



PLANNING COMMITTEE: –

27 January 2011

REPORT OF THE HEAD OF DEVELOPMENT AND DELIVERY

**APPLICATION TO FELL ONE PROTECTED CEDAR TREE AT 7
MANDEVILLE GARDENS, WALSALL, WS1 3AT**

**SUPPLEMENTARY REPORT ON TECHNICAL INFORMATION
PROVIDED BY APPLICANT**

1. PURPOSE OF REPORT

To seek the determination of the application to fell one Cedar tree contained in application 10/1488/TR protected by Tree Preservation Order 15 of 1992. This application was brought to Planning Committee at the request of Councillor Arif, on behalf of Councillor McCracken, on the basis of the wider community interest as neighbour disputes have arisen, and damage being caused to the applicant's driveway and the drains of no. 5 Mandeville Gardens.

At its meeting on 6th January 2011, the committee resolved to defer a decision until the applicant's surveyor's report could be considered further by officers. This report gives further consideration to the surveyor's report as resolved by the committee.

2. RECOMMENDATIONS

The Committee is recommended to refuse consent for the removal of the Cedar tree at 7 Mandeville Gardens for the reasons described in this report and the initial report to Planning Committee on 6 January 2011 (appended to this report).

3. FINANCIAL IMPLICATIONS

As with all Tree Preservation Order applications there is provision within The Town and Country Planning Act 1990 section 203 for the applicant to claim compensation from the local planning authority in respect of damage caused or incurred in consequence of the refusal of any consent required under the Order or of the grant of any such consent subject to conditions.

4. **POLICY IMPLICATIONS**

National guidance relating to trees in Tree Preservation Orders or Conservation Areas is found in 'Tree Preservation Orders. A guide to the law and good practice'. March 2000 (updated May 2009). There are no council policy implications from this application.

5. **LEGAL IMPLICATIONS**

See paragraph 3. (There is provision within the legislation for the applicant to claim compensation from the local planning authority in respect of damage caused or incurred in consequence of the refusal of any consent. In the event of a refusal, the applicant has a right of appeal against the Council's decision.

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 relates to the St. Matthews ward.

9. **CONSULTEES**

Owners and near neighbours were consulted on this application.

10. **CONTACT OFFICER**

Cameron Gibson - Extension: 2543

11. **BACKGROUND PAPERS**

File reference 10/1488/TR

Simon Tranter

HEAD OF DEVELOPMENT AND DELIVERY

PLANNING COMMITTEE: –

27 January 2011

APPLICATION TO FELL ONE PROTECTED CEDAR TREE AT 7 MANDEVILLE GARDENS, WALSALL, WS1 3AT

SUPPLEMENTARY REPORT ON TECHNICAL INFORMATION PROVIDED BY APPLICANT

Introduction.

This report further considers the findings of a report by a surveyor acting for the applicant which was submitted in support of the application. This report was discussed in the officer's report on the agenda of the previous meeting of the committee. The committee felt that further consideration was required of the technical issues raised. The original officer's report to the 6 January 2011 meeting of the committee remains relevant and is attached as Appendix A.

The surveyor's report submitted by the applicant seeks to justify the removal of the cedar tree protected by Tree Preservation Order 15 of 1992. The report indicates that the following questions were to be addressed:

- Is the damage to the drive caused by the tree?
- Is there any damage to the house?
- If damage is a result of the tree, what is the remedy?

It states that, from a visual inspection, the tarmac drive has been lifted by tree roots, a leak in the mains gas supply is the result of the tree roots moving the subsoil sufficiently to cause damage to the pipe, and that tree roots have affected the foundations of the garage to cause it to lean.

It recommends that the tree be felled and the roots removed, with a suitable replacement tree being planted in its place.

Consideration of surveyor's report.

Guidance on the information applicants are required to submit in support of a Tree Preservation Order application is set out in 'Tree Preservation Orders: a Guide to the Law and Good Practice' by DETR dated March 2000 but amended in May 2009. Paragraph 6.40C gives detailed requirements for the information required by applicants to demonstrate that alleged subsidence damage is caused by trees.

