

**4/02578/15/FUL - ALTERATIONS TO THE LISTED CURTILAGE BOUNDARY WALLING AND CONSTRUCTION OF NEW FENCING TO FORM NEW LANDSCAPED AREA FOLLOWING THE REMOVAL OF 1 NO. COMMON ASH TREE.**

**BLUE COURT, 1 CHURCH LANE, KINGS LANGLEY, WD4 8JP.**

**APPLICANT: Mr Hazell.**

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[Case Officer - Keith Frost]

### **Summary**

The application is recommended for approval.

While the loss of the Ash tree (granted TPO status by Members) is regrettable it is considered that any harm to the character and appearance of the Kings Langley conservation area is slight and overcome by the improvements to the starkness of the existing car parking area achieved through the proposed planting of a Himalayan Birch tree and the soft landscaping within the proposed raised planting area. In addition, and very importantly, significant weight must be attached to the damage the ash tree is currently causing, and will cause, to the adjacent wall and car park hard surface.

### **Site Description**

Blue Court is a large symmetrical classical villa of a late Georgian date, situated on the corner of Church Street and the High Street in the Kings Langley Conservation Area. The building, has since 1952 been included on the statutory list of buildings of historic or architectural interest, as Grade II. This former detached residential building, had been used as a hotel until the late 1990s when the property was converted to offices. At some point in time, in either the 1980s or 1990s, the area of land to the side of the property that fronts onto Church Street was made into a large paved area for vehicle parking, with new brick boundary walling and panelled fencing put up to the rear of the site adjacent to residential development of Orchard Court and an area of hard standing and garaging.

### **Proposal**

It is proposed to remove a TPO ash tree and a 3.5 metre section of 2.8 metre high brick walling (and a further 8 metres of 1.8 metre tall closed boarded fencing) to facilitate a new boundary layout to the north-western corner of the site that would involve the construction of a new length of curving brick walling that would be 550mm high with a raised area of planting behind, with a new length of close boarded fencing along the extended site boundary line at the rear of the raised planted area.

A concurrent application for listed building consent is being considered under 4/02579/15/LBC.

### **Referral to Committee**

The application is referred to the Development Control Committee due to the contrary views of Kings Langley Parish Council.

### **Planning History**

TPO 546            The TPO status of the ash tree subject to this application was confirmed on 30/03/15.

4/02331/14/TC A ASH (T1) - FELL AND REMOVE ROOT BALL BECAUSE OF STRUCTURAL DAMAGE TO RETAINING WALL TO CAR PARK.  
Raise objections  
10/10/2014

4/01055/11/TC A WORKS TO ASH TREE  
Raise no objection  
29/07/2011

## **Policies**

### National Policy Guidance

National Planning Policy Framework (NPPF)  
Circular 11/95

### Adopted Core Strategy

NP1 - Supporting Development  
CS4 - The Towns and Large Villages  
CS13 - Quality of Public Realm  
CS27 - Quality of the Historic Environment

### Saved Policies of the Dacorum Borough Local Plan

Policy 120

### Supplementary Planning Guidance / Documents

Environmental Guidelines (May 2004)

## **Summary of Representations**

### Councillor Anderson (Kings Langley)

'Objection & call-in if recommendation is for approval'.

Councillor Anderson refers to local residents having commissioned a report by tree experts, Bartletts, that led to the tree being made the subject of a TPO by the Council, that this decision was appealed against by the applicant. However, the appeal was dismissed by the Council's TPO Appeals Committee. As such Councillor Anderson wishes the application to be referred to the Development Control Committee should the recommendation be for approval.

Kings Langley Parish Council

'The Council stands by its previous objection listed below and would be disappointed if the tree which has a TPO listing is felled.

"The Council OBJECTS to the application because it is the only tree in this part of the Conservation Area and that the case submitted for its removal is not considered to be very strong; the Council is also concerned for the loss of wildlife".

### Hertfordshire Highways

Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission.

It would appear that none of the works including the part demolition of the retaining wall and subsequent rebuilding and removal of large tree would affect the public highway.

