

70 Bracken Path, Epsom. KT18 7SZ.

Objection to the implementation of a Tree Preservation Order on a Norway Spruce at 70 Bracken Path, Epsom - Tree Preservation Order No. 461

Ward:	Stamford Ward;
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1 Plans and Representations

- 1.1 The Council now holds this information electronically. Please click on the following link to access the plans and representations relating to this application via the Council's website, which is provided by way of background information to the report. Please note that the link is current at the time of publication, and will not be updated.

Link: <http://eplanning.epsom-ewell.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P6B31ZGYJJ000>

2 Summary

- 2.1 This report is for the Planning Committee to consider whether to confirm Tree Preservation Order (TPO) No. 461 following objections to the order being made by the tree owner and a neighbour.
- 2.2 70 Bracken Path is situated in the Stamford Green Conservation Area. A section 211 notice was made by the tree owner's tree surgeons to fell the Norway Spruce which was received by the Council on 28/03/2018 (application no.17/01886/CAT). This application gave six weeks' notice that it was intended to remove the Spruce. Officers evaluated the proposal and formed the view that the loss of the tree would have a detrimental impact on the landscape amenity of the conservation area. Reasons given to support the felling of the tree did not appear convincing. The tree was assessed to be in good health and of sufficient amenity value to justify the making of the tree preservation order to block the felling proposal. Delegated authority was therefore obtained to make the provisional TPO which was served on 10th May 2018.
- 2.3 The tree owner formally objected to the TPO in a letter received on 22nd May 2018 and the neighbour at 67 Bracken Path formally objected to the TPO in a letter received on 5th June 2018.
- 2.4 Where objections are received to a TPO these are normally reported for consideration by the Planning Committee. A decision is required whether the order should be confirmed, modified or revoked after taking into account the amenity implications and the validity of the objection/s received.

3 Site description

- 3.1 70 Bracken Path contains two bedroom and is the north-west quadrant of a 19th Century terrace of four bungalows arranged back to back. They are set behind a small tree planted amenity green called Goose Green which faces out onto the more open grassland of The Conservation Meadow. The site is within the Stamford Green Conservation area which was designated in June 1982. Stamford Green Conservation area abuts the edge of Epsom Common. There is a picturesque main green area with a pond and a series of interlocking amenity greens through a meandering hamlet of houses to the south. Original house building was haphazard as some buildings evolved from squatter plots. There are notable 19th century cottages many built to house workers of the nearby Epsom Hospital Cluster. More modern buildings have infilled to complete the current residential area. The setting retains a pleasant rural character. Sylvan character is provided from the scattering of trees in the rough grass amenity greens, the few notable garden trees and the backcloth of woodlands in the main common area.
- 3.2 The building of 70 Bracken path was thought to be a former laundry. To be more precise about its age the property predates the 1867 1st series County map but does not feature in the 1848 Board of Health plan. There is no direct vehicular access to No 70. Pedestrian access from the road is via a footpath which runs on the north side of No.71 round to a courtyard style garden and front door of No.70. The Norway Spruce is located at the side of the footpath to No.70. Although the tree is much closer to No. 71 (approximately 6m to the building corner) it is still within the curtilage of No. 70.
- 3.3 The Norway Spruce tree *Picea abies*, subject of the TPO is estimated to be 15.75m tall and has attained an average spread of 9m. The stem diameter measures 470mm at 1.5m up the trunk. Being located close to the front boundary the tree is visually very prominent in the setting of Goose Green. It can be seen clearly from the road outside. From wider views the tree can also be seen as a notable specimen in the landscape across both the Conservation Meadow and Stamford Green. Being coniferous it stands out even more in the landscape during the dormant period. Visually the tree has good stature and is aesthetically pleasing to the eye.

