

TREE PRESERVATION ORDER NO. 11, 2006
No's 6, 8 & 10 Welcomes Road, Kenley South Croydon.

1. SUMMARY

- 1.1 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 in its modified form.
- 1.2 The proposal has been referred to committee by the Head of Planning Control due to its link with development proposals at the site, also determined by the Planning Committee.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Order be confirmed with minor modifications to positioning and detail, but not in content.
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3. BACKGROUND

(a) Legislative background

- 3.1 Section 198 of the Town and Country Planning Act 1990 empowers a Local Planning Authority to protect trees with amenity value by making Tree Preservation Orders. These Orders bring under the control of the Authority the felling, topping, lopping, uprooting and willful damage of specified trees and woodlands. Orders may be made in respect of individual trees and woodlands, but cannot be applied to bush shrubs or to hedges as such.
- 3.2 The DETR booklet Tree Preservation Orders, a Guide to the Law and Good Practice provides advice on the making of Tree Preservation Orders. In general, orders should be made to protect selected trees and woodland if their removal would have a significant impact on the environment and its enjoyment by the public. Trees may be worthy of preservation for their intrinsic beauty, for their contribution to the landscape, or because they screen an eyesore or future development. The value of trees may be enhanced by their scarcity. Other facts, such as their importance as a wildlife habitat may also be taken into account although on their own these may not be sufficient to warrant an Order.
- 3.3 The risk of felling need not be imminent before an Order is made and trees may be regarded as at risk generally from development pressure. Since changes in property ownership and intentions to fell trees are not advised in advance, the preservation of selected trees by precautionary Orders may be considered expedient. It is made clear that it would be quite inappropriate to make a blanket Order with a view to maintaining control over an extensive area.

3.4 The procedures for the making and confirming of Tree Preservation Orders are set out in the Town and Country Planning (Trees) Regulations 1999.

(b) Site and Surrounding Area

3.5 The trees that are subject to protection from the Tree Preservation Order are located in the gardens of No's 6, 8 & 10 Welcomes Road, located predominantly along boundaries both to the front and rear of the properties identified. The dwellings at the site are three bungalows with landscaped gardens to the front and to the rear.

3.6 The surrounding area comprises mainly residential premises with a similar character, of well maintained large plots with many mature trees with car parking and further gardens to the front and larger amenity spaces with trees and vegetation to the rear much of which could be considered mature. The site borders No's 4 & 12 Welcomes Road and shares a rear boundary with No's 9, 11, 13, 15 & 19 Hayes Lane.

(c) Relevant Planning History

3.7 On the 3rd and the 16th May 2006 the Tree Preservation Officer carried out a site inspection to examine the trees at No's 6, 8 & 10 Welcomes Road.

3.8 Following a delegated business meeting the formal notice of the Tree Preservation Order No. 11, 2006 was sent to owners/occupiers of properties affected by the new designation, on the 22nd May 2006.

3.9 On the 9th June 2006, a letter of objection to the TPO was received from ACS Consulting and a Mr. H. Appleyard on behalf of the developers who have an interest in this site.

3.10 On the 6th September 2006, a letter of response was sent to the letter of objection.

4. PLANNING POLICIES

4.1 The relevant policies of the Unitary Development Plan are SP8 and NC4.

5. THE ORDER

5.1 Tree Preservation Order No. 11, 2006 was made on the 22nd May 2006, and included a direction applying Section 201 of the Town and Country Planning Act 1990, which allowed the Order to come into immediate effect.

5.2 The Order protects four individual trees, and are described within the order as T1- Lawson Cypress tree, T2- Hazel tree, T3- Ash tree and T4- Laburnum tree. The Order also protects two groups of trees and these are described in the order as G1 – Two Corsican Pine trees and G2- Thirty Lawson Cypress trees.

- 5.3 The Order is effective for a period of 6 months. If the Order is not confirmed within that period, the provisional protection afforded by Section 201 will cease at the end of October 2006.

6. OBJECTIONS TO THE ORDER

- 6.1 The Principal, Mr. Appleyard from ACS Consulting has objected on behalf of the developers to the preservation of two single trees T3- Ash tree & T4- Laburnum tree and one tree group, G2- thirty Lawson Cypress trees, on the following grounds.

