

Item No. 7	Classification: Open	Date: 28 July 2011	Meeting Name: Dulwich Community Council
Report title:	Development Management Confirmation of Tree Preservation Order 397: Address: Land to the rear of 160 to 192 Friern Road and to the rear of 153 to 163 Barry Rd Proposal: Confirmation of a Tree Preservation Order in respect of various native and other trees.		
Ward(s) or groups affected:	East Dulwich		
From:	Head of Development Management		

PURPOSE

- 1 To confirm the protected status of trees which are subject to a provisional tree preservation order.

RECOMMENDATION

- 2 Confirm the provisional Tree Preservation Order in its entirety.

BACKGROUND

Site location and description

- 3 The site is an unused area of open space to the rear of gardens on Friern Rd which adjoins a strip of land behind rear gardens on Barry Rd. Both sites are characterised by self seeded young and mature trees together with characterful domestic pear trees associated with former orchard cultivation.

Planning history

- 4 Rear of 190 Friern Road planning application 10-AP-2526 for permission to build a 2-storey plus basement dwelling house (Use Class C3); off street parking for 2 cars; access alongside no. 190 Friern Road and house located behind 178-190 Friern Road was withdrawn following recommendation for refusal due in part to the unacceptable loss of trees protected with a woodland TPO.

TPO number 384 was raised following a request from local residents and Cllr Jonathan Mitchell on behalf of local residents to ensure valuable wildlife habitat was protected, which appeared to be threatened by development proposals. As part of this request trees at the adjoining site to the rear of Barry Road were also included.

A provisional Tree Preservation Order number 384 was raised on the 21st June 2010. This was not confirmed following receipt of objections from the owners of the trees. One objection in respect of the description of the trees was addressed and the Tree Preservation Order re-issued under number 397 on 14th March 2011 in order to more adequately define those trees worthy of protection.

Application number 11-AP-0006 proposes to develop the site via the construction of a single storey house and associated clearance and landscaping works. A number of trees are to be removed and planted as part of the development which will affect amenity and screening. On inspection of the site it appears that at some time in the past some trees have been removed from the rear of Barry Road. There are grounds to believe that the trees on this site are under pressure and without protection maybe removed.

Planning history of adjoining sites

5 Land to the rear of 153 to 163 Barry Rd.

Rear of 151 and 153 Barry Road 10-AP-0880 Planning permission was refused on 1/06/2010 for the demolition of garage at 153 Barry Road and erection of 2 x 2-bedroom and 2 x 3-bedroom semi-detached houses with 4 car parking spaces, cycle and refuse storage and associated landscaping at land to rear of 153 Barry Road, permission was refused for the following reasons;

- The location of the proposed vehicle access immediately adjoining 151 and 153 Barry Road would have an unacceptable impact on the amenity of these properties through the introduction of vehicle movements in close proximity to their windows and gardens.
- The proposed development, by reason of the limited separation distance between the two blocks of houses and resultant overlooking, together with the limited depth and level of amenity space for the 2-bedroom houses would provide poor levels of residential amenity for future occupiers of the proposed dwellings.

08-AP-1916 Planning permission was also refused for the erection of 4 x 3 bedroom houses with 4 parking spaces in November 2008. Permission was refused for the following reasons;

- The proposed 2- storey houses would result in an incongruous development that would display an unacceptable level of visual bulk and mass when viewed from 151 -165 Barry Road to the detriment of the amenity of these properties and the enjoyment of their gardens.
- The design and location of the proposed vehicle access way is inadequate in design to cater for the development including catering for pedestrian access and refuse collection and its location immediately adjoining the neighbouring property would have an unacceptable impact on the amenity of immediately adjoining residents.

06-AP-0833 - Re-development of land to the rear of 153 Barry Road to provide 3 new build houses single-storey (outline application); application assessing only siting of the dwellinghouses. Planning permission was REFUSED in March 2007 for the following reason:

The proposed siting of the three residential units of the footprint and height proposed in this location would result in an incongruous development that would display an unacceptable level of visual bulk and mass out of character with the pattern of development in this area and to the detriment of the amenity of residents.

