

DEVELOPMENT CONTROL COMMITTEE - 28th April 2010:

Report of the Executive Head of Planning and Transportation

Ref: TPO 2009/11

WARD: Carshalton Central

Site: 25 Mill Lane, Carshalton, SM5 2JY

Proposal: Confirmation of Tree Preservation Order No. 2009/11

Applicant NA

Recommendation:

It is recommended that Tree Preservation Order No. 2009/11 be confirmed without modification.

Reason for Report to Committee: Objections to the making of Tree Preservation Order 2009/11 have been received from the residents of 23, 24 and 26 Mill Lane, 1 Palmerston Road, and 2 and 4 Station Road, Carshalton.

Summary

This report considers objections that have been made to the making of a Tree Preservation Order. The Committee must take the objections into account before deciding whether to confirm the order.

1. Background

1.1 Site

1.2 The site measures approximately 0.01 hectares and comprises an end of terrace 2 storey house with front and rear gardens. The site has a garden area measuring approximately 15m in length and has a maximum width measuring approximately 4.5m. Located in the rear garden situated in the top left hand western corner is 1 mature elm tree the subject of this report. This site is located in the Carshalton Village Conservation Area

1.3 **The Order**

1.4 Following receipt of tree works notification ref. TRW/09/114/CON on 19th October 2009 to crown reduce 1 elm tree by 50% the Council decided on 23rd November 2009 to make Tree Preservation Order No. 2009/11.

1.5 The order was served upon the owners and occupiers of 25 Mill Lane and the adjoining properties in Mill Lane, Palmerston Road and Station Road on 30th November 2009, and included a direction applying Section 201 of the Town and Country Planning Act 1990, which allowed the order to come into immediate effect.

1.6 The order is effective for 6 Months. If the order is not confirmed within that period, the provisional protection afforded by Section 201 will cease on 30th May 2010. The report is seeking authority to confirm the order so that the Tree Preservation Order takes permanent effect.

1.7 TRW/09/135/TPO: Following the making and serving of the order, on 10th December 2009 the Council received an application from the owners of 25 Mill Lane for consent to crown reduce the elm tree by 30%. On 26th November 2009 the Council decided that consent to carry out the above works be granted.

1.8 **Surroundings:**

1.9 The surrounding area is predominantly residential and is characterised by the presence of mostly 2 storey terraced dwelling houses with modest sized front and rear gardens. The site is located equidistant between Palmerston Road and Station Road with Grove Park approximately 222m to the south east and situated approximately 240m from the junction of Mill Lane and North Street.

1.10 **Relevant Planning History**

1.11 No relevant planning history.

2. **Issues**

2.1 The order protects 1 elm tree located in the rear garden of 25 Mill Lane, Carshalton. The tree has been inspected and is considered to be in satisfactory condition and to be of high public amenity value.

2.2 The Council has received objections to the order from the occupiers of 23, 24 and 26 Mill Lane, 1 Palmerston Road, and 2 and 4 Station Road, Carshalton. on the following grounds:

- a) The tree is located in a small suburban garden close to several houses and there are likely to be increasing problems resulting from spreading tree roots as well as increasing problems resulting from falling and low hanging branches, and leaf and seed fall causing severe blocked drains and gutters.
- b) The tree has caused damage to fencing, sheds and structural damage resulting in significant cost to local residents who must pay for cleaning and repair.
- c) The tree is within 10m of the nearby properties and must be declared on insurance quotations.
- d) The tree is too large and out of proportion to its surroundings and is unsightly due to irregular pruning.
- e) The tree is the only one of its size located in any private residential property.
- f) Several properties including 3 and 5a Palmerston Road and 2 and 4 Station Road are directly affected by the tree particularly in the spring and autumn when the cost and inconvenience is incurred from blocked drains and gutters.
- g) It is not considered reasonable for local residents to exclusively incur the burden of costs resulting from the tree.
- h) The tree is already the subject to Council supervision as it is in a Conservation Area.
- i) It is felt that the Council has not adequately assessed the impact of the tree on local residents.
- j) The tree shades approximately 30-40% of the rear garden of 24 Mill Lane.
- k) A resident has been told that it is not worth planting shrubs as the tree has drained the moisture and goodness from the soil.
- l) Tree roots are visible within the jointly owned alley way and are hazardous to walk over.
- m) If the Tree Preservation Order is confirmed and made permanent the Council would be liable for any damage caused by the tree.
- n) The Council is abusing its position on this matter and is breaching Article 8 of the Human Rights Act.