- a) The group of trees G2 are described as Lawson Cypress when in fact they are Leyland Cypress trees. Mr. Appleyard goes on to say that “ it is recognised that this is probably an over sight however there is a difference between the species which has implications upon the suitability of legal protection.” “Whilst the tree group is currently an effective boundary screen between the two neighbouring properties, it is clear that this group was planted as a ‘green fence’ to offer seclusion and privacy to two rear gardens, which it does effectively to date. However, some of the individual trees appear drought stressed and are becoming sparser than normal, with yellowing foliage. This condition is unlikely to improve with time. In addition, the trees in general have the potential to increase in height and spread still further, which will need to be controlled. In my view, the trees have already become too tall for the location and their substantial reduction or removal and replacement is justifiable. Since the trees have been permitted to grow-on without regular pruning, which is advisable, effective crown reduction will of course render the trees yet more unattractive, diminishing any landscape contribution the Council considers they currently offer.”

Mr. Appleyard goes on further to say that “ it is well recognised that pruning Leyland Cypress trees is best undertaken on a regular basis. Regrowth subsequent to pruning is normally vigorous, resulting in a dense profusion of young shoots and an increase in crown spread. The imposition of the TPO would require both an application to and consent from the Council each time the trees were to be pruned. Clearly, this would be an unreasonable burden and is irresponsible, in my view, to require an owner to apply for consent each time pruning becomes necessary, as will be required if the Order remains unmodified.” “It is to be noted that the trees are not prominent when viewed from the Welcomes Road because their green effect merges with the many trees which surround the site and particularly those to the west.”

“It is very unusual to legally protect Leyland Cypress trees, especially since recent legislation has been introduced (ASBA 2005), which is designed specifically to control enforce reasonable management of trees for hedges, and which has been driven largely by the uncontrollable nature of Leyland Cypress growth in the urban setting. This is not so much the case with the similar species Lawson Cypress, which grow at a slower annual rate; are ultimately not so large and which do not respond to pruning in the same vigorous way. I submit that whilst some individual

specimens may warrant legal protection in rare cases, it is more responsible and effective to control the use of this species rather than seeking to preserve it by the imposition of a Tree Preservation Order.”

“I note that the extent of G2 on the order extends from the rear of the garage of house No.8 to the rear boundary. I am not certain that this is entirely accurate if the only species within G2 are Cypress.”

- b) There is also an objection to the preservation of the Ash tree T3 in the rear garden of 10 Welcomes Road. This is centred around the statement that “there are several Ash trees of a similar size in the vicinity of the location marked upon the plan. The trees are common in the area and are not of a quality or landscape contribution to warrant the legal protection afforded by the TPO.”
- c) The objection letter is concluded with the representation against the preservation of the small Laburnum tree, T4. The objection centres around the fact that this tree has “been wind blown and uprooted in the past. Given that the contravention of a TPO is a serious offence, which carries substantial penalties, I am not convinced that this tree merits legal protection as such request this TPO be modified to exclude this tree.”

7. CONSIDERATIONS

- 7.1 The Committee should take into account the advice set out in paragraph 3.2 and 3.3 of this report and have in mind that the essential purpose of a Tree Preservation Order is to protect public amenity.

It is necessary for the Committee to consider: -

- (a) Whether to hold a Local Inquiry; and
- (b) Whether the Order should be confirmed.

- 7.2 There is no prescribed format for holding a Local Inquiry. A Local Inquiry would not necessarily be led by an Inspector appointed by the Secretary of State but would follow procedures decided by the Local Planning Authority. It has not been the normal practice of Croydon Council to hold Local Inquiries in dealing with objections to a Tree Preservation Order as the procedures adopted are open and provide any person objecting to a TPO with an opportunity to submit written objections and to speak to the Committee in support of the objection. Members of the Committee have the benefit of photographs of the subject trees when considering the written and oral objections. In view of these procedures, a Local Inquiry would afford only limited further opportunities for objections to be heard and the merits of the TPO to be considered. If it is decided that Local Inquiry should be held then the report of that Inquiry must be taken into consideration before a decision is made.
- 7.3 The trees that are the subject of the objection are visible from a number of viewpoints in the local area due to their size and form, and are therefore considered to have high public amenity value.