- 3.4 Spruce trees are a prominent species of the vast boreal forests of the Northern Hemisphere and the Norway Spruce has the broadest range in the genus, although not a native tree in the UK it has been widely cultivated for forestry and horticulture since the 17th Century. With such a vast range comes considerable variation in the trees morphological characteristic. The subject Spruce is estimated to be 45 years old. Generally Spruce is regarded as having a moderate life span in the British Isles with a normal safe life expectancy closer to 150 years. Growth and timber yield of spruce trees has been much studied for commercial forestry. Spruce can attain considerable height and on the right soils height can exceed 30m. Rotational spans for timber production align with the period of maximum growth yield which is usually between 80 and 100 years. After a slow start growth tends to be most rapid from the ages of 20-60 years. In form the spruce tend to grow symmetrical thin crowns and seldom produce branch forks.
- 3.5 Spruce resent chalk soils, they thrive on sandy soils and are tolerant of most other soils including clay. The species can suffer snow break and are not suitable for very exposed locations. Across the northern hemisphere there has been concern about forest decline of spruce forests from abiotic factors.
- 3.6 The Spruce under TPO is a healthy high grade tree. There is no sign of basal decay pathogens or basal instability. The crown is symmetrical and well balance. Needle colour and size is normal. Shoot extension growth appears vigorous and overall the tree is assessed as having good vitality. It was noted that there are signs that the apical extension growth is starting to slow.

4 Proposal

- 4.1 When a tree preservation order is served it takes effect immediately for a provisional period. If the TPO is to remain valid it must be confirmed within expiry of six months from the date the order is made or a new order has to be made. There is an opportunity for those affected by the TPO to raise an objection or make comments. The Committee has agreed that any unchallenged orders are confirmed automatically. Where objections are received these are normally reported for consideration by the Planning Committee and a decision is required whether the Order should be confirmed, modified or revoked after taking into account the amenity of the tree and validity of the objections received.
- 4.2 After making this TPO two objection have been received; one of the objections has been from the tree owner and the other from the neighbour at 67 Bracken Path. A further comment was made from the neighbour at 69 but this was neutral – not expressing a preference for or against the TPO. The letters of objections are appended to this report and Members are advised to take account of the points raised.

4.3 In summary the basis of the objection challenges the appropriateness of the tree to be protected; given its perceived size; risk of causing both direct and indirect damage, and risk of collapse.

- The objectors believe the tree is not special nor indigenous to the area.
- They feel the tree is poorly rooted, very dangerous and could fall.
- Concern is expressed about surface roots making the pathway uneven and a hazard to visitors
- A concern is raised about the possibility of damage to buildings and drains from roots.
- Objections is raised to an inconsistency in the Councils approach by allow the felling of a neighbouring tree but not the Spruce.
- The objectors seek confirmation that the Borough Council will accept liability for any damage the tree may cause.

4.4 The tree owner has indicated that they would be prepared to replace the Spruce with a smaller growing tree.

5 Consultation and Comments from third parties

- 5.1 The TPO was served on the owner/occupier of No. 70 Bracken Path and on the neighbouring properties of 71 and 69 Bracken path.
- 5.2 The neighbour at 67 has objected to the TPO on similar grounds to the tree owner.
- 5.3 An objection to the original felling proposal for the tree was received by the Tree Advisory Board but they have not been consulted further about the making of the TPO.

6 Relevant planning history

Application number	Decision date	Application detail	Decision
17/01886/CAT	22/05/2018	Felling of Norway Spruce	Blocked by making a TPO on 22/5/2018

7 Planning Policy

National Policy Planning Framework (NPPF) 2012

Chapter 11: Conserving and enhancing the natural Environment

Core Strategy 2007

Policy CS1	Sustainable Development
Policy CS5	Built Environment

Development Management Policies Submission Document November 2014

Policy DM5	Trees and Landscape
Policy DM9	Townscape Character and Local Distinctiveness