Outline planning permission 06-AP-0310 for the development of the site for 6, two storey, semi-detached dwellings (seeking siting and access to be considered) was refused in April 2006 for the following reasons:

1. *The proposed siting of the double storey development would result in an incongruous development that would display an unacceptable level of visual bulk and mass when viewed from surrounding properties to the detriment of the amenity of residents,*
2. *The design and location of the proposed vehicle access way is inadequate in design to cater for the development including catering for pedestrian access and refuse collection and its location immediately adjoining the neighbouring property would have an unacceptable impact on the amenity of immediately adjoining residents.*

Outline planning permission was granted on 11 October 1982 for the redevelopment of 153 Barry Road and the land to the rear to provide a 3 storey building fronting Barry Road and 2 single storey houses to the rear (reference: TP/2596-M/TE). Details of the following were 'reserved':

- a) siting;
- b) detailed design;
- c) external appearance;
- d) extent and position of car parking and / or garages within the site (including width and position of any new vehicular access and the design and position of any new service road within the site);
- e) landscaping;
- f) boundary treatment.

FACTORS FOR CONSIDERATION

Main Issues

- 6 Adverse impact on the amenity and biodiversity of the area due to the threat to remove individual trees and tree groups.

Planning Policy

- 7 Southwark Plan 2007 [July]
Policy 3.2 Protection of amenity
Policy 3.13 Urban design
Policy 3.18 Setting of listed buildings, conservation areas and world heritage sites
Policy 3.28 Biodiversity

Arboricultural considerations

- 8 Assessment of submitted arboricultural report

A tree strategy plan was provided on the 7th December following a site visit with officers,

the owner of land to the rear of Friern Road and their arboriculturist on November 24th 2010 (appendix 2).

An assessment of individual trees was undertaken and a plan agreed as a basis for further clarification as to which trees it was agreed could be preserved without objection.

The plan shows the location of individual specimens categorised according to the condition types listed with the relevant British standard (BS 5837: Trees in relation to construction). These describe trees in categories A to C according to their relative safe useful life expectancy, form and contribution to biodiversity. Category R trees are those which are assessed not to be worthy of retention.

Within the submitted plan (11-AP-0006 drawing number 0121 Revision D) a total of twenty five individual trees are categorised for removal (R). Seven of these are a type of evergreen Cypress which were planted as a hedge. These do not make a positive contribution to the character of the area, do not have a high biodiversity value and have outgrown their location to the detriment of other trees of greater worth. These are not included in the Order.

Tree T7 has since been felled as it was confirmed to be dangerous due to its poor condition and pronounced lean and this is therefore removed from the order.

Seventeen other trees are listed for removal (T12 to T21 inclusive, T23, T25 to T31 inclusive) which include a group of self sown Sycamore trees near the centre and western boundary of the site, together with single immature specimens of Oak and Willow. Trees T20, T21 and T25 to T31 inclusive are not considered worthy of retention due to inherent structural defects and instability due to their development on and within compacted refuse. Although of lower retention category value it is recommended that the remaining trees (T12 to T19 inclusive and T23) are preserved notwithstanding the owner's objection. Should development be permitted these trees may reasonably be replaced as part of the proposed replacement planting.

Three over-mature Pear trees are included for retention. These are likely to be remnant plantings from an orchard which is shown on historical maps for the site. Although they display some structural defects these are not so severe as to warrant removal and the trees' age, rarity, importance to wildlife and historical context make them of most importance for protection. Their preservation is agreed by the owner.

A number of category C trees are also shown to be retained, These are smaller Sycamore trees located on the eastern perimeter which screen the site from adjacent rear gardens along Friern Road and there is no objection to their preservation.

A large Lombardy Poplar tree is shown outside the site for retention as are trees of significant sizes within rear gardens. The plan does not show the trees to the rear of Barry Road that are in a different ownership.

