

BARNET

LONDON BOROUGH

COMMITTEE REPORT

- LOCATION:** The Spinney 22 and The Ridge 28 Hendon Wood Lane, London NW7 4HR
- REFERENCE:** 20/TPO/009
- WARD:** Totteridge
- 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 The Spinney 22 and The Ridge 28 Hendon Wood Lane, London NW7 4HR Tree Preservation Order 2020 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 4th March 2020
- 19/6787/FUL - Full Planning application for Erection of 4no detached dwellings with lower ground floor level following demolition of existing dwellings/scaffolding yard. Alterations to existing access road. Associated refuse/recycling and parking
 - Land At 22 Hendon Wood Lane, London NW7 4HR
 - Validated 2nd January 2020
 - Pending Consideration

Although records do not indicate anything current, there is a considerable history of Planning Enforcement investigations at The Spinney, 22 Hendon Wood Lane.

Background Information/Officers Comments

The Town and Country Planning Act 1990 (as amended) at section 197 states:

“It shall be the duty of the local planning authority—

- (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
- (b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.”

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’.

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.”

“When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission.”

A Tree Preservation Order was made on 4th March 2020 in the interest of public amenity in the light of a planning application for redevelopment of land at The Spinney 22 Hendon Wood Lane (19/6787/FUL) and concerns raised by the Re Arboricultural Consultant giving arboricultural advice to the Case Officer(s) about the proposal’s implications for trees who requested that the mature Oak trees on the frontage be considered for possible inclusion in a Tree Preservation Order. The making of the Order was considered justifiable both on grounds of amenity and expediency. As set out below, the trees are considered to be of significant public amenity value – visually and environmentally.

The planning application for “Full Planning application for Erection of 4no detached dwellings with lower ground floor level following demolition of existing dwellings/scaffolding yard. Alterations to existing access road. Associated refuse/recycling and parking” at The Spinney, 22 Hendon Wood Lane, London NW7 4HR (19/6787/FUL), validated on 2nd January 2020 is still under consideration.

The Council as Local Planning Authority has power to make a Tree Preservation Order in the interests of amenity to provide for the preservation of trees or woodlands in their area (either initiating this process themselves or in response to a request made by any other party) and a statutory duty to make such Orders as appear necessary in connection with the grant of planning permission for any development to ensure that adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.

It should be borne in mind that the making of the Tree Preservation Order and assessment of planning application for redevelopment are separate procedures. The inclusion of the trees in an Order would render the trees an ongoing material consideration in any planning application - the merit of trees and appropriateness of retention would be taken into account when assessing the planning application(s). The inclusion of the trees in an Order would give the Council as Local Planning Authority some measure of control over treatment considered excessive; as well as

allowing imposition of planning condition(s) if deemed appropriate when determining the redevelopment application.

Hendon Wood Lane is a long-established rural lane that links Arkley with Mill Hill, which is characterised by the number of (mainly native) mature trees that grow along the boundaries of the lane and fields. Although there has been piecemeal residential development along parts of the roadside, a substantial number of trees, woodland and fields have been retained. There are still fields at the southern (Mill Hill) end of the Lane - including part of the Totteridge Fields and Highwood Hill Site of Metropolitan Importance for Nature Conservation on the eastern side of the Lane, opposite part of Moat Mount Open Space and Mote End Farm Grade II Site of Borough Importance for Nature Conservation on the western side. Immediately adjacent to the Metropolitan SINC is the Old Cholmeleian Sports Ground, which itself has an area of scrub and trees beside the Hendon Wood Lane frontage; then adjacent is The Spinney 22 Hendon Wood Lane, next door to which is The Ridge 28 Hendon Wood Lane. The Spinney is bounded by the Sportsground to the southern flank and rear (east), the Sportsground also extends behind The Ridge.

The concerns were raised in particular about three Oak trees standing along the Hendon Wood Lane frontage - one beside the access to The Spinney; another partway along the roadside boundary; and the third in the corner of the mainly hard-surfaced front garden area of The Ridge, immediately adjacent to the boundary with The Spinney.

