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PLANNING COMMITTEE

27 SEPTEMBER 2023

TREE WORK APPLICATION – REQUEST TO FELL PROTECTED TREE AND ECO PLUG STUMP – 4 CHILTON COURT

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Summary

An application to fell the tulip tree growing in the rear garden of 4 Chilton Court, Rainham was received on 14 February 2023. This tree is protected by tree preservation order G7/1969 and the case reference is TPA/23/0357.

The reasons given for the removal of this large mature tree relate to alleged subsidence damage to the property at 4 High Elms, Rainham, Gillingham, ME8 7DJ. The request to fell the tree and eco plug stump are proposed as a remedy to differential foundation movement at 4 High Elms and to ensure the long-term stability of the building. The applicant has stated that a replacement tree would be planted.

1. Recommendations

1.1. Application be refused on the following grounds:

- The applicant has failed to demonstrate that the removal of the tree is proportionate to the scale of damage involved.

- The applicant has failed to supply convincing and compelling reasons to justify the removal of the tree, given that repair options would allow the tree to be retained.

- The removal of the tree appears excessive and unjustified, given the visibility and value of the tree and the harm that would occur to the character and appearance of the local area.

2. Budget and policy framework

2.1. The National Planning Practice Guidance (NPPG) states that Authorities should bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to

conditions. The same guidance states that even if the Authority believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.

2.2. Such liability only relates to loss or damage caused or incurred in consequence of it refusing any consent under an Order. The NPPG states that no claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

2.3. In this instance the repair costs estimated by the applicant vary between £7,000 if the tree is removed and £60,000 if the tree is retained. The tulip tree has been assessed using Capital Asset Value for Amenity Trees (CAVAT) and the valuation derived from this assessment is £48,457, reflecting the tree's contribution to the visual characteristics of the area and to the local environment.

2.4. Medway Local Plan Policy BNE41 states that when considering applications for works to protected trees, regard will be had to the future health and appearance of trees.

2.5. Medway Council Tree Management Policy was approved at Cabinet on 16 December 2008 and reviewed in May 2015 with changes approved by the RCC Management Team on 10 June 2015. Policy 17 states that TPO applications for works are assessed by a competent arboriculturalist. Policy 23 states that when considering TPO applications Medway Council will ensure that appropriate arboricultural expertise informs its decision and that there will be a presumption against granting consent to fell protected trees without good justification.

3. Background

3.1. An application to fell the tulip tree (T3) growing in the rear garden of 4 Chilton Court, Rainham was received on 14 February 2023. This tree is protected by tree preservation order G7/1969 and the case reference is TPA/23/0357.

3.2. The reasons given for the removal of this large mature tree relate to alleged subsidence damage to the property at 4 High Elms, Rainham, Gillingham, ME8 7DJ. The above tree works are proposed as a remedy to differential foundation movement at 4 High Elms and to ensure the long-term stability of the building. The applicant has stated that a replacement tree would be planted.

4. Options

4.1 Approve the application to fell and eco plug stump, with condition for replacement tree planting.

4.2 Refuse the application for the grounds set out in the recommendation.

5. Advice and analysis

Character and appearance

5.1. The large, mature tulip tree (T3) that grows in the rear garden of 4 Chilton Court is most likely a remnant of the cover that existed before the housing estate was developed.

5.2. The tree is clearly visible beyond the rooflines of properties on High Elms, Holmoaks and Chilton Court. It is the largest and most prominent tree in the immediate area and given the lack of mature vegetation nearby, there can be no doubt that the tree makes a significant contribution to the character and appearance of the local area.

5.3. Loss of the tree will be visible from numerous public viewpoints and any replacement will take decades to compensate for the loss of the tree, assuming it was of a similar scale and allowed to mature. Given the degree of harm that would occur, it is considered that any reasons put forward in support of the removal of the tree need to be convincing and compelling.

Ecosystem service benefits and monetary value

5.4. The National Planning Practice Guidance (NPPG) states that where relevant to an assessment of the amenity value of trees, Authorities may consider factors, such as importance to nature conservation or response to climate change.

5.5. It is widely acknowledged that urban trees improve local air quality, capture carbon, reduce flooding and cool urban environments. Urban forests provide habitats for animals and can improve social cohesion in communities. These benefits are widely referred to as ecosystem services.

5.6. The England Trees Action Plan 2012 – 2024 recognise the critical part that trees play in tackling climate change and providing vital habitats, particularly in and around our cities where trees can make places where people live and work more climate resilient, healthy and attractive.

5.7. Research published by Forest Research confirm that larger stature trees provide the most ecosystem service benefits, especially as they reach maturity.

5.8. CAVAT can be used to assign a monetary value to trees that provide aesthetic, environmental and social benefits to a community. This value considers factors such as the tree's size, species, location and condition, as well as the benefits it provides, such as shade, air quality improvement and carbon sequestration. The CAVAT assessment is a method commonly used by urban planners and policymakers to justify the preservation and maintenance of urban trees, forests and green spaces.

5.9. The system was specifically designed to consider the counter-value of trees in cases of alleged subsidence. It was originally designed to assign a replacement monetary value for publicly owned trees, however, it has become standard within the arboricultural industry to use this method to assign values to private trees where they are protected by law as recognition of the private contribution to natural/green capital.

5.10. The tulip tree which is the subject of this application has been assessed using CAVAT. The valuation derived from this assessment is £48,457. This assigned valuation reflects the tree's contribution to the visual characteristics of the area and to the local environment. It represents a like-for-like asset replacement cost in the current market.

Justification

5.11. When considering an application, the Authority is advised to assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area and, in the light of this assessment, whether the proposal is justified, having regard to the reasons and additional information put forward in support of it.

