

WEST AREA PLANNING COMMITTEE

12 July 2016

Order Name: Oxford City Council – Hamilton Road (No.1) Tree Preservation Order, 2016

Decision Due by: 17 August 2016

Site Address: 68 Hamilton Road, Oxford

Ward: Summertown Ward

Recommendation

To confirm the Oxford City Council – Hamilton Road (No.1) Tree Preservation Order 2016 without modification.

Background

1. The Oxford City Council – Hamilton Road (No.1) Tree Preservation Order, 2016 was made on 17th February 2016. It is an 'Individual' designation Order, which specifically includes a mature silver birch shown on the Tree Preservation Order (TPO) plan (Appendix 1).
2. The TPO was made following the Council's decision to refuse planning permission for a rear extension to the property (15/03519/FUL). The reasons for refusal of planning consent included arboricultural implications, i.e. the likely loss of the silver birch. This tree adds significant amenity value to the public realm and its loss would have a detrimental impact on the street-scene contrary to Policy CP11 of the Oxford Local Plan 2001-2016.

Reasons for making order

3. To protect a tree that makes a significant positive contribution to the landscape in public views along Hamilton Road and King's Cross Road.
4. To prevent the potential removal of the tree in order to overcome reasons for refusal of a planning application for an extension that would cause damage to the tree's root zone.

Relevant Site History

5. The relevant planning history for the site is;

15/03519/FUL: Erection of a single storey ground and first floor rear extension. Formation of 1No. dormer window to side roof slope in association with loft conversion. Replacement of window for door on west elevation.- Refused 02.02.2016

16/01295/FUL: Erection of a single storey ground and first floor rear extension with associated landscaping. Replacement of window for door on west elevation. –Pending consideration.

Representations Received

6. One representation in objection to the TPO has been received from the property owners and residents of 68 Hamilton Road; this is presented at Appendix 2. The objection was received shortly after the stated consultation period ended but was accepted; thus the decision whether to confirm the Order thereby making it permanent became a non-delegated decision to be made by Members of the West Area Planning Committee.

Officers Assessment:

Site

7. The application site is a corner residential plot at the junction between Hamilton Road and Kings Cross Road, with the property being located on the south side of Hamilton Road and the east side of King's Cross Road. The property has an existing extension at ground floor level, with a flat roof. The property has been heavily altered over time.

Trees and their amenity:

8. A number of trees and shrubs are located within the application site with the most significant being a mature silver birch tree facing onto King's Cross Road which provides significant visual amenity benefit to the street-scene in views from the junction of King's Cross Road and Hamilton Road and along King's Cross Road from the north and south.
9. The silver birch is a mature specimen approximately 17m tall with a crown diameter of between 9 and 10 metres. The tree is in good (or normal) physiological condition and is estimated (based on species longevity) to have a remaining useful contribution to public amenity of between 20 and 40 years.
10. The tree has been subjected to poor pruning practice, known as 'Topping' in the relatively recent past; a point noted by an independent arboricultural consultant instructed by the tree owner in relation to their current revised planning application. Despite this the tree remains an attractive natural feature in the street-scene (an assessment also in accord with that of the arboricultural consultant). It is prominent because of the relative absence of any other significant large trees in the local vicinity, and this therefore increases its amenity significance.

Public Comments: Property owners

11. The property owner's objections to the TPO have been summarised below (the full submission is reproduced at Appendix 2).

- (1) The family appreciates the tree and have never had any intention of removing it. They report that they have also been advised by a structural engineer that their property might be adversely affected by ground 'heave' if the tree was to be

removed.

- (2) The dimensions of the proposed rear extension have been reduced in line with the recommendations of an independent arboricultural consultant so as avoid damage to roots and preserve the tree.
- (3) The Council has used its powers to make a TPO as a means of blocking their planning application; as evidenced by the timing of the service of the TPO 15 days after notice of planning refusal.
- (4) The tree owners '*are comfortable to the TPO being on a provisional basis as proof of our commitment to modify our rear extension plans in order to preserve the tree.*'

Officer's response to comments:

12. It is not the case that the Tree Preservation Order (TPO) was made as a means of blocking the house holder's planning application. In fact a TPO has no legal affect if a full planning permission is granted and removal, pruning or any other prescribed operation is required in order to implement that planning permission.
13. The TPO was made because the implied loss of the tree formed one of a number of reasons for refusal of the planning application. The tree is considered to have significant public visual amenity benefit, and there arose the perceived threat that it could be removed quite lawfully as a means to remove one of the impediments to the development either at appeal or under a future planning application scheme.
14. The TPO simply creates a planning control, which requires that anyone wishing to carry out any tree work must obtain the written consent of the Council as Local Planning Authority. Essentially the TPO enables the Council to prevent the removal of the tree, or any other forms of works that would be harmful to public visual amenity, without there being good reason or lawful exemption such as a planning permission.
15. Under Section 197 of the Town and Country Planning Act 1990 planning authorities have a general duty in respect of trees; thus all trees are a material consideration in planning. TPOs have no affect if a full planning permission is granted (and work is required to implement the permission) because the public amenity value of trees is considered at the planning stage and any harmful impacts are balanced against other material considerations in accordance with the Council's adopted Local Plan Policies.
16. Following refusal of planning permission and the making of the TPO, the householders of 68 Hamilton Road have made a fresh planning application and sought professional arboricultural advice in the process. The current scheme has been reduced in its footprint to take account of the tree's root system and also the tree's canopy, although some crown lifting may be required to facilitate the volume of the extension and scaffolding requirements. The tree officer's advice to the planning case officer was that these amendments now make the scheme acceptable in terms of arboricultural impacts in relation to Adopted Local Plan Policies CP1, CP11, NE15 and NE16.
17. Nevertheless it remains expedient for the TPO to be confirmed; this is because the provisional status of the Order will lapse on the 17th of August, which may be before

determination of the current planning application (it will certainly be prior to completion of any consented development). One of the rationales for Local Planning Authorities having the power to make TPOs is in connection with the granting of planning permission so as to give added legal weight to tree protection conditions, such that breaching those conditions could constitute a criminal offence. This is stated at Section 197 (b) of the Town and Country Planning Act 1990.

Conclusion:

18. The birch tree covered by the TPO provides significant visual amenity benefit to the street-scene in views from the junction of King's Cross Road and Hamilton Road and along King's Cross Road from the north and south.

19. The TPO does not hinder appropriate development of the site. Trees are a material consideration in the planning process whether they are legally protected or not. The TPO prevents preemptive removal of the tree as a constraint and provides legal weight to a tree protection condition that may be applied to any planning consent.

Recommendation:

20. Taking into account the objections that have been received to the Order, officers recommend that the Oxford City Council – Hamilton Road (No.1) Tree Preservation Order, 2016 be confirmed without modification.

Human Rights Act 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to confirm this Tree Preservation Order with modifications. They consider that the interference with the human rights of the land owner under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to confirm this Tree Preservation Order with modification, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers:

1. Oxford City Council – Hamilton Road (No.1) Tree Preservation Order, 2016.
2. Letter of objection to TPO from the house holders.

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Date: 10 June 2016