OBJECTION TO TREE PRESERVATION ORDER EL:17/05

Land At 11 Clare Hill, Esher, Surrey KT10 9NA

PRESENTED TO:

Elmbridge Borough Council

April 2017
Objection for and on behalf of

Mr Ola Holmstrom
11 Clare Hill
Esher
Surrey
KT10 9NA

Main Contributors

David Partridge
Lizzie
Bonito

Approved by

David Partridge

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Objection to Tree Preservation Order EL:17/05

1.0 Executive Summary & Grounds For Objection

1.1 We are instructed by Mr Ola Holmstrom, the owner of 11 Clare Hill, Esher, Surrey, in the matter of objection to the Elmbridge Borough Council Tree Preservation Order EL:17/05 which was served as a provisional order on 9th March 2017. This objection is in accordance with the requirements of Regulation 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012.

1.2 The Tree Preservation Order relates to a Beech tree identified as T1 within the Order and shown as T3 on the enclosed tree data tables and site survey drawing (Ref: DPA-69908-01).

1.3 In summary, our main grounds for objection to the confirmation of the above Tree Preservation Order (TPO) in its current form are as follows:

- Beech T1 is not of sufficient amenity value to warrant inclusion within a TPO.

- Beech T1 and/or parts thereof cannot be seen from any public roads, public footpaths or land accessible to the general public. We note that 3-4 neighbours (and their visitors) may be able to see parts of the tree from their gardens and that 1 neighbour (and their visitors) could see part of the tree when driving past the property. However, views of the tree from the surrounding landscape, and the residents private golf course, are obscured by other trees and vegetation and therefore this tree does not provide sufficient amenity value for the wider public (which includes other residents on the Estate) to justify the making of a Tree Preservation Order.

- Beech T1 has been previously regularly pruned to maintain a reduced size and form due to its proximity to existing dwellings. It is reasonable to expect that this management of the tree in a reduced form will continue in the future. The future potential as an amenity is and will always therefore be limited.

- Beech T1 is already subject to legal protection and written permission is required for its removal under the Clare Hill (Esher) Association Limited Deed of Covenant. Therefore, this tree is not at risk of being removed.

- We note that a planning application (Ref: 2017/0720) for a replacement dwelling has recently been submitted to the Authority. The proposed replacement dwelling has been specifically designed (including careful consideration of the root system, future growth and light and shade issues) to ensure Beech T1 can be retained both during and post development in accordance with the published guidance (BS5837:2012). Further information and details are provided within the arboricultural report submitted to accompany the planning application. If planning permission is granted Beech T1 is also then likely to be subject to legal protection under the planning conditions attached to planning permission for the proposed development.
2.0 The Land

2.1 The land is comprised of private gardens at the property known as 11 Clare Hill, Esher, Surrey.

2.2 There are various trees, shrubs and hedges situated both on and adjacent to the land. A detailed tree survey was undertaken in February 2017, the details of which are enclosed at Appendix 1 and Appendix 2 within this objection.

2.3 Photographs of the property and Beech T1 are enclosed at Appendix 3 of this objection, which shows examples of the limited views of Beech T1 from within the immediate and wider landscape.
Objection to Tree Preservation Order EL:17/05

3.0 The Tree Preservation Order

3.1 Local Planning Authorities can make a Tree Preservation Order ‘if it appears to a Local Planning Authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands’.

3.2 Given the significant legal implications the making of a TPO places on a landowner the Department for Communities and Local Government provides guidance to Local Planning Authorities regarding the serving of Tree Preservation Orders, which is set out in the National Planning Policy Framework guidance: Tree Preservation Orders and trees in conservation areas (2014).

3.3 The guidance states that 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. And that when considering whether trees should be protected by an Order, authorities should develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

*Visibility*

The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a public road or footpath, or land accessible by the general public.

*Individual, collective and wider impact*

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and
- contribution to the character or appearance of a conservation area.

3.4 The information presented within this objection shows that with regard to Beech T1:

- this tree and/or parts thereof cannot be seen from any public roads, public footpaths or land accessible to the general public. We note that 3-4 neighbours (and their visitors) may be able to see parts of the tree from their gardens and that 1 neighbour (and their visitors) could see part of the tree when driving past the property. However, views of the tree from the surrounding landscape and the residents private golf course are obscured by other trees and vegetation and this tree does not provide sufficient amenity value for the wider public (which includes other residents on the Estate) that justifies the making of a Tree Preservation Order.
- this tree has been previously regularly pruned to maintain a reduced size and form due to its proximity to existing dwellings. It is reasonable to expect that this management of the tree in a reduced form will continue in the future. The future potential as an amenity is and will always therefore be limited.
- this tree species is not rare and the tree has limited cultural and/or historic value.
- this tree is not situated within or directly adjacent to a conservation area.