Five trees are shown as replacement planting to provide screening. That is not a consideration for the purposes of deciding whether to preserve the existing trees.

9 Assessment of damage to property

None witnessed or indicated as relevant.

10 Assessment of amenity value

The trees provide major visual amenity due to their size, age, condition and rarity. The number of large trees, which are either fully or partially visible from rear gardens, make a significant contribution to the character of the area. Larger specimens and other native species also have high biodiversity value and as habitat for protected species.

11 Tree evaluation assessment for making Tree Preservation Order

Considerations:

- Although not fully visible to the public, the trees are a prominent feature to a large number of adjacent properties due to the extent of the site.
- Due to their height and size the trees are of some landscape value due to their presence within groups and as screening.
- A number of fruit trees are of historical value due to the previous land use for horticulture and as an orchard.
- The trees are characteristic of rear gardens which form important links for wildlife.
- There are also significant biodiversity benefits due to the density and age of mature trees. These features are not common outside of parks or other woodland the nearest of which are in Camberwell Old Cemetery and Peckham Rye Common.

The trees therefore have a significant amenity value.

The trees were assessed as attaining an overall score of 15 (out of a potential total 25) under the Tree Evaluation Method for Tree Preservation Orders (TEMPO), resulting in a decision guide indicating that the placing of a Tree Preservation Order is definitely merited.

It is important to note that although trees may individually be categorised as lower value, their contribution to a group as a whole will often merit retention due to their usefulness to screening, historical context, as wildlife habitat or in relation to the group's overall aesthetic appeal.

The tree numbers below relate to those in the Order a copy of which is attached as Appendix 2. They do not correspond to those surveyed in the owner's submitted arboricultural report. This is because that report did not number R category trees.

Tree numbers T1 to T9 form a discrete group of larger trees within the northern area of the site behind 168 to 190 Friern Road. This is comprised of mature self sown Sycamore trees of good to fair condition. Although leaning and of poorer form, tree number T7 is recommended for inclusion due to its contribution to the group, particularly in relation to screening, and the potential for this specimen to be pruned in order to reduce hazard. Should this tree need to be removed for safety reasons the TPO designation will secure a suitable replacement. This group is the most important in terms of biodiversity and landscape due its size and maturity.

Tree numbers T10 to T19 form a second group near the centre of the site. These are smaller and lesser condition trees. Trees T10, T11, T14 and T15 are of particular value for screening as are T23, T24, T32 and T33. Trees T13, T16, T17, T18, T19, T20 and T21 are important for the cohesion of the group. This group also includes a small Plum tree T12.

A third sub-group is centred around a large domestic Pear tree T22 which has the highest value of any individual tree for retention.

A final group of Sycamore and an Oak tree is located to the southern boundary comprising trees T25 to T30.

Two other mature Pear trees are located on the boundary at T34 and T35 near to recently planted Fig trees T36 and T37.

Lastly for this site, two mature trees which contribute to the woodland site are included at locations on the boundary outside the site (T38 and T39). Although Lime tree T39 is of relatively poor form with significant defects it is not immediately hazardous and may either be managed as a pollard or removed and replaced.

Finally, tree group G1 consists of ten semi-mature Sycamores to the rear of garden fencing at 153 to 163 Barry Rd. This strip of trees is a remnant of woodland similar to that at 168 to 190 Friern Road before the site was cleared for a proposed development which was subsequently refused. Apart from its contribution to wildlife habitat the trees offer a buffer or screen between the rear gardens and any future development that might be permitted on this site.

Those trees not specifically identified, contribute to the group as a whole, and screen the rear gardens of the area thereby contributing to its leafy character. They constitute a substantial area of woodland which is comparatively rare and therefore of value in an urban/suburban location.

