

0021/02496/TPO

Applicant Mr Michael Davis

Location 31 Edwalton Lodge Close, Edwalton

Proposal Trees: T1 & T2 (sycamore) – Fell

Ward Edwalton

THE SITE AND SURROUNDINGS

1. The application relates to two mature Sycamore trees (identified in the application as T1 and T2) that are located in the rear garden of 31 Edwalton Lodge Close, Edwalton.
2. Edwalton Lodge Close is a linear residential cul-de-sac that was built in the late 1980's on the site of the former Edwalton Station. The development is in a pleasant, quiet location set back from the main A606 Melton Road. At its northern end the cul-de-sac is set into the former railway cutting.
3. The two Sycamore trees in question stand at the top of a large embankment section of the former railway line, on the south-west (rear) side of the house. The top of the embankment stands approximately 4 metres above the level of the garden.
4. The trees are protected by Tree Preservation Order West Bridgford No.4 1987.

DETAILS OF THE PROPOSAL

5. The application seeks consent to fell both Sycamore trees.
6. The applicant's justification for seeking consent to fell the trees is that they cause excessive shading of the neighbour's garden and, given their large size, are a danger to the applicant's house.

SITE HISTORY

7. 15/00652/TPO – Fell 1 Fir and 2 Sycamore trees. Consent granted 29 April 2015.
8. 07/00085/TPO – Remove group of multi-stemmed Sycamore. Consent granted 22 February 2007.

REPRESENTATIONS

Ward Councillor(s)

9. Both Ward Councillors (Cllr S Robinson & Cllr K Beardsall) have objected to the application, Cllr Beardsall has commented that based on the submitted

information he sees no reason why the trees need to be cut down and questions why they can't be trimmed.

10. Cllr Robinson initially commenting that in the absence of solid and justifiable reasons he does not see why the trees cannot be trimmed rather than removed. He has subsequently clarified that his objection to the removal of the trees is on the following grounds:
 - a. The removal of these trees is contrary to our climate emergency status declared by the Council.
 - b. No reference has been made to the contribution these mature trees make to the biodiversity of the environment.
 - c. No reference to the negative impact on wildlife dependent on these trees.
 - d. Replacing mature trees like this with new is woefully inadequate.
 - e. The trees could be pruned and shaped without being killed.

Town/Parish Council

11. Not applicable.

Statutory and Other Consultees

12. The Council's Design and Landscape Officer has confirmed the trees are protected by a Tree Preservation Order ('TPO') but has not objected to the proposed felling of the trees. He makes the following comments:
 - a. The trees on this estate were protected prior to it being built and over the years a common theme has arisen, that the residents based within the old railway cutting have concerns about the large Sycamore trees that are located on top of the raised embankment. As the trees sit on top of the embankment the base of the trunks are approximately 4m above the ground floor of the properties and this change in level causes concerns based around the risk and consequences of failure and also loss of light as the trees dominate the properties below.
 - b. In public amenity terms the trees along the embankment are not particularly prominent as they tend to be screened by the properties on Edwalton Lodge Close so only the very top of the canopies are visible from the road where more prominent trees on Rushcliffe land are prominent features. Views from Machin's Lane are screened by a dense hedge/line of trees. Residents of Edwalton Lodge Close were also aware that the Sharphill development was likely to take place and could consider whether the fact the trees could screen the new development would outweigh the concerns mentioned above.
 - c. In terms of this application, it is necessary to consider the amenity value the trees offer the new Sharphill housing development. The new development does increase the amenity value of the [Sycamore] trees, but in this case there is an old hedgerow within the public open space for the Sharphill development which contain a number of mature trees so the removal of the 2 Sycamore will not affect the new property owners.

- d. The past removal of similar trees has not altered public views from the Edwalton Lodge Close or Machins Lane. Mature trees will screen views from the new estate which is also providing new tree planting on the landscape buffer that runs alongside Edwalton Lodge Close.
 - e. Pruning is not likely to be a successful alternative solution as on Sycamores it will only encourage new growth and would result in trees which gradually lose their natural appearance and require work on a regular basis.
13. Whilst the Design and Landscape Officer did not initially recommend planting replacement trees, he has subsequently suggested that if consent were to be granted a condition could be imposed requiring the two Sycamore trees (a non-native species) be replaced with two native tree species that would be more suitable for the elevated embankment location and would also provide more wildlife value to the area. He has suggested a number of native tree species that he considers would be in keeping with the landscape character of the area, but his preference would be Crab Apple (*Malus sylvestris*) trees, which he advises grow up to around 7 metres tall and suit heavy clay soils. He considers this species of tree to be perhaps the prettiest native tree with white blossom in the spring (which would support bees) and red fruits in the Autumn. As an alternative he has suggested Common Whitebeam (*Sorbus aria*) trees could also be suitable. He advises that this species can reach up to 15 metres high and 6 metres wide. It also has spring flowers and red berries in the winter which are favoured by birds.