### Trees and Woodlands

No objection - The history of this site and tree is now well documented and while unusual, the view of officers remains the same as other officers at the time. The tree was not of sufficient merit within the landscape to warrant placing under the protection of a TPO. Furthermore it was our view that it was the cause of i) structural damage to the adjacent brick wall ii) ongoing disruption of the adjacent brick paved parking area.

On the basis of my original view, I raise no objection to the removal of the Ash tree in question and its replacement with a Himalayan Birch as shown in drawing MKBS467.

### Building Control Officer

'Situation remains the same. Wall is a danger and is propped for the time being. To resolve this situation either the tree needs to be removed and the wall repaired, or if the tree is to remain then the wall will require demolishing and rebuilding further away from the tree to prevent a re-occurrence.'

### Response to Neighbour Notification / Site Notice / Newspaper Advertisement

5no. comments of objection were received from Nos. 34, 40, 44, 46 & 48 The Orchard, which raised the following (summarised) objections:

#### HARMED CAUSED BY LOSS OF ASH TREE

- the removal of a the ash tree, the subject of a TPO that has been assessed as being in good health.
- ash trees nationally are being lost through fungal disease and as such efforts should be made to keep this tree.
- the tree supports a variety of wildlife, such as birds and insects.
- the tree is considered important for the contribution it makes to the conservation area and to the outlook of residents of The Orchard. As such the removal of the tree would be harmful to the conservation area and adjacent residents of The Orchard whose views would be replaced with views of the fencing and wheelie bins.

#### OWNERSHIP / ACCESS

- the parcel of land to be enclosed by the new fencing is not believed to be owned by Blue Court rather that it is 'no mans land' not in any ones ownership.
- the parcel of land to be enclosed is not as reported by the applicant to be 'derelict' but has been maintained for at least the last two decades by the residents of Nos.46 and 48 The Orchard.
- the applicant incorrectly states that the access to Nos. 46 and 48 The Orchard, adjacent to the application site, to be the 'rear access' gateways these two properties when in fact it is the only means of access to this two properties.
- the proposal would have an impact on access to Nos. 46 and 48 The Orchard.

#### OTHER MATTERS

- the proposal seeks the substantial reduction in the height of part of the boundary walling with No.48 The Orchard and adversely impact on the privacy of the property.
- information presented is incorrect in that the walling is not supporting the tree (the tree was there before the wall).
- there has not been sufficient consideration given to other options that could see the tree retained, such as re-enforcing the existing walling.

#### **Background to TPO**

The following section provides a timeline of events that led to the confirmation of the TPO status of the tree:

- 29 August 2014: Application to do works to the ash tree (as it is in a conservation area), reference 4/02331/14/TCA was received.
- Objections to these works were received from No.46 The Orchard and Kings Langley Parish Council. Conversely no objections were raised by the Trees & Woodlands Officer.
- 7 October 2014: A letter (dated 3 October 2014) was received from Mr S Clarke (48 The Orchard). This was a 3-page letter written by Bartlett Consulting which contained their advice concerning the proposed development and TCA application at Blue Court. This report concluded:

*'Overall, we consider that there are no substantiated reasons why the LPA should not make a TPO to protect the Ash tree, as one is justified in the interests of amenity and is highly desirable in terms of the preservation of the character of the Conservation Area and the setting of the Listed Building.'*

- An e-mail was sent by Cllr Anderson to the Planning Officer (Patrick Doyle) and copying in the Chief Executive, Head of Legal, Group Manager Planning and the Parish Council, requesting that this TPO consideration is referred to the DCC, and put on the agenda for the 16 October. Cllr Anderson made the following comments:

*'Not delaying or objecting to the TCA would in my view therefore be in breach of the council's constitution. I would be grateful also if the Bartletts report could be copied to the members of the Development Control Committee, because it is difficult to see how*

*one could argue that the council's trees advice takes precedence over the country's top tree experts.'*

- 8 October 2014: The TPO Memo was sent from Trees & Woodlands to Planning. This Memo contained the recommendations of Tress Officers (Mansour Moini and Colin Chambers) and Planning Officer (Patrick Doyle) not to serve a TPO for the following reasons:

