

<b>Committee Date</b>	25 <sup>th</sup> November 2021		
<b>Address</b>	J Sainsbury's, 73 High St, Chislehurst, BR7 5AG		
<b>Application Number</b>	21/02788/TPO	<b>Officer</b> Chris Ryder	
<b>Ward</b>	Chislehurst		
<b>Proposal</b>	2 x London Plane tree at wall backing on to No. 73 Empress Drive - Fell. SUBJECT TO TPO 1927 (28.11.2002)		
<b>Applicant</b> J Sainsbury's 73 High Street Chislehurst BR7 5AG	<b>Agent</b> Ground Control Kingfisher House Radford Way Billericay CM12 0EQ		
<b>Reason for referral to committee</b>	Subsidence related financial risk	<b>Councillor call in</b>	
<b>RECOMMENDATION</b>	Refusal		

<b>KEY DESIGNATIONS</b>
Tree Preservation Order (TPO) 1927 (28-11-2002) Chislehurst Conservation Area

<b>Representation summary</b>	
Total number of responses	0
Number in support	0
Number of objections	0

## SUMMARY OF KEY REASONS FOR RECOMMENDATION

- Members must decide whether to consent or refuse the proposed tree removal, based on the evidence submitted and the officer's assessment.

## PROPOSAL

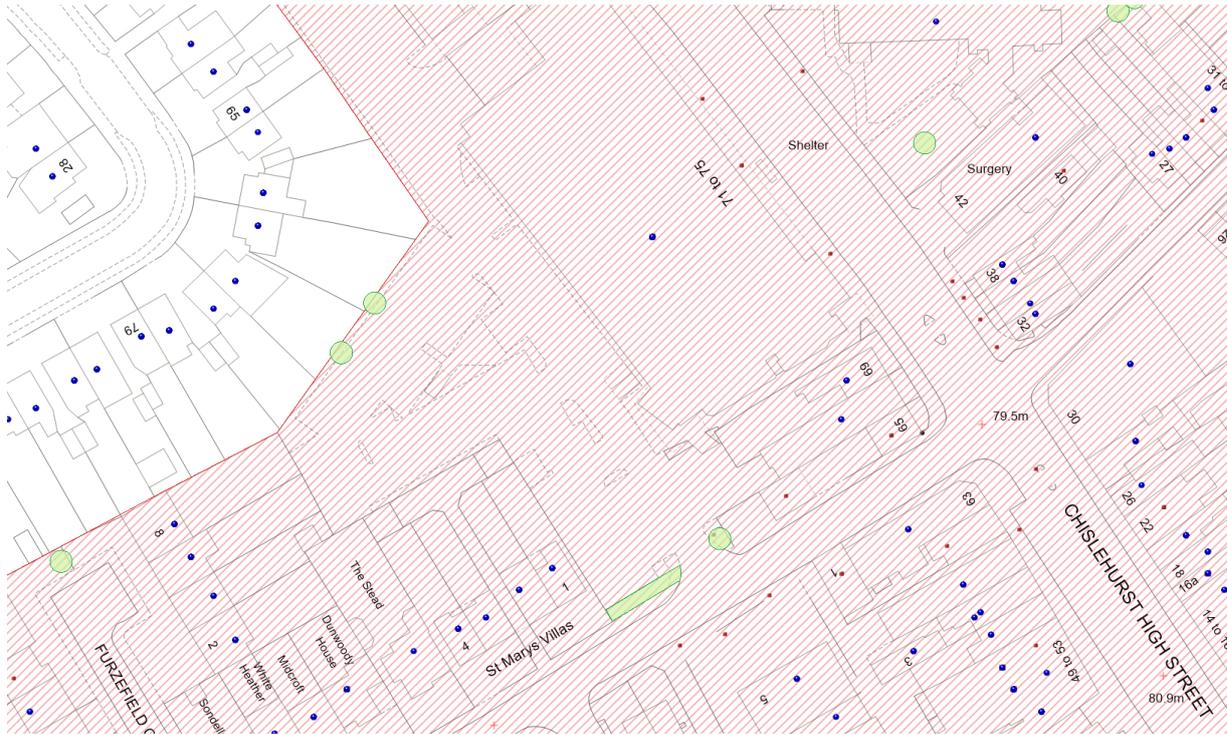
1. This application has been made in respect of two London Plane trees situated in the car park of Chislehurst Sainsbury's, bordering the rear boundary of 71/73 Empress Drive. The application has been made following a direct damage claim involving the boundary wall. The felling of the trees is proposed to enable repairs to take place and remove the influence of the root activity.



*Figure 1 – London Plane Trees*

## LOCATION

2. The trees are located at the back of the car park, bordering the residential boundary wall. Tree Preservation Order (TPO) 1927 protected both subject trees.



