

Ward: Shirley

PLANNING COMMITTEE

Lead Officer: Head of Planning Control

16<sup>TH</sup> NOVEMBER 2006

**TREE PRESERVATION ORDER No. 30,2006**  
**82 Orchard Way**

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**1. SUMMARY**

- 1.1 This report considers objections that have been made to the making of a Tree Preservation Order. The objections must be taken into account by the Committee before deciding whether to confirm the Order.

**2. RECOMMENDATIONS**

- 2.1 It is recommended that no Local Inquiry be held and that the Order be confirmed without modification.
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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 in the interests of amenity, 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 bushes, shrubs or to hedges as such.
- 3.2 The Government 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 No. 82 Orchard Way is a detached property with a large garden It is situated in a residential area with a number of prominent, mature trees. The site is bounded on one side by Edenham High School.

06/2854: 82-84 Orchard Way. Application to demolish existing dwelling and erect 4 three bed detached houses and 4 semi detached houses. Refused.

06/3077: 82-84 Orchard Way. Application to demolish existing building and erect 3 three bed detached houses, 3 three bed semi detached houses and 1 three bed house. Refused.

06/4058: 82-84 Orchard Way. Current application to demolish existing building and erect 3 three bed detached houses, 2 three bed semi detached houses and 1 three bed bungalow.

- 3.6 (C) Relevant Planning History

TPO 30, 2006: At a delegated business meeting on 24<sup>th</sup> August 2006 a Tree Preservation Order was made, to come into immediate effect, to protect 1 Sycamore tree and 1 Horse Chestnut tree.

#### **4. PLANNING POLICIES**

- 4.1 The relevant policies of the Croydon Replacement Unitary Development Plan (The Croydon Plan) are SP8, NC4.

#### **5. THE ORDER**

- 5.1 Tree Preservation Order No.30, 2006 included a direction applying Section 201 of the Town and Country Planning Act 1990 which allowed the Order to come into immediate effect on 24th August 2006.

- 5.2 The Order protects 1 Sycamore tree and 1 Horse Chestnut tree, as described in Schedule 1 of the Tree Preservation Order.

- 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 ceases.

#### **6. OBJECTIONS TO THE ORDER**

- 6.1 The Council has received two letters of objection to the serving of Tree Preservation Order 30, 2006, one from a local resident and one from Asprey Homes, the company wishing to develop the site.

The Council has received one letter of support to the serving of Tree Preservation Order 30, 2006 from the Headteacher of Edenham High School.

- 6.2 With regard to the objections, it is stated that the Sycamore tree is in an unruly state and has never had any maintenance or management. Furthermore, the Sycamore tree, given its proximity to the dwelling at 82 Orchard Way, has the potential to structurally damage the property. It is also claimed that “as we enter the autumn months and daylight hours reduce, this tree also limits the amount of natural light able to penetrate the footpath which serves Edenham High School.”
- 6.3 The objections raised by Asprey Homes question the merits of preserving a self-seeded sycamore tree adjacent to the existing dwelling. Asprey Homes further state that “the sycamore tree overhangs the existing roof on the south west corner by approximately 3-4m and, with this in mind, we are of the view that there must be some potential risk (if this has not already occurred) to the foundations of the dwelling, as the roots will extend up to and possibly beyond the extent of the tree canopy. This is likely to cause structural damage to the fabric of the existing dwelling, should this tree be retained.”

Asprey Homes continue that as “this tree has clearly not been the subject of any maintenance or management during its life, immediate works are required to many of the lateral branches so as to avoid damage to the existing property. The proximity of this tree to the house presents a liability to the current owner and any other occupier in the future”

- 6.4 With regard to the letter of support for the serving of tree preservation order 30, 2006, the headteacher of Edenham High School states that “the trees add significantly to this environment and if the trees alongside the footpath were removed then the footpath becomes a concrete alleyway with no natural shade and certainly no beauty”.

## **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 a 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 this report are 1 Sycamore and 1 Horse Chestnut. Both trees are on the side boundary of 82 Orchard Way and border an access path to Edenham High School. Both the trees have been inspected and from a ground level inspection there appears to be no evident weakness to the branch systems or stems.
- 7.4 The trees provide a high level of visual amenity when viewed from Orchard Way and surrounding roads. They also contribute to the sylvan character of the area.
- 7.5 The tree preservation order was made following a planning application to develop 82 and 84 Orchard Way. The original proposal requested the demolition of the existing dwelling at 82 Orchard Way and its replacement with two new dwellings in closer proximity to the boundary trees, in addition to further development away from the trees. (Planning Application No. 06/3077). The planning application did not include a tree survey and the applicant failed to plot the existing trees on the submitted plans. Given the lack of tree information submitted with the application, and the potential direct loss of trees as a result of the proposed siting of the dwellings, the Council considered it prudent to serve the Tree Preservation Order.
- 7.6 In response to the objections raised, with both relate only to the sycamore, the Local Authority accepts that the sycamore tree has not been regularly managed. However, the form of the tree (how it has grown) does not preclude it from inclusion in a new tree preservation order. Furthermore, it is likely that consent to sympathetically prune the tree would be given should an application be submitted. Future pruning would overcome the concerns raised in both objection letters in regard to the extent the sycamore tree overhangs the existing dwelling.
- 7.7 When considering the issue of natural light penetrating to the footpath during the autumn months, it should be remembered that sycamore trees shed their leaves in the autumn, resulting in greater visibility for the adjacent footpath.
- 7.8 With regard to the objections raised by Asprey Homes, it is not possible to establish whether the sycamore is a self seeded specimen or whether it was planted at a similar time to the additional mature trees on this boundary. Irrespective of the heritage of the tree, the sycamore is a mature prominent specimen which offers a good level of visual amenity.
- 7.9 It should not be assumed because a tree is growing in close proximity to a dwelling that structural damage will occur to the building. Furthermore, it is not acceptable to remove a mature tree simply because there is a possibility it may cause damage in the future. The Local Authority will not refuse consent to remove the sycamore should it be implicated as the cause of subsidence damage to the property. However, the Local Authority would require the provision of expert arboricultural evidence before consenting to the removal of the tree. Correct investigations would involve considering aspects of the building, the soil

and of the tree in question. To date, there is no evidence implicating the sycamore as the cause of any damage to the dwelling.

- 7.10 The remaining issues of objection raised by Asprey Homes have been addressed in paragraph 7.6 above.
- 7.11 It is recommended that Tree Preservation Order No.30, 2006 be confirmed without modifications.

## **8. ENVIRONMENTAL CONSIDERATIONS**

- 8.1 The felling of the Sycamore without the consent of the Local Authority would have a detrimental impact on the environment and its enjoyment by the public by virtue of the loss of an important visual amenity.

## **9. EQUALITIES CONSIDERATIONS**

- 9.1 There are no equalities opportunity implications arising from this report.

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Case Officer: S. Kaye

Background Documents: 2 letters of objection.  
Tree Preservation Order No.30, 2006.

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