Local Residents and the General Public

14. One objection from a local resident has been received raising the following summarised points:
- a. Lack of consultation to residents on the new housing estate to the west.
 - b. Details within the application are sparse, inadequate and contradictory.
 - c. Applicant's claim of 'excessive shading to neighbour's gardens' is no ground for felling a protected tree. No claim for loss of light has been made therefore not applicable to this application.
 - d. Applicant has not stated which properties are at risk from the trees and has answered 'no' on their application form to questions asking if the trees might break or fall or if any damage has been caused to drains/driveways.
 - e. Application lacks adequate drawings/photos to show how trees impact on light or their geographical context.
 - f. Environmental impact of trees has not been considered.
 - g. Currently amid a local, national and global climate emergency.
 - h. The trees form part of a wildlife corridor which has already been affected by the adjacent development site and works to layout the designated public open space, should be a protected wildlife area.

- i. Alarmed by the number of protected trees that have been allowed to be felled along Edwalton Lodge Close in the last 15 years. The once majestic row of trees now reduced to a couple of remaining clumps.
- j. Planting replacement sapling trees would not be sufficient to replace wildlife benefits of the existing trees.
- k. The trees have immense wildlife value for bats and other wildlife.
- l. The trees filter the air, provide a sound barrier from Melton Road and are storing tonnes of CO₂.

PLANNING POLICY

15. The Local Development Plan for Rushcliffe consists of The Rushcliffe Local Plan Part 1: Core Strategy 2014 (LPP1) and The Rushcliffe Local Plan Part 2: Land and Planning Policies 2019 (LPP2).
16. The overarching policies in the National Planning Policy Framework (July 2021) (the NPPF) are also relevant, particularly where the Local Development Plan is silent. Furthermore, the guidance contained within the National Planning Policy Guidance (the NPPG) is also relevant.

Relevant National Planning Policies and Guidance

17. Paragraph 131 of the NPPF acknowledges that trees make an important contribution to the character and quality of urban environments and requires that planning decisions should ensure, amongst other things, that existing trees are retained wherever possible. The principle of the 'right tree in the right place' is also re-iterated to ensure solutions for replacement trees are found that are compatible with, amongst other things, the needs of different users.
18. Chapter 15 of the NPPF relates to conserving and enhancing the natural environments. Paragraph 174 requires that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the benefits of natural capital such as trees.
19. The NPPG advises that when considering applications for consent to carry out works to trees under a TPO, Local Planning Authorities should:
 - assess the amenity value of the tree(s) and the likely impact of the proposal on the amenity of the area;
 - consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
 - 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.

20. The NPPG advises that Local Planning Authorities need to bear in mind that they may be liable to pay compensation for loss or damage caused as a result of refusing consent or granting consent subject to conditions. However, 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.
21. The NPPG also advises that in general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and the impact of the proposed works is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need/justification for the proposed work.
22. It is important to bear in mind that the Town and Country Planning Act 1990 gives the Council the power to make Tree Preservation Orders in the interests of amenity only and the determination of applications to carry out works to protected trees (including their felling), is primarily an assessment of the amenity value of the said trees and the impact the proposed work would have on the amenity of the area. The NPPG advises that although other factors, such as nature conservation or response to climate change may be taken into account when making a TPO, however these factors alone would not warrant making the making an Order.

Relevant Local Planning Policies and Guidance

23. There are no specific 'tree' policies within the LPP1 that are relevant to this application.
24. Policy 37 of the LPP2 states that the adverse impacts on mature tree(s) must be avoided, mitigated or, if removal of the tree(s) is justified, it should be replaced. Any replacement must follow the principle of the 'right tree in the right place'.

APPRAISAL

Assessment of amenity value and impact on amenity of the area

25. As outlined above, Edwalton Lodge Close is a quiet, linear cul-de-sac development, which at its northern end is set within the former railway cutting. Along most of its eastern side the road is lined with mature trees and hedgerow forming a screen between the cul-de-sac and Machins Lane which rises up gradually to the north. Whilst there are also some mature trees in the rear gardens of the properties on the western side of Edwalton Lodge Close too, when viewed from that road, they are largely obscured from direct view by the houses within the cul-de-sac.
26. The two Sycamores in question, are both mature trees (although neither are of any great age), that stand at the top of the former railway embankment, approximately 4 metres above the rear garden of the application property. Notwithstanding their elevated position, as with the other trees on the west side of the cul-de-sac, the two Sycamores are not particularly prominent within the

street scene on Edwalton Lodge Close and it is considered they afford limited amenity value to the cul-de-sac, with only the tops of the trees being visible over the roofs of the houses on the approach to the site from the south with more direct, albeit limited views of them between the property and the neighbour at no.33 from the north. From Edwalton Lodge Close the Sycamores are also viewed in the context of the other larger trees located within the proposed Public Open Space (POS) for Zone 2 of the 'Sharphill' Sustainable Urban Extension (SUE) development to the west, which also occupy a similarly elevated position over the cul-de-sac. As such, officers consider that the amenity value that the two Sycamore trees provide to Edwalton Lodge Close and the wider area is limited and the impact of their loss would not be particularly significant within the street scene.

