

BARNET

LONDON BOROUGH

COMMITTEE REPORT

- LOCATION:** Woodland to the rear of Burton Bank, Wills Grove Mill Hill
- REFERENCE:** 22/TPO/003
- WARD:** Mill Hill
- PROPOSAL:** To seek authority for confirmation of Tree Preservation Order with 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 with 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 25th April 2022
TCP/0154/22- Section 211 notice of intent for the following works:-

Undertake woodland management operations within sub compartments W200 and W213 as shown on the tree location plan:

- 1) Remove under story trees and shrubs with a stem diameter less than 7.5cm at BH (1.3m) and grind out stumps (exempt works)
- 2) Undertake selective thinning areas mature trees by 20% within woodland.
- 3) Fell any Holly and sycamore with a stem diameter no greater than 15cm at BH (1.3m) and grind out stumps
- 4) Remove ivy from trees (exempt works)
- 5) Allow for all chippings and logs to create wildlife environment.

Reason:- This would allow for greater inspection of the trees to maintain full health, allow for the existing trees to flourish, allow for greater access for any future works, create more light in for neighbours that complain, allow for a healthy woodland area. clear any storm damage

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 29th April 2022 in the interest of public amenity in the light of a section 211 notice of intent to undertake extensive tree works within the woodland to the rear of Burton Bank, Wills Grove Mill Hill.

Following a site visit with the applicant to review the works within the woodland it was verbally agreed lesser works would be more appropriate. However, the applicant failed to withdraw the 6 week notice of intended works. The proposed works would have had a significant and detrimental impact on the visual tree amenity of the area and the Mill Hill Conservation Area. This part of the conservation area is a mosaic of woodlands that are interlinked providing a large area of almost continuous tree cover.

The proposed works “ 1) Remove under story trees and shrubs with a stem diameter less than 7.5cm at BH (1.3m) and grind out stumps (exempt works)

2) Undertake selective thinning areas mature trees by 20% within woodland.

3) Fell any Holly and sycamore with a stem diameter no greater than 15cm at BH (1.3m) and grind out stumps”

For the complete removal of the understory shrub layer is not considered sound woodland management practice. As it would remove low level shelter and food sources for wildlife and impact significantly on the visual appearance of the woodland.

Removing 20% of the upper canopy (mature trees) would result in a significant reduction in tree cover leading to excessive under story growth, that treatment 1 was trying to address. The woodland has a normal stocking level and a reduction would

leave the woodland understocked and at a greater risk of storm damage which would harm the character and appearance of the conservation area.

Treatment 3 removal of holly and sycamore with stem diameter of less than 15cm, the need for this work was unclear. The removal of these establishing sycamore trees is imprudent as with ash die back disease coming to the borough. Sycamore would take the place to any ash trees that are infected, which would maintain the amenity within the woodland.

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 6 weeks sec 211 notice of intent for woodland works 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.

It is believed that the public amenity value of the woodland is considerable – as outlined above – and removal or reduction 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 any future treatments of the woodland.

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 landowner Mill Hill Education Trust..

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

“While there are a number of reasons to object to the confirmation of TPO 22/TPO/003, the overriding reason is that the TPO is unnecessary because the trees are already protected by virtue of being within the Mill Hill Conservation Area and are under good management.

The present level of protection has been effective in preserving the trees to date and can be relied upon to provide protection in the future.

In addition, the form of the TPO is not appropriate to the situation and, in particular, the woodland designation is not appropriate in areas where the land is managed as mown grass and includes an area covered by a tarmac tennis court”

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

- (i) As described above the proposed works would have a detrimental effect on the structure and integrity of the woodland. In addition to this it is usual for woodland works to be undertaken in accordance with a long-term plan (25 years). These plans include clear objectives and set out how they could be achieved. No woodland management plan was submitted with the sec 211 notice or discussed during the site visit. Therefore officers concluded that the works were not part of a long-term strategy, which would be considered ‘good practice’ by industry professionals.
- (ii) The TPO was made as it was expedient to prevent excessive and harmful works from taking place within a woodland that is an essential component of the conservation area’s character.
- (iii) The woodland TPO does include a tennis court and grass areas used for sporting and other school activities. Because of the nature of woodland TPO designation, any tree growing in these areas would be protected by the order. Officers accept that it would not be appropriate for the school to allow trees to grow in these locations. Therefore, the tennis courts and sports areas will be excluded from the order.
- (iv) 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.
- (v) The inclusion of this woodland in an Order does not prevent treeworks being undertaken, but means that application(s) for consent for

treatment of the designated trees/woodland 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.

- (vi) 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.
- (vii) 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.
- (viii) The owners, Mill Hill Education Trust manages many trees other trees protected by tree preservation orders and is very familiar with the process. Undertaking woodland management works would be similar to the other applications. It may also encourage the development a long term management plan.

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 subject woodland has a considerable public amenity value and contribute significantly to the character and appearance of the conservation area. 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 as modified below is considered appropriate in the interests of public amenity. As set out above, it is considered the woodland designated as woodland W1 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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