

Location 2 Foxwood Close London NW7 3JF

Reference: TPP/0462/23 Received: 21st July 2023
Accepted: 21st July 2023

Ward: Mill Hill Expiry 15th September 2023

Case Officer: Jonathan Mills

Applicant: Mr Hussain

Proposal: 2 x Corsican Pine (applicants ref. T3, T4) - Remove (fell) to near ground level. Standing in Group G1 of Tree Preservation Order.

OFFICER'S RECOMMENDATION

AND the Committee grants delegated authority to the Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chair (or in their absence the Vice-Chair) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

That Members of the Planning Committee determine the appropriate action in respect of the proposed felling of 2 x Corsican Pine (applicants ref. T3, T4) - Remove (fell) to near ground level. Standing in Group G1 of Tree Preservation Order either:

REFUSE CONSENT for the following reason:

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

Or:

APPROVE SUBJECT TO CONDITIONS

1. The planting of two scots pine (*Pinus sylvatica*) planted at 2m in height within 3m of the removed shall be confirmed with the Local Planning Authority and these replacement trees shall be planted before the end of the next planting season following the commencement of the approved treatment (either wholly or in part). If within a period of five years from the date of any planting, the tree(s) is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective), further planting of appropriate size and species shall be planted at the same place in the next planting season.

Reason: To maintain the visual amenities of the area.

Informative(s):

1 Ground heave

The applicant would be required to provide the Council with a waiver of liability and indemnity agreement to protect the Council from any third party claims arising out of the implementation of this consent to fell x 2 pine trees standing within G1 of the order. Included in a Tree Preservation Order TPO/CA/204 and to provide appropriate compensation in the event of any ground heave damage to surrounding properties.

2 Bio Security

Tree and shrub species selected for landscaping/replacement planting provide long term resilience to pest, diseases and climate change. The diverse range of species and variety will help prevent rapid spread of any disease. In addition to this, all trees, shrubs and herbaceous plants must adhere to basic bio-security measures to prevent accidental release of pest and diseases and must follow the guidelines below.

"An overarching recommendation is to follow BS 8545: Trees: From Nursery to independence in the Landscape. Recommendations and that in the interest of Bio-security, trees should not be imported directly from European suppliers and planted straight into the field, but spend a full growing season in a British nursery to ensure plant health and non-infection by foreign pests or disease. This is the appropriate measure to address the introduction of diseases such as Oak Processionary Moth and Chalara of Ash. All trees to be planted must have been held in quarantine." To ensure the replacement trees meet bio-security standards they should be purchased from a DEFRA accredited supplier that can be found here:- www.planthealthy.org.uk

3 Retention of wood for habitat

While trees are alive they provide many benefits for wildlife including food and shelter. When a tree dies or needs to be removed these habitat niches are lost. However, where it is safe and appropriate to do so, the retention of large diameter logs and/or standing dead trees (conventionally at a reduced height) is encouraged, as the natural decay process provides equally important habitats for wildlife. To help maintain and improve wildlife habitats and diversity within Barnet, the retention of logs and/or standing timber on site is encouraged. Logs can be arranged in many different ways - guidance can be found here: www.rhs.org.uk/wildlife/dead-wood-compost-heap-habitats or www.wildlifetrusts.org/actions/how-make-log-shelter. Further information on the importance of deadwood habitats, published by The World Wide Fund for Nature, can be found here: www.forestlife.gr/en/publication-afterlife-tree/

4 Wildlife

Any and all works carried out in pursuance of this consent / notice will be subject to the duties, obligations and criminal offences contained in the Wildlife and Countryside Act 1981 (as amended). Failure to comply with the provisions of the Wildlife and Countryside Act 1981 (as amended) may result in a criminal

prosecution.

OFFICER'S ASSESSMENT

Amenity:

The subject pine trees stand to the front of 2 Foxwood Close located immediately off the Watford Way a major road within the borough. The subject trees are clearly visible from this road and they make an important contribution to verdant character and appearance of main road side as people transect through the borough.