5.12. The Authority is also advised to consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions; consider whether any requirements apply in regard to protected species; consider other material considerations, including Development Plan Policies where relevant; and ensure that appropriate expertise informs its decision.

5.13. The application indicates subsidence damage and is supported by an engineer's report, arboricultural report, level monitoring and site investigation data. The engineer's report indicates downward movement of the more recently constructed extension towards the tulip tree, with the level of damage being classified as slight (cracks less than 5mm).

5.14. The borehole soil profile details made ground to a depth of 480mm, with silty clay soil to 170mm below foundation depth. Beyond that, the borehole data shows chalk soil (which is not shrinkable). Fine roots are present within the top 830mm of soil and T3 belongs to the same family as the roots identified close to the dwelling at 4 High Elms, Rainham.

5.15. Level monitoring indicates downward movement with recovery of levels over the winter; supporting the engineer's view that movement is cyclical in nature and therefore related to roots of nearby vegetation. The arboricultural report submitted in support of the application focuses on the involvement of the tulip tree at 4 Chilton Court, Rainham (T3). Whilst it is acknowledged that roots belonging to T3 were found below foundation depth, it is important to note that tree T1 (oak) and tree T6 (conifer) are within known zones of influence and have equal potential to affect the moisture content of soils in the garden and under the extension at 4 High Elms.

5.16. Trees T1 and T6 are not proposed for removal and so it remains unclear whether the removal of T3 would offer a sustainable solution to the problem. Given that T3 is a low water demand species, it is possible that an equal water demand replacement would cause the same issues in time as it grows and matures.

5.17. The involvement of T3 is accepted, but to assess whether the removal of this highly prominent and high value tulip tree is justified, it is necessary to consider the evidence on balance. In this regard and following an examination of the tests and soil data, there is a concern that some of the readings might be false or misleading.

5.18. It is also necessary to consider that the BRE digests do not recommend removal of trees for cases of level 2 (slight) damage. Damage has not been demonstrated as progressive and there are repair options which should ensure long term stability of the property. These options need to be considered on balance, against the environmental benefits of the tree and the harm that would occur to the character and appearance of the area should the tulip tree be removed.

5.19. The applicant has supplied evidence of tree root involvement on a shallow layer of clay soil and this is not disputed. It can reasonably be assumed that roots of the tulip tree (tree T3) are enhancing seasonal movement. The applicant has demonstrated that the shallow layer of soil beneath foundations is shrinkable, and that movement is of a seasonal nature. However, it is not considered that the removal of the tree is proportionate to the scale of damage involved, particularly when considering the scale of repairs that would allow the tree to be retained.

5.20. The impact of the proposal on the character and appearance of the area and whether the proposal is justified, having regard to the reasons and evidence put forward in support of it, has been assessed.

5.21. It is considered that, on balance, the reasons put forward in support of the proposed works fail to provide a convincing argument that the proposal is justified. The removal of the tulip tree would be contrary to Medway Local Plan Policy BNE41 and Medway Council Tree Management Policy 23. The works would have a negative impact on the character and appearance of the local area, and it is not considered that the proposed works are reasonable based on a balanced judgement of the evidence put forward in support of the application.

6. Risk management

6.1. It is widely acknowledged that urban trees improve local air quality, capture carbon, reduce flooding and cool urban environments. Urban forests provide habitats for animals and can improve social cohesion in communities. These benefits are widely referred to as ecosystem services. The removal of this large mature tree would have a significant adverse impact on the provision of ecosystem service benefits, resulting in the loss of a tree valued at £48,457.

6.2. Authorities are advised to bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. The NPPG states that no claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

6.3. In this instance the repair costs estimated by the applicant vary between £7,000 if the tree is removed and £60,000 if the tree is retained. Whilst an experienced arboricultural consultant has been employed to advise on this application, it remains the case that a claim for compensation might be made if the application is refused permission.

6.4. There is no certainty regarding the value of such a claim, or how successful a claim would be.

7. Consultation

7.1. Representations have been received from Highways confirming that the proposal raises no highways concerns.

8. Climate change implications

8.1. The National Planning Practice Guidance (NPPG) states that where relevant to an assessment of the amenity value of trees, authorities may consider factors such as importance to nature conservation or response to climate change.

8.2. It is widely acknowledged that urban trees improve local air quality, capture carbon, reduce flooding and cool urban environments. The England Trees Action Plan 2012 – 2024 recognise the critical part that trees play in tackling climate change, particularly in and around our cities where trees can make places where people live and work more climate resilient. These benefits are widely referred to as ecosystem services.

8.3. Research published by Forest Research confirm that larger stature trees provide the most ecosystem service benefits, especially as they reach maturity.

8.4. The removal of this large mature tree would have a significant adverse impact on the provision of ecosystem service benefits, resulting in the loss of a tree valued at £48,457 in recognition of its ecosystem service benefits.

9. Financial implications

9.1. Authorities are advised to bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. The NPPG states that no claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

9.2. In this instance the repair costs estimated by the applicant vary between £7,000 if the tree is removed and £60,000 if the tree is retained. Whilst an experienced arboricultural consultant has been employed to advise on this application, it remains the case that a claim for compensation might be made if the application is refused permission.

9.3. There is no certainty regarding the value of such a claim, or how successful a claim would be.

10. Legal implications

10.1. There are no legal implications arising from this report.

Lead officer contact

Mike Sankus, Senior Tree Officer

Background papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; The National Planning Practice Guidance; The England Trees Action Plan 2012 – 2024; and The Forrest Research report titled ‘Ecosystem services delivery by large stature urban trees’

Any information referred to is available for inspection on Medway Council’s Website https://publicaccess1.medway.gov.uk/online-applications/