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| Committee Date | 8 th December 2022 | |
| Address | J Sainsbury's, 73 High St, Chislehurst, BR7 5AG | |
| Application Number | 22/03075/TPO | Officer Paul Smith |
| Ward | Chislehurst | |
| Proposal | 2 x London Plane tree at wall backing on to No. 73 Empress Drive - Fell. SUBJECT TO TPO 1927 (28.11.2002) | |
| Applicant J Sainsbury's 73 High Street Chislehurst BR7 5AG | Agent Ground Control Kingfisher House Radford Way Billericay CM12 0EQ | |
| Reason for referral to committee | | Councillor call in yes |
| RECOMMENDATION | Refusal | |

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| KEY DESIGNATIONS Tree Preservation Order (TPO) 1927 (28-11-2002) Chislehurst Conservation Area |
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| Representation summary | |
| 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 Plan trees situated in the car park of Chislehurst Sainsbury's, bordering the rear boundary of 71/73 Empress Drive. It is the third application to fell the trees in 3 years, the most recent having been refused by committee 29/7/2021. The reasons given for the application are as follows "[the trees] have done significant damage to the boundary wall" and "resubmission of application so client can appeal".



Figure 1 – View from within car park



Figure 2 – View from pavement of Willow Grove

LOCATION

2. The trees are located at the back of the car park, bordering the boundary wall with the rear gardens of Empress Drive. Tree Preservation Order (TPO) 1927 protects both subject trees.

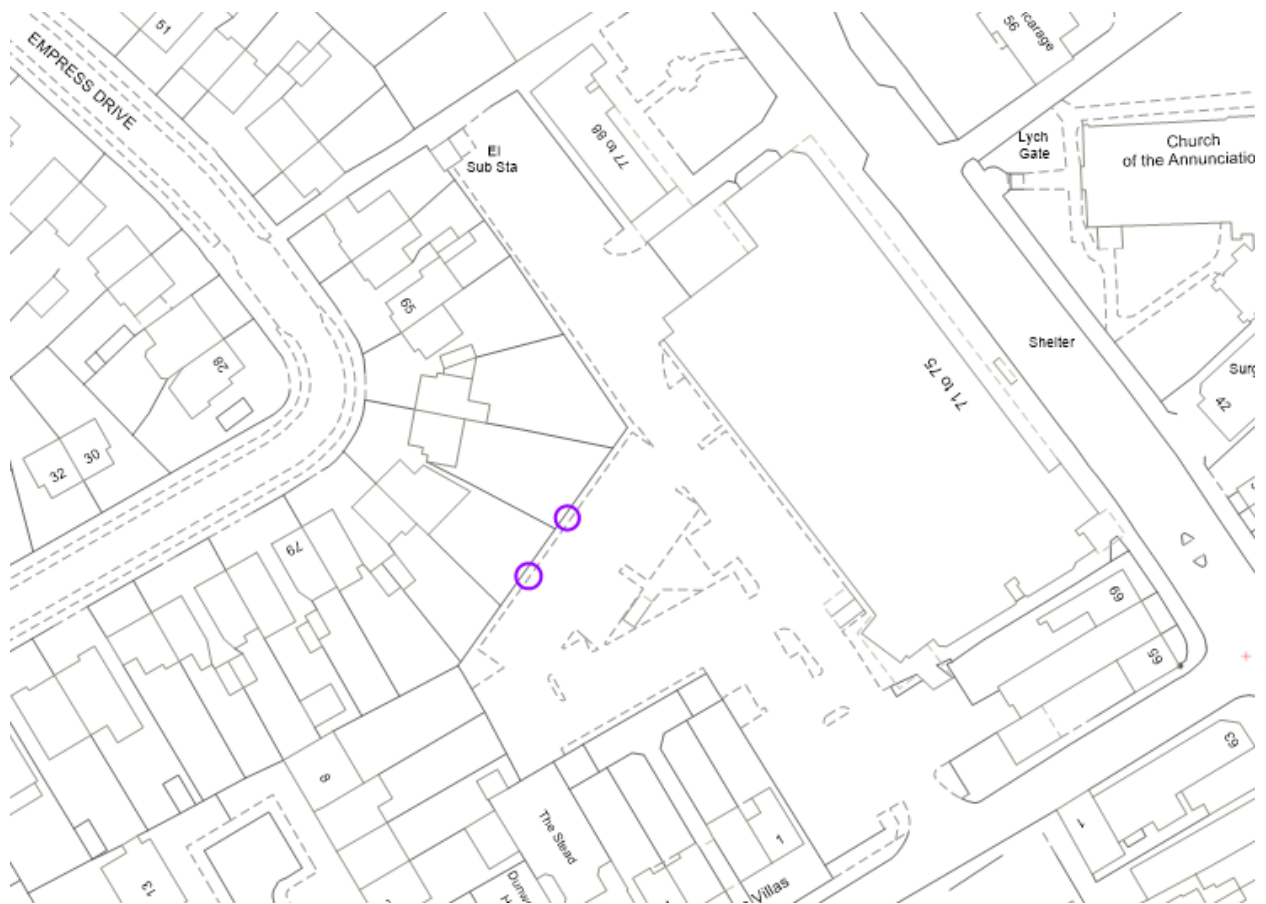


Figure 3 - Site Location

3 RELEVANT PLANNING HISTORY

- 3.1 The TPO was applied in response to a 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 (Sainsburys) (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. 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.
SUBJECT TO TPO 2453
- 3.4 Application 20/01758/TPO resulted in refusal 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 resulted in no objection to: 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.

- 3.6 Application 21/02788/TPO was determined by committee and resulted in refusal for: 2 x London Plane tree at wall backing on to No. 73 Empress Drive - Fell.
SUBJECT TO TPO 1927 (28.11.2002)

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 to the boundary wall, located at the end of gardens associated with 71 and 73 Empress Drive, is evident. The subject trees are the most likely cause, though no investigation or report have been submitted to confirm as such. The report submitted with this application is not relevant to the subject trees nor the subject section of wall, concerning only the already removed line of Cypress trees and already rebuilt section of wall. The agent was repeatedly asked for a report relevant to the subject trees but did not provide one and eventually requested the application be determined without one.

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

- Engineers Report (23.06.20) – *this is relevant only to a different section of wall affected by different trees and not relevant to the wall or trees subject to this application.*
- Wall section diagram
- Photos

- 6.3 The proximity of the tree stems to the wall and the evident damage suggest that planning at the time the two London Plane trees were planted did not account for the size to which the trees would have grown by today. No technical adaptations appear to have been made to tolerate tree influence or allow for growth.
- 6.4 The extent of the damage indicates that the section of wall now needs to be demolished for safety, regardless of the trees' presence. That is to say, whether or not the trees are removed, the section of wall must be removed to prevent it falling. Even if the trees were to be removed, the wall could not be retained and repaired.
- 6.5 Given the above, the agent has been asked, as in previous applications, why, if the wall has to be demolished anyway, can technical solutions not be used to rebuild a new boundary treatment that accommodates the trees. The agent has been prompted to demonstrate consideration of the viability of alternative solutions, for example the use of lintels to bridge roots, the use of a non-brick section of boundary treatment to curve around the tree stems etc.. To date these have not been explored.
- 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 has enabled much of the boundary wall to be repaired. 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 trees 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 trees in Sainsbury's Car Park at wall backing on to 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.