*'My view is that the tree does not meet the criteria as set out Planning Practice Guidance (ID:36) "Tree Preservation Orders and trees in Conservation Areas" (March 2014) and furthermore if made the subject of a TPO, risks the Council becoming liable for ongoing repairs to an adjacent brick wall and surface to a car park. The wall is currently being held by timber supports and the car park brick paving clearly disturbed by tree roots.'*

- Philip Stanley (Planning Enforcement) wrote an e-mail to Mr Clarke, copying in the Group Manager (Alex Chrusciak) explaining why the ash tree is not worthy of further protection. These reasons were contained within 4 categories: visual amenity, condition of tree, relationship with immediate surroundings, future consequences.
- 9 October 2014: The recommendation not to serve the TPO was overturned by the Group Manager for the following reason:

*'The TPO is necessary to ensure all parties have proper opportunity to raise their views on the merits of the tree. The final decision has been 'called in' by Councillor Anderson and therefore the tree needs to be protected to allow the consideration to happen.'*

The TPO was served and the owner of the tree, the Parish Council, Ward Members, immediate local residents and relevant internal departments were made aware of this decision.

- 10 October 2014: The Group Manager overturned the Planning Officer's recommendation not to object to application 4/02331/14/TCA. Therefore the Council's decision was to Raise Objections to this application for the following reason:

*'TPO served on the 9 October 2014 contrary to officer advice. I authorised the serving of the TPO to allow further consideration of the merits of the tree in light of evidence provided on behalf of local residents.'*

- 6 November 2014: Bidwells, on behalf of the landowner, wrote to the Council to formally object to the serving of the TPO and requesting that the Order be removed for the following reasons:

*'The tree is a self-seeded ash tree which does not provide any positive amenity to the location within which it is found. The tree is currently causing significant damage to property and the below ground utilities which service Blue Court. This building is a*

*Grade II Listed building and the entire site falls within the a conservation area. Therefore the damage to the building and the site by the tree far outweighs the protection which the TPO provides. The instability of the tree is a concern and a TPO will inhibit the ability of my Client to effectively manage the tree now and in the future.'*

This document had been also submitted in support of their application to fell the ash tree (4/02331/14/TCA).

- 4 March 2015: Philip Stanley informed all interested parties that the TPO appeal sub-committee had been set up for 30 March and that it would be necessary for all documents for consideration to be received by the Council by 18 March 2015.
- 16 March 2015: Bidwells sent Philip Stanley their Client's commissioned Structural Survey (Smithers Purslow Damaged Wall Report). This 4-page report (containing two drawings, SK1 & SK2 and several photographs) outlined the damage being caused by the Ash tree to the property, concluding as follows:

*'The damages to the wall and paving and potentially to the adjacent drains have clearly been caused by the ash tree. It is recommended that the tree is removed, its root ball ground out, and the damaged section of the wall taken down and rebuilt. Attention should also be given to the disturbances to the block paviors to the car park.'*

- 26 March 2015: A 16-page tree report was received from Tree Sense Arboricultural Consultants, commissioned by the landowner. This report was not put before Members as the deadline for comments had passed. This report made the following (abbreviated) conclusions

*'From an arboricultural standpoint I do not feel that the re-location and rebuilding of the wall to the proposed new design is feasible with T1 being safely retained. T1 would need to be removed on safety grounds to achieve this. The need to at least repair the damaged and unsafe wall is undisputed, but should only be achieved without the need for any additional excavations. Due consideration must be given to the longer term impact of the tree on the repaired wall as it has not yet reached full maturity and its future growth may continue to directly impact on the structure causing damage again in the future*

- 30 March 2015: The TPO appeal sub-committee considering the objections to the serving of the TPO. This involved a site visit and then further considerations at the Civic Centre.

The Agenda for the appeal sub-committee contained the following:

- Statement from Mansour Moini recommending that the tree be removed, describing the poor qualities of the tree, responding to the Bartlett report and making it clear the Council's risk of compensation should the Council refuse to agree the removal of the TPO.