Although the surveyor's report was submitted, it should have been supported by technical analysis of roots and soils and must include the following information:

- A description of the property, including a description of the damage and the crack pattern, the date that the damage first occurred/was noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map.
- Further details of vegetation in the vicinity and its management since discovery of the damage, together with a plan showing the vegetation and affected building.
- Measurement of the extent and distribution of vertical movement using level monitoring. However, where level monitoring is not possible, the applicant should state why and provide crack-monitoring data. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s)
- A profile of a trial/bore hole dug to identify soil characteristics and foundation type and depth (particularly that on which the foundations rest) including liquid limit, plastic limit and plasticity index.
- The location and identification of roots found. Where identification is inconclusive, DNA testing should be carried out
- Details of previous underpinning or building work. Proposals and estimated costs of options to repair the damage.

In addition to this, the application claims damage to other structures.

Paragraph 6.40D states that 'claims that damage is occurring to lighter structures and surfaces (e.g. garden walls, drains, paving, drives) should be supported by technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.'

The report submitted by the applicant contains little of this information. The report is prefaced by the statement: 'I am not an expert in trees but have considered the requirements for further advice by reference to Forestry Commission Guidance Notes'. As such, the recommendations with regard to tree works are largely speculative and based on very limited survey data.

Discussions of the report by the Council's Tree Officer are contained in the report submitted to the previous meeting of the Planning Committee on 6th January 2011 (see Appendix A). In view of the committee's requirement for officers to consider the technical aspects further and since the report makes reference to potential tree-related property damage, advice was sought from the Council's Structures and Geotechnics Team, whose comments are as follows:

1. Whilst the Surveyors report refers to the side wall of the garage as leaning, there is no reference to cracking, rather a vague comment 'that it is likely that the foundations have been affected.'
2. Photograph 9 in the report shows cracking at high level only and there is no evidence to support the claim that this damage has been caused by a tree.
3. The plan accompanying the application is not to scale and therefore does not show the relationship of the position of the tree relative to the garage. There are no elevations showing the extent of the cracking or the degree and/or orientation of any tapering of the cracks.

4. The report also states, 'I cannot be certain without excavation and inspection.....' Why then have trial holes not been excavated?
5. The report refers to heave of the tarmac to driveway and a leak in the gas main. These items are outside the remit of my Group's activities and therefore I shall not be commenting upon them.

In their view, 'the report is poorly written and, in respect of the garage, other possible causes for the cracking have been totally ignored. The structural evidence produced does not stand up to scrutiny and certainly does not support a case for removal of the tree'.

The applicant's surveyor's report also refers to other documents, the contents of which have been used to justify the removal of the tree. These documents are discussed below:

Forestry Commission Information Note – The Influence of Soils and Species on Tree Root Depth

This document gives advice on the likely rooting depth of a selection of tree species on soils with different characteristics. It aims to be useful to anyone with an interest in underground utilities, objects or features.

Table 1 of the document lists several species of tree and their probable rooting depth for specific soil groups. It is significant that Atlas Cedar, the species of tree in this application, is not included on the list and it is unclear why this document has been referenced at all. It does not appear to provide any evidence to support the surveyor's reports and any conclusions drawn are speculative and conjectural.

British Standard 5837:2005 – Trees in Relation to Construction – Recommendations

This document gives recommendations and guidance on the principles to be applied to achieve a satisfactory juxtaposition of trees, including shrubs, hedges and hedgerows, with new structures. It follows, in sequence, the stages of planning and implementing the provisions which are essential to allow trees to be integrated with new developments. It was published in 2005 and supersedes the original BS5837 which was published in 1991.

The surveyor's report does not specify which part of the document it refers. It has therefore been assumed that the relevant section of the document is Table 3, which gives guidance on the minimum distance between young trees or new planting and structures to avoid direct damage to the structure from future tree growth.

