

Item No. 6.3	Classification: Open	Date: 3 March 2015	Meeting Name: Planning Committee
Report title:	Development Management planning application: Application 14/AP/4154 for Tree Preservation Order - works related Address: 21 DULWICH WOOD AVENUE, LONDON, SE19 1HB Proposal: T3 - Oak - Fell and replace T4 - Laurel - Fell		
Ward(s) or groups affected:	College		
From:	Head of Development Management		
Application Start Date 05/11/2014		Application Expiry Date 31/12/2014	
Earliest Decision Date 07/12/2014			

RECOMMENDATION

1. That the application is referred to the Planning Committee for consideration; and that it grant TPO consent to fell T3 (Oak) and issue a Tree Replacement Notice securing suitable replacement planting; and to agree no intervention by the local authority in the removal of T4 (Laurel), a Tree within the Dulwich Wood Conservation Area.

BACKGROUND INFORMATION

Site location and description

2. The site is a semi-detached two storey residential property adjacent to Gipsy Hill railway cutting. The Oak tree is protected by TPO ref. 449 confirmed 17/04/2014. The Bay tree is not protected but an application for the approval of tree works in a conservation area.

Details of proposed tree works

3. T3 - Oak (TPO ref 449) - Fell.
T4 - Laurel - Fell.

The applicant states that:

- a) The tree works are proposed to stop the influence of the tree(s) on the soil below building foundation level and provide long term stability.
- b) Estimated costs of repair to the building are £25k if the influence of the tree(s) remain and £5k 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).
- c) It is the expert opinion of both the case engineer and arboriculturalist that on the balance of probabilities the supporting information demonstrates the influence of the tree(s).
- d) Further monitoring results may be submitted if these become available during the

course of this application. The installation of a root barrier has been discounted given the "site constraints" conditions at the rear of the property and in attempting a root barrier the costs would significantly outweigh those of repair costs, please also note that the distance between the tree and the property is not sufficient to provide safe working distance to the property without major root severance to the Oak tree.

- e) Suggestions for replacement planting would be Silver Birch as per the Dulwich Estates decision, however the distance to the property would need to increase to 8m-9m from the property.

Planning history

- 4.

14/AP/0178 Application type: Tree Preservation Order - works related (TPO) T3: Oak - Fell 1 to provide long term stability. Decision date 17/03/2014 Decision: TPO consent refused (TPOR)

Planning history of adjoining sites

- 5. None relevant.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

- 6. The main issues to be considered in respect of this application are:
 - a) the impact of the proposed works on the tree(s); and
 - b) the impact of the proposed works on the amenity of the area.

Planning policy

- 7. The Council's cabinet on 19 March 2013, as required by para 215 of the NPPF, considered the issue of compliance of Southwark Planning Policy with the National Planning Policy Framework. All policies and proposals were reviewed and the Council satisfied itself that the policies and proposals in use were in conformity with the NPPF. The resolution was that with the exception of Policy 1.8 (location of retail outside town centres) in the Southwark Plan all Southwark Plan policies are saved. Therefore due weight should be given to relevant policies in existing plans in accordance to their degree of consistency with the NPPF.

National Planning Policy Framework (NPPF)

Section 11 Conserving and enhancing the natural environment
Section 12 Conserving and enhancing the historic environment

London Plan 2011

Policy 5.9 Overheating and cooling
Policy 5.10 Urban greening
Policy 7.5 Public realm
Policy 7.6 Architecture
Policy 7.8 Heritage assets and conservation
Policy 7.19 Biodiversity and access to nature
Policy 7.21 Trees and woodland

Core Strategy 2011

SP11 Open spaces and wildlife

SP12 Design and conservation
SP13 High environmental standards

Southwark Plan 2007 (July) - saved policies

Policy 3.2 Protection of amenity

Policy 3.13 Urban design

Policy 3.15 Conservation of the historic environment

Policy 3.16 Conservation areas

Policy 3.18 Setting of listed buildings, conservation areas and world heritage sites

Policy 3.28 Biodiversity

Other Guidance

Dulwich Wood Conservation Area Appraisal

Arboricultural considerations

Assessment of submitted arboricultural report

8. Positive tree root identification of the Oak protected by TPO has been provided together with level monitoring showing cyclical movement which indicates the location of damage as occurring to the rear, closest to the trees implicated.
9. Defective drainage has been confirmed as not being a relevant factor, whilst it has also been verified that insufficient space is available to install a root barrier. Damage can therefore be expected to continue being a problem and a source of liability in terms of cost and hazard.
10. Pruning is not considered a suitable alternative as this would require pollarding which would result in the crown being entirely removed, with the tree subsequently repollarded at two yearly intervals.
11. Such intensive intervention would be so severe that the amenity value of the Oak tree would be significantly reduced. The intensity of repeated pollarding is also likely to result in a decline in vigour and eventual death. This is because insufficient time would be available between pollarding for sufficient energy reserves to be stored in order to sustain growth.
12. On balance, removal and replacement with a long lived species at a suitable location which could be allowed to grow to maturity without repeated interventions is considered to be a more sustainable option.

Assessment of damage to property

13. Damage is confirmed as relating to the one storey rear extension. The category of damage is recorded as moderate (>5 and <15mm).

Assessment of amenity value

14. Although not fully visible from Dulwich Wood Avenue, the tree contributes to the character and historical interest of the area given its location near to Dulwich Wood and Borough Open Land. It is also important as screening to adjacent properties due to the recent clear felling and removal of vegetation along the railway cutting.