3.5 Within the Council’s Formal Notice it sets out the reasons for making the TPO as follows:

*The new Tree Preservation Order has been made in recognition of the amenity value provided for the wider area by the trees on the land. The Order is not intended to just stop any plans which owners or interested parties may have in managing or developing the land but is intended to allow the Local Planning Authority to retain a form of control.*
3.6 The published Elmbridge Borough Council guidance states that trees must meet the following criteria before the Authority can consider making a Tree Preservation Order:

- The tree must be of public amenity and not only of private benefit (it must be visible from a public space like a road or park).
- The tree must not have been mutilated in the past in a way that has removed its arboricultural amenity value.
- The tree is does not pose an unacceptable or un-manageable risk.
- The tree is capable of a reasonably long life.
- The tree is not located so close to a building that it would be unreasonable to refuse its removal if requested.
- The tree is under some form of threat, such as by proposed development, heavy pruning or removal.

3.7 The information presented within this objection shows that with regard to Beech T1:

- The tree is not visible from any open spaces, roads or parks that are open to the public, as it is situated within a private garden within a private estate. Other estate residents' views of the tree are obscured by buildings and other trees and vegetation.
- The existing house is situated 6.9m away from this tree and the existing raised patio (and associated retaining wall) is 3.8m away. This tree is also situated 6.2m away from a neighbouring house. This being the case the tree has been previously regularly pruned to maintain it at a reduced size. Given its proximity to the existing buildings it is therefore reasonable to expect that this previous management, of the tree in a reduced form, will continue in the future.
- Following due diligence checks for any statutory controls (TPO etc.) and a review the Deed of Covenant administered by the Clare Hill (Esher) Residents Association Limited the tree was recently lightly pruned (a 25% crown reduction). These works were undertaken prior to the serving of the TPO in accordance with published guidance (BS3998:2010) by an experienced and qualified tree works contractor. The tree was not and is not under some form of threat (of heavy pruning or removal).
- The proposed replacement dwelling detailed within the recently submitted planning application (Ref: 2017/0720) has been specifically designed (including consideration of the root system, future growth and light and shade issues) to allow the tree to be retained both during and post development in accordance with the published guidance (BS5837:2012). The tree was not and is not under some form of threat (of heavy pruning or removal).
4.0 Conclusions & Recommendations

It is concluded that:

4.1 We respect that the Authority has a duty to protect important landscape trees and note that Elmbridge Borough Council maintains a high-quality sylvan landscape. However, we consider that the Authority may have been mistakenly advised that this tree was under some form of threat due to development. Given the information provided within this objection we ask that the Authority reconsiders the making of TPO EL:17/05 and notes our opinion that this tree does not meet the criteria for the making of a TPO and/or that this TPO is not in accordance with the government or Elmbridge Borough Council guidance.

4.2 Beech T1 is not a significant landmark tree that is visible within the wider landscape, it is a regularly pruned tree situated within a private back garden next to a house that can only be seen, in part, by the immediate neighbours. Beech T1 is already legally protected by a Deed of Covenant and is not at risk of being heavily pruned or removed. We therefore maintain that in this instance a Tree Preservation Order is not justified or necessary.

It is recommended that:

4.3 The Authority should not confirm Tree Preservation Order EL:17/05 in its current form for the reasons given within this objection.
APPENDIX 1

