

Decision Maker: Plans Sub-Committee No. 4

Date: 17 June 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **OBJECTIONS TO TREE PRESERVATION ORDER 2350 AT
CARTERS HILL CLOSE, MOTTINGHAM**

Contact Officer: Coral Gibson, Principal Trees Officer
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Chief Officer: Chief Planner

Ward: Mottingham and Chislehurst North

1. Reason for report

To consider comments made about the making of the Tree Preservation Order.

2. **RECOMMENDATION(S)**

2.1 The Chief Planner advises that the tree make an important contribution to the visual amenity of the surrounding area and notwithstanding the objections raised, the order should be confirmed.

3. COMMENTARY

- 1.1 This order was made on 6 January 2010 and relates to one cedar tree at the front of Carters Hill Close, Mottingham.
- 1.2 Comments have been received from two residents. One was concerned about the removal of dead wood from the tree and it has been explained that the formal consent of the Council is not needed for the removal of dead wood from a tree covered by a Tree Preservation Order.
- 1.3 The other comments related to the following: the increasing size of the tree and the risks of it falling or losing limbs in a high wind and damage to the nearby path and risks of the tree contributing to subsidence. They have been advised that whilst it is never possible to guarantee the safety of a tree, the cedar is in a healthy condition and because of this, it is normally accepted that there is a low risk of a tree falling or being damaged.
- 1.4 With regard to the cracking of the path, there are several options for its repair which need not adversely affect the tree. If total replacement of the path were required, again there are technical solutions which may allow the retention of the tree without damage, but the consent of the Council would be needed for the carrying out of works which would affect the roots of the tree.
- 1.5 Turning to the possibility of future damage to the property, it was pointed out that the TPO does not prevent tree surgery, but it does mean that the consent of the Council is required for almost any works. If it is demonstrated in the future that property foundations are being damaged, and the only means of solving the problem is by tree surgery or even tree removal, then it would be unusual for the Council to withhold consent. However, the possibility of future damage is not normally sufficient to prevent the confirmation of Tree Preservation Orders.
- 1.6 They also raised a number of questions about the lack of contact between residents and the management committee for Carters Hill Close, they asked how many complaints the Council received, the period of time involved and the basis of the complaints. They have been advised that this information is not publicly available and they could not be told who asked for the tree to be protected. However anyone can ask for a tree to be protected whether or not they have a legal interest in the property or even if they are a resident of the Borough. It is therefore normal practice for the making of TPOs to be considered if the Council is made aware of threats to trees. The cedar tree is an attractive specimen and is of public amenity value and it is for this reason that the tree has been protected.
- 1.7 The Council receives thousands of queries about the status of trees each year. It is not Council practice to inspect each tree prior to letting people know the status of their trees but the objector and their tree surgeon were advised by telephone at the time of asking that the tree was not protected. The objector has been assured that prior to the making of the Order the tree was inspected and it met the criteria for statutory protection - that is, it was of amenity value and was also in a healthy condition. They were advised that the consent of the Council is not needed for the removal of dead wood and broken branches from a protected tree. Residents or tree surgeons can make an application at any time to work on the tree, although work (other than removal of dead wood and broken branches) should not be carried out without first obtaining consent.
- 1.8 They asked about the Council's responsibility for costs of any damage if a branch were to fall. The Tree Preservation Order does not alter responsibility for the tree, and the owner of the tree remains responsible for it. It is prudent for the health of a tree to be periodically checked and it was recommend that this be done by a competent tree surgeon approximately every 5 years. The "rules" regarding compensation and Tree Preservation Orders are as follows - claims can only be made if an application to the Council to carry out work to a protected tree has been

refused or given consent subject to conditions. Claims have to be made within 12 months of the Council's decision and are only payable if an owner has suffered loss or damage as a result of the Council's decision to refuse or grant consent.

- 1.9 They asked for clarification about preservation of amenities. This means the public benefit of a tree, that is whether or not the tree can be seen from a public place, such as a road or path. With regard to the assessment of amenity for Tree Preservation Orders, no standard method is in use which determines when a tree merits a Tree Preservation Order, and when it does not. All methods of amenity assessment contain some inherent subjectivity. The amenity value of trees depends on many factors, and a tree may be appropriate in one location, but out of place or unattractive in another. Trees do not lend themselves to classification into high or low landscape value categories. In this case the size, potential growth, location and intrinsic characteristics of the tree indicate that it is worthy of statutory protection.
- 1.10 They expressed disappointment that the Council did not consult with the management committee prior to protecting the tree. They have been advised that the Council does not notify affected parties prior to the making of TPOs, because of the risk of trees being removed whilst unprotected. It is appreciated that this can appear rather uncompromising, but the legislation sets out a two stage process for making and confirming TPOs, to allow objections to be raised.
- 1.11 Their final point asked if the Council records show who planted the tree and when and if it was not planted by the Council can an Order still be made. The Council does not have any records to show when the tree was planted or by whom. Any tree can be protected regardless of who originally planted it.
- 1.12 A further letter raised some additional points and clarification was sought about procedures for dealing with comments about the making of a Tree Preservation Order. They were advised that an officer responds in detail to the comments that have been made and then a report for a Plans Sub-Committee of the Council is prepared. This report simply states what the comments are and the responses that have been made and a recommendation is made. The Plans Sub-Committee is made up from Councillors and they make the final decision as to whether or not the Tree Preservation Order should be confirmed. Objectors are advised of the date of the Committee meeting as they are entitled to speak at the meeting.
- 1.13 Further concerns were made about how the Order was made. The previous comments were repeated about the Council receiving thousands of requests about the status of trees every year. Officers are not able to inspect trees prior to letting people know the status of the trees and when a telephone query is made our maps are checked and callers advised that at the time the tree was not protected and that the consent of the Council was not needed for the carrying out of work to the tree. Subsequently a request was made for the tree to be protected, the tree was then inspected and it was recommended that a Tree Preservation Order be made.
- 1.14 They expressed concern about the appearance of the tree and photographs are available for the members of the Committee.
- 1.15 They queried the amenity value of the tree and sought clarification of the meaning of the intrinsic characteristics of the tree. They were advised that this relates to the size and form of the tree which are typical of its species.

2. POLICY IMPLICATIONS

- 2.1 This report is in accordance with Policy NE6 of the Council's adopted Unitary Development Plan.

3. LEGAL IMPLICATIONS

3.1 If not confirmed the Order will expire on 6 July 2010.

Non-Applicable Sections:	Financial and Personnel Implications.
Background Documents: (Access via Contact Officer)	