Foxwood Close is a recent development completed in 1996 under planning approval W07936J for: Three 5 bedroom detached houses with double garages. The tree preservation order TPO/CA/204 was made in 1987 to protect trees during the planning and development process. The pine trees make a significant contribution, softening the visual appearance of the new development.

The two pine trees are mature, established trees at around 20m high. They make a definite impression on the skyline along the Watford Way. The trees are in good condition and there are no substantive arboricultural reasons for the proposed works.

The level of public amenity this tree has justifies the tree preservation order when it was made.

As requested at the previous planning committee meeting the tree should be valued to compare this against any likely costs to the council for compensation. Tree preservation orders are made to protect trees with public amenity value. Therefore, the Visual Amenity Valuation of Tree and Woodlands (The Helliwell System 2008) Guidance note 4 is the appropriate valuation system. 6 factors are used to assess the amenity value of a tree and guidance is set out within the above document. This system does not value ecosystem services, timber value, historical or cultural values which have values. **The committee should note these other factors listed above have considerable value which have not been included in the calculation below.**

The pine trees are growing close together and have a unified crown and so amenity value has been assessed as one tree, in accordance with published guidance.

Factor	Points									
	0	0.5	1	2	3	4	5	6	7	8
Size	< 2m ²	2 to 5m ²	5 to 10m ²	10-20m ²	20-30m ²	30-50m ²	50-100m ²	100-150m ²	150-200m ²	+ 200m ²
Duration	<2 years		2-5 yrs	5-40 yrs	40-100 yrs	100+ yrs				
Importance	None	Very Little	Little	Some	Considerable	Great				
Tree Cover		Woodland	Many	Some	Few	None				
Suitability	Not	Poor	Just	Fair	Very	Particular				

to setting				y		ly				
Form		Poor	Average	Good						

Current **Helliwell** point values: From 1st January **2023**. Individual Trees: £46.92. T tree scores 7 x 3 x 2 x 3 x 2 x 2 making an amenity score of 504 x £46.92 provides an amenity of £23,647

The subject pine trees T3 & T4 (applicant's plan) are approximately 20 high and have stem diameters of around 810mm and 550mm and a full crown spread. The trees are in good health with no obvious physiological or structural defects that would merit the felling of this tree.

Planning History:

2 Foxwood Close

TPO/00060/11/H 3 x Pine (T1 and G2 of Applicants Plan) - Crown Clean by 10%, Deadwood. Group G1 and Standing in Group G2 of Tree Preservation Order (Approved)

TPO/00662/13/H 2 x Pine (T2 and T3 Applicants Plan) - Fell. Group G1 of Tree Preservation Order (Refused)

The reason for this application was to address subsidence occurring at the property, 2 Foxwood Close. No appeal was lodged against this decision.

Planning History:

602 Watford Way

The tree preservation order was made to protect x 4 pine trees and x 1 horse chestnut situated within the ground of 602 Watford in March 1987. This was made following and application W07936D for six properties on the site (refused).

W07936G & W07936J Erection of three detached houses with garages and access thereto from Watford Way were approved on 03.05.1989 and 12.10.1993.

TPO/00662/13/H 2 x Pine (T2 and T3 Applicants Plan) - Fell. Group G1 of Tree Preservation Order. This application was submitted to resolve a subsidence incident that occurred in 2009, 2010 and 2011. The current application makes no reference to this application which is on the public record.

There is also an application from the same agents that relates to an oak tree growing within the grounds of Oakley House 2 Chesham Close London NW7 4AF.

TPP/0463/23 1 x Oak (applicants ref. T9) - Reduce height by 3m and crown radius by 2m leaving balanced crown. Prune on a triennial cycle to maintain at broadly reduced dimensions. Standing in T9 of Tree Preservation Order. (Invalid)

Application:

The applicants and agents acting for the owners of 2 Foxwood Close have made the application for the following reasons: *“Reason: Clay shrinkage subsidence damage at subject property”*.

The supporting documentation comprises:

Sketch plan
Engineering appraisal report
Foundation level monitoring 18/05/2021 to 18/04/2022
Soil analysis
Tree root identification
Arboricultural assessment.
Photographs of damage

Findings

The engineers report states that house was completed in 1996, the current owners purchased the property in 2017 and notified the insurers in 2019 about the damage. The planning history shows that there was an earlier application to remove the subject pine trees in 2013. This planning history would have been provided to the current property owners at the time of purchase.

