



COMMITTEE REPORT

LOCATION: 118 - 140 Kenilworth Road, Edgware HA8 8XF
(Broadfields Estate)

REFERENCE: 21/TPO/010

WARD: Edgware

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 118 - 140 Kenilworth Road (land adjacent), Edgware, HA8 8XF Tree Preservation Order 2021 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 29th March 2021
- 20/3742/FUL - Full Planning application for Demolition of three existing dwellings and garages and erection of 45 new affordable homes (C3) with associated landscaping, parking and ancillary works
 - Broadfields Estate Bushfield Crescent, Edgware, HA8 8XH
 - Validated 25th August 2020
 - Pending Consideration

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 the 1st April 2021 in the interest of public amenity in the light of a planning application for redevelopment of land at Broadfields Estate Bushfield Crescent, Edgware, HA8 8XH (20/3742/FUL), following a request received from the Greenspaces Trees and Woodlands Manager that two Oak trees in the grounds around 118 – 140 Kenilworth Road be considered for possible inclusion in a Tree Preservation Order, and concerns also raised by Officers dealing with the application about implications for these trees. 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 “Demolition of three existing dwellings and garages and erection of 45 new affordable homes (C3) with associated landscaping, parking and ancillary works” at Broadfields Estate Bushfield Crescent, Edgware, HA8 8XH (20/3742/FUL), was validated on the 25th August 2020 and 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 development application.

The development application under consideration (20/3742/FUL) is a Council / Capita scheme for Barnet Homes. It is part of a package of applications which collectively propose the redevelopment of Broadfields Estate to deliver 47 new homes (18 x 1b, 18 x 2b, 6 x 3b and 5x5b) and associated landscaping and car parking across two sites. Many of the application supporting documents relate to both sites. This part of the proposal is for the southern section of 'Application Site B' (Sites B6 and B7 Broadfields Estate Infill) and relates to the communal garden land and garages around the two blocks of flats 118 – 140 Kenilworth Road, on which two new blocks are proposed. This part of the 'Broadfields Estate' stands to the south and east of the two 1960s/70s 3 storey blocks (flats 118 – 128 and 130 – 140), it is a mainly grassed area with garage blocks along the diagonal rear boundary accessed via a service road which also provides parking spaces. To the south of the site is the flank boundary of the two storey semi-detached dwelling of 116 Kenilworth Road, and the rear boundaries of the two storey semi-detached 3 – 8 Morley Crescent; these two storey semi-detached properties are 1930s style houses, some of which have been extended.

An "Arboricultural Report on the impact on trees of proposals for development at Broadfields Estate, Edgware, HA8" dated 30th June 2020, prepared by John Cromar's Arboricultural Company Ltd was provided with the planning application. The Arboricultural Report surveyed 3 individual trees and two groups in the relevant part of the site (the communal garden land and garages around the two blocks of flats 118 – 140 Kenilworth Road).

As referred to above officers' concerns related particularly to two Oak trees (T3 and T4 of the John Cromar Arboricultural Report) which stand close to the southern boundary of the site, close to the boundaries with 116 Kenilworth Road and 3 Morley Crescent. In the John Cromar report these two trees have been assessed as "category A" (in accordance with the guidance contained in British Standard BS5837:2012 - Trees in relation to design, demolition and construction – Recommendations) with safe useful life expectancies of 40+ years and noted to be "prominent... high environmental value" trees.

The two Oaks are well-formed trees that significantly predate the residential development of the area. The 1878 1:2500 historic Ordnance Survey map indicates that these were field boundary trees which were retained when the agricultural fields were developed for residential dwellings. The two Oaks have been previously lifted but little other previous treatment is apparent; there is some deadwood and dead branches but these are relatively minor and the trees are generally reasonable with no major faults apparent.

There are few other large mature trees in the vicinity (certainly none of such high quality) and this enhances their aesthetic, environmental, ecological value and green infrastructure importance. Their location between the properties and set back into grassland reduces any e.g. shading impact on windows – there are no windows on the rear half of the flank wall of the closest block of flats and rear elevation windows face onto the grass / garages rather than towards these Oaks.

Because of their size and position, these trees are very clearly visible from within the Broadfields Estate, also above and between properties in Kenilworth Road and Morley Crescent, and Luther Close (to the rear); in addition, they form a focal point to the southern access pathway to the flats and it may be noted that they directly align with the bus shelter in Kenilworth Road which is adjacent.

As acknowledged in the tree survey, they are of very high quality. The Greenspaces Trees and Woodlands Manager has assessed the CAVAT value of these two trees to be £107,414 each. These trees are very clearly visible across the site and from surrounding roadways / properties – they contribute significantly to softening the otherwise harsh built form; provide a sense of scale to the large multi-storey blocks set amidst two story housing; provide seasonal interest; and provide wildlife habitat.

It is believed that the public amenity value of the two 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 estate, 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 the neighbour at 116 Kenilworth Road.