27. Similarly, to the east of the site views of the trees are largely obscured along most the length of Machins Lane by the dense hedgerow/treeline that runs between the two roads. Whilst there are a couple of small gaps towards the northern end of Machins Lane, from where the Sycamore trees can be glimpsed, given that the distance is in the region of 60 metres away and the trees are viewed in the context of the larger trees on the development site beyond, it is considered that the amenity value of the two Sycamores viewed from Machins Lane is minimal and the impact of their loss would not be significant either.
28. As highlighted by the Council's Design and Landscape Officer, given that the land to the west/south-west of the application site is currently being developed, as part of the wider 'Sharphill' SUE, the amenity value of the two Sycamores also needs to be considered from this direction. In this regard, that part of the SUE bordering the top of the embankment at the rear of the properties on Edwalton Lodge Close is to be laid out as public open space (POS). Within this area there would be a series of footpaths/cycle routes. The two Sycamore trees are visible from the footpaths when viewed from the north of the application site, albeit they are not quite as prominent as the existing mature trees within the POS area, which are to be retained.
29. Furthermore, the approved landscaping scheme for the POS area indicates that additional native trees and shrubs are to be planted towards the top of the embankment directly at the rear of the application site, and this will bolster the verdant appearance of the top of the embankment when viewed across the POS. In light of these factors, it is considered that the amenity value of the Sycamore trees when viewed from within the SUE site is not particularly high and given the proposed landscaping of the POS area, the impact of their loss would be limited.
30. Overall officers considered that the amenity value of the trees is not particularly high and given the generally sylvan character of the area, the impact of the trees removal upon this existing character would be negligible. It is also considered that if the application were to be granted, then a condition could be imposed requiring replacement trees be planted. As outlined above, the Design and Landscape Officer has suggested a number of native species of tree that would be better suited to the elevated embankment location and more in keeping with the landscape character of the wider area. The suggested replacements would also provide improved wildlife value in addition to enhancing the amenity of the area too.

Is the proposal justified having regard to the reasons put forward to support it?

31. Apart from a general statement about the trees causing excessive shading to their neighbour's garden and expressing their concerns that the trees pose a danger to their property, the applicant has not provided any detailed arboricultural justification for the removal of the trees.
32. Whilst they have not objected to the application, the Council's Design and Landscape Officer does not believe there to be any arboricultural reason for their removal either, although they do acknowledge that merely pruning the trees is unlikely to be a successful alternative to removal, as it would only encourage new growth that would result in the trees losing their natural appearance over time and require tree work to be carried out more frequently.
33. Notwithstanding this, given the views set out in the preceding sub-section of this report, and having regard to the guidance within the NPPG (see paragraph 20 above), in this instance it is considered that it could be appropriate to grant consent, subject to a replacement tree condition, despite there being no apparent arboricultural justification for removing the trees.

Would any loss or damage arise if consent were refused or granted with conditions?

34. Other than the general statement about the trees posing a potential danger to their property, the applicant has not submitted any evidence that the trees have caused damage to their property or that they may do so in the future. Nevertheless, in line with the NPPG, the Committee still need to bear in mind the risk of compensation if any loss or damage is caused as a result of the application being refused or granted subject to conditions.
35. In terms of any decision to refuse the application, given that the trees occupy an elevated position above the house, it is possible that were the trees to fall over they might cause damage to either the applicant's or neighbouring properties. Notwithstanding this, the applicant has not provided any evidence to suggest that there is an imminent risk of this occurring and the trees appear to be healthy. Furthermore, no evidence has been provided to suggest that the roots of the trees are affecting either the applicant's or neighbouring properties. It is also noted that in their application form the applicant has answered 'no' to questions relating to the condition of the tree and alleged damage to property. In light of this and in the absence of any evidence having been adduced by the applicant, officers consider that the risk of a subsequent claim for compensation being successful would be limited.
36. Similarly, it is considered that if consent was granted, subject to a condition requiring replacement trees to be planted, the risk of a compensation claim being successful would also be limited given that smaller, more appropriate native species of trees could be chosen that would be more suited to the elevated embankment location in the rear garden, if the Committee is minded to grant consent subject to a replacement tree(s) condition, officers suggest the replacement trees be the Crab Apple (*Malus sylvestris*) species recommended by the Design and Landscape Officer, as these would not grow as tall as the Common Hornbeam alternative suggested, yet would still provide a reasonable degree of amenity value as well as improved wildlife value to the area.

