. The five year replacement period referred to in the condition is because, particularly on redevelopment sites, failures of new planting or damage to retained trees is most likely to show up in the first five years of completion and the condition provides that replacement planting should take place to ensure the satisfactory appearance into the future. It would clearly negate the purpose of imposing landscaping conditions if the entire scheme was only effective for five years, not least as much of any new planting would have had insufficient time to establish and develop.
- (ix) As noted above, a Tree Preservation Order was not made at the outset because of the heavy pruning undertaken at the time of the redevelopment proposals. However, this decision was reviewed in the light of changed circumstances - the tree’s healthy regrowth; the realisation that the information on the Council’s internal GIS mapping system incorrectly suggested the privately owned Oak was a Council owned / maintained highways tree; the subsequent request to reconsider the possible inclusion of the tree in an Order; and the apparent imminence of the threat of the tree’s removal.
- (x) Whilst it is regrettable that conflicting advice was given, this is attributable to the changes in circumstances noted above.

- (xi) It is accepted that some sympathetic pruning work may be appropriate – however, the resident’s ‘health and hygiene’ concerns about proximity to birds and dog fouling seem unlikely to be addressed by pruning, and there is a stated intention to remove the tree. It should be noted that the Consultant Dermatologist’s comments do not conclusively endorse the contention that the resident’s allergic response is due to the tree or associated wildlife.
- (xii) It appears that the resident wishes to remove the tree – which predates the housing that has recently been constructed on the site and would have been clearly evident at the date the decision was made to purchase the property. A Tree Preservation Order provides legal protection to tree(s) that are considered to be of amenity value to an area, and individual “rights” have to be set against the benefits to the wider public. The Appeal Inspector and the Arboricultural Consultant both independently attest to the Oak’s public amenity value. The properties were designed and constructed with due regard for the retention of the healthy, prominently located Oak and there is no evidence that proximity to the tree is causing an allergic reaction.
- (xiii) The inclusion of the tree in an Order would allow the Council some measure of control over treatment of the tree, but there would be a right of appeal to the Planning Inspectorate if an applicant is aggrieved by the Council’s refusal of treework consent.

When the map that forms part of the Tree Preservation Order was created, it appears that the layer which shows all Orders was inadvertently on. In consequence, the map shows not only the Oak, T1 of the subject Order (London Borough of Barnet Land at 21 – 27 Rasper Road, London N20 0LU Tree Preservation Order 2016), but also parts of area A1 and group G1 of the nearby Tree Preservation Orders at Sweets Way. This is potentially misleading as it appears to conflict with the First Schedule (which details, correctly, only the Oak, T1, and no areas / groups / woodlands). For the avoidance of doubt, it is considered that the map should be amended to show only Oak, T1, and to omit the depiction of other nearby Orders.

## **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 confirmation of the Tree Preservation Order is considered appropriate in the interests of public amenity and would allow the Council some measure of control over treatment that

is considered excessive. As set out above, it is considered the Oak tree identified in the Order contributes significantly to public amenity, and given normal arboricultural attention is capable of providing amenity value for a considerable time. It is therefore recommended that the Order be confirmed with modification to the map to omit depiction of other nearby Orders.



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