



PLANNING COMMITTEE: –

9<sup>th</sup> September 2010

REPORT OF THE HEAD OF DEVELOPMENT AND DELIVERY

**APPLICATION TO FELL ONE PROTECTED SILVER BIRCH TREE  
AT 79 INGLEWOOD GROVE, STREETLY B74 3LW.**

**1. PURPOSE OF REPORT**

To seek the determination of the application to fell one Silver Birch tree contained in application 10/01015/TR protected by Tree Preservation Order 5 of 1979. This application has been brought to Development Control Committee at the request of Councillor Hughes due to significant community interest.

**2. RECOMMENDATIONS**

The Committee is recommended to:

- To refuse consent for the removal of the Silver Birch tree at 79 Inglewood Grove, Streetly.

**3. FINANCIAL IMPLICATIONS**

None arising from this report.

**4. POLICY IMPLICATIONS**

Applications to carry out works to protected trees are determined in accordance with legislation and government guidance. There are no council policy implications from this application.

**5. LEGAL IMPLICATIONS**

Failure to comply with a Tree Preservation Order renders anyone carrying out unauthorised works to trees liable to criminal proceedings.

**6. EQUAL OPPORTUNITY IMPLICATIONS**

None arising from this report.

**7. ENVIRONMENTAL IMPACT**

The management of Walsall's tree cover through the administration of the Tree Preservation Order system has positive implications in protecting trees for their visual and environmental benefits. Removal of protected trees is often necessary because trees have a finite lifespan and may also cause nuisance or damage. In these instances the Council has to decide whether the removal of protected trees is justified. In the event that felling a tree is permitted, the Council can secure replacement planting to maintain tree cover.

8. **WARD(S) AFFECTED**

This application is situated within the Streetly ward.

9. **CONSULTEES**

Owners and near neighbours were consulted on this application.

10. **CONTACT OFFICER**

Cameron Gibson - Extension: 2453

11. **BACKGROUND PAPERS**

File reference 10/1015/TR

**Simon Tranter**

HEAD OF DEVELOPMENT AND DELIVERY

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#### **REPORT DETAIL**

**Application number:** 10/1015/TR

**Applicant:** Mrs. Diane Beresford, 79 Inglewood Grove,  
Streetly B74 3LW.

**Date received:** 28 July 2010

**Expiry date:** 22 September 2010

**Reason for bringing to committee:** At the request of Councillor Hughes.

#### **Application and Site Details**

This is an application to remove one Silver Birch tree located to the front of 79 Inglewood Grove, Streetly B74 3LW.

#### **Policy Guidelines**

**National guidance** relating to trees in Tree Preservation Orders and Conservation Areas is found in 'Tree Preservation Orders. A guide to the law and good practice' March 2000 (updated September 2008).

#### **Relevant Planning History**

##### **Previously :**

BC61469T: Prune 2 Birch trees growing in front garden – Grant Consent.  
05/1404/TR/T3: Fell one Silver Birch on corner of 79 Inglewood Grove, next to no. 81 – Refuse Consent. Applicant appealed, Appeal dismissed.  
07/0178/TR/T1: Fell one Silver Birch tree in front garden – Refuse Consent.  
07/2334/TR/T1: Fell one tree in front garden (Rowan) – Grant Consent.  
10/0667/TR: Fell one Silver Birch at front of property. - Part refuse/part consent.

#### **Representations**

As per the previous application, a copy of a letter from the owners of 81 Inglewood Grove dated 21/04/2010 has been submitted, which deals with a complaint against the tree, prior to any application being submitted. It states that the tree is making a mess of their car and driveway and, as the owners cannot sweep up due to back problems, the mess is being trodden into the house carpets. It also states that the Silver Birch is too big for a domestic garden and is in every way a hazard.

The application has also been accompanied by a signed petition in support of the trees removal. It contains 20 names although these represent 9 households, and 2 of the signatories are marked as 'visitor'.

The application is also accompanied by a letter from the applicant's doctor requesting a reconsideration of the issues which appear to cause the applicant stress. This point is expanded upon in the Observations section below.

### **Determining Issues**

The Council has to determine if the removal of the Silver Birch tree is justifiable on the grounds put forward by the applicant and that the correct procedures have been followed throughout the time that this tree has been subject to applications to fell.

