

Crawley Borough Council

Report to Planning Committee

29 August 2023

Objections to the Crawley Borough Council Tree Preservation Order Trees At Kenilworth Close - 05/2023

Report of the Head of Economy and Planning –*PES/439*

1. Purpose

- 1.1 This report presents the “Trees At Kenilworth Close - 05/2023” Tree Preservation Order. The Committee is requested to consider the objection received and determine whether to confirm the Tree Preservation Order with or without modification for continued protection, or not to confirm the Tree Preservation Order.

2. Recommendation

- 2.1 It is recommended that the Committee **CONFIRMS** the Tree Preservation Order for “Trees At Kenilworth Close - 05/2023” without modification.

3. Reasons for the Recommendation

- 3.1 The trees have good shape and form.
The trees are considered to have good landscape amenity value in the surrounding area.
The trees have been identified as having significant long term potential.
The trees are clearly visible from the public highway and have significant amenity value.

4. Background

- 4.1 The trees the subject of this order are a group consisting of 6 mature oak trees and 1 individual early mature lime tree located in Kenilworth Close, Broadfield adjacent to the small car park area that serves numbers 21 - 36 Kenilworth Close. One of the oaks is located within the garden area of 22 Kenilworth Close. The trees are a large and visually prominent tree belt which serves to soften the parking areas and provide a landscaped green edge with the street scene. The trees are clearly visible from nearby Sandringham Road, Fulham Close, Buchans Lawn and Seymour Road.
- 4.2 An email was received from the owner of 22 Kenilworth Close (the objector) enquiring as to the TPO status of an oak tree within the garden as well as the other trees within the car park area which complete the group. A desktop review revealed that the three trees at the westernmost end of the group were already protected (Kenilworth Close No. 1, reference: 16.13.17 Tree Preservation Order) however the remaining 6 oak trees, as well as the individual lime tree were not. A site visit confirmed that the trees are a prominent feature which make a strong contribution to the visual amenity and character of the area, and the decision was made to serve a TPO on the trees so as to safeguard their future.

- 4.3 The provisional Tree Preservation Order was made on 28th March 2023 and remains provisionally in force for a period of six months until 28th September 2023. If the Order is confirmed the protection becomes permanent, if the Order is not confirmed it ceases to have effect.

5. Notification/ Consultation/Representation

- 5.1 A Council must, as soon as practicable after making a TPO and before it is confirmed, serve a copy of the order and a prescribed notice on persons interested in the land affected by the TPO. The Council therefore served a copy of the provisional TPO and notice on all the owners/occupiers of the land and other interested parties as set out below.

Owners and occupiers of the land:

- Owner/Occupier, 22 Kenilworth Close, Crawley, RH11 9PY
- Kenilworth Management Company Limited, 7 High Street, Crawley, RH10 1BA

Owners and occupiers of adjoining land affected by the TPO:

- Owner/Occupier, 7 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 8 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 9 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 10 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 20 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 21 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 23 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 24 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 25 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 26 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 27 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 28 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 29 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 30 Kenilworth Close, Broadfield, Crawley, RH11 9PY
- Owner/Occupier, 31 Kenilworth Close, Broadfield, Crawley, RH11 9PY

- 5.2 The Council is required to consider any objections or representations made within 28 days of the date of the Order. The notification period for objections ended on 2nd May 2023. Confirmation of the Order is required within six months of the date upon which the Order was provisionally made.
- 5.3 One representation has been received from the owner of 22 Kenilworth Close objecting to the TPO mainly relating to the tree within the garden of 22 Kenilworth Close. A copy of the letter is provided within this report at **Appendix A**.
- 5.4 A summary of the comments made to the initial TPO notification are set out below.

Seasonal And Other Nuisance

- The issues caused with this tree on our property is continuous with gutters being blocked by leaf litter, twigs and branches which is costing us to keep having them cleaned out to allow water to flow away effectively.
- The gutter has been broken by the sheer amount of litter from the tree or a stick/branch falling and damaging the gutter, this damaged the down pipe leading to quite a bit of flooding in the garden.
- We have a lot of moss growing on our roof tiles which we had cleaned off just over a year ago but has now grown back and this could be caused by the litter off the tree and the reduced light the roof gets. This could also be the cause of mould and dampness in our loft.