An Arboricultural Report dated 18th December 2019 prepared by David Bailey of Old Oak Tree Care was submitted as part of the 19/6787/FUL planning application documents. The BS5837 tree survey provides details of 13 individual trees and 4 groups / hedges. The 3 Oaks about which the Re Arboricultural Consultant had particular concerns are identified by the applicant's own arboriculturists as being mature trees of significant size (20 – 21 metres in height; with trunk diameters 625 / 400 / 1000mm respectively) and in good physiological and structural condition.

In addition, although not identified in the Old Oak Tree Care report (being beyond the sphere of influence of the proposed development subject of 19/6787/FUL), there is a further mature Oak of commensurate size and condition standing in the other corner of the mainly hard-surfaced front garden area of The Ridge, immediately adjacent to the frontage and boundary with Woodhill House, 32 Hendon Wood Lane. Being of similar appearance and at similar spacing, this fourth tree is perceived as being part of a group with the three Oaks referred to above.

It is understood from Land Registry records that the proposed development site (The Spinney) and the adjacent property (The Ridge) are in the same ownership.

The four trees are very clearly visible from Hendon Wood Lane and contribute considerably to the rural character and appearance of the Lane – helping to soften / screen the built form and as a transition to the nearby fields. Not only is public visibility particularly high; but the trees' environmental contribution, for example in terms of linking the patchwork of undeveloped land and providing wildlife habitat are important.

It is believed that the public amenity value of the four Oaks is considerable – as outlined above – and removal would have a significant negative impact on the local environment and its enjoyment by the public. The trees have been assessed as being clearly visible from public places; contributing significantly to the character and appearance of the rural lane, and having ecological value for nature conservation. Inclusion of the trees in an Order would give the Council as Local Planning Authority some measure of control over treatment considered excessive; as well as allowing imposition of planning condition(s) if deemed appropriate when determining the development application.

With appropriate cultural attention, the trees are capable of contributing to public amenity for a considerable period of time. For the above reasons it has been considered appropriate to include the trees in a Tree Preservation Order.

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. Representations were received from David Bailey of Old Oak Tree Care, the arboriculturist involved with the planning application for redevelopment.

The Tree Preservation Order (TPO) 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 arboriculturist's representations are as follows:

- *“The above TPO has been made in light of a current planning application (19/6787/FUL) and I have been asked to make contact with yourself in relation to it.”*
- *“The owner and I appreciate the value of the tree[s] to locality and can see that they add a lot to the appearance and character of the area. The trees have been considered within the tree report around the proposed development and are not going to be damaged by it (Indeed we are looking to provide additional good rooting area for all of these trees).”*
- *“The trees are an important landscape feature fo[r] the proposed development and no change to their amenity is proposed or expected. They are considered to be a benefit to the proposed development.”*
- *“We are concerned that the Group G1 is described as four oak trees. However, as can be seen in the plans associated with the planning application [attached to e-mail but not included in this report], the strip of land contains 3 oaks, 1 field maple and two smaller hornbeams.”*
- *“Obviously, the naming on the grouping is incorrect and we would like to see the TPO revised to reflect the true nature of trees on-site to prevent any problems in the future.”*
- *“Given the plan is taken from a topographical survey and locations are confirmed (I am happy to add my own confirmation of this), we would prefer the order individually identifies the four trees as individual tree orders as this will be much more precise and leave no doubt as to which trees are covered.”*

