

Order Name: Oxford City Council - Hawkswell Gardens (No.2) Tree Preservation Order, 2020

Decision Due by: 05 April 2021

Site Address: Land At Hawkswell Gardens Near The Junction With King's Cross Road Oxford

Ward: Summertown Ward

Reason at Committee: Objection received

1. Recommendation:

1.1. West Area Planning Committee is recommended to confirm without modification the Oxford City Council – Hawkswell Gardens (No.2) TPO, 2020.

2. Background:

2.1. Oxford City Council – Hawkswell Gardens (No.2) TPO, 2020 was made on 06 October 2020.

2.2. It protects a copper beech tree, T.1, and a cedar tree, T.2, on land at Hawkswell Gardens near the Junction with King's Cross Road, Oxford (refer location plan below).

2.3. The reasons given for making the Tree Preservation Order (TPO) are at paragraph 4 of this report below.

2.4. Hawkswell Estates Limited (HEL), a management company which owns all of the soft landscaped areas at Hawkswell Gardens, made a request for the beech tree to be protected by a TPO, because of concerns that its branches, which overhang the garden of a newly constructed house at 1 King's Cross Road (granted planning permission under 18/03009/FUL), might be cut back under common law to the boundary such that it would be detrimental to its appearance and amenity value of the tree overall. HEL had been contacted by the developer asking for action to be taken to "...prune it back as much as possible" because when in leaf the tree will be "...extremely overpowering and oppressive".

2.5. HEL also owns the cedar tree the southern side of the road (as shown on the location plan in the appendices to this report). The branches of this tree overhang the gardens of neighbouring properties in Lonsdale Road, so that it too is at risk of having overhanging branches removed under common law.

2.6. Officers considered that rather than making an order to protect just the copper

beech tree alone, taking action to protect both trees is a more coherent approach to protecting visual amenity in the area. So, the cedar tree is included in the TPO that has been made.

2.7. An objection has been received in respect of the protection of the cedar tree from 85 Lonsdale Road.

2.8. The TPO took immediate effect on 06 October 2020, but is provisional for 6 months and must be confirmed before 06 April 2021 to be made permanent. The Council must take account of the objection received in reaching its decision.

3. Location Plan:



4. Reason for making the Order:

4.1. To protect, in the interests of public amenity, a copper beech tree, T.1, and a cedar tree, T.2, that stand in prominent roadside locations either side of the entrance road to Hawkswell Gardens from King's Cross Road, Summertown, Oxford. The trees are visually attractive, offering a range of ornamental attributes and environmental services which vary according to the seasons and therefore make a valuable contribution to the appearance and character of this part of the local suburban environment. It is expedient in the interests of amenity to make the Tree Preservation Order because the trees overhang gardens of neighbouring properties and are at risk of having branches cut back to the boundary to the detriment of their appearance and amenity value.

5. Representations Received:

5.1. One objection in respect of the protection of the cedar tree from 85 Lonsdale Road: summary of key objections raised;

- Tree has been identified as being in distressed condition and not in best of health in the past and the location is not suitable for healthy life of this species;
- Tree is of substantial size, such that it imposes a substantial threat to the superstructure and foundations of adjacent built structures, which include a garage and an open-electricity sub-station;
- Tree will require significant maintenance in the future to avoid damage to property and potential safety issues.

6. Officers Assessment:

6.1. **Amenity:** Both the copper beech and cedar trees are large (approximately 18m and 15m tall, respectively), mature specimens that stand in prominent roadside locations either side of the access road into Hawkswell Gardens from King's Cross Road, Summertown, Oxford. The trees are both visually attractive, offering a range of ornamental attributes and environmental services which vary according to the seasons and they therefore make a valuable contribution to the appearance and character of the local suburban environment.

6.2. **Suitability:** Neither the copper beech nor the cedar currently show any indication of any significant structural defects, or physiological ill-health, that would make them unsuitable for a TPO. The size and proportion of the trees is currently well suited to their location. The Council has received no evidence of the growth of the trees being the cause of any damage (direct or indirect) to any of the various built structures that are near to them. Although their branches overhang adjacent gardens it is considered that they do not unreasonably restrict the use and enjoyment of these outdoor amenity spaces. Any risk of branches from the cedar falling onto the garage, or into the open electricity sub-station and causing significant damage can be reasonably managed by regular routine inspection and maintenance works. As things stand it is expected that both trees can make a valuable contribution to amenity in the area for at least 20 years, the copper beech for considerably longer.

6.3. **Expediency:** It was expedient to make the Tree Preservation Order because the trees overhang the gardens of neighbouring properties and are at risk of having branches cut back to the boundary to the detriment of their appearance and amenity value.

