



PLANNING COMMITTEE

28 November 2019

REPORT OF THE HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION – DEVELOPMENT CONTROL

CONFIRMATION OF TREE PRESERVATION ORDER NO. 05 OF 2019

AT

26 BELVIDERE ROAD, WALSALL WS1 3AU.

1. **PURPOSE OF REPORT**

To seek the confirmation of the Tree Preservation Order No. 05 of 2019 in an unmodified form.

2. **RECOMMENDATIONS**

- i. Confirm the Walsall Tree Preservation Order No. 05 of 2019 in an unmodified form. A plan showing the original Tree Preservation Order is attached to this report.
- ii. Support the reason for making the Tree Preservation Order set out in the report detail, paragraph 10.
- iii. Note that four representations have been received in respect of this Tree Preservation Order.

3 **FINANCIAL IMPLICATIONS**

Within budget, in general, new Tree Preservation Orders generate additional applications for consent and increase officers' workload.

4 **POLICY IMPLICATIONS**

Within Council policy – YES

5 **LEGAL IMPLICATIONS**

The owners and future owners of this site will be required to apply for Council permission if they wish to fell or prune any tree protected by the Tree Preservation Order. Failure to do this renders anyone carrying out unauthorised works to trees liable to criminal proceedings.

6 **EQUAL OPPORTUNITY IMPLICATIONS**

NOT APPLICABLE

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 sometimes 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**

The Tree Preservation Order No. 05 of 2019 is located within the St. Matthews ward.

9. **CONSULTEES**

Owners and near neighbours were sent copies of the Tree Preservation Order and invited to make representations to the Council in either opposition or support of this Tree Preservation Order. Any response is described within the report.

10. **REPORT DETAIL**

Tree Preservation Order No. 05 of 2019 was made using the Head of Service's delegated powers on 23rd July 2019 following an application for development (19/0480). The plans accompanying the application stated the existing Pine tree would be removed. The tree was therefore protected for the following reasons:

- *The tree is an integral part of the verdant character of the area and will continue to contribute to landscape quality in the future.*
- *The tree adds to the amenity and visual diversity of the immediate area.*
- *The tree is at risk of removal through the submission of a development application that indicates it is to be removed.*

Three of the letters of objection comment as follows (note that in at least one instance, the property owner has drafted the letter of objection for his neighbour to sign, if in agreement):

- The tree is unsightly and out of character with the Highgate Conservation Area.
- The tree is too close to the Lime on the street, which has led to uneven growth.
- The tree is damaging the wall and pillars of the property.
- The tree was planted after the property was built as it obstructs the original driveway.
- The tree interferes with street lighting and telephone wires. This is a safety issue for the young children attending the school.
- The tree leans towards the street and it is possible that the prevailing winds could cause it to fall.
- The tree is at odds with others in Jesson Road.

- The tree hinders the large Lime on the street.
- The tree is too large for a suburban garden.
- The tree leaves a carpet of needles and cones in the autumn, making the pathways clogged and messy.

There is also a lengthy objection submitted on behalf of the property owner, from a Planning Consultancy. It is extensive in its comments and I've attempted to summarise the main issues as follows, although I urge you to read the report, and supporting documentation, for a complete picture:

- There is no deigned tree character to the street although Jesson Road has a number of protected mature trees already.
- The Pine tree clutters the corner position.
- The Highgate Conservation Area Assessment does not identify the tree as providing a positive contribution to the Highgate Conservation Area.
- The 2012 protection of the street trees in Jesson Road did not identify the Pine as being of sufficient merit to warrant protection.
- The trees contribution to the verdant character of the area is overstated as it has a limited, lop-sided branch arrangement with little foliage.
- The Pine tree is a garden feature (Christmas Tree) that has outgrown its intended scale, in contrast to the prevalent broadleaf trees along adjacent streets.
- The Highgate Conservation Area Character Appraisal and Management Plan 2009 clearly sets out the key characteristics of the CA as a consistent rhythm of street trees and broadleaf foliage within gardens.
- The Management Plan also identifies negative features such as 'some non-native coniferous trees of little positive visual value', which must apply to the Pine.
- The tree is not an individual feature.
- The condition and appearance of the tree are questionable. It only has branches on the trunk facing the junction, making it appear rather crude and sculptured, and not an attractive natural feature.
- The 'risk of removing the tree' is non-existent given that it requires consent from the LPA.
- It is only through the application that this tree was identified as worthy of protection.
- The TPO is wholly in appropriate and illogical.
- The reasons for the TPO are only based on the visual attraction of the tree by a single officer.
- The tree is damaging the historic garden wall and gate post.
- The proximity of the tree to the garden wall is disproportionate in terms of scale and positioning.
- The branches pose a conflict with the adjacent streetlamp and telegraph post.