### **Introduction**

This is a tree which has been the subject of a number of applications to fell over the years. The Councils approach in dealing with this tree has been consistent in all cases and the Planning Inspectorate has supported this view. The applicant has chosen to have this application determined by this Committee rather than submitting an Appeal to the Planning Inspectorate, as would be normal practice.

### **Observations**

The application states various reasons for wanting the tree removed. These will be dealt with throughout the course of this report although there may be some overlap in comments.

The application refers to a significant mature Silver Birch tree situated to the front of 79 Inglewood Grove, Streetly, adjacent to the flank boundary with no.81. It is approx. 18m in height with an average radial crown spread of approx. 6m. It has a single stem although a large, almost co-dominant, limb arises from a point at 2.5m on the south east side.

The tree appears well rooted and stable in the ground with no visible indications to suggest otherwise. There are no significant faults or defects and there were no signs of fungal fruiting bodies, past or present. The crown of the tree appears to have been thinned in the past which has reduced the

density although this still appears relatively normal. There are also some low hanging branches over the drive of no. 81 and over the public footpath to the front, which could be pruned to give extra headroom clearance. Apart from this, there does not appear to be any other works that are necessary.

The tree is of normal shape and form for the species and is a highly attractive feature in the locality. It is visible from numerous locations in the area and is by far the most visually attractive natural feature to the front of the properties in this section of Inglewood Grove.

The tree once formed part of a scattering of Silver Birches located to the front of several properties in Inglewood Grove although most of these have been removed in recent years. However, its individuality has significantly increased its amenity value as the remainder of the trees in the area are mainly smaller growing Cherry species, with the majority of these being located mainly in other parts of Inglewood Grove and outwith the general view of this part of the street.

Silver Birch trees have relatively light foliage that is not considered to cast dense shade. It is situated almost directly to the east of the applicants dwelling, indicating that any shade cast onto the property would be minimal and restricted to the morning hours only. Indeed, shadow pattern calculations indicate that shading on the property from the tree is negligible from approx. 1.00pm onwards. The amount of shading caused by the tree is not considered a sufficient reason for removing the tree, due to the short amount of time it does cast shade onto the property and the timing of this.

The applicant states that the tree is 30m in height and within 5m of her property. The tree is in fact 18m in height and situated 6m from the property. It is perfectly natural for all trees to sway in the wind and there is no reason to suggest that the movement of the tree indicates instability. With regard to the creaking, this is most likely due to two branches rubbing together in windy weather. This can be remedied by minor pruning, where identified.

It is also stated that the tree creates a stressful condition for which the applicant requires medication. However, although a letter from her doctor has been submitted in support of the application, there is no mention in his letter to suggest that this tree is causing any condition which requires medication. The letter only states that the applicant believes the tree exacerbates her asthma and she feels she may have a possible allergy to it although, again, no evidence has been submitted to support this.

To follow up on the above allergy issue, specific advice on allergies and pollen has been sought from Allergy UK (The British Allergy Foundation). It states that all plants produce pollen. Virtually all of Britain's native trees (Alder, Ash, Beech, Oak, Pine, Sweet Chestnut, Hazel etc) have wind spread pollen. Similarly grasses, including a lawn, no matter how closely mown, will still have flowers low down, and are wind pollinated. Wind borne pollen can travel for many miles due to the minute size of the pollen particles, with this even occurring on the stillest of days.

Allergy UK also state that it is possible to be tested for allergic reactions to specific tree pollens. However, there has been no evidence submitted to demonstrate that this tree in particular is largely, or wholly, responsible for the applicant's ill health. The presence of a significant number of wind pollinated trees in the local area indicates that the removal of this tree may have no discernable effect on the health of the applicants and neighbours.

It has been noted that the applicant has had a small brick wall to the front of the property rebuilt recently. The rebuilt wall has removed the issue of public safety as there are no indications that the public footpath presents a hazard to the general public, although minor cracking has been noted. It must also be stated that a nearby Cherry tree is more likely to cause damage to the public footpath than the Silver Birch tree as it has substantial surface roots, which are clearly evident on site.