6.4. **Response to the objection received regarding the protection of cedar tree, T2:**

- **The tree has been identified as being in stressed condition and not in the best of health in the past, and the location is not suitable for healthy life of this species;** while the relatively confined rooting environment of the highway verge might be considered sub-optimal for the growth of a cedar tree, this particular specimen appears to be well adapted and is currently growing successfully, showing no signs of any significant physiological ill-health. It is reasonable to expect that the health and structural condition of the cedar tree will be monitored from

time to time by the owner, who has a duty of care to ensure that people and property around the tree are not harmed by it.

- **The tree is of substantial size, such that it imposes a substantial threat to the superstructure and foundations of adjacent built structures, which include a garage and open sub-station;** no evidence has been made available to the Council of any existing damage being caused to adjacent built structures by the cedar tree. Trees can cause damage directly, as a result of the pressure that is applied to structures that are in direct contact with their trunk, roots, branches etc, which increase in size over time with growth. Or indirectly, as a result of roots taking moisture from the soil which has potential to shrink when it is dried out e.g tree-related clay subsidence. It is difficult to predict the risk that a tree might cause damage as it grows because it depends on a number of (often unknown) variable factors.
- However, British Standard 5837:2012 includes some guidance on minimum distance between young trees, and new plantings, and various types of structure to avoid direct damage as the trees grow. So, to avoid direct damage to lightly loaded structures, such as garages, it is recommended that trees that have potential to grow to have a stem diameter in excess of 600mm, should be located at least 1.5m away. The stem diameter of the cedar tree is approximately 650mm, but at its nearest the trunk is approximately 1.70m from the garage wall, so that the tree was probably planted approx. 2.0 m from the garage building . On this basis it is considered that the risk of direct damage to the garage in the future is low.
- The risk of indirect subsidence damage depends largely on the potential of the soil to shrink (it's 'shrinkability') when dried by tree roots amongst other factors. The shrinkability of the soil is not known in this location, but as there appears to be no evidence of damage to the wall by subsidence (typically cracking) currently, or historically, then given the size and age of the tree relative to the adjacent wall of the garage building, it seems unlikely that the soil is shrinkable. In which case the risk of indirect damage would be very low.
- **The tree will require significant maintenance in the future to avoid damage to property and potential safety issues;** if confirmed, the TPO allows the owner of the tree, or any other interested party, to apply for consent to undertake works to the tree at any time. So, if the health or condition of the tree declines significantly for any reason, at any time, the owner can apply for TPO consent to carry out appropriate remedial works,. Similarly, if there is technical evidence that the tree is damaging a surrounding built structure, or is likely to cause damage in the future, the TPO allows an application for TPO consent to be made to take appropriate remedial action. On-going routine maintenance works, such as removal of defective branches that are at risk of breaking and falling, or pruning to lift the crown of the tree over the road and adjacent properties to give adequate clearance, can also be undertaken with TPO consent. Applications for such consent will be considered by the Council on their merits at the time they are made. If consent is refused – or granted with conditions – an applicant can seek compensation for any loss or damage which occurs as a result of that decision. An applicant

can also appeal against a refusal of consent or imposition of a condition.

6.5. Other issues: The land on which the trees stand is privately owned by the HEL management company. However, it is understood that the land is also designated Highway (HMPE), so that the Highway Authority has some responsibility for the management for it and the trees growing on it. While it is not usually considered to be expedient to make a TPO to protect trees which are entirely owned and managed by the Highway Authority as they are generally considered to be under good arboricultural management of the Highway Authority (in Oxford undertaken on behalf of Oxfordshire County Council by Oxford Direct Services Tree Team), these trees are privately owned.

7. Conclusion:

7.1. For all the reasons in this report, and taking account of the objection received in respect of the protection of the cedar tree, T.2, it is considered to be expedient in the interests of amenity for the Council to use its powers to confirm the Oxford City Council – Hawkswell Gardens (No.2) TPO, 2020, without modification, to protect the copper beech and cedar trees growing on land at Hawkswell Gardens near the junction with Kings Cross Road.

8. Human Rights Act 1998

8.1. Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to confirm this TPO. They consider that the interference with the human rights of the owner of the trees and the owners and occupiers of neighbouring properties under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others and the control of his/her property in this way is in accordance with the general interest.

9. Section 17 of the Crime and Disorder Act 1998

9.1. Officers have considered, with due regard, the likely effect of the TPO on the need to reduce crime and disorder as part of the decision of whether to confirm the order, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to confirm the TPO, officers consider that the decision will not undermine crime prevention or the promotion of community.

Background Papers:

Contact Officer: Kevin Caldicott

Extension: 2149

Date: 23rd February 2021

This page is intentionally left blank