

Manchester City Council

Report for Resolution

COMMITTEE	PLANNING AND HIGHWAYS COMMITTEE
DATE	24th July 2008
SUBJECT	CONFIRMATION OF TREE PRESERVATION ORDER
LOCATION	17 DARLEY AVENUE, WEST DIDSBURY
REPORT OF	HEAD OF PLANNING

PURPOSE OF REPORT

To inform the committee about the background and issues involved in the making of a Tree Preservation Order on 6th February 2008 and to recommend the confirmation of the Tree Preservation Order.

RECOMMENDATION

The Head of Planning recommends that the Planning and Highways Committee instruct the City Solicitor to confirm the Tree Preservation at 17 Darley Avenue, West Didsbury, under Section 199 of the Town and Country Planning Act 1990, and that the Order should cover the trees as plotted T1 and T2 on the plan attached to this report.

Financial Consequences for the Revenue Budget

None

Financial Consequences for the Capital Budget

None

Contact Officer

Lisa Holland 0161 234 4543

Background Documents

Correspondence regarding the Tree Preservation Order is held on a file, which is available from the case officer.

Wards Affected

Didsbury West

Implications for:

Anti-poverty
No

Equal Opportunities
No

Environment
Yes

Employment
No

INTRODUCTION

On 25th August 2006, a letter was received from West Didsbury Residents Association asking for a Tree Preservation Order to be placed on several trees in the garden of 17 Darley Avenue, West Didsbury. The reason given for requesting the Tree Preservation Order was that there was a possibility for redevelopment on the site in the future and that the trees may be removed as part of that redevelopment.

The City Council Arboriculturalist and Landscape Architect visited the site and inspected the trees. In their opinion two of the trees were of high amenity value and the Oak in particular contributed to ecological diversity which was considered very important. Therefore, it is considered that two of the trees are worthy of protection.

CONSULTATIONS

Section 3 of the Town and Country Planning (Trees) Regulations 1999 states that before a provisional Tree Preservation Order is confirmed any persons interested in the land affected by the order should be served with a copy of the order. Local residents in the vicinity were also consulted and objections and representations made with respect to the Order were considered.

The following residents were served with a copy of the order or notified about the TPO on 6th February 2008.

The owner/occupiers,

17 Darley Avenue, West Didsbury, Manchester M20 2ZD
19 Darley Avenue, West Didsbury, Manchester M20 2ZD.
2 Borrowdale Crescent, West Didsbury, Manchester M20 2XU.
12 Highcroft Avenue, Manchester M20 2YN.
6 Glenmore Avenue, West Didsbury, Manchester M20 2XH
18 Darley Avenue, West Didsbury, Manchester, M20 2XF.

Owner of the site – Anne Lee and Paul Anthony Lee, 17 Darley Avenue, West Didsbury, Manchester, M20

Local Residents - One letter of objection has been received from Addleshaw Goddard Solicitors on behalf of the Estate of Mrs A M Lee the owner of 17 Darley Avenue, the main points of which are outlined below:

1. Visual amenity - It is difficult to see how the trees add significantly to the amenity enjoyment of the area by the public especially since the property is mostly bounded by walls and hedges.
2. Size – The Oak tree is a large tree substantially out of proportion to the rest of the garden, the tree is quite near to the house.
3. Loss of light – The Oak tree is quite near to the house and interferes with the light as well as causing one of the drains to overflow from time to time.
4. Impact on boundary wall – The Beech tree has caused considerable damage to the wall , if retained the owners would welcome guidance as to how the problem can be addressed.
5. Ecological merit – There is no evidence that the Oak tree has any ecological merit and merely rely on their position beside the Mersey Valley as ecological justification for the TPO.

Arboricultural Officer comments - The 18m mature Oak is in good condition and is worthy of a TPO. The 18m Beech is in fair condition and has been pollarded in the past at a height of 2.5m. The tree is of amenity value and as such is worthy of protection.

Landscape Architects comments - Landscape strongly recommend that both trees T1 and T2 be covered by a Tree Preservation Order as the property is currently uninhabited and the garden could be at risk of redevelopment. The Beech is a characterful tree which impacts strongly on the street scene and contributes to the setting of the house. It is causing damage to the boundary wall which will need to be rebuilt. Such building work has the potential to damage tree roots, making TPO protection even more important.

The Native Oak tree is one of the most valuable habitat trees and the position of this tree beside the Mersey Valley makes its contribution to ecological diversity even more important.

ISSUES

Visual amenity – It is the City Council's opinion that the Beech tree significantly contributes to the setting of the street in view of its characterful trunk and the fact that its crown is carried lower than those trees situated in the street, and is therefore, more in view of the passers by. The Oak also contributes to the street scene of Borrowdale Crescent from where its crown can easily be seen from the end of Oaker Avenue and the Mersey Valley from where the screening properties of the Oak benefit the Valley's setting.

Size and Loss of Light – The Oak is approximately six metres from the house on its eastern side therefore any shading occurs only in the morning. As it carries its crown quite high, the major shading occurs in mid summer when the benefits of shade are most valuable. The garden is large and any problem shading is most likely caused by the short row of conifers on its southern boundary rather than the Oak to the east and the Beech to the north of the house.

Impact on boundary wall – It is acknowledged that the Beech tree has caused displacement of the gate pier and localized bowing of the boundary wall. Naturally, the tree has much more amenity and wildlife value to the area than the wall. There is suggestion that the pier could probably be rebuilt in its existing position. The displaced section of the wall could be removed, the remaining section of wall made good and the exposed gap in the wall in filled with metal railings. The wall coping could be used as a kerb along the boundary. This approach is frequently used in similar situations.

Ecological Merit - Native Oaks are particularly valuable ecologically because they have approximately 280 species of associated insects, which in turn benefit birds, bats and some small mammals. By comparison, native Lime trees (i.e. the adjacent street trees) have only 30 associated species and Beech trees have approximately 60 species. Consequently, the Oaks in particular have a great contribution to make to the ecology of both urban and river valley wildlife. Due to their special ecological value, it is considered that all Oak trees should be given priority and protection wherever this is practical and appropriate.

Although, the trees are subject to a Tree Preservation Order, this does not prevent future applications for works to the trees to ensure that the trees are appropriately managed and maintained.

CONCLUSION

It is acknowledged that some damage has occurred as a result of the location of the Beech tree, however this does not out weight the high amenity value that the tree provides. Notwithstanding this, the Head of Planning feels that in their current condition the two trees still contribute to the level of visual amenity experienced along 17 Darley Avenue and Borrowdale Crescent. Retention of these trees would be in line with the aspirations of the City Council's Tree Strategy (2006-10).

Human Rights Act 1998 considerations

This Tree Preservation Order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments.

Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Unitary Development Plan, the Head of Planning has concluded that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the Tree Preservation Order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation.

The Head of Planning, recommends that the Planning and Highways Committee instruct the City Solicitor to confirm the Tree Preservation at 17 Darley Avenue, West Didsbury, under Section 199 of the town and Country Planning Act 1990, and that the Order should cover the trees as plotted on the plan attached to this report.

Environmental Implications

The confirmation of the above Tree Preservation Order will enhance the area in which they are located and would be of benefit to the environment of the City.