3. Publicity

- 3.1 Letters have been received from the owners of 23, 24 and 26 Mill Lane, 1 Palmerston Road, and 2 and 4 Station Road objecting to the order.

4 Material Planning Policies

- 4.1 UDP Policy OE30 para. 5.161 states: The Council will make Tree Preservation Orders to protect trees which are under threat from damage or destruction arising from development, insensitive management or neglect. Although they may not be immediately under threat from the development, the Council will also protect trees that because of their rarity or excellent value in relation to the streetscene or general townscape value should be retained.
- 4.2 UDP Policy BE35 para. (v) states: The Council will oppose the loss of trees and encourage the retention of landscape or other features that make a positive contribution to the character or appearance of the area.

5. Planning Considerations

- 5.1 The principal considerations in relation to confirmation of the tree preservation order are whether:
- a) The tree is of public amenity value and its removal would adversely affect the visual amenity of the streetscene.
 - b) The Council has exceeded its powers by making a Tree Preservation Order for a tree located within a Conservation Area.
 - c) The tree is unacceptably adversely affecting properties in terms of overshadowing of rear gardens, structural damage and posing a hazard in terms of dangerous overhanging branches, tree roots, and falling leaves causing blocked gutters and drains.
 - d) The tree is disproportionately large for the size of the garden and unreasonably affects the enjoyment of properties adjoining the site.
 - e) It is acceptable for the Council to serve a Tree Preservation Order during a dispute between neighbours and whether by doing so it is breaching the Human Rights Act.
 - f) The Council would be liable for any damage incurred following the confirmation of the order.

- 5.2 The elm tree has been inspected by the Council's Principal Tree Officer and is considered to be in a satisfactory condition. The tree officer has noted that the elm has a trunk formation that is formed from multiple stems and may require future monitoring, however there is no current indication that this is a significant fault. The elm tree is located in the rear garden of 25 Mill Lane and is visible from Public view points along Station Road and Palmerston Road. The tree has been subject to some pruning of lower lateral branches but generally exhibits good form. The elm tree is considered to have a significant degree of visual public amenity value.
- 5.3 The Town Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 allows Local Planning Authorities the powers to make Tree Preservation Orders if it appears to them to be expedient in the interests of amenity. In respect to trees located within a Conservation Area, where an owner seeks to either prune or remove a tree, a formal notification must first be submitted to the Council. The Council then has 6 weeks to decide whether or not to raise an objection to the works. If the Council decides to raise an objection to the proposed tree works and considers the tree to be worthy of protection, it must serve a Tree Preservation Order within 6 weeks of receiving the initial treeworks notification. The applicant is entitled to carry out the works if the Council fails to serve the order within that deadline. The TPO is not an additional layer of protection but a culmination of a process which ultimately results in the making of a new Tree Preservation Order.
- 5.4 The elm tree is located centrally at the meeting point of a number of rear gardens and extends across several properties. As with most broadleaved trees the canopy will shed its leaves and will deposit debris. Although this is an anticipated natural process it is accepted that maintaining the areas beneath the tree especially during the autumn requires time spent to clear and dispose of the debris. The blocking of gutters from leaves and falling debris can however be alleviated by the use of gutter guards or similar systems of protection. Although the tree does not appear to have caused serious structural damage such as subsidence to houses, damage has been reported by residents to have occurred to fencing posts and to sheds as a result of tree root action of which have had to be rebuilt. Tree roots can extend across a wide area and will occasionally interact with structures such as footings for garden posts and concrete bases for sheds. Measures can be taken to guard against invasive root systems such as targeted root pruning, reinforced or floating sub bases for sheds or root barriers.
- 5.5 The gardens adjacent to the elm tree are relatively modest in size ranging from between 18 and 28m in length and from between 5 to 10m in width. The tree is however located centrally between the various affected properties allowing in the main reasonable usable garden space for most properties. No 1 Palmerston Road is however the most affected property having less than 50% of its rear garden space outside the canopy of the tree.