The Officer's response to the objections are as follows:

- The tree, the subject of this report, is a Pine tree. Pine is a generic term for a tree within the Pine family (*Pinaceae*) which contains approximately 70 different species in the UK. Differentiating between the various types of Pine is extremely difficult due to the minor variations between them although it is likely that this tree is a Black Pine. For the purposes of making a Tree Preservation Order, the specific species of tree is not required so long as the particular tree can clearly be identified on site by reference to the TPO Plan and Schedule. In this situation, there is only one tree in the location identified on the TPO Plan and it is quite clearly a Pine so there can be no debate as to which tree the TPO intends to cover.
- It is a maturing, upright tree of reasonable shape and form, and has grown in close proximity to a Lime tree on the public footpath. This has resulted in its slightly asymmetrical shape and form although this has no effect on its health, condition or stability. Trees grow in accordance with their surroundings and climatic conditions. It is located towards the southern end of the property, which lies on the junction of Jesson Road and Belvidere Road. Despite its asymmetrical form, it is clearly visible on approaches from the northern end of Jesson Road and along Belvidere Road, providing a high level of amenity value.
- The tree is situated in the Highgate Conservation Area (CA). Anyone wishing to remove a tree in a CA must give the Council 6 weeks' Notice of Intent in writing although there is no requirement to do so in a standard format. In this situation, the property owner had included the tree for removal on a plan submitted as part of an application for development (19/0480) although the tree was remote from the location of the proposed works. As the Council had been submitted with written notification that a tree in a Conservation Area was going to be removed, this constituted a notice under Section 211 of the Town and Country Planning Act. The Council must deal with a Notice under S.211 in one of three ways:
 - make a Tree Preservation Order if justified in the interests of amenity;
 - decide not to make an Order and inform the person who gave notice that the work can go ahead; or
 - decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.

In accordance with the Council's procedure for assessing trees for inclusion in a TPO (TEMPO - Tree Evaluation Method for Preservation Orders), it was considered that a TPO was justified and duly made.

- It is recognised that a streetlamp, telegraph pole and telegraph wires are situated in close proximity to the tree. However, the lower branches of the tree are high enough to not interfere with the streetlamp, and minor 'window pruning' will accommodate the wires running through the crown.

- It is also recognised that the tree is in close proximity to the boundary wall of the property, and that the wall is showing signs of damage through minor cracking where the north and west sections abut the brick built gate pillars. This damage has been attributed to the roots of the Pine tree although no evidence has been submitted to corroborate this. There is a high likelihood that roots from the very mature Laurel bushes immediately adjacent to the wall are a significant contributory factor in the damage to the west pillar at least. The damage noted to the east pillar appears minimal and could be contributed to a host of factors given the age of the wall, and the difference in ground levels between the public footpath and the site. Attributing the damage to the wall on the Pine alone appears to be a very narrow and simplistic approach to a more complicated issue.
- One of the objections appears to base its comments on the Highgate Conservation Area Character Appraisal and Management Plan (hereafter referred to as “the Management Plan”). The objection considers that the Pine tree is at odds with the character of the Conservation Area and is included in the comments that some non-native coniferous trees of little positive visual value are negative features of the Conservation Area, and suggests that the inclusion of the Pine in a TPO is in “*direct contradiction to the Conservation Area Management Plan*”.

Conservation Areas designations apply to the special architectural and historic interest of a place, the character of which is worthy of preserving. Included in the character assessment is the value that trees add to the setting of the architectural interest and the quality of the neighbourhood as a whole. A Conservation Area Character Appraisal will identify and list the trees that make a positive contribution to the character and appearance of the CA (Management Plan, page 29-Trees).

It is interesting to note that the Pine tree has been formally identified as making a positive contribution and is included at Appendix 1 to the Management Plan on Map 5 (Tree Survey), and identified as T120. It is incredulous to think that the objector has interpreted comments in the Management Plan re ‘non-native conifers’ as pertaining to the Pine when it quite clearly states the opposite and supports its inclusion in a formal Tree Preservation Order.

- The same objection also states that when the Council surveyed the trees along Jesson Road in 2012, and made them the subject of a TPO, the Pine tree was not identified as being of sufficient merit to warrant protection.

The trees along Jesson Road are NOT protected by a TPO and are unlikely to be in the future. The trees are under management of the Councils Clean and Green section and government guidance states that trees under Council control are not normally made the subject of a TPO as they are deemed to be under good management (and therefore fail the ‘Expediency Assessment’ section).

11. Officers have taken account of the representations received and followed Government guidance with regards to making and classifying Tree Preservation Orders. The Pine tree is of high visual amenity and is supported in this by its

inclusion in the Management Plan as making a positive contribution. The Planning Committee is therefore recommended to confirm Tree Preservation Order No. 05 of 2019 in an unmodified form.

12. **CONTACT OFFICER**

Cameron Gibson - Extension: 4741

13. **BACKGROUND PAPERS**

File PD1/18/022 relating to Tree Preservation Order No. 05 of 2019.

Steve Pretty,
HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.

TPO 05 of 2019

26 Belvidere Road, Walsall WS1 3AU.