The applicant feels aggrieved that other property owners have been 'allowed' to remove their trees and that the Council have removed a number of trees from the grass verge without being replaced. Also that property developers have been given permission to demolish properties and remove trees, indicating preferential treatment to 'big businesses'. These are general issues which are difficult to respond to although it appears as if the trees that other property owners have removed were not covered by a Tree Preservation Order and therefore, no permission from the Council was necessary. It is possible however, to state that the Tree Section undertakes its duties in accordance with all relevant legislation, and applies it in as fair a manner as possible, to the benefit of the wider public.

The applicant suggests that, should her application be refused, the Council should assume responsibility for the future monitoring of the tree in order that she doesn't carry any personal responsibility. As with any other part of property ownership, the owner of the land on which a tree stands, has a duty of care to maintain that tree in as safe a condition as can reasonably be expected. The fact that the tree is subject to a Tree Preservation Order (TPO) does not transfer responsibility from a landowner to the Local Planning Authority (the Council). The TPO is only administered by the Council who deal with the making and revoking of TPOs, applications to work on protected trees and unauthorised work issues.

It is recognised that the applicant has offered to replace the tree with a more suitable type, should the Committee be minded to grant consent for the removal of the tree. It is also recognised that the applicant has already planted a tree in memory of her late husband, albeit in another part of the country, although this approach would not be considered acceptable in this situation.

Officers advise that it may set a dangerous example to the general public if the Committee are minded to allow the removal of the tree based on the reasons submitted in the application. This may lead to an influx of applications citing similar reasons of personal health and anxiety which could

have wider implications for the tree cover throughout the Borough. If the Committee are minded to allow the removal of the tree, it is recommended that a condition to replace the tree with a semi mature species of similar visual presence, be planted in the front garden area of the property to provide the greatest amenity to the general public.

### **Recommendation**

The Committee is therefore recommended to refuse the application.

### **Conditions and Reasons (or reasons for refusal)**

Walsall Metropolitan Borough Council, as a Local Planning Authority, hereby **refuses** consent for the following works as shown in this application;

- To remove the mature Silver Birch tree at 79 Inglewood Grove, Streetly.

For the following reason(s);

- The tree appears well rooted and stable in the soil with no signs of faults or defects indicating a tree of good health and condition.
- The council considers that the applicant has failed to demonstrate that their concerns outweigh the amenity, aesthetic and landscape value that the tree provides to the general public, and justify the removal of the tree.
- The tree is of high amenity value and its loss would be detrimental to the amenity value and character of the area.

Walsall Metropolitan Borough Council, as a Local planning Authority, hereby **grants** consent for the following works;

- Lift the crown of the Silver Birch tree to achieve a 3m clearance above the level of the public footpath and the neighbouring drive at no. 81 Inglewood Grove.

Subject to the following conditions;

1. All tree surgery work shall be completed in accordance with British Standard B.S. 3998.

*Reason:* To protect the health and appearance of the tree(s) in the interest of maintaining the amenity of the area.

2. This permission expires 2 years from the date of the decision and any works not undertaken by the date of expiry shall be the subject of a further application.

*Reason:* In order to give the Local Planning Authority an opportunity of reassessing the condition of the tree in the event of works not being carried out.

Note to Applicant;

1. All 17 species of bat found in Britain are fully protected under the Wildlife and Countryside Act 1981 (as amended by National and European legislation). The applicant should inspect the trees for the presence of bat activity. If bats are discovered during inspection or subsequent work, all work must cease immediately and Natural England must be informed. They can be contacted on 0845 600 3078.
2. All wild birds, their nests and eggs are protected under the Wildlife and Countryside Act 1981. It is an offence to damage or destroy a nest of any wild bird. Birds are generally nesting between March and July, although exceptions to this do occur.
3. This consent to undertake work to the tree(s) does not give consent for any person to enter the land where the tree is situated for the purposes of undertaking the works without the formal consent of the landowner.
4. You may remove deadwood under Section 198(6a) of the Town and Country Planning Act 1990 as this operation is exempt from the need to obtain formal planning permission.



## **SITE PLAN**

### **APPLICATION TO FELL ONE PROTECTED SILVER BIRCH TREE AT 79 INGLEWOOD GROVE, STREETLY B74 3LW.**

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