The Applicants' engineers note that damage is:

“In structural terms the damage falls into Category 3 of Table 1, Building Research Establishment7 Digest 251, which describes it as “moderate” .

*“Cracks that require some opening up and can be patched by a mason.
Repointing of external brickwork and possibly a small amount of brickwork to be replaced.*

Doors and windows sticking. Service pipes may fracture. Weather-tightness often impaired.”

The soil analysis finds that there is clay soil beneath the property with a high shrinkage potential. Pine tree roots were identified within TP1 & BH1 located to front left side of the property.

The August 2020 drainage report notes defective drains and recommends a repair. The engineer states that the damaged drainages are remote from the location where movement is reported.

Level monitoring shows that there is seasonal movement with the levels dropping in the drier summer months and recovering during the wetter winter months. This indicates that the trees are an influencing factor.

The submitted Arboricultural report dated 20 July 2023 recommends the removal of the protected pine trees.

On the 22nd January 2024 the agents of the application confirmed that the following works to the trees that are not protected by the order have been completed.

“Site visit in December 2022 confirmed the following works had been completed:

T5 Oak - reduced - Complete by Dec 22

T6 Oak - Fell - Complete around Oct 20

T9 Oak - Reduce - Outstanding

T10 Maple - Fell - Complete around Oct 20”

The level monitoring readings provided post these works show a downwards trend in the summer months and recovery in the autumn.

Soil analysis provides evidence to show the property is founded on clay soil with a high potential for volume change.

Tree roots from the pines have been identified below the foundations of the property.

No assessment of heave has been provided.

The ADDENDUM ARBORICULTURAL REPORT SUBSIDENCE CLAIM; Claim Reference 201910010070 20 July 2023

Provides guidance on the likely costs of repair should the property need to be underpinned.

Superstructure repairs - £29,000

Estimated Engineering solutions (underpinning) - £150,000

The damage reported within the engineering reports relates mainly to damage occurring to rear of the property. This has been attributed to the oak trees T6 (felled). T9 has not been reduced.

The Council's Engineer has reviewed the information provided and made the following observations:

As observed in 2013 the foundation depth remains *“The foundations vary between 900mm and 1100mm deep”*.

“My only comment on the MWA email is that 2 Foxwood Close was built in 1996 when there was guidance on foundation depths in clay soil when building near trees, which was not the case in Paterson v Humberside”.

In 1995/6 when the property was constructed there was clear guidance from the National House Building council on foundation depths close to trees. The applicants have confirmed that there is no building control certificate for the property.

Following further correspondence with the applicants and clarifications on matters the Councils' engineering made the following conclusions.

“In conclusion

- 1. T3 and T4 pines would be implicated in damage to LHS of the house.*
- 2. T3 and T4 both pre-date house and ground heave is likely if trees removed.*
- 3. The ground heave occurring at rear of house most likely due to removal of T6.*

4. *Soil testing and ground heave would indicate what is the potential for ongoing ground heave of clay soil.*
5. *Oak roots found at rear could be from either T6 or T9 oak, has not been confirmed by DNA. No trial pit at the rear LHS of the house to identify if any oak roots under this part of the house where there is seasonal movement.*
6. *The house foundations were not constructed in accordance with NHBC guidelines current at the time, therefore foundation movement and damage to the property was always likely to occur.”*

The applicants' engineers have stated in their emails that they are not concerned about the risk of heave. The trees were mature at the time the property was constructed and officers remain concerned that there remains a risk of heave, given the deficient foundations.

The reference to the oak trees T6 & T9 not subject to this application. They are included as they are part the wider issues being experienced at the property. T9 is located within the grounds of Oakley House 2 Chesham Close and protected by a Tree Preservation Order. T6 is within the grounds of Rutland House, 1 Chesham Close but is not protected.

The costs provided are for the repair of the section damaged by the pine trees.