- 7.4 All trees are considered to be healthy, mature specimens with a well-proportioned crown, displaying a dense covering of leaves/needles with average to good annual shoot extension.
- 7.5 The preserved trees make a significant impact in terms of amenity due to their size, foliage colour, scarcity as mature trees in this locality, and elevated position in this part of borough, which enhances the streetscape and the surrounding area.
- 7.6 In response to ACS Consulting comments over the type of Cypress protected by G2, the species type indicated in the TPO document corresponds with that which was indicated in the Tree Survey produced by ACS Consulting for this site on the 20th February 2006. It is also agreed that the group as shown does extend somewhat further towards the northern, rear boundary than is actually the case and this will be modified to accurately depict the situation. Now that these inaccuracies have been highlighted the Order it will be modified.

In regard to the suitability of these trees being afforded formal designation, the Cypress trees as a group form the dominant feature within the centre of the development site. Due to their size, evergreen nature, good physiological condition and lack of obstruction to the south they are considered to provide a significant feature in terms of visual amenity to Welcomes Road and are consistent with the well vegetated appearance of the area. This statement is supported by the Classification given to this group of Cypress indicated as G26 in the Tree Survey and Arboricultural Report produced by ACS Consulting where it indicates a British Standard 5837:2005 Table 1, Classification of category 'B' with a sub-category of '2'. Quoting directly from the British Standard Table 1 under Category 'B', "Criteria – Subcategories" 2 Mainly Landscape Values it states that "Trees present in numbers, usually as groups or woodlands, such that they form distinct landscape features" are considered suitable for protection.

It is recognised that some of the group are likely to die as the weaker specimens are subject to natural selection and the stronger specimens continue to thrive and grow. There appears to have been ample room to date for the trees in question to reach their current size and there is no reason to believe that there is still not further room for growth considering the extensive gardens surrounding this linear formation of trees both at No's 8 & 10 Welcomes Road. While the objector states the view that these "trees have already become too tall for the location", they have not been pruned or reduced in height in the past and no objection has been received from either owner of 8 or 10 Welcomes Road to the preservation of this group of Cypress or any other trees protected by TPO No. 11, 2006. There is also no evidence of any conflict between the neighbours over the linear formation of Cypress trees.

Whilst noting the recent Anti Social Behaviour Act 2005 and its implications regarding nuisance from evergreen high hedges it is the belief that due to the extent of the garden area surrounding this linear formation of trees, its proximity in relation to the dwellings and the passage of the sun and the lack of any complaints from either owner of 8 or 10 Welcomes Road about the size or dominance of these specimens this "distinct landscape feature" warrants the protection of a Tree Preservation Order due to the threat that it is under from the proposed development.

- 7.7 The statement made that says that the Ash tree T3 in the rear garden of No. 10 Welcomes Road does not warrant legal protection because it is common in the area and is not of a quality or of significant landscape contribution is disputed. The Ash tree can be seen from Welcomes Road and once the smaller trees to the south are removed as proposed and the neighbouring Ash tree (No. 22) that has a split main stem is removed as recommended, the preserved Ash tree will represent one of the remaining sky-line features at the northern boundary of the site and would be under significant threat from the proposed development therefore warranting inclusion in this Tree Preservation Order..
- 7.8 It is recognised that the Laburnum tree T4 at the front of No. 8 Welcomes Road has been partially wind-blown in the past, but it appears to have satisfactorily re-anchored itself and presents a striking feature at 7 metres tall on the front boundary, especially when it is in flower. The loss of such a feature would be detrimental to the precious sylvan character on the front boundary of this site and therefore warrants the protection of the Tree Preservation Order.

8. ENVIRONMENTAL CONSIDERATIONS

- 8.1 The felling or pruning of the Leyland Cypress trees in G2 or the Ash tree T3 or the Laburnum tree T4 without approval from the Council would have an adverse impact on the environment and its enjoyment by the public by virtue of the loss of the public visual amenity benefit at present afforded by these trees.

9. EQUALITIES CONSIDERATIONS

- 9.1 None beyond those considerations high-lighted above.

Case Officer: Mr. R. Snodin

Background Documents: 1) One objection letter from ACS Consulting, Urban and Rural Tree Management.

Contact Officer: Philip Mills 020 8760 5419