

Decision Maker: PLANS SUB-COMMITTEE NO. 4

Date: Thursday 19 September 2013

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

Title: OBJECTIONS TO TREE PRESERVATION ORDER 2548 AT 25
AND 29 GWYDYR ROAD, BROMLEY

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

Ward: Bromley Town;

1. Reason for report

To consider objections that have been made in respect of the making of a tree preservation order.

2. **RECOMMENDATION(S)**

The Chief Planner advises that the trees makes an important contribution to the visual amenity of this part of Bromley and that the order should be confirmed.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Planning Division Budget
 4. Total current budget for this head: £3.3m
 5. Source of funding: Existing revenue budget
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Staff

1. Number of staff (current and additional): 103.89ftes
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Those affected by the tree preservation order.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1. This order was made on 17th May 2013 and relates to a sycamore in the back garden of 25 Gwydyr Road and an ash tree in the back garden of no.29.

3.2. Objections from have been made by two adjoining owners in 4 Marina Close. The owner of no.4 has expressed concerns about the protection of the ash tree T.2.- she has commented that her house is probably the closest to the ash tree. She has explained that she has lived at the property since 1987 and the tree has grown considerably since that time. She used to be able to grow vegetables in the back half of the garden but the tree now shades this area from 1.30p.m. The seeds from the tree clog gutters and downpipes. She asked if the overhanging branches could be cut back to the boundary and also if the height of the tree could be reduced. She is concerned about safety if the tree should blow over in a strong wind.

3.3. In response the concerns about the sizes of the tree in relation to the garden are noted, The house is 10 metres from the tree (it is 16 metres from the house at no. 29 Gwydyr Road) and this distance would normally be regarded as adequate to accommodate a tree of these species. Tree Preservation Orders do not preclude appropriate tree surgery, although they do mean that the consent of the Council is required prior to most tree works being carried out. Trees sometimes require tree surgery, and this does not necessarily prevent Tree Preservation Orders being made for them. The process for obtaining consent for the carrying out of tree work is not complicated, although it may take up to 8 weeks for a decision to be made. Tree surgeons can apply to the Council on behalf applicants. It was pointed out that the responsibility for the maintenance of the tree remains that of the owners and the reduction in height of the tree would need to be discussed with the owners of the tree.

3.4. It is appreciated that there is some inconvenience associated with the tree dropping leaves and seeds into the garden. However, the problems are limited in severity, and are unlikely to be sufficient reason to prevent the confirmation of the Order. In respect of the tree affecting what can be grown in the garden, the tree is to the west of the garden and will shade the garden. It is accepted that the shade together with the impact of the tree drying out the soil will affect the type of plants that would grow in these conditions however there remain a variety of species which tolerate dry shady conditions.

3.5. Reference is made to dealing with overhanging branches - landowners do have a right in Common Law to cut back any branches which overhang their property. They can only cut back to the boundary line and should offer the branches back to the owner of the tree. However this right is removed once a preservation order has been made. If someone wants to cut back overhanging branches from a preserved tree they would need the written consent of the Council in the same way as an owner. As stated above this is not a complicated process.

3.6. Concerns about the possibility of branches or even the whole tree failing in a strong wind are appreciated. Whilst there is never a guarantee that a tree will not fall in a high wind, provided the tree is in a reasonable condition, it is not usually considered to be a high risk. It is prudent to have trees inspected periodically by a qualified arboriculturist, although as the tree is owned by someone else, this would be something which would need to be discussed with the tree owners.

3.7. The owners of 5 Marina Close have objected to the protection of both trees and they had three points of concern:

1. Consideration has not been given to the positions of the trees in relation to the small gardens in the vicinity. The height of both trees is above the level of surrounding roofs and their spread is out of proportion to the surrounding area. The TPO would make it difficult to obtain consent to reduce the sizes of the trees.

2. The trees block light and air to several properties and they also inhibit plant growth. The overhanging branches cause problems because leaves and seeds block drains and gutters and litter lawns. A TPO would prevent owners from taking prompt action to deal with the overhanging branches.

3. In the event of high winds there is the possibility of branches falling or the whole tree uprooting. This could cause serious and costly damage. The sycamore tree is only 45 feet from their property. This will remain a potential problem if the trees are allowed to continue to grow without control.

4. The objector asked if the making of the TPO places a requirement on the owners for them to maintain their trees.

3.8. In response:

1. Concerns about the sizes of the trees in relation to the surrounding gardens is noted. The back garden of 5 Marina Close is on average 13 metres long and that of 25 Gwydyr Road which contains the sycamore is 17 metres long. The gardens around the ash tree are of a similar size. This is adequate to accommodate trees of these species. Tree Preservation Orders do not preclude appropriate tree surgery, although they do mean that the consent of the Council is required prior to most tree works being carried out. Trees sometimes require tree surgery, and this does not necessarily prevent Tree Preservation Orders being made for them. The process for obtaining consent for the carrying out of tree work is not complicated, although it may take up to 8 weeks for a decision to be made. Tree surgeons can apply to the Council on behalf applicants. The responsibility for the maintenance of the trees remains that of the owners and if the reduction in size of the trees would need to be discussed with the owners of the trees.

2. It is appreciated that the owners of no.5 suffer some inconvenience associated with the tree dropping leaves and seeds into their garden. However, the problems are limited in severity, and are unlikely to be sufficient reason to prevent the confirmation of the Order. Reference is made to dealing with overhanging branches - landowners do have a right in Common Law to cut back any branches which overhang their property. They can only cut back to the boundary line and should offer the branches back to the owner of the tree. However this right is removed once a preservation order has been made. If someone wants to cut back overhanging branches from a preserved tree they would need the written consent of the Council in the same way as an owner. As stated above this is not a complicated process.

3. Concerns about the possibility of branches or even the whole tree failing in a strong wind are appreciated. Whilst there is never a guarantee that a tree will not fall in a high wind, provided the trees are in a reasonable condition, it is not usually considered to be a high risk. It is prudent to have trees inspected periodically by a qualified arboriculturist, although as the trees are owned by others, this would be something which would need to be discussed with the tree owners.

4. The existence of a TPO means that anyone wishing to work on a protected tree has to obtain the consent of the Council before carrying out the work. It does not place any obligation on an owner in respect of maintenance. Tree owners do have a common law duty of law to ensure that their trees are in a reasonably safe condition.

3.9. A meeting has taken place with the objectors and the above issues have been discussed in detail.

4. POLICY IMPLICATIONS

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

5. FINANCIAL IMPLICATIONS

None

6. LEGAL IMPLICATIONS

If not confirmed the order will expire on 17th November 2013.

7. PERSONNEL IMPLICATIONS

None

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| Non-Applicable Sections: | [List non-applicable sections here] |
| Background Documents: (Access via Contact Officer) | [Title of document and date] |