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 neighbour has objected to the Tree Preservation Order for the following reason:

“I am writing to make a representation under this order under Regulation 6 of the Town NS Country Planning (Tree Preservation) (England) Regulations 2012

I am writing to object to this preservation order. Two of the proposed trees’s branches are encroaching on my house. If the order were to stand then, as I have found as yet , it will be impossible for me to lob the offending branches off.

I also request that you arrange for the branches to be lobbed off the roof and fences of my house at number 116 as you are the owner of the trees.”

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

- (i) The representations received by the neighbour do not question the amenity value of the trees or 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 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.
- (iv) It should further be noted that that there are no restrictions on who can submit a treeworks application – and we often receive applications from neighbours or their agents. Hence, if the neighbour has concerns about e.g. overhanging branches they, or a tree surgeon acting on their 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.
- (v) 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 exemption provisions for e.g. removal of deadwood.
- (vi) However, these powers are reactive rather than pro-active – so whilst the LPA can now approve / refuse application(s) and has powers of enforcement relating to contravention of the legislation; it cannot require that somebody submits a specific 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.
- (vii) In response to their representations the neighbour has been advised that they (or an agent acting on their behalf) could submit an application to undertake treatment to the tree(s) – and provided with links to the relevant form and guidance notes. At the time of writing this

report the LPA has not received any application for treatment of the subject Oak trees.

- (viii) The neighbour has made requests to the Greenspaces Trees and Woodlands Manager for him/a member of his team to initiate work to the subject trees. As referred to above the LPA has no powers under the tree preservation legislation to require that somebody submits a specific application or that works are undertaken.

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'. The two subject Oak trees have a considerable public amenity value and contribute significantly to the character and appearance of the area and the site on which the trees stand is subject of a current full planning application for proposed development works. It would not be reasonable to refuse to confirm a Tree Preservation Order purely because an objector wanted to undertake treatment to the subject trees – as referred to above anyone wishing to undertake treatment to the trees should submit an application in accordance with the legislation which would then be considered on its own merits and granted/refused as appropriate.

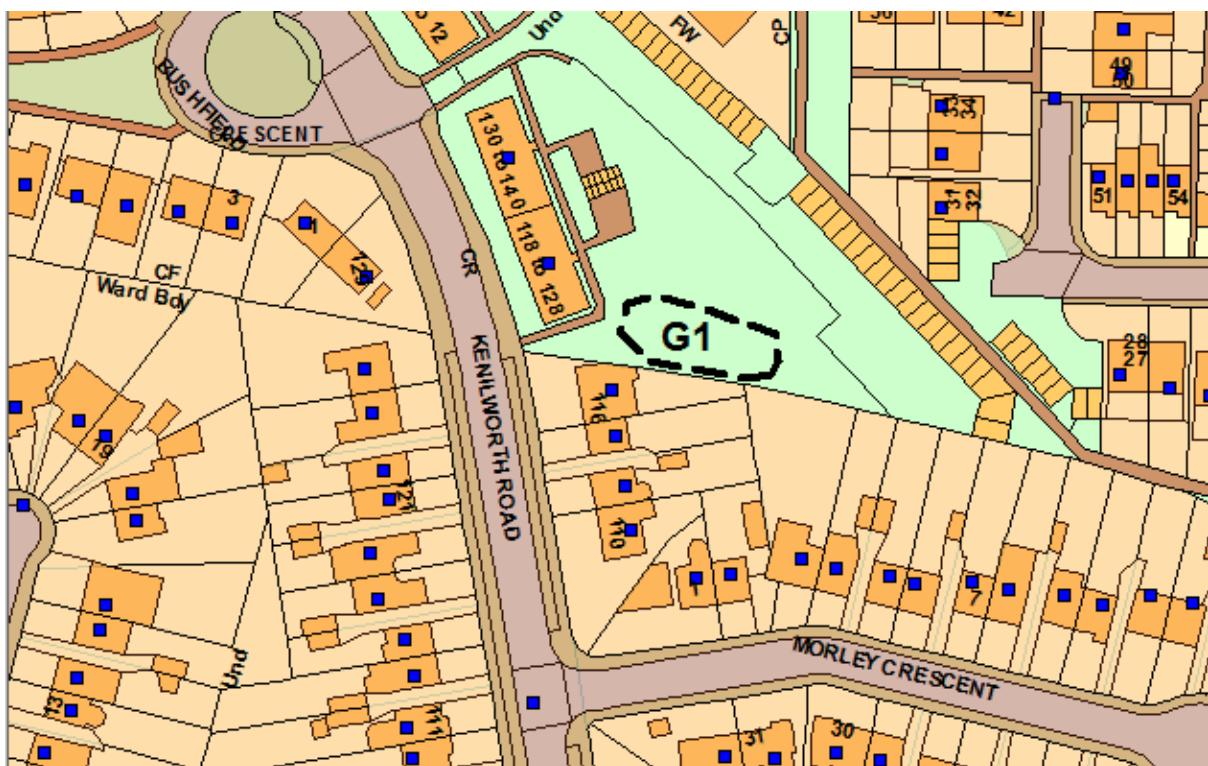
2. EQUALITIES AND DIVERSITY ISSUES

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 two 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.



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