

COMMITTEE REPORT

BY THE DIRECTOR OF ENVIRONMENT & NEIGHBOURHOOD SERVICES
READING BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE: 17 July 2019
TITLE: OBJECTION TO A TREE PRESERVATION ORDER AT 1,3,5,5a,7,9, ARCTIC HOUSE
AND LIME HOUSE, GRASS HILL, READING

Ward: Thames

RECOMMENDATION

That the Tree Preservation Order be confirmed with the substitution of W1 woodland with two individually specified Ash trees.

1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To report to Committee two objections to Tree Preservation Order No. 3/19 relating to 1, 3, 5, 5a, 7, 9, Arctic House & Lime House, Grass Hill, Reading (copy of TPO plan attached - Appendix 1).

2. BACKGROUND

- 2.1 It was discovered in late 2018 that the TPO covering the east side of Grass Hill and part of St Peters Avenue (TPO 115/08) had unfortunately never been confirmed, hence the trees were not protected. In December 2018, a temporary Area TPO (16/18) was served on the Grass Hill and St Peters Hill properties to protect all trees until a survey could be carried out, which had not been done since the 2008 TPO. A subsequent survey of the trees within the properties identified individuals, groups and one small woodland area worthy of long-term inclusion in a TPO. A more specific TPO was then served on 29 May 2019 - reference 3/19.

3. RESULT OF CONSULTATION

- 3.1 An objection to specific trees within the TPO (T20 Ginkgo, T16 Cedar, G6 Hornbeams, G7 Ash, G8 Sycamores, W1 woodland) has been made by 7 Grass Hill based on the following concerns:
 - 1) For the 15 years residing at the property, there has been a TPO on 3 Hornbeams, one Maple, an Ash tree and a Walnut (the latter having been felled in recent years). Many new trees of various species have been planted within that time and new trees should be chosen by the owner and it is not understood why the Council wish to interfere with the garden.
 - 2) Some of the trees are not visible to the public (those not adjacent to Grass Hill) and most are common species not chosen for rarity, heritage of cultural reasons. The trees do not meet the Government criteria for inclusion in a TPO.
 - 3) In relation to T20 Ginkgo, topping of this tree was planned. It was planted too close to the driveway and unless it is restricted, there will be problems with the root system lifting the driveway. As it is just at the junction of the drive and the garage area entrance, it could make the area impassable. Does the Council pay for the damage done by roots where the tree has a TPO on it against the wishes of the owner?
 - 4) In relation to T16 Cedar, it is a lovely tree but branches dip low over the steps to the front door and it should be for the owner to control it.
 - 5) In relation to one of the Hornbeams in G6, it has grown too close to a flint wall; the wall being 20-50 years old. The tree is growing larger and sooner or later, it will need to be felled or severely pruned. One was topped 5 years ago.

- 6) Work always needs to be undertaken in the garden unless it is to be the sort of mess the Council keeps The Warren in. Trees need constant protection from deer and the soil conditions presents challenges. Maintenance of the garden and the cost of this is undertaken by the owner. There has been no good reason provided for the imposition of a TPO on 13 trees which will effectively take control of the garden.
- 7) Why have TPOs been removed from 37 St Peters Hill which will have a major effect on the area?
- 8) Why as part of the land next to the garden (within the garden of No. 9) been designated a 'woodland' when Government guidelines clearly state *'it is unlikely to be appropriate to use the woodland classification in gardens'*. The trees next to No. 9 on Council land are not protected - these trees are larger and more important to the area than the deformed overgrown runts in the proposed woodland.

3.2 An objection to the TPO has also been made by 9 Grass Hill, specifically to the woodland area included in the rear garden, based on the following concerns:

- 1) A woodland order is far too restrictive for a private garden and indeed Government Guidelines state that *'it is unlikely to be appropriate to use the woodland classification in gardens'*
- 2) The woodland is part of the garden and whilst there are no immediate plans to carry out any additional landscaping, this may be desired in the future - the woodland order would severely restrict this.
- 3) The woodland area is a natural habitat and it is that way because a significant amount of time and effort over the past twenty years has been spent making it so. This has included the removal of a large amount of dead wood, Ivy encroachment, the planting of wild meadow flowers and bluebells. Currently there is an old collapsed tree from the Council land adjoining the garden which will need to be removed. The imposition of a woodland order would grossly restrict the ability to manage this environment.