The table indicates that the tree should be 3.0m from a 'path or drive with a flexible surface ...' to generally avoid all damage. It also states that if a new tree was planted at 1.0m, some movement and minor damage might occur. However, these distances would assume that the structure was constructed to the appropriate standard and in line with current best practices, and any

structure that was substandard would be at an increased likelihood of damage. Therefore, it is impossible to make comment on the proximity of trees to structures without first undertaking all necessary investigations and ascertaining all the relevant facts. For this reason, government guidance on Tree Preservation Orders referred to above, sets out the information required in such cases. This has not been supplied.

It is possible that the problems cited by the applicant are due to factors unrelated to the tree. No evidence has been provided to implicate the tree. Little of the evidence required in the official guidance has been provided and the author of the report agreed that he is not a tree expert.

Other points raised during discussion at 6 January 2011 meeting of Planning Committee.

It was stated on behalf of the applicant at the previous meeting of the Planning Committee that the tree was situated too close to the building although no reason was given why. The tree is approximately 6m from the single storey garage on the west side of the house. The distance to the nearest part of the house is approximately 8m. The radial crown spread of the tree is approximately 5.5m, indicating a distance of approx. 2.5m from the crown to the nearest part of the house. This is considered more than sufficient and should not cause problems to the occupiers of the property through shading and proximity.

It was also stated that the majority of the residents of Mandeville Gardens wanted this tree felled although only one letter of support for the application has been received in respect of this, together with one letter of objection. Officers therefore have no evidence of significant community interest.

Recommendation.

Having considered the report by the applicant's surveyor and the comments received from the Council's Structures and Geotechnics officer, the committee is recommended to refuse consent for the removal of the Cedar tree at 7 Mandeville Gardens. This is a visually important tree and it should not be felled without good reason. No evidence has been provided to implicate the tree in any of the alleged damage to the applicant's property. Indeed, there are other possible causes for such damage other than the tree.

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;

- Fell one Cedar tree in the front garden.

For the following reason;

- The council considers that insufficient evidence has been supplied to demonstrate that the Cedar tree is responsible for the problems noted in the application.
- The tree is of high amenity value and its removal would be detrimental to the overall amenity, aesthetic and landscape value of the area.

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

- Minor root pruning (see conditions below).

Subject to the following conditions;

1. No root pruning shall be undertaken without exploratory hand excavations along the line of the lawn/drive boundary being undertaken to ascertain the presence of root material. The depth of the excavations shall be determined as they progress and be dependant on the presence of root material. All roots less than 25mm (1") diameter may be severed with a sharp cutting implement at right angles to the growing direction to keep the exposed wound as small as possible. Any roots greater than 25mm (1") diameter shall be retained until such times as the Council's Tree Officer has inspected them and advised accordingly. Further advice should be obtained from the Council's Tree Officer before any work is undertaken so that the extent and timing of works are agreed.

Reason: To ensure a satisfactory standard of work and in the interests of protecting the health and appearance of the tree.

2. The applicant shall give at least 5 working days notice prior to any works in order that a mutually convenient time can be arranged with the Council to discuss the extent of the works and/or supervise the works on site.

Reason: To ensure a satisfactory standard of work and in the interest of protecting the health and appearance of the tree.

3. 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. Walsall Metropolitan Borough Council considers the following works to be acceptable, subject to a further application. However, they do not address the issues raised in this application and are prescribed to improve the overall appearance of the tree and reduce the potential of the lower crown to impede pedestrian passage:
 1. Clean out the crown of deadwood and crossing branches.
 2. Prune the lower branches to give approx. 3m clearance above ground level.
2. 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.
3. 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.
4. 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.
5. 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.

APPENDIX A

PLANNING COMMITTEE: –

6 January 2011

APPLICATION TO FELL ONE PROTECTED CEDAR TREE AT 7 MANDEVILLE GARDENS, WALSALL, WS1 3AT

Application number: 10/1488/TR

Applicant: Mr. Jaspal Singh, 7 Mandeville Gardens, Walsall WS1 3AT

Date received: 08 November 2010

Expiry date: 03 January 2011

Reason for bringing to committee: Called in at the request of Councillor Arif, on behalf of Councillor McCracken, on the basis of the wider community interest as neighbour disputes have arisen, and damage being caused to the applicant's driveway and the drains of no. 5 Mandeville Gardens.