Conclusion of arboricultural considerations

15. Further level monitoring has been undertaken since 2011 and this is shown in addition to that submitted in the previous application (ref. 14-AP-0178). This confirms a strong seasonal variation of ground movement associated with subsidence caused by water uptake by vegetation.
16. The loss of the tree would result in adverse impacts upon the character of the area.

However, due to the probability of continued ground movement related to soil moisture deficits, it is reasonable to give consent. On balance, the loss of amenity is considered to be less harmful than ongoing exposure to liability for costs.

- Permission has been given by the Dulwich Estate.
- Although replacement planting is proposed this needs to specify an Oak or Beech of a suitable size to be acceptable. This can be controlled via condition.

Impact on biodiversity

17. No nesting sites are apparent, however, the tree canopy provides potential habitat and forage to protected species which may be adversely affected if the tree were to be removed. It is the duty of the applicant to ensure no that protected species are present.

Community impact statement

18. 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.

a) The impact on local people is set out above.

Consultations

19. Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

Consultation replies

Details of consultation responses received are set out in Appendix 2.

Summary of consultation responses

20. 23 Dulwich Wood Avenue - objection.

- The tree has high aesthetic, wildlife and historic value.
- It is older than the house and the modern extension cited in the application; the current owners bought the house aware of the tree's existence.
- The Laurel tree closest to the extension has not been removed nor trimmed and until it is removed it is not clear if this or the Oak is the main issue. Dulwich estate gave permission for the Bay to be removed in 2012.
- The Dulwich Estate license warns of the risk of heave. Other neighbours who have removed trees have said they have had heave problems.
- The current owners have not maintained the trees. The previous owners did and had no reportable problems for 20 + years. They trimmed the Oak and the Laurel regularly. None has since been done.

19 Dulwich Wood Avenue - an objection received 23/12/2014, reiterating concerns regarding heave, the need to remove the Bay tree and subsequent reassessment to

verify the necessity for felling of the Oak.

Officer response:

- 21.
- In order to satisfy the requirements for tree removal due to subsidence, positive root identification must be provided. The existence of Oak roots, which have been verified in the laboratory results provided in the supporting evidence, relates to the only tree of this species in the vicinity.
 - Although the adjacent Laurel tree is clearly implicated as a contributory factor, it is not possible to enforce its removal. The prevalent seasonal variation in ground movement, taken together with the Oak tree's proximity, size and its positive root identification, give a strong indication that it is implicated as a primary cause of soil desiccation.
 - The reasons for refusal given in relation to the previous application to remove the tree have subsequently been addressed.
 - Cracking has continued whilst drainage has been shown not to be contributing to ongoing damage. In addition, a root barrier is considered not to be technically feasible due to the close proximity of the tree to the rear extension.
 - Although the CAVAT value can help guide decisions on the relative merit of competing claims for damage and tree retention, trees protected by TPOs are not included within the Joint Mitigation Protocol which describes how CAVAT is used where trees are implicated in subsidence claims.
 - It is not possible to provide like for like replacement of stem girth on site. However, a semi-mature specimen can be planted as a condition to consent. The contribution of such replacement planting will eventually surpass the value of the claim once it is fully mature, thereby helping to mitigate the immediate loss in CAVAT value.
 - Although heave may become apparent as a result of tree removal, liability rests with the land owner and their insurers should damage to adjacent properties occur. The potential for heave is addressed within the engineer's report.
 - Finally, it is considered that an appeal by the applicants against a second refusal is likely to be upheld by the Planning Inspectorate Service (PINS).

Human rights implications

22. This application may engage certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
23. This application has the legitimate aim of carrying out certain works to a tree or trees. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/2088-19 Application file: 14/AP/4154 Southwark Local Development Framework and Development Plan Documents	Chief executive's department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone:: 020 7525 2090 Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received
Appendix 3	Recommendation

AUDIT TRAIL

Lead Officer	Gary Rice, Head of Development Management	
Report Author	Oliver Stutter, Planner	
Version	Final	
Dated	5 February 2015	
Key Decision	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic director, finance & corporate services	No	No
Strategic director, environment and leisure	Yes	Yes
Strategic director, housing and community services	No	No
Director of regeneration	No	No
Date final report sent to Constitutional Team	19 February 2015	

APPENDIX 1

Consultation undertaken

Site notice date: 14/11/2014

Press notice date: n/a

Case officer site visit date: n/a

Neighbour consultation letters sent: 13/11/2014

Internal services consulted:

Ecology officer

Statutory and non-statutory organisations consulted:

n/a

Neighbour and local groups consulted:

23 Dulwich Wood Avenue London SE19 1HB
19 Dulwich Wood Avenue London SE19 1HB
25 Dulwich Wood Avenue London SE19 1HB
8 Dulwich Wood Avenue London SE19 1HD
6 Dulwich Wood Avenue London SE19 1HD

38 Colby Road London SE19 1HA
36 Colby Road London SE19 1HA
13 Dulwich Wood Avenue London SE19 1HB
17 Dulwich Wood Avenue London SE19 1HB
15 Dulwich Wood Avenue London SE19 1HB
The Old College Gallery Road SE21 7AE

Re-consultation: n/a

APPENDIX 2

Consultation responses received

Internal services

Summarised in main report

Statutory and non-statutory organisations

None

Neighbours and local groups

X
19 Dulwich Wood Avenue London SE19 1HB