3.3 In response to the objections 7 Grass Hill, Officers have the following comments:

- 1) The TPO served in 2008 (115/08) included 6 trees at No. 7; those being 3 Hornbeam and 1 Walnut at the front and an Ash and Sycamore in the rear garden. Given the time that has passed since the 2008 TPO was made, it is expected that other trees on the property will have grown up and now meet the criteria for inclusion in the TPO. These may be a combination of trees that have grown substantially in those 11 years or that have planted since then. It is positive that so many trees have been planted over the years which will have contributed to the verdant nature of the Grass Hill area. The Council would not interfere with proactive planting and would only have input in the species to be planted if planted in direct replacement for a felled, protected tree.
- 2) Government guidance in relation to 'amenity' states the following:
"'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders 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".
 In terms of 'visibility', Government advice goes on to say:
The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

It was established in the case of Wilkson Properties Ltd Vs Royal Borough of Kensington & Chelsea (Royal Courts of Justice Case No: CO/2334/2010 dated 13/01/2011) that collective 'private' views of a tree(s) constitute a 'public' view.

Given the above and that the trees collectively contribute to the characteristic treed nature of Grass Hill and surrounding area, the Council is satisfied that there is sufficient amenity value to warrant a TPO. The trees' canopies are visible as back drop to the property in views from Grass Hill and collectively contribute to the wider wooded character of the area.

In relation to species, whilst the rarity of some species in the Borough may make a TPO more prudent, officers do not place significant weight on a tree's species when determining whether it is suitable for inclusion in a TPO. The 'common' species referred to, such as Ash and Sycamore, are native or naturalised trees important for biodiversity, hence their protection is important.

- 3) In relation to the Ginkgo (T20), concern has been expressed that the roots may cause damage to the adjacent asphalt in the future. If this occurs, which is not an uncommon problem with structures of minimal construction, officers would try to address this in the first instance by exploring resurfacing rather than felling. If the roots are not too large adjacent to the driveway (below 25cm diameter), installation of a root barrier on the driveway edge could be considered to prevent future problems. Given the young age of the tree (included in the TPO for its future potential), this would seem to be a feasible solution.

It is normal for tree owners to be concerned about what damage might occur but it is not considered reasonable to omit good quality trees, with potential, from a TPO on the basis of something that might occur or that could be remedied. A tree owner remains financially responsible for any damage their trees cost. They can apply to fell any protected tree on the basis of damage occurring, appealing the Council's decision if refused.

- 4) In relation to the Cedar (T16), the presence of the TPO does not prevent reasonable management. Whilst the TPO does mean that proposed works need to be approved through a formal process, this process is straightforward with no fee attached.
- 5) In relation to the concerns about the Hornbeams (G6), if /when damage starts to occur, then an application seeking consent for appropriate works can be submitted. If the works are supported by appropriate justification then they are likely to be looked upon favourably.
- 6) It is correct in that the trees on the immediately adjacent Council land are not subject to a TPO. Officers do not often place a TPO on Council trees unless there is a potential threat from third parties. For information, the majority of the Escarpment is subject to TPOs, including Council land adjacent to The Warren, rear of Upper Warren Avenue and Ridge Hall Close, and an area adjacent to Warren Court (The Warren).
- 7) With reference to No. 37 St Peters Avenue, TPOs have not been removed from this property. The properties at Courtlands and in adjacent St Peter's Avenue properties have been included in a separate TPO to those in Grass Hill - reference 4/19.
- 8) In relation to the query about the appropriateness of the 'woodland' at 9 Grass Hill, The Town & Country Planning Act 1990 ('the Act') requires TPOs to fall into 4 classifications, a single TPO being able to contain a combination of these: Individually specified trees (T); Groups of trees (G); Woodlands (W) and Areas (A). When deciding on the most appropriate type of TPO, a Local Authority is confined to these four classifications.

Officers have included trees as individuals where they merited this individual classification and selected Groups where several trees together form a feature (Groups requiring individual trees to be indicated). An 'Area' classification

could have been used, however, as the area of trees in question appeared to be more 'woodland like' and being mindful of Government advice on the use of the 'Area' classification (normally only as a temporary measure as was done with TPO 16/18), the 'Woodland' classification was deemed the most appropriate. At the time of the survey, the inclusion of the trees as a small 'woodland' was considered reasonable. However, please see the comments below in relation to the objections from 9 Grass Hill.