- The Order for TPO 2014 (546) with Schedule and Map.
- The Smithers Purslow Damaged Wall Report with drawings SK1 & SK2.
- The Bartlett Report (written by John Lawson).
- The objection letter from Bidwells.

Members resolved to dismiss the objections and confirm the TPO. The full resolution is as follows:

*The Tree Preservation Appeals Committee, having visited the site and considered all the evidence, and all the oral evidence, from the DBC officer with representatives of Kings Langley Parish Council and residents, but not from the Appellant who did not attend, came to the decision by 4 : 0 votes and 1 abstention to confirm the TPO Order 2014 546.*

- The TPO was confirmed.

## **Considerations**

The principle consideration in this application relate to the impact of the proposed loss of the TPO ash tree. The impact of the proposed works on the character and appearance of the Kings Langley conservation area and on the residential amenities of surrounding properties also need consideration.

### TPO Ash Tree

The brick boundary walling to the north-western corner of the car park to Blue Court is understood to have been built in the 1980s when the grounds to the south of Blue Court was turned into an area of a paved area for car parking for the premises. At that time it appears ground levels to parts of the area to the side of Blue Court were modified leading to the present situation with respect to the north-western corner of the car park where the land the other side of the boundary wall is at a higher level.

A structural survey was undertaken in July 2014, by **Smithers and Purslow**, which reported that beyond the 2.8 metre boundary wall of the car park there is an area of retained soil that was to a height of approximately 1.20 metres. This area of retained land contains an ash tree, which an accompanying tree survey report describes as being a semi-mature tree with a 700mm stem diameter and overall height of 15 metres. The structural survey identified the boundary wall to have a lateral crack running through part of it, the walling having an outward bow to it, such that the wall was considered to be in a potentially dangerous condition and has been shored up with timber propping. Furthermore the report notes that the block pavers of the car park in the vicinity of the wall and fencing had been disturbed. The conclusion reached in the report is that damage to the wall and pavers has been caused by the ash tree behind the wall, with the recommendation the tree be removed and the damaged walling taken down and rebuilt.

It is noted that Councillor Anderson has given significant weight to the **Bartlett Report** (written on behalf of the objectors). This 3-page report provides a summary of the

planning history of the site, of the Smithers and Purslow Report, and the views of the Council's Trees & Woodlands Officer. The report then goes on to describe the importance of the tree in its locality, stating that, "*The crown contains a number of dead or dying branches, a few branch stubs, but otherwise appears heathy and vigorous, and could be re-pruned and thinned at intervals. The tree, which stands at a height of 13 metres, is a prominent feature and focal point at the end of The Orchard (cul-de-sac) and is highly visible from Church Lane, such that it makes a significant contribution to the arboreal character of the Conservation Area and the setting of the Listed Building, and has a high amenity value*".

It is important to note that the Bartlett Report is not a full arboricultural assessment. While it does provide a visual assessment, it does not provide any information regarding the condition, health, stability and safety of the Ash tree in relation to the wall. Indeed the Bartlett Report simply states that this work is missing from the Smithers and Purslow Report. The Bartlett Report also states that there is an absence of supporting information to explain that the wall cannot be rebuilt, or a new wall built, with the tree retained, nor any indication that the rooting zone of the mature tree will be disturbed significantly. Overall, the Bartlett Report considers that there are no substantiated reasons why the LPA should not make a TPO to protect the Ash tree.

The information that the Bartlett Report considered to be missing has now been provided through the 16-page tree survey report from **Tree Sense Arboricultural Consultants**. This Report makes the point that trees '*are not static objects, but growing, living organisms and their condition, size and relationship to buildings, structures and other trees can change significantly and sometimes unpredictably over a period of time*'.

The Tree Sense report assessed the ash tree as to be in good structural condition and in a fair physiological condition with the tree having been managed in the past with signs of significant crown dieback evident following heavy crown reduction. Furthermore due to ground level differences and physical restraints (the brick walling), the majority of the feeder root network for the ash tree appears to have mainly developed to the north and west where the ground conditions would appear to be preferable, with the tree having it is considered developed a root to the south and east to provide physical stability.