8 Planning considerations

Amenity Considerations

- 8.1 The Town and Country Planning Act 1990, Section 198 provides that Local Planning Authorities may make a Tree Preservation Order (TPO) if it appears to them to be “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”. Tree preservation orders and trees in conservation areas planning practice guidance recommends that “TPO’s should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.
- 8.2 To define what amenity means in practice, the Council’s procedure is to use a systematic scoring system to evaluate whether a tree/s has sufficient amenity to justify the serving of a TPO. This also ensures a consistent approach to tree protection across the Borough. In considering the amenity value such factors as the size, age, condition, form, rarity, prominence, screening value, appropriateness to setting and presence of other trees are taken into account.
- 8.3 In considering the conservation area notice to fell the Norway Spruce two tree amenity value assessments were undertaken:- The Tree Evaluation Method for Preservation Order (TEMPO), and the Helliwell appraisal system. These systems were used to evaluate whether a TPO in this case was defensible and justified. Under these appraisal system the tree scored a sufficiently high grade to justify the TPO. The amenity appraisal demonstrates that it is both expedient and appropriate to protect the Norway Spruce in the interest of amenity. The tree amenity evaluation appraisals are attached to this report.
- 8.4 The Norway Spruce makes an important and pleasant contribution to the amenity of the landscape. In particular the Spruce enhances the sylvan character of the setting and is more valuable in the dormant period when most trees on the greens and common are bare. Officers were particularly impressed with the trees excellent form and attractive appearance. The spruce is clearly visible as part of the background treescape of the conservation area from a surprisingly far distance. It can be seen from Christ Church Road (B280) right across the heart of Stamford Green because it stands slightly elevated as the ground topography rises uphill in the direction of Common. This landscape impact will increase if the tree becomes taller into the near future.

- 8.5 Enrichment of the site is achieved by the trees aesthetic quality and therefore felling will result in a denuding of tree cover that would be harmful to landscape amenity. A TPO was deemed justified because of this harm. Creation of the tree preservation order was deemed necessary as the work could proceed by default after the six week section 211 Notice period unless the Council acted by making a Tree Preservation Order to block the proposal and protect the tree.
- 8.6 Members should also be aware that the Stamford Green Conservation Character Appraisal and Management Proposal 2007 notes that the distinctive open spaces and greens surrounded by trees are a key characteristic of the area. In the appraisal map that accompanies this study it plots this Norway Spruce as an important tree in the conservation area.

Validity of the Objection

- 8.7 Officers have considered the reasons given for the objection and whilst it is accepted that the Norway Spruce might have the capacity to grow into a larger tree it is not felt that the arguments in favour of removing the tree are persuasive.
- 8.8 Norway Spruce is not a native tree species but the provenance of tree species is not a fundamental consideration when protecting trees. With the wide distribution of Norway Spruce across the northern hemisphere including parts of Europe it is not deemed to be unfamiliar or out of place. Norway Spruce grow perfectly well in this country as is evident from the fine condition of this tree. Within garden settings there are a huge variety of different trees that have for century's been cultivated for diversity, ornament and beautification of land. Even in broadleaved forests conservationist are now seeking to encourage the retention of some non-native coniferous species to provide wildlife diversity.
- 8.9 Officers do not share the view that the tree is too over-bearing, in contrast it is currently considered to be in proportion and in scale with its setting. Suggestion have been given to remove low branch overhang and remove ivy that will lighten the tree and improve its correlation to the setting. The tree may have the capacity to grow larger but the scale of this growth is by no means certain given the varied morphological possibilities of the species. Practising foresters have noted that the growth rate of Norway spruce plantations older than 40 years on heavy clay decreases sharply.
- 8.10 On three of the quadrants of the crown there is ample growing space where the branches overhang either a spacious garden or green setting. Even where the building corner of No.71 projects closer to the tree the tree still doesn't appear disproportionately dominant because the building is single story and spatial separation from the crown could be improved with sensitive crown lifting. The spacious garden area is located on the leeward side of the tree where normal twig and needle debris would fall propelled from the prevailing wind direction.
- 8.11 Two surface roots are visible erupting through the shingle of the entrance path. These roots are considered obstructive to assess. Although they are likely to increase in increment, they could be bypassed by carefully raising levels with a loose granular infill or bridging over the roots with a cellular confinement system.