3.4 In response to the objections from 9 Grass Hill, Officers have the following comments:

Please refer to 3.3 (8) above in relation to use of the woodland classification. In response to the concerns about the inclusion of this woodland area within the private garden, Officers visited to discuss the concerns with the owners and reviewed the appropriateness of the use of woodland classification. The area of woodland included in the TPO (W1) does have the characteristics of a young woodland and could be managed as such into the future, effectively forming a continuation of the adjacent wooded (Council) land. Whilst Government guidance states that 'it is unlikely to be appropriate to use the woodland classification in garden' there are a number of woodland TPOs across the Borough, some of which are in private gardens. However, those have generally been where each individual tree is considerably larger than those at 9 Grass Hill; the majority of trees within W1 being relatively young. Other woodland TPOs do exist in the Borough consisting of trees of a similar, or younger, age than those in question, but these tend to be on plots of land not within the curtilage of a garden. Whilst not a clear cut decision, on balance officers agree that the woodland classification could be removed from the garden. However, this is agreed as part of a compromise whereby the two mature Ash trees within the woodland area are retained in the TPO as individually specified trees; the remaining trees forming the understory. This compromise has been agreed with the objector.

4. CONCLUSION

4.1 The Grass Hill area is characteristically treed in nature, all trees contributing to this and the tree lined ridge along the Warren. None of the objections raised are considered to be valid reasons for omitting trees from the TPO for the reasons provided. It is therefore recommended that the TPO be confirmed but with the substitution of the woodland with two individually specified Ash trees within the area; amending the plan accordingly on confirmation.

5. LEGAL IMPLICATIONS

5.1 Preparing, serving confirmation and contravention of TPO's are services dealt with by the Council's Legal Section.

6. FINANCIAL IMPLICATIONS

6.1.1 Administrative.

7. EQUAL OPPORTUNITIES IMPLICATIONS

7.1 In assessing objections to TPOs, officers will have regard to Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.2 In terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the making of this TPO.

8. SUSTAINABILITY IMPLICATIONS

8.1 The aim of the TPO's is to secure trees of high amenity value for present and future generations to enjoy. Trees also have high environmental benefits through their absorption of polluted air and creation of wildlife habitats.