The Tree Sense report supports the conclusions reached in the structural survey that the ash tree is the cause of the damage to both the walling and the surface of the car park. The report also concludes that as the ash tree has yet to reach maturity and would therefore cause further damage were nothing to be done.

With respect to the proposal to remove the length of failing walling and to construct a new wall, on new footings, such works would require excavation works that, based on what is being proposed, could not be achieved without causing the loss of major supportive roots found close to the tree stem. As such the author of the tree survey report concludes the proposed new walling cannot be achieved without the removal of the tree as the safety of the tree would otherwise be severely compromised. Furthermore, it is suggested that even had reinforcement works to the existing wall been considered this would undoubtedly required similar excavation works for any new walling to support the existing wall with the same harmful impact on the tree.

In addition to the structural damage being caused by the ash tree, it is also worth



emphasising that the **Council's Trees & Woodlands Officer** has stated, both at the time of the serving of the TPO and during the consideration of this application that the ash tree is not of sufficient merit to warrant placing under the protection of a TPO. The tree officer therefore on the basis that the tree is not of great merit, and is causing damage, does not object to its removal or to its replacement with a Himalayan Birch.

Notwithstanding the above it is very important to recognise that **Members** considered the status of the Ash tree during the TPO process. In March this year Members decided to confirm the TPO status of the Ash tree, having taken into account the qualities of the tree, its importance in its locality, and the structural condition of the adjacent wall. However there are two key differences between Members' consideration at the time of the TPO appeal sub-committee and the present application:

1. The 16-page Tree Sense report (which dealt with the outstanding matters highlighted in the Bartlett Report) was not put before Members during the TPO considerations.
2. While the issue of liability for compensation may have been discussed at the TPO appeal sub-committee, the Council was not at risk of a compensation claim at that time. (see later 'Liability' section).

In conclusion, it is considered that the evidence submitted regarding the structural damage, which is agreed by the Council's Building Control and Trees & Woodlands departments, outweighs any harm caused by the removal of the Ash tree.

#### Liability

It is further considered that a refusal of permission in this instance would risk the Council becoming liable for ongoing repairs to the adjacent brick wall and car park surface.

Under the Town and Country Planning (Tree Preservation)(England) Regulations 2012 compensation is **not** payable when a TPO is made for the loss of development value or other diminution in the value of the land.

However, it should be noted that were it to be established subsequently the protected tree is the causation or has incurred losses or damage (in excess of £500) as a consequence of the Council refusing consent to carry out works to the protected tree or where consent is granted subject to conditions or there is the refusal of any consent, agreement or approval required under a condition, the Council would be liable to compensation costs where a claim to be made within 12 months of the relevant LPA's decision.

#### Impact on Conservation Area

The ash tree is considered to contribute in a positive manner to the character and appearance of this part of the Kings Langley Conservation Area both in views from the land in front of The Orchards (looking south), where the tree is seen against the backdrop of the trees within the churchyard of All Saints and looking north from Church Street into the site where the ash represents the only tree of any note in those views. The importance of the ash tree in these contexts was given significant weight by Members when they confirmed the TPO status of the tree in March this year.

Conversely, the tree is considered by the Council's tree officer not to be of sufficient merit within the landscape to warrant the protection of the TPO awarded to it by the TPO Appeals Committee. Furthermore the tree officer is of the opinion that the tree is causing the structural damage to the adjacent brick wall and ongoing disruption of the adjacent brick paved parking area, something the Building Control Officer also believes is the case. It is considered that these factors would outweigh any harm to the conservation area caused by the loss of the ash tree. In addition it is considered that any harm to the conservation area would be very small for the following reasons:

- The ash tree is not a high quality individual specimen.
- The ash tree actually blocks views of the high quality trees within the All Saints churchyard when looking south from The Orchards.
- The proposal for a replacement tree would in time, it is considered, contribute to the visual appearance of this part of Kings Langley.
- Given the present lack of planting in and around the car park to Blue Court the proposed raised planted area would be a positive change for this area.