Application and Site Details

This is an application to remove one Cedar tree at the front of 7 Mandeville Gardens, Walsall, WS1 3AT.

The applicant sets out the following reasons for wanting to fell the tree:

- Roots are causing undulations and cracking to drive.
- Tree is an inappropriate species for the situation.
- Expects tree roots to interfere with drains and underground services.
- Anticipates injury to elderly parent and others visiting the property.
- Problems to health caused by pollen.
- Complaints by neighbours.

He anticipates the tree will put on further growth.

The application has been accompanied by a surveyor's report. The report brief indicates that the following points were to be considered:

- Is the damage to the drive caused by the tree?
- Is there any damage to the house?
- If damage is a result of the tree, what is the remedy?

The report tentatively found from a visual inspection that the tarmac drive has been lifted by tree roots, a leak in the mains gas supply is the result of the tree

roots moving the subsoil sufficiently to cause damage to the pipe, and that tree roots have affected the foundations of the garage to cause it to lean.

It recommends that the tree be felled and the roots removed, with a suitable replacement tree being planted in its place.

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 May 2009).

Relevant Planning History

Previously :

BC35455P: Two storey double garage side extension – Grant Consent
BC58555T: Removal of Cedar in front garden – Part refuse, part consent.

Representations

Two representations from near neighbours have been received. One in support of the application, the other an objection.

The letter of objection states that the multitude of needles that fall onto the drive get walked into the house and embedded in carpets. They cannot be removed easily, even with a strong carpet sweeper. As a result, the owner cannot use his front door to enter his house which he considers to be unfair.

The letter of support states that the tree is a great asset standing at the entrance to the road. He also states that the tree does not overshadow any property at any time and it is healthy and no danger to anyone. He points out that the owner runs a car repair service on his driveway and removal of the tree will allow the front lawn to be used for the parking of cars under repair.

Determining Issues

The Council has to determine if the removal of the Cedar tree is justifiable on the grounds put forward by the applicant.

Observations

The Cedar tree has a height and spread of approximately 15m and 5.5m and is widely visible from the surrounding street scene. It is a fine tree worthy of protection by Tree Preservation Order. It is estimated that the tree is between 40 to 50 years old. From a ground inspection the tree appears to be in good condition exhibiting no signs of structural or physiological problems.

The surveyor's report dated October 2010 was submitted in support of the application. This report gives a brief assessment of the site and makes comments on several issues without the benefit of excavations and soil tests, or advice from a suitably qualified and experienced Arboriculturist. Indeed the report is prefaced by the statement: 'I am not an expert in trees but have considered the requirements for further advice by reference to Forestry Commission Guidance Notes'. As such, the recommendations with regard to tree works are largely speculative and based on inadequate survey data.

Guidance on the administration of Tree Preservation Orders by local authorities is set out in 'Tree Preservation Orders: a Guide to the Law and Good Practice' by DETR dated March 2000. Paragraph 6.40C of a recent addendum to the guidance dated May 2009 issued by the DCLG gives detailed requirements for the information required by applicants to demonstrate that alleged subsidence damage is caused by trees.

Although a surveyor's report was submitted, it should have been supported by technical analysis of roots and soils. These reports must include the following information:

- A description of the property, including a description of the damage and the crack pattern, the date that the damage first occurred/was noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map.
- Further details of vegetation in the vicinity and its management since discovery of the damage, together with a plan showing the vegetation and affected building.
- Measurement of the extent and distribution of vertical movement using level monitoring. However, where level monitoring is not possible, the applicant should state why and provide crack-monitoring data. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s)
- A profile of a trial/bore hole dug to identify soil characteristics and foundation type and depth (particularly that on which the foundations rest) including liquid limit, plastic limit and plasticity index.
- The location and identification of roots found. Where identification is inconclusive, DNA testing should be carried out
- Details of previous underpinning or building work. Proposals and estimated costs of options to repair the damage.