Protected species

37. In terms of requirements for protected species, it is acknowledged that the Sycamore trees are potentially capable of providing a habitat for both nesting birds and roosting bats. Ultimately, however, it is the responsibility of the applicant (as the tree owner) to ensure that protected species are not disturbed. If the Committee is minded to grant consent, it is recommended that a note be added to any decision reminding the applicant of their obligations in this regard.

Other considerations

38. Whilst the concerns in respect of the climate emergency is acknowledged, given the Governments guidance in this regard (referred to in paragraph 21 above), it is not considered that, such concerns, on their own, justify refusing the application in this instance.
39. With regard to concerns about the impact of the proposal on biodiversity/wildlife, whilst officers acknowledge that the Sycamores are likely to offer some contribution towards supporting the biodiversity of the area, as a non-native species it is considered that this contribution is not particularly significant. Moreover, having regard to the advice of the Design and Landscape Officer, it is considered that by seeking the replacement of the Sycamore trees with two native species, there is potentially an opportunity to enhance biodiversity/wildlife as well as being more in keeping with the 'native' landscape character of the wider area.
40. In terms of the other grounds of objection raised, as outlined above, the Design and Landscape Officer has advised that pruning the trees is not likely to be a successful alternative and would only encourage the trees to gradually lose their natural appearance, thereby diminishing their limited amenity value further.
41. In terms of other material considerations, policy 37 of the LPP2 does allow the removal of mature trees, where it is justified and subject to them being replaced by appropriate trees, following the 'right tree for the right place principle'. This echoes the NPPF in this regard.
42. As outlined above, it is considered that the removal of the two Sycamore trees can, in this instance, be justified. Furthermore, their replacement with native trees that would be more suitable for the embankment location and could also provide enhanced wildlife as well as amenity value could be secured by condition. As such it is considered that granting consent for the application would be compliant with both policy 37 of the LPP2 and the NPPF.

CONCLUSION

43. It is considered that the two Sycamore trees have limited amenity value and, on balance, the impact of their removal upon the amenity of the area would be negligible. Whilst the applicant has not adduced any specific arboricultural justification for the removal of the trees, given the negligible impact their removal would have on the amenity of the area, it is considered that an arboricultural justification is not necessary, in this instance. This is in line with the Government's guidance in this regard.

44. Whilst the risk of compensation being payable should the application be refused or granted subject to condition is noted, it is considered that the risk, in this instance, would be limited either way.
45. Whilst it is acknowledged that the two Sycamore trees have the potential to provide habitat for protected species, it is the applicants responsibility to ensure that no protected species are disturbed. Officers also consider that any initial loss of biodiversity/habitat could be restored in time by suitable native trees being re-planted and a condition can be attached to any consent to ensure this takes place.
46. Overall, it is considered that felling of the two Sycamore trees can be justified in this instance, particularly as the trees are not of any great age and do not provide significant amenity value to the area. In addition, it is considered that if the application were granted, subject to the suggested tree replacement condition, there would be an opportunity to replace two non-native species trees with two native species of tree that would be more suited to the elevated embankment location and would provide better amenity value in terms of the existing landscape character as well as improved biodiversity/wildlife value to the area too.
47. Having regard to the matters outlined in this report, it is considered that on balance, the application to fell the two Sycamore trees can be recommended for approval, subject to a condition requiring the trees be replaced during the first planting season (October to March) following the two Sycamore trees being felled.

RECOMMENDATION

It is RECOMMENDED that consent be granted subject to the following condition(s):

1. This consent is valid for a period of two years beginning with the date of this decision notice and the works for which this consent is granted may only be carried out once.

[In accordance with Regulation 17(4)(a) and 17(4)(b) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012].

2. During the first planting season (October-March) following the felling of the two Sycamore trees, 2no. Crab Apple (*Malus sylvestris*) trees with a minimum height above ground level of 2.5 metres must be planted along the top of the embankment in the rear garden of 31 Edwalton Lodge Close. If within a period of five years from the date of planting, these trees (or any other tree planted in replacement for them) is removed, uprooted, destroyed or dies, another tree of the same species shall be planted at the same place during the next planting season (October-March).

[To preserve the amenity of the area and enhance bio-diversity having regard to policy 37 of the Rushcliffe Local Plan Part 2: Land and Planning Policies (2019)].

Notes to Applicant

Nesting birds and bats, their roosts and their access to these roosts are protected under the Wildlife and Countryside Act 1981. Should birds be nesting in the trees concerned it is recommended that felling/surgery should be carried out between September and January for further advice contact Nottinghamshire Wildlife Trust on 0115 958 8242 or by email at info@nottswt.co.uk. If bats are present you should contact Natural England on 0300 060 3900 or by email at enquiries@naturalengland.org.uk.