### Impact on Neighbours

The applicant has provided Land Registry documentation showing that the applicant owns Blue Court and the car park land directly to the east of the site as well as the hard standing area (up to a series of garages) that lie in front (to the east of) The Orchard, including the footpath that gives access to those properties of The Orchard. As such the raised area of land and ash tree as well as the footpath to Nos.46 and 48 The Orchard are in the ownership of the applicant, who through the proposed works would be annexing a parcel of land in their ownership into the curtilage of Blue Court.

It is understood the owners of No.46 The Orchard have in recent months had undertaken works to pave to the length of the footpath to the rear of these two properties paved along with adding steps and a free standing timber handrail along with an area of hard standing outside of No. 48 for four 'wheelie' refuse bins. Under the scheme as being proposed it would appear the footpath is to be made wider and straighter (however no steps are apparently shown) with a new area for wheelie bins across the end of the proposed an indented end of the raised area of land to be enclosed by the proposed new fencing.

Given the present height of the boundary treatment to the properties of The Orchard, that front onto the area of land to be enclosed the visual impact of the new fencing or the bin store would be negligible with respect to ground floor views from these properties although it is recognised the removal of the ash tree given its size and height will have an impact on the views from these properties. Similarly given the position along the existing wall from which it is proposed to remove and rebuild the walling albeit to a lower height, this would be a point just beyond where the fencing to No. 48 The Orchard abuts and as such it is not believed the existing privacy of this property would be affected under this proposal.

Overall, therefore, the proposed works would not have a significantly detrimental impact on the residential amenities of neighbouring properties.

### Ecology

Kings Langley Parish Council and local residents have objected to the loss of the ash tree on ecological grounds, stating that it would result in a loss of bird and insect habitat. However, it is considered that the value of the ash tree as a habitat is very limited (being a single specimen) and would over time be compensated by the proposed Himalayan Birch.

## **Conclusions**

It would appear that the present situation with respect to the ongoing damage to the boundary wall to the car park of Blue Court and the surface pavers originates with the decision in the 1990s when the new car park was created with a retaining boundary wall and fencing line built close to an existing tree that was still in the process of growing.

The situation today is that the boundary wall is in a potentially dangerous condition and has had to be shored up. Shoring can only be seen as short term fix and the situation is likely to worsen as the tree continues to grow. A long term solution would ultimately be necessary.

To this end the structural report has determined that the ash tree, which is causing the damage to the walling and paving blocks needs to be removed and the existing wall taken down and rebuilt. Whilst the loss of the ash tree is considered regrettable and will have a slight negative impact locally on the character and appearance of the conservation area it is clear it is causing damage to the boundary wall and surface treatment of the car park (and will continue to do so as it grows); potentially becoming dangerous to those using the car park. As such the proposal would see this danger removed and the walling rebuilt to provide a pleasant planted area to an otherwise stark car park.

RECOMMENDATION - That planning permission be **GRANTED** for the reasons referred to above and subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

Reason: To comply with the requirements of Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.

- 2 The materials and finishes of the hereby approved section of new boundary walling shall match in size, colour, and texture that of the existing walling, in terms of the bricks, mortar mix and brick bond.**

Reason: To ensure a satisfactory appearance to the development in the interests of the visual amenities of the Conservation Area, in accordance with Policy CS27 of the adopted Dacorum Core Strategy (September 2013).

- 3 A replacement tree shall be planted before the end of the first planting season following the felling of ash tree in accordance with details which**

**shall have been submitted to and approved in writing by the local planning authority prior to the felling of the tree.**

Reason: In the interests of visual amenity. of the Conservation Area, in accordance with Policy CS27 of the adopted Dacorum Core Strategy (September 2013).

- 4 The development hereby permitted shall be carried out in accordance with the following approved plans:**

**Project No. MKBS467; Drawing No.01**

**Project No. MKBS467; Drawing No.02**

**Project No. MKBS467; Drawing No.03**

**Project No. MKBS467; Drawing No.04**

**Project No. MKBS467; Drawing No.05**

**Project No. MKBS467; Drawing No.06**

#### **Design & Access Statement**

Reason: For the avoidance of doubt and in the interests of proper planning.

#### **Article 31 Statement**

Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.