Consultations

- 12 The following points have been made in support of the Tree Preservation Order

155 Barry Road

The trees substantially add to enjoyment of the local environment

They add shade to local gardens

They provide screening around the local gardens

There are not that many trees in the area between Barry Road and Friern Road

They add to the biodiversity of the local area

Ground Floor 190 Friern Road

Since 2006, 4 planning applications have been submitted for the land behind 153 Barry Road which was an old orchard and market garden. Almost all trees were subsequently removed and the land has been left bare of the trees and other flora and fauna it supported, affecting the wider environment as well as the general amenity of the area's inhabitants.

Since 1985 there have been 10 formal planning applications or unique approaches to develop the land behind Friern Road. Each application/enquiry has been refused or rebuffed in clear terms, or withdrawn. I feel strongly that unless a TPO is applied to all (or at least all significant/meritorious) trees on both parcels of land, we will continue to live under the threat that prospective developers will be tempted to do as the owner of 153 Barry Road has done, and clear the land in advance of being granted planning permission, when there is absolutely no guarantee that it ever will.

I do not feel this overly prejudices any landowner in terms of development, as any particular tree(s) covered by the TPO may of course be felled under the authority of detailed planning permission (ideally with the tree being replaced).

For the reasons set out above, I fully support the provisional order being confirmed.

The Council may wish to consider the wider merit of retaining (so far as remains possible) the habitat as a 'green lung' habitat in this part of London, something a TPO would presumably foster.

178 Friern Road

We have lived on Friern Road for the last eight years and our garden backs on to this space. We chose to live in this house partly because of the garden and the protection the wooded area at the end of the garden provided.

This green space is a natural haven for a variety of forms of wildlife. Birds nesting, squirrels, foxes, stag beetles as well as bats have all been personally sighted by us in this area. The trees directly behind our property are mature Sycamore trees over 40 feet tall and provide both a sanctuary for wildlife but also a screen from other neighbours. At ground level there are wild flowers, fungus and dead wood for stag beetles and other insects. Removal of these trees and shrubs would harm the local sustainability of these species.

We make substantial use of our outdoor space with our two young children and would be greatly affected by the removal of these trees. We are fortunate enough to have a private green sanctuary which is not overlooked or subject to noise and this will be lost if these trees are removed. There are so few green spaces like this left in this area because of the high level of building activity that it is important to fight to keep them and within the local community we feel very strongly about this. The site provides tranquillity and space in an area surrounded by housing as well as providing protection from the mass of buildings around. This would be lost if the trees were removed and would have an unacceptable impact on the amenities of the local properties. This would also increase the light pollution at night.

Removal of trees could affect the drainage of the land. The drainage is naturally managed now but the area could become water logged with the removal of the trees as occurred in the land adjacent on Barry Road.

We urge the council to keep the preservation order in place in full and to do all it can to protect what local biodiversity we have.

182 Friern Road

The TPO should be kept in place as the area provides habitat for other wildlife including birds, bats and stag beetles.

The area has an historical connection to Friern Manor dairy farm and orchard.

The trees act as a 'lung' between houses and reduce noise.

The trees are supported in their growth by an underground stream at this location.

They provide significant enjoyment and amenity.

The following objections to the previous order were received :

153 Barry Rd

a) The trees are incorrectly labelled and identified.

b) There is no evaluation as to the trees worthiness for protection.

c) Lack of an assessment on the effect of tree retention and potential subsidence to properties.

d) Interference with the right to enjoy private property and unreasonableness due to the delay in making the order.

Rear of 168 – 190 Friern Rd

e) A permanent TPO which includes certain self seeded, poor form and hazardous trees is not necessary. Poor condition trees should be removed and replaced in suitable locations using native species.

f) The site has been unmaintained for many years and has been used as a fly tipping ground. The removal of dangerous and noxious waste would be hampered by a permanent TPO. The presence of this waste also underlines the unsuitability of the land for permanent protection- it is not a pristine environment.