**Figure 2 - Site Location**

### 3 RELEVANT PLANNING HISTORY

- 3.1 The TPO was applied as a result of conservation area notice 02/03647/TREE proposing: Cut back to boundary, reduce crown over car park by 25% and reduce to height of hedge 3 plane trees in car park (Sainsbury's) (TREES IN CONSERVATION AREA).
- 3.2 Application 15/04149/TPO resulted in permission for: Remove 4 lower limbs protruding onto neighbour's land, remove 1 lower limb on car park aspect to balance canopy and cut back to give a clearance of 0.5 metres from security light next to the tree of 1 plane located adjacent to the rear boundary of 71 Empress Drive will be cleared around to achieve 0.5 metres clearance. Reasons - Tree is currently causing excessive shading into neighbours gardens and currently obscuring a security light for customers of Sainsbury's. SUBJECT TO TPO 1927 (T2).
- 3.3 Application 17/03048/TPO resulted in permission for:  
 T1 London Plane - Reduce canopy by 5m.  
 T2 London Plane - Reduce canopy by 4m.  
 T3 Silver Maple - Reduce canopy by 2.5m.  
 T4 Silver Maple - Reduce canopy by 2.5m.  
 SUBJECT TO TPO 2453
- 3.4 Application 20/01758/TPO resulted in refused permission for:  
 2x London Plane trees on car park boundary with 73 Empress Drive - Section fell.  
 SUBJECT TO TPO 1927 (28.11.2002)
- 3.5 Conservation area notice 21/03996/TREE proposes: Line of approximately 40 x Conifer trees at back edge of the car park and neighbouring gardens - Fell to ground and grind out main roof stump plate to a depth of 8-10in.

## **4 CONSULTATION SUMMARY**

4.1 A site notice was displayed on the tree and no representations were received.

## **5 POLICIES AND GUIDANCE**

### **5.1 National Policy Framework 2019**

15. Conserving and enhancing the natural environment

### **5.2 The London Plan**

G1 Green Infrastructure and Natural Environment

G7 Trees and Woodlands

### **5.3 Bromley Local Plan 2019**

42 Conservation Areas

73 Development and Trees

74 Conservation and Management of Trees and Woodlands

### **5.4 The London Borough of Bromley Tree Management Strategy 2016-2020**

Section 18

### **5.5 National Planning Guidance - Tree Preservation Orders and trees in conservation areas (Ministry of Housing, Communities and Local Government)**

Paragraph 020 – 057

## **6 CONSIDERATIONS**

6.1 Damage is occurring to the rear boundary wall, located at the end of gardens associated with 71 and 73 Empress Drive. The Engineers Report supplied in support of the application may be referred to for information. Photos are listed within of damage occurring to sections of the wall.

6.2 The following supporting documents have been appended to the application:

- Engineers Report (23.06.20)
- Wall section diagram
- Photos

6.3 The trees are clearly outgrowing the position that they have been planted. Direct damage to the wall is evident and being caused by root activity under the wall footings. No technical adaptations appear to have been made to tolerate tree influence.

6.4 It is understood that the wall repairs need to take place to allow the re-construction of a similar sized brick wall. The trees are therefore constraining the repairs from taking place and risk causing further movement, if retained.

- 6.5 Alternative solutions have not yet been explored. Costs are not yet understood.
- 6.6 The trees are prominent features of the car park. Vitality is normal and no defects were observed on either tree.

## **7 CONCLUSION**

- 7.1 A technical solution has not been explored and should be included in a feasibility study.
- 7.2 Alternative boundary materials/design have not been reviewed. Where boundaries are no longer suited to the surrounding, established landscape, boundary alterations are considered the first consideration. The removal of protected trees should be a last resort and be satisfactorily mitigated.
- 7.3 The felling of nearby cypress trees will enable much of the boundary wall to be repaired. It would be expected that these trees will be replaced with more suitable boundary screening plants. The section adjacent to the subject Plane trees remains a matter of review, for which further support is invited.
- 7.4 The Council must explore alternative solutions and understand the costs implications, ahead of making a final decision.
- 7.5 Members are recommended to refuse the application to defend the implicated tree at this stage. Further detail would be required to address the concerns raised in this report. Members should consider the value of the trees against the costs of repairs in this case. Should consent be granted, it will be necessary to apply planning conditions in mitigation to require replacement planting.

## **8 Financial Implications**

- 8.1 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 reminded of the officer costs involved in defending against a compensation claim.
- 8.2 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.
- 8.3 The Council must be prepared to defend against a compensation claim should the application be refused. Based on the latest case example where a subsidence case was refused and the Council had to defend a compensation claim, the costs of repair in view of tree retention and legal costs were considerations. Where costs of repair were estimated at £76000, the total costs of defending the case were circa £90000. Members should therefore anticipate at least a 25% increase in costs. This may relate to and is not limited to legal, investigation, expert costs and actual repairs.
- 8.4 The Council are currently on notice for 6 subsidence cases where decision have been refused. No further action has been taken at this stage, but Members must be aware of the potential implications involved in a legal challenge.

## **RECOMMENDATION: REFUSAL**

2 x London Plane tree at wall backing on to No. 73 Empress Drive - Fell.  
SUBJECT TO TPO 1927 (28.11.2002)

### **Reason:**

**The application has failed to acknowledge the construction design, technical repairs and alternative solutions. The tree felling would be harmful to the character of the area. The proposals would negate the objectives of the TPO and therefore conflict with Policies 73, 74 of The Bromley Local Plan (adopted January 2019), Policy G7 of The London Plan (adopted March 2021).**

### **INFORMATIVES**

1. You are advised that formal consent is not required for the removal of deadwood, dangerous branches and ivy from protected trees.
2. Further appraisal of alternative solution must be presented, should a further application be lodged.