

Report to Area Plans Sub-Committee East

Date of meeting: 12 August 2009



**Subject: TREE PRESERVATION ORDER TPO/EPF/01/09:
CONFIRMATION**

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Recommendation

That Tree Preservation Order TPO/EPF/01/09 be confirmed without modification.

Introduction

Tree Preservation Order TPO/EPF/01/09 covers one field Maple tree at 5 Kensington Grove, Oakhill Road, Stapleford Abbots. The Tree Preservation Order was made as part of protection of trees retained on a development comprising in total 7 properties. An objection has been received to the Tree Preservation Order. The tree was originally protected under Tree Preservation Order TPO/EPF/11/08 but, as a result of a transcription error, was named as an Oak tree. The current Tree Preservation Order is for the avoidance of any doubt as to the status of the tree and to ensure that the tree protection is effective. Consideration was deferred from the meeting of July 1st, so that members would have the benefit of a layout plan which showed the relationship of T1 to the property. This will be available at the meeting.

Grounds of Objection

The objection comes from the owner of No. 5 Kensington Grove. The grounds of objection are as follows:

1. **Potential damage to dwelling.** The objector states that he has major concerns that the tree can and will cause damage to his property. In issuing the order he believes the Council must consider the potential damage that the tree might cause the buildings, particularly on clay soil. He queries whether the Council has done sufficient work to confirm what is the degree of potential risk. He requests advice as to how the Council has carried out this duty to protect his property and asks for an undertaking in respect of future damage to his property.
2. **Scarcity.** The objector queries whether a Field Maple tree can be considered as scarce and since he has been informed that it is not scarce he queries the rationale for the Tree Preservation Order.
3. **Degree of public benefit.** The tree exists on a private road of 7 dwellings, is positioned at the end of a cul-de-sac and therefore is not in general view of the public, and indeed most of the residents of the road. The objector queries how the tree in that position gives a reasonable degree of public benefit.

Director of Planning and Economic Development's Comments

1. In relation to potential damage to the dwelling, this is considered unlikely providing the building has been built to modern NHBC standards. This is a self-certificated development, so the Council does not have Building Control records of inspections of foundations etc; nevertheless there is no reason to believe that the foundations will not cope with future development of the tree. The objector has asked for the Council to give an undertaking as to the safety of the house; it is not reasonable to expect the Council to do this. It has been explained to the objector that it would be open to him to provide evidence as part of an application to justify felling on this ground, if he wishes to take the matter further. The tree is relatively young, a reasonable distance from the front of the property, and there is no reason to feel that there is any substantive likelihood of subsidence to the property, or of other damage arising, in the foreseeable future.
2. In relation to scarcity it is not part of the rationale for the order that it is a scarce or rare tree. A Field Maple is a common British native, although not as frequently seen in the countryside as Oak or Ash. Nevertheless it has the capacity to form a large and attractive tree, of considerable landscape and wildlife value. It is entirely appropriate to protect a Field Maple tree for these qualities.
3. In relation to the tree's public value it is accepted that to be protected a tree must have public amenity value. Amenity is not defined precisely but it is generally held to be primarily a visual matter, in other words the tree must be able to be seen from a public place. Trees may, however, also be protected for other kinds of value, for example ecological or rarity value even if the value is not primarily visual.

In the case in question the tree was protected because it has significant existing, and potentially greater visual value, as seen from the road which serves the Kensington Grove development and which is also an access to several fields. The tree is set some 150 metres along the road and it is necessary to travel 50 metres around a gentle bend before the tree is visible as the major landscape feature in the front garden of No. 5 Kensington Grove towards the end of the cul-de-sac. It is possible that in maturity the tree may be able to be glimpsed from Oakhill Road and also from public footpaths in the general area but at present it cannot.

The Area Highways Office confirms that although negotiations had proceeded to an advanced stage on adoption negotiations are no longer being pursued and the road has not been publicly adopted. It is likely that it will remain a private road, maintained at the charge of the residents and it could be gated, possibly without the need for planning permission, depending on the exact circumstances. This would clearly limit the tree's ability to be a public benefit.

At present, however, the road is publicly accessible. There are no signs of an attempt to limit public access and no gates. The road is built to adoptable standards with proper footpaths for pedestrians.

The Council's solicitor advises that the key issue in relation to public amenity value is not the technical one of whether the highway is a dedicated public highway but the practical issue of whether the public has access. Circumstances in relation to public access to the tree might change in the future; in that event it would be open to the objector to make an application under the order, if confirmed, to fell the tree having regard to the changed circumstances.

Conclusion

The tree identified as T1 on the plan has significant public value in that it stands in a place where it is visually accessible to members of the public who are able to use the access road without any restraint. The tree is an attractive, relatively young tree, healthy, of good form and with a long life expectancy. It has the potential to make a positive visual contribution to the immediate locality for the foreseeable future.

It would therefore be in the interest of public amenity to continue the tree protection, and so to ensure that the value of the tree is taken into account in any decision on its management or retention.