9. BACKGROUND DOCUMENTS

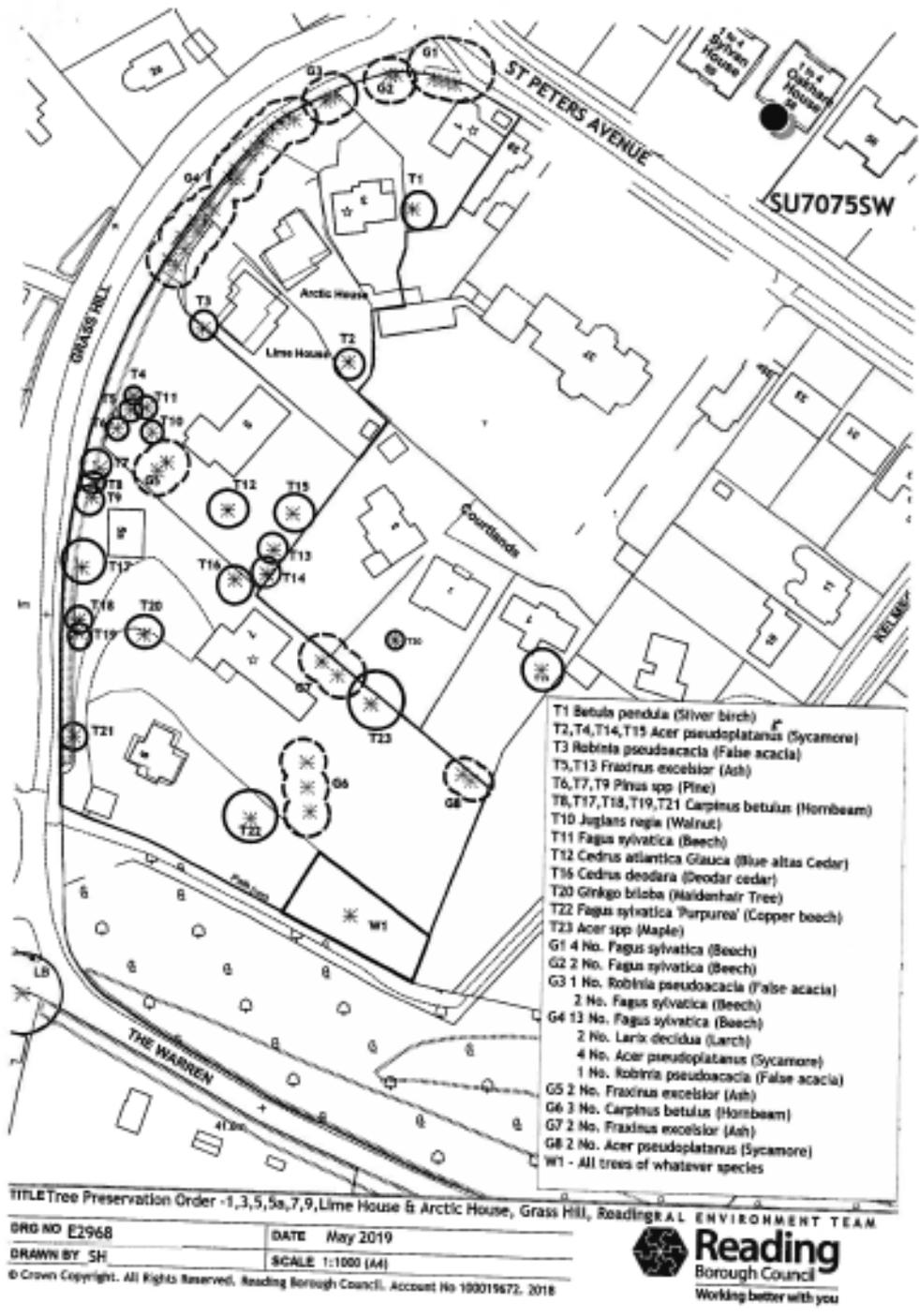
9.1 Planning Section's Tree Preservation Order Directory

9.2 Register of Tree Preservation Orders

9.3 Plan of TPO 3/19 relating to 1, 3, 5, 5a, 7, 9, Arctic House & Lime House, Grass Hill, Reading (Appendix 1)

Officer: Sarah Hanson

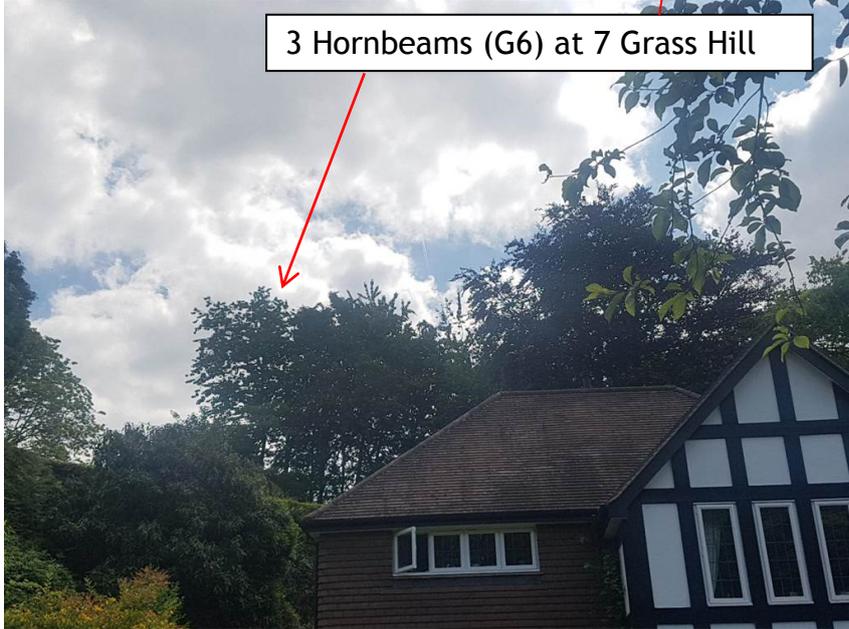
Appendix 1 - TPO plan (as served)



Appendix 2 - Photos



9 Grass Hill - Mature Beech (T22) in front of much younger trees in W1 woodland



3 Hornbeams (G6) at 7 Grass Hill