

SECTION '2' – Applications meriting special consideration

Application No: 19/00061/TPO

Ward: Bromley Common
and Keston

Address: Street Record,
Mackintosh Street, Bromley

OS Grid: E:541896 N: 167377

Applicant: Mr M Fryer

Objections: Yes

Description of Development:

**Oak tree on corner of Mackintosh Street and Crown Lane – Fell.
SUBJECT TO TPO BB 1 1952**

Proposal

This application concerns a mature oak tree located adjacent to the junction of Mackintosh Street and Crown Lane Spur. The tree is the last tree of a group designation protecting 1 elm tree and 3 oak trees. Tree Preservation Order (TPO) BB 1, 1952 is one of the earliest TPOs made in the borough. The TPO continues to preserve a number of mature tree features in the Bromley Common and Keston Ward.

The application to fell the tree is a result of the applicant being served notice to take necessary steps to address the hazards posed to the public domain by the tree. The felling of the tree is proposed as the safest and most cost effective option.

Location

The application site is comprised of a communal space associated with the Trinity Development. The development was completed within the past 10 years and is formed of a number of internal access roads leading to a range of terraced town houses and blocks of flats. The main access into the development is Mackintosh Street that links to Crown Lane Spur.

Consultations

A site notice was displayed adjacent to the tree and over 250 objections were received which can be summarised as follows:

1. Cheapest management option is opposed.
2. Life preserving techniques should be applied.
3. Impact on air quality.
4. Alternative management should be considered.
5. No evidence of a danger.
6. Loss of habitat value.
7. Impact on environmental benefits.
8. Applicant has failed to consult residents.
9. Few trees of significance in the area.
10. Pavement should be narrowed to accommodate tree.

11. Impact on historic value.
12. Visual loss.
13. Tree was retained as a condition of the development.
14. Sufficient clearance from the building exists.
15. Amenity value is irreplaceable.
16. Poorly prepared application.
17. The applicant is not registered with Companies House.
18. The appeal decision of November 2007 required a tree survey to be undertaken.
19. Loss of screening.
20. Higher maintenance fees could be considered.
21. No evidence of the reported fungus being harmful or beneficial.
22. Impact on drainage.
23. Loss of the medical and mental wellbeing benefits.
24. Loss of shade and shelter.
25. Impact upon the sense of community.
26. Conflict with Council and London Plan Policies.
27. Lack of quantified risk assessment.
28. Independent assessment should be undertaken.
29. TPOs need to be enforced.
30. Impact on the character of Bromley.
31. Loss of educational asset.
32. Soil compaction should be addressed.
33. Impact upon eco system.
34. Impact on planet.

Due to the public interest on this application, a second site notice will be displayed with the details of the committee meeting.

Considerations

The oak tree is a historic feature and has seen major changes in recent years including the development of the Trinity Village and the construction of the junction of Crown Lane Spur and Bromley Common. A degree of the Root Protection Area (RPA) has therefore been given over to hard surfacing associated with the road and pavements.

A site visit was made on 1st February 2019 to enable a visual assessment to take place and resistograph testing. Resistograph drilling allows the operator to detect the level of resistance in the wood and identify areas of decay or compromised structure. This assists officers in estimating remaining safe retention span.

Officer observations calculate the tree to be 20m in height, displaying signs of lowered vitality. The diameter of the tree is measured to be 1.68m at 1.5m above ground level. A large accumulation of deadwood has developed throughout the canopy layer. Terminal buds were present on the extremities of multiple branches, but it is clear that the tree is dying back from what was the natural canopy outline. Epicormic growth internally indicates response growth is being generated. Basal cavities were noted and probed to establish the extent of coverage. Resistograph testing was extended to the basal flares of significance to the structure of the tree. A circular bench has been immersed by the adapted growth of the tree.

The tree is situated adjacent to the public footpath and has therefore been inspected prior to the submission of this application to address hazards and subsequent threats posed to the public domain. Enforcement action is being taken with regard to removing

the deadwood of the tree to reduce the risk of falling debris impacting the nearby road and footpaths. The enforcement notice served does not require tree felling as a course of action.

The application has been called in for a committee decision by a Ward Councillor.

Conclusion

The Council was served a 5 day notice of the intention to fell the tree in accordance with Exception 14 (1) (C) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012. This notice was rejected and an application required to be submitted. This has enabled public consultation to take place. The result of public consultation has resulted in 253 representations being made to date. Many of the objections are from children of the area and have been displayed on the tree.

The officer has read every objection and summarised the points made under the consultation heading. Valid points have been made in opposition to the application. Some confusion has been noticed in the content of the objections. Many of the objectors believe the Council is responsible for this application. The applicant is acting on behalf of the management company representing residents of Trinity Village.

The applicant is proposing to fell the tree as the most cost effective solution and to address the risk to public safety. Enforcement action has been commenced against the applicant by the Council to address the dangerous condition of the tree by the removal of the deadwood and the dead branches. However, the felling of the tree is not part of the enforcement action which is being undertaken by the Council, as the instructing officer is of the view that it is only the removal of the dead branches and deadwood which is currently required to make the tree safe, and the felling of the tree is not required at the present time. The instructing officer is unable to comment on the necessity for complete removal of the tree in the future, as the tree will have to be monitored over time and managed appropriately depending on how its condition progresses.

The result of the officer assessment during the site visit and upon consideration of the supporting justification reveals that sufficient structural strength remains to support the tree. The level of sound wood and decaying wood ratio is not yet an immediate concern. Management is required, but should start with the removal of deadwood and consideration to remedial pruning. Such pruning will require a level of support from an arboricultural consultant.

The tree is a high amenity feature and should be managed for retention. Alternative management options need to be explored and further evidence submitted to the Council for any required remedial action. The estimated remaining life expectancy is sufficient to justify further management considerations.

A monetary value has been applied to the trees adopting the CAVAT (Capital Asset Value for Amenity Trees) system. CAVAT provides a method for managing trees as public assets rather than liabilities. It is designed not only to be a strategic tool and aid to decision-making in relation to the tree stock as a whole, but also to be applicable to individual cases where the value of a single tree needs to be expressed in monetary terms. CAVAT is recognised in the English court system. The subject tree has been valued at £121, 973.

The supporting justification refers to correspondence with the Council with regards to the danger posed to the public domain, cavities noted at the base, presence of a fungus and the general poor condition.

There is nothing before the Council to indicate an immediate risk of failure. The risk of falling debris is not to be overlooked and should take place under exemption.

Members are therefore recommended to refuse the application and request alternative management.

Financial Implications

Attention is drawn to section 202E of the Town and Country Planning Act 1990. This allows the applicant to make a compensation claim in respect of a refused decision.

Members are informed that no budget has been allocated to the defence of a compensation claim, should the application be refused. A claim may include and is not restricted to any further damage from the date of the decision, costs incurred in respect further repairs, costs incurred in further monitoring and legal costs.

Members are also informed of the officer costs involved in defending against a compensation claim.

RECOMMENDATION: REFUSAL

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REASON:

The proposed felling of the tree has not been justified as a last resort. Alternative management options are available and need to be adopted ahead of tree felling. The proposed felling of the tree is subsequently contrary to Policies 43 and 73 of the Bromley Local Plan (adopted January 2019) and Policy 7.21 of The London Plan (adopted March 2016).

INFORMATIVES

1. You are advised that formal consent is not required for the removal of deadwood, dangerous branches and ivy from protected trees.
2. Details of approved arboricultural consultants can be found at www.trees.org.uk.