In addition to this, the application claims damage to other structures. Paragraph 6.40D of the addendum to the guidance dated May 2009 states that 'claims that damage is occurring to lighter structures and surfaces (e.g. garden walls, drains, paving, drives) should be supported by technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.'

In both instances, supporting information that corroborates the recommendations in the surveyor's report has not been submitted, leaving the recommendations contained in the report to be speculative at best.

The driveway, and the front garden area, is severely undulated with the tarmac on the drive appearing cracked and broken in places. The cause of the undulation is unknown as the particular properties of the subsoil have not been investigated. However, the plans of the National Soils Research Institute indicate the soil in the immediate neighbourhood to be a 'slowly permeable seasonally wet acid loamy and clayey soil' indicating the presence of a highly shrinkable soil to be unlikely.

In addition to this, the soft landscaped area to the west of the tree has no undulations or ground alterations evident. This is inconsistent with the theory that the tree is the cause of the undulations on the east side as it should have the same effect on all the ground round the base and not just biased to one side. It also supports the fact that further investigation is required to ascertain what is causing the undulations on the east side.

It has been noted that the property appears to have several vehicles parked on the drive, to the side of the garage and on the public highway. The letter of support indicates that a car repair business is operated from the drive. The weight of these vehicles may have caused uneven ground conditions, especially if the drive had been poorly constructed. This explanation for the undulations would be supported by the fact that only the ground to the east side of the tree, where the drive is located, is affected and the west side of the tree is not.

There is no evidence provided to suggest that a reported gas leak referred to in the surveyor's report was due to the tree or some other cause. The applicant states that he is concerned that such damage may occur. The damage to drains in the grounds of no. 5 Mandeville gardens referred to in the councillor's call-in request is not mentioned in the objection by the owner of this property.

The area of the drive where the root meets the edging kerbs has been displaced in an upward direction, indicating the possibility that the annual incremental growth of the root was the cause. However, this cannot be stated fully without further investigative measures, and no evidence to support this theory was submitted with the application. If the tree is not implicated, repairs to the driveway could be carried out to solve these problems without the need to fell the tree.

It is equally uncertain whether the tree could have caused damage to the garage wall. The section of the garage wall that is leaning appears to be the top few courses of bricks which is unlikely to be caused by tree roots.

There is a significant lack of supporting evidence to suggest that the tree is the cause of direct (physical) or indirect (subsidence) damage to the property. However, the issue of direct damage can be addressed to a certain degree through further investigations by hand digging a trench between the drive and the lawn to the west to ascertain the presence of root material. An assessment could then be made of the likelihood of any roots found to be the

cause of the damage to the drive, and remedial pruning work prescribed, if appropriate. Any root pruning would aim to address the damage to the drive, to allow it to be repaired and to mitigate the potential for further damage.

Cedar trees are, like many other tree species, wind pollinated and may cause hay fever in some people in spring. However, the application does not provide any information on the nature of the health problems that this particular tree may cause. This aspect of the application cannot be commented on further as the applicants statement lacks detail although it would be prudent to note that tree pollen can travel several miles and the removal of one tree from a property may not have any effect on the health of the occupier.

The person who supported the application did so because its removal would prevent needles getting inside his house and into the carpets where they are difficult to remove. While I am sympathetic to the problem, I do not feel that it outweighs the considerable amenity value of the tree.

This is a fine and prominent tree and it should not be felled without adequate evidence that it is responsible for the damage reported by the applicant. One of the two responses received referred to the tree as a great asset standing at the entrance of the road. The supporting information provided by the applicant is wholly inadequate and falls well short of the standards required in the official guidance. It is therefore recommended that the application is refused until evidence is received that the tree is the cause of damage to the building and driveway. The Council has no interest in retaining a tree which is causing significant damage but does not want to lose a prominent tree without reasonable evidence that the tree is responsible for that damage.

Recommendation

The Committee is therefore recommended to refuse the application.

SITE PLAN

APPLICATION TO FELL ONE PROTECTED CEDAR TREE AT 7 MANDEVILLE GARDENS, WALSALL, WS1 3AT.

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