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

- (i) It is welcomed that the arboriculturist and owner acknowledge the public amenity value of the trees and their contribution to the character and appearance of the area.
- (ii) Inclusion of the trees in an Order accords with the Local Planning Authority's statutory duty to ensure that adequate provision is made for the preservation of trees and provides enforceability in relation to any tree-related conditions deemed appropriate when determining the development application; as well as allowing some measure of control over treatment considered excessive.
- (iii) The arboriculturist and owner appear to have misread / misunderstood the Tree Preservation Order and Map. Group G1 is depicted on the TPO Map as extending across the roadside frontage of both The Ridge 28, and The Spinney 22, Hendon Wood Lane from the boundary with Woodhill House to that with the Old Cholmeleian Sports Ground and includes the only four Oak trees within that marked location. The plans for the proposed redevelopment (including that attached to the arboriculturist's representation) show only part of the frontage of The Ridge and do not extend to the boundary with Woodhill House. The Map / plans have been prepared for different purposes and the TPO Map includes a longer strip of land.
- (iv) Whilst the arboriculturist's plan does show "*the strip of land contains 3 oaks, 1 field maple and two smaller hornbeams.*", the section surveyed by the arboriculturist and shown on plans in connection with the proposed redevelopment omits the 4th Oak immediately adjacent to the frontage and boundary with Woodhill House, 32 Hendon Wood Lane.
- (v) In assessing the trees in connection with the Tree Preservation Order, it was considered that the much younger and smaller Field Maple and two Hornbeams were of poorer quality and inappropriate for inclusion – however, the nearby fourth Oak not shown on the arboriculturist's plan was perceived as part of a group with the three Oaks being of similar maturity, size, spacing, and appearance. It was therefore considered reasonable to designate group G1 of the Order as the group of 4 Oak trees situated at "The Spinney 22 and The Ridge 28 Hendon Wood Lane, London, NW7 4HR" – and this is what is shown on the TPO Schedule and Map.
- (vi) The contention that "*the naming on the grouping is incorrect*" is erroneous, it reflects a misunderstanding of the Order itself. The exclusion of the Field Maple and two Hornbeam was intentional; as is the boundary of the group depicted on the TPO Map; as well as the description and situation specified in the TPO Schedule - the designation of group G1 as comprising 4 Oaks specified as being

situated at “The Spinney 22 and The Ridge 28 Hendon Wood Lane, London, NW7 4HR” in the position marked on the TPO Map is correct.

- (vii) The request that “*we would prefer the order individually identifies the four trees as individual tree orders as this will be much more precise and leave no doubt as to which trees are covered.*” is considered inappropriate and unnecessary. It is assumed that “*the four trees as individual tree orders*” is not intended to mean four separate Orders should be made – rather that the Oaks should each be designated as four individual trees instead of a group within the same Order. There is no need for such modification, in accordance with tree preservation legislation, trees can be designated in four different ways – as an individual tree (T); as part of a specified group (G); within an area defined by reference to a boundary marked on a TPO Map (A); or as part of a woodland defined by reference to a boundary marked on a TPO Map (W) – but each of these designations has the same weight, there is no hierarchy whereby one designation affords greater protection to a tree than another. A TPO can be of any size ranging from a single tree to many thousands and can be composed of one or more of each type of designation. In addition to there being no need to identify each of the trees individually, it should be noted that the designation of the 4 Oaks as a group relates to the collective public amenity value of these trees on the roadside frontage and the integrity of the landscape feature which contributes significantly to maintaining the rural character and appearance of this part of the Hendon Wood Lane.
- (viii) It is also unclear why it would be “*much more precise and leave no doubt as to which trees are covered*” as suggested. There are only four Oak trees along the roadside frontage of The Spinney 22 and The Ridge 28 Hendon Wood Lane, London, NW7 4HR. The boundary of the designated group is clearly shown on the TPO Map. The Schedule clearly specifies that the subject trees are situated at both named properties. It is to be noted that both properties are in the same ownership and the site boundary between the two shown on the arboriculturist’s plan is inconsistent with Ordnance Survey base-mapping and Council records (the arboriculturist’s plan has a small kink beside the largest Oak and marks it as being at The Ridge, whereas other sources of information suggest the tree may straddle the boundary) – the designation of the 4 Oaks as detailed in the Order overcomes this discrepancy and any associated potential inaccuracy. It seems that the uncertainty as to which trees are covered arises from misreading / misunderstanding rather than the drafting of Order.

It is considered that the making of the Tree Preservation Order fully accords with the duty imposed on the Council as Local Planning Authority as being ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’. It is evident that the arboriculturist and owner acknowledge the public amenity value of the trees but appear not to have realised that the Order includes the four Oak trees along the roadside frontage of The Spinney 22 and The Ridge 28

Hendon Wood Lane, or that the TPO Map includes a longer strip of land (extending to the boundary with Woodhill House) than shown on the plans for the proposed redevelopment.

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. As set out above, it is considered the four Oak trees designated as group G1 of the Order contribute significantly to public amenity and given normal arboricultural attention are capable of providing amenity value for a considerable time. Inclusion of the trees in an Order would give the Council as Local Planning Authority some measure of control over treatment considered excessive; as well as allowing imposition of planning condition(s) if deemed appropriate when determining the development application.