- 8.12 There is no arboricultural evidence to substantiate that the tree is unstable, decayed or dangerous. No decay pathogens are evident. There is no sign of root plate instability and the tree is growing vertical. A study post 1987 storm on a small sample of uprooted Spruce revealed that these trees had a relatively shallow rooting depth to the root plate. Norway Spruce can be more prone to wind throw on thin soils. However, this does not infer that this Spruce is growing on a shallow soil, clay is usually deep, nor that the tree would be prone to wind throw. Removal of Ivy would significantly reduce the sail area of the crown and improve stability in any case.
- 8.13 There is no evidence that the Spruce is currently damaging drains or house foundations. Spruce generally have a low capacity to dry soil. This is because they have adapted sunken stomata within a rolled needle sheath that reduces transpiration of water vapour. This is not an adaption to conserve moisture from dry weather conditions as they are not trees from a hot climate, but it is an adaption to conserve moisture from physiological drought induced by permafrost. No foundation records are available for No. 70-73 given the age of the properties. Foundation requirements specified under the LABC calculator for the relationship between the Spruce and the building are not especially deep because of the low propensity of Spruce to feature in tree root damage claims. All the indications are that this tree is unlikely to damage buildings based on the information available in preparation of this report.
- 8.14 The objector advised a concern that the tree could damage drains. According to building plans No.70 has a soakaway in the court yard garden remote from the tree. According to Thames Water plans the foul drainage connects on the south side of the bungalows through the gardens of 72 and 73. Based on this information it is not thought that the tree represents a risk of drain damage.
- 8.15 The objectors have sought confirmation that the Council will accept liability for any loss suffered as a result of tree damage by the Norway Spruce. Section 202E of the Town and Country Planning Act 1990 provides that tree preservation regulations may make provision for the payment of compensation in certain circumstances. The current regulations are the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 8.16 Regulation 24 makes provision about the payment of compensation. In summary, a person will be entitled to compensation for loss or damage incurred in consequence of a decision to refuse consent. A claim would need to be made within 12 months of the Council's decision.
- 8.17 No compensation will be payable for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused. Nor will compensation be payable for loss or damage which was reasonably foreseeable and which is attributable to the failure on the part of the claimant to take reasonable steps to avert the loss or damage or to mitigate its extent.

- 8.18 In essence no right to compensation from the Council arises unless an application for felling of the tree is made under the Tree Preservation Order as detailed above.
- 8.19 Issue of inconsistency has been suggested because the Council raised no objection to the felling of an Ash tree at the rear of 66 Bracken Path (16/00898/CAT) but blocked the felling proposal of the Norway Spruce with a TPO. Officers do not believe this case is comparable as the Ash tree had a poor form made up of multiple stems, it was classified as being of low quality. The tree was growing within a few metres of the adjacent bungalow, had much less visible presence in the landscape, being set in the rear back-land. Additionally the Ash was not identified as an important tree on the conservation area appraisal study unlike the Spruce.
- 8.20 Officers concluded that the objections raised to the TPO do not appear compelling enough to override the need to protect the tree in the interest of amenity.

Expediency

- 8.21 The Felling notification indicated the applicant's original intention to fell the tree. Officers assessed that this felling was inappropriate. In view of this appraisal and the adverse impact this would have on amenity it would therefore seem reasonable for the Council to believe the tree was at risk of removal.
- 8.22 Once the amenity assessment indicates the tree is worthy of protection and there is a risk the proposal will be harmful to amenity it becomes more compulsive for the Council to act and issue a TPO.
- 8.23 Confirming the TPO will have the effect of creating a planning constraint on the use of the land, however this impact is not considered to be a disproportionate burden on the owner who would retain the right to make applications for tree works and appeal planning decisions.

9 Conclusion

- 9.1 The Spruce makes a significant contribution to the local landscape. It is a healthy specimen of good form and has a considerable safe useful life expectancy.
- 9.2 If the order is not confirmed the tree could be removed to the detriment of the visual character and amenity of the landscape.
- 9.3 Removal of the tree would be contrary to policies contained in the Development Management Policies Document and the Core Strategy of the Local Development Framework - these seek to conserve and enhance landscape character and the natural environment. Confirmation of the TPO and retention of the tree promotes environmental sustainability.

- 9.4 It is the Officers view that the objections raised against the making of Tree Preservation Order 461 do not override the public interest to protect the tree as an amenity and natural feature.

10 Recommendation

- 10.1 That Tree Preservation Order No. 461 is confirmed without modification.