Alternative solutions:-

The applicants have not provided any alternative solutions to remedy the repair of the building. However, it is likely that solutions like root barriers in this instance are ineffective due to the positioning of the tree in relation to the structures. A significant crown reduction on scale required (70%) would effectively destroy the trees. Pine trees cannot be reduced past the green needle as they can only generate new growth from the tips of branches. A reduction to manage water uptake would remove the visual amenity that these trees provide.

The loss of the subject pines tree would have a considerable impact on public visual tree amenity and the character and appearance of the properties over alongside the Watford Way

RESERVES

Superstructure repairs - £29,000

Estimated Engineering solutions (underpinning) - £150,000

Legislative background

As the oak tree is included in a Tree Preservation Order, formal consent is required for their treatment from the Council (as Local Planning Authority) in accordance with the provisions of the tree preservation legislation.

Government guidance advises that when determining the application the Council should (1) assess the amenity value of the tree(s) 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.

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provide that compensation is payable for loss or damage in consequence of refusal of consent or grant subject to conditions. 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. In accordance with the 2012 Regulations, it is not possible to issue an Article 5 Certificate confirming that the trees are considered to have 'outstanding' or 'special' amenity value which would remove the Council's liability under the Order to pay compensation for loss or damage incurred as a result of its decision.

In section 5 of the submitted application form it is stated: *"Estimated costs of repair to the building are £29,000 if the influence of the tree(s) remain and £150,000 if the proposed tree works are allowed to proceed. Granting permission will limit these costs. In the event of a refusal we, or our clients, will seek to secure compensation for the additional costs incurred through Section 202(e).*

When considering this, the higher figure should be used.

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 to the privately owned TPO pine trees that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the pine trees is so high that the proposed felling is not justified on the basis of the reasons put forward together with the supporting documentary evidence, such that TPO consent is refused, there may be liability to pay compensation. It is to be noted that the Council's Structural Engineers have noted that the *"pine trees would be implicated in the subsidence damage to the extension"*; there is uncertainty about the risk of heave, it is also clear that the foundations were not constructed in accordance with NHBC guidance current at the time.

The statutory compensation liability arises for loss or damage in consequence of a refusal of consent or grant subject to conditions - a direct causal link has to be established between the decision giving rise to the claim and the loss or damage claimed for (having regard to the application and the documents and particulars accompanying it). Thus, the cost of rectifying any damage that occurs before the date of the decision, or rectifying damage which is not attributable to the subject trees, would not be subject of a compensation payment.

If it is concluded on the balance of probabilities that the roots of the pine trees is the 'effective and substantial' cause of damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the felling of these trees, there may be a compensation liability if consent for the proposed felling is refused – in the application submissions it is indicated that the repair works for 2 Foxwood Close may be in excess of an extra £150,000 if the subject pine trees are retained.

Consultation:

1 & 3 Foxwood Close and 600 Watford Way were consulted as part of the application process. No comments were received in support or objection to the application.

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 application would have a significant impact on any of the groups as noted in the Act.

CONCLUSION

The agent, MWA Arboriculture Ltd, proposes to fell two pine trees standing in the front garden of 2 Foxwood Close because of its alleged implication in subsidence damage at the same property.

The subject pine trees have high public amenity value and are visible from publicly accessible locations. The trees make an important contribution to the character and appearance of the Watford Way a principal main road in and out of the borough.

The Council's Structural Engineers have assessed the supporting documentary evidence and have noted that the subject pine trees are implicated in the subsidence damage to the front of the property. However, the primary reason is deficient foundations that did not meet the guidelines in force at the time the property was constructed. Additionally the building does not have Building Control approval for the foundations.

The financial implications for the public purse, and public amenity value/benefits of the subject pine trees need to be weighed.

If it is concluded on the balance of probabilities that the pine trees' roots are the 'effective and substantial' cause of damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the felling of this tree, there may be a compensation liability (in the application submissions it is indicated that the repair works for 2 Foxwood Close may be in excess of an extra £150,000 if the subject pine tree is retained and consent not granted).

Members need to decide whether or not the proposal is justified, having regard to the reasons put forward in support of it, given the likely impact of the proposal on the amenity of the area; bearing in mind the potential implications for the public purse that may arise from the Decision for this application.