Safety

- This tree is causing us continuous issues with our property and a risk to my pregnant partner. She was hit on the back from a stick falling out of the tree where there are so many dead bits in the tree.
- My partner's mother had a slip in the car park where the leaf debris gets so bad and slippery when wet, it is a major hazard. My partner's mother's injury resulted in a broken ankle and bad bruising on her leg.
- We do have a road sweeper which comes into the close which is not very often but it does not even come into the parking area.

6. Amenity Value/Assessment

- 6.1 The amenity value of these trees has already been explained in paragraphs 4.1 and 4.2 of this report.
- 6.2 In relation to the nuisance caused by the trees, trees do drop leaves and debris, particularly in the autumn. This is a normal part of a tree's life cycle and is something that all trees do and is to be expected. This is considered to be a 'seasonal nuisance', being a normal part of living with trees in our environment. For this reason, the dropping of leaves and other debris is not considered a valid or justifiable reason not to protect the trees which offer considerable amenity value and make an important contribution to the character of the area.
- 6.3 Deadwood can be removed from protected trees without the need for planning consent, therefore the imposition of a TPO poses no constraint to this operation. The branches in the photos provided by the objector are dead and could therefore have been removed. Oak generates a fair amount of deadwood as part of their normal life cycle and this should be removed periodically by the owner of the tree in order to maintain the tree in a safe condition. The imposition of a TPO requires the consent of the Local Planning Authority to works only to live tree growth.
- 6.4 Moss tends to thrive in damp shaded areas and these conditions can be caused by tree canopies that excessively overhang roofs, causing shade and preventing the roof from drying out. The imposition of a TPO does not, however, prevent the undertaking of works that are required and justified and these could include a proportionate level of pruning works to increase light and allow adequate clearance from buildings etc.
- 6.5 The landowner has a duty of care to clean up leaves where such leaves could pose a risk to the public, this is a legal duty. While West Sussex County Council has adopted the road leading through Kenilworth Close and maintains it to some degree (this presumably includes road sweeping), the car park area appears to be owned by the Kenilworth Management Company Ltd and it is assumed the tree within the garden area is the responsibility of the occupier. It is therefore ultimately the responsibility of the landowners to maintain the trees in a safe manner. Maintaining public areas in a safe condition is part of a responsible landowner's obligations and part of this duty is to remove falling leaves when said leaves are posing a slip hazard. To clarify it is the responsibility of the landowner on whose land the leaves have fallen, not the owner of the tree from which the leaves came.

7. Implications

Human Rights Act 1998

- 7.1 The referral of this matter to the Planning Committee is in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. Those persons who made representations in objection to the TPO are entitled to attend the Planning Committee meeting and to make any further verbal representations at the meeting. The Planning Committee must give full consideration to any such representations.

7.2 Article 8 and Article 1 of the First Protocol – the right to respect for private/family life and the protection of property – also needs to be considered. These are qualified rights and can only be interfered with in accordance with the law and if necessary to control the use of property in accordance with the law and if necessary to control the use of property in accordance with the general interest. The recommended continued protection of these trees by confirming the TPO is considered to be in the general interest of the community and is considered to be both proportionate and justified.

Planning legislation

7.3 The law relevant to the protection of trees is set out in Part VIII of the Town and Country Planning Act 1990 as amended and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

8. Background Papers

8.1 The Crawley Borough Council Tree Preservation Order Trees At Kenilworth Close - 05/2023

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SCHEDULE
SPECIFICATION OF TREES

Trees Specified Individually
(encircled in black on the map)

Reference on Map	Description	Situation
T1	Lime spp	Grid Ref: TQ-25890-34965

Groups of Trees
(within a broken black line on the map)

Reference on Map	Description	Situation
G1	English Oak (5)	Grid Ref: TQ-25871-34977

Woodlands
(within a continuous black line on the map)

Reference on Map	Description	Situation
NONE		

Reference to an Area
(within a dotted black line on the map)

Reference on Map	Description	Situation
NONE		