Although the casting of shade onto a garden can be an inconvenience or perceived as oppressive, the Council does not consider this alone to be a satisfactory reason to allow the loss of trees which are considered to make a significant contribution to the character of the area. Grass seeding, turfing and shrub planting is made difficult by the presence of a large tree, however alternative landscaping solutions can be used to overcome this for example the use of shade loving plants or the use of hard landscaped or decked areas in the most shaded parts of the garden. If the approved 30% crown reduction measures as referred to in paragraph 1.7 above are carried out the amount of overshadowing would be reduced.

- 5.6 Although the elm tree is considered to be in satisfactory condition it is prudent that any dead, dying or diseased branches be removed in order to avoid damage to property and increase safety margins for users of the gardens beneath the tree. Consent is not required to remove dead, dying or diseased branches. Shallow roots can in extreme cases cause obstruction to footpaths but can be pruned or bridged in order to mitigate the potential for accidents to pedestrian users.
- 5.7 It is accepted that the degree of maintenance for the nearby residents will be more than if the tree were not there at all, however the Council does not believe that it is unreasonably onerous, and on balance the retention of the tree outweighs the routine maintenance required to be undertaken such as clearing drains and gutters, sweeping up leaves and protecting exposed gutters and drains.
- 5.8 One of the adjoining occupiers (No 24 Mill Lane) objects on the basis that retention of the tree breaches Article 8 of the Human Rights Act as they cannot enjoy their garden and Article 1 as their entitlement to the peaceful possession of their house and garden is affected.

Article 1 states that 'No one shall be deprived of his possessions except in the public interest'.

Article 1 also states that 'the preceding provisions shall not however in any way impair the right of a state to enforce laws, as it deems necessary to control the use of property in accordance with the general interest'.

Article 8 states that 'everyone has the right to respect for his private and family life his home and his correspondence'.

Article 8 also states that 'there shall be no interference by the public authority with the exercise of this right except as in accordance with the law and is necessary in a domestic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'.

The Council has, in deciding the use of its powers pursuant of Section 198 of the Town and Country Planning Act 1990, taken into account of and balanced the rights of the owner against the general interests of the public and surrounding area and concluded that the proposed confirmation of the Tree Preservation Order is appropriate in relation to the Human Rights Act.

Consideration as to whether human rights have or have not been breached is a balancing act between the individuals affected and the wider community who might be affected if the tree were to be removed. It is the Councils position that the tree has visual public amenity value and that the significant wider benefits that accrue from retaining the tree outweigh the impact of the tree on the owner of No.25 Mill Lane and the adjoining and nearby occupiers.

- 5.9 The Council are not directly liable for any damage the tree may cause as the tree is still under private ownership. The tree preservation order does not remove the legal and financial responsibility of the owner, nor does it impose any requirement for the owner to undertake tree works or submit a tree works application. The tree preservation order does however make provision for the payment by the Council of compensation for loss or damage caused or incurred as a result of either the refusal of consent for tree works under the TPO, or the grant of consent for tree works subject to conditions. No claim for compensation can be made if the loss or damage incurred amounts to less than £500 and must meet the criteria laid down within the amendments to the Town and Country Planning Act 1990 as described in the Town and County Planning (Trees) Regulations 1999.

6 Conclusion and Recommendation

- 6.1 The elm tree is considered to be in a satisfactory condition, is a good specimen and of public amenity value. The tree is visible to the general public and its removal would have a detrimental impact upon visual public amenity.
- 6.2 The objections to the order are not accepted for the reasons given in paragraphs 5.2 to 5.9 above. It is therefore recommended that the provisional Tree Preservation Order is confirmed without modification and made permanent.

Background Papers:

Letters of objection from the owners 23, 24 and 26 Mill Lane, 1 Palmerston Road, and 2 and 4 Station Road

Copy of Tree Preservation Order No.2009/11.

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