Officer's response

13 a) A new Tree Preservation Order has dealt with these issues.

b) The new Tree Preservation Order has amended identification to individual trees and this report records how those trees have been assessed both individually and collectively. Factors taken into account include:

1. Visibility of the tree, on the street and in its local area
2. Species, rarity, whether it is indigenous, value to local biodiversity
3. health of tree, whether it displays any ill health
4. Lifespan of tree, etc

Whilst it is acknowledged that individual trees vary in quality collectively they make a significant contribution to the amenity of the area and are worthy of preservation.

c) The requirement to assess the impact on nearby buildings is unnecessary given the distance away from properties (26m) which are beyond the maximum likely zone of influence of tree roots. There is no evidence of damage or risk to the boundary wall.

d) It is acknowledged that it has taken time to bring this matter to a conclusion that has been due to the need to better identify the trees in question and to allow time for inspection of the trees by those Members who wish to prior to reaching a decision. The delay in confirming the order is within the six month period of the current provisional Tree Preservation order No 397.

e) Although trees may individually be categorised as lower value, their contribution to a group as a whole will often merit retention due to their usefulness to screening, historical context, as wildlife habitat or in relation to the group's overall aesthetic appeal. Should trees be assessed as presenting an unacceptable risk these may be removed on condition that appropriate replacements, including native species, are planted.

f) No restriction is imposed which would prevent the removal of hazardous material where this does not damage protected trees. Work to remove such material has been undertaken. If evidence is provided that a tree needs to be removed to remedy contaminated land that matter can be considered separately on its own merits. An environment does not need to be pristine for trees to be worthy of preservation. In this instance the scarcity of woodland whether pristine or otherwise in the area has been a factor in assessing these trees importance to the local area.

14 Conclusion

Should the TPO not be confirmed there remains an immediate threat of the trees being removed. Protection is lost after the provisional six month period elapses. The trees are not protected by another designation since they are not within a conservation area.

The amount of tree and canopy cover within rear gardens has historically been under increasing pressure resulting in gradual and significant loss.

Since details of individual trees worthy of protection have now been clarified it is therefore reasonable to proceed to confirm the Tree Preservation Order.

If adequate information to support removal is received in future the need for removal or pruning work can be reassessed in respect of individual trees.

It is open to Members to vary the Tree Preservation Order by removing some trees from it, if they do not accept in full the recommendation to confirm the Tree Preservation Order

COMMUNITY IMPACT STATEMENT

15 In line with the Council's Community Impact Statement the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process.

16 The impact on local people is set out above; there will be a loss of biodiversity, screening and visual amenity if the trees are removed.

The European Convention of Human Rights requires public authorities such as the Council to have regard to individuals Human Rights as well as pursuing legitimate policy objectives such as protection of the environment.

In this instance the right to enjoy ones possessions under Article 1 of the first Protocol and the right to a private life, family and home within Article 8 maybe engaged. It is considered that whilst these rights maybe engaged they may apply to both tree owners and adjacent residents and do not compel the authority to determine this matter either way, but instead should be considered with the planning and environmental considerations identified in the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Tree Preservation Files Planning Application Files	Regeneration and Neighbourhoods Department 160 Tooley Street London SE1 2TZ	Planning enquiries telephone: 020 7525 5403/2090 Planning enquiries email: planning.enquiries@southwark.gov .uk Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix 1	Consultation responses received

AUDIT TRAIL

Lead Officer	Gary Rice, Head of Development Management	
Report Author	Oliver Stutter, Senior Planner, Urban Forester	
Version	Final	
Dated	7 July 2011	
Key Decision	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	No.	None received.
Strategic Director of Regeneration and Neighbourhoods	No.	None received.
Strategic Director of Environment and Housing	No.	None received.
Date final report sent to Community Council Team		15 July 2011

APPENDIX 1

Consultation responses received

Internal services

Legal

Statutory and non-statutory organisations

None

Neighbours and local groups

Supporters

Ground Floor 190 Friern Road

178 Friern Road

182 Friern Road

155 Barry Road

Objections

Mr Jake Edgley Rear of 166 to 190 Friern Road

Mr Abdul Waheed 153 Barry Rd