Tree Data Tables
<table>
<thead>
<tr>
<th>Tree No</th>
<th>Species</th>
<th>HT (m)</th>
<th>Crown Spread (m)</th>
<th>Stem DBH (mm)</th>
<th>RPA / Radius (m)</th>
<th>Condition</th>
<th>Age Class</th>
<th>Structural Condition &amp; Comments</th>
<th>Preliminary Management Recommendations</th>
<th>Est. (yrs)</th>
<th>Cat Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>T1</td>
<td>Amelanchier</td>
<td>4</td>
<td>2</td>
<td></td>
<td>115</td>
<td></td>
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<td>Not significant within local or wider landscape</td>
<td>Remove &amp; replace</td>
<td>&gt;20</td>
<td>A</td>
</tr>
<tr>
<td>T2</td>
<td>Tree Cotoneaster</td>
<td>4</td>
<td>1.5</td>
<td>95</td>
<td>421.28</td>
<td>G</td>
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<td>Not significant within local or wider landscape</td>
<td>Remove &amp; replace</td>
<td>&gt;20</td>
<td>A</td>
</tr>
<tr>
<td>T3</td>
<td>Copper Beech</td>
<td>15</td>
<td>6</td>
<td>965</td>
<td>131.92</td>
<td>G</td>
<td>MA</td>
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<td>Retain &amp; protect in accordance with BS5837:2012</td>
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<tr>
<td>T4</td>
<td>Magnolia</td>
<td>6</td>
<td>6</td>
<td>540</td>
<td>4.08</td>
<td>G</td>
<td>Y</td>
<td>Not significant within local or wider landscape</td>
<td>Remove &amp; replace</td>
<td>&gt;20</td>
<td>A</td>
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<tr>
<td>T5</td>
<td>Liquid Amber</td>
<td>3.5</td>
<td>1.5</td>
<td>95</td>
<td>17.20</td>
<td>G</td>
<td>MA</td>
<td>Recently planted tree</td>
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<td>T6</td>
<td>Mulberry</td>
<td>6</td>
<td>6</td>
<td>195</td>
<td>296.81</td>
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<td>M</td>
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<td>Retain &amp; protect in accordance with BS5837:2012</td>
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<tr>
<td>T7</td>
<td>Cypress</td>
<td>16</td>
<td>8</td>
<td>810</td>
<td>7.07</td>
<td>G</td>
<td>Y</td>
<td>Minor deadwood within inner crown</td>
<td>Retain &amp; protect in accordance with BS5837:2012</td>
<td>&gt;20</td>
<td>A</td>
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<td>T8</td>
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<td>3</td>
<td>125</td>
<td>5.98</td>
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<td>Apple</td>
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<td>3</td>
<td>115</td>
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<td>Tulip Tree</td>
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<td>120</td>
<td>110.85</td>
<td>G</td>
<td>MA</td>
<td>Previously reduced back from Pool House</td>
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<tr>
<td>Tree No</td>
<td>Species</td>
<td>HT (m)</td>
<td>Crown Spread (m)</td>
<td>Stem DBH (mm)</td>
<td>RPA / Radius (m)</td>
<td>Condition</td>
<td>Age Class</td>
<td>Structural Condition &amp; Comments</td>
<td>Preliminary Management Recommendations</td>
<td>Est. (yrs)</td>
<td>Cat Grade</td>
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<td>1.5</td>
<td>95</td>
<td>4.08</td>
<td>G</td>
<td>Y</td>
<td>Minor deadwood within crown</td>
<td>Retain &amp; protect in accordance with BS5837:2012</td>
<td>&gt;20</td>
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<td>B</td>
<td>C</td>
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<td></td>
<td></td>
<td>D</td>
<td>U</td>
</tr>
<tr>
<td>T14</td>
<td>Tree of Heaven</td>
<td>5</td>
<td>2</td>
<td>110</td>
<td>6.47</td>
<td>D</td>
<td>Y</td>
<td>Minor deadwood within crown</td>
<td>Retain &amp; protect in accordance with BS5837:2012</td>
<td>&gt;40</td>
<td>A</td>
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<td>B</td>
<td>C</td>
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<td>T15</td>
<td>Persian Ironwood</td>
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<td>6</td>
<td>245</td>
<td>27.15</td>
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<td>Y/MA</td>
<td>Not significant within local or wider landscape</td>
<td>Remove &amp; replace</td>
<td>&gt;20</td>
<td>A</td>
</tr>
<tr>
<td></td>
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<td>B</td>
<td>C</td>
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<td>Ornamental Pear</td>
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<td>140</td>
<td>8.87</td>
<td>D</td>
<td>Y</td>
<td>Not significant within local or wider landscape</td>
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<td>F</td>
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<td>C</td>
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<td>G1</td>
<td>Ornamental Pear x4</td>
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<td>1.5</td>
<td>Avg. 115</td>
<td>5.98</td>
<td>D</td>
<td>Y</td>
<td>Recently planted trees</td>
<td>Retain &amp; protect in accordance with BS5837:2012</td>
<td>&gt;20</td>
<td>A</td>
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<td>1.38</td>
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<td></td>
<td>B</td>
<td>C</td>
</tr>
<tr>
<td>G2</td>
<td>Ornamental Pear x2</td>
<td>3.5</td>
<td>1.5</td>
<td>Avg. 115</td>
<td>5.98</td>
<td>D</td>
<td>Y</td>
<td>Recently planted trees</td>
<td>Remove &amp; replace</td>
<td>&gt;20</td>
<td>A</td>
</tr>
<tr>
<td></td>
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<td>1.36</td>
<td>F</td>
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<td></td>
<td></td>
<td>B</td>
<td>C</td>
</tr>
</tbody>
</table>
Key to Tree Data Tables

1.0  Tree Number (T No.)
   •  T = Individual tree detailed on the drawings which accompany the tree report
   •  G = Group of trees detailed on the drawings which accompany the tree report
   •  W = Woodland areas detailed on the drawings which accompany the tree report
   •  S = Individual shrub detailed on the drawings which accompany the tree report

2.0  Species
   •  Tree or vegetation detailed within the tree data table using common name (UK)

3.0  Tree Height (Ht)
   •  Tree or other vegetation height measured from ground level and detailed within the data table in metres

4.0  Crown Spread (Cs)
   •  Tree crown spread radius from the main stem, either detailed within the tree data tables or on the drawings in metres. Where tree crown spreads are not shown to scale on the drawings which accompany the tree report, measurements will be recorded and detailed within the tree data tables for North, East, South and West directions

5.0  Stem Diameter (Stem DBH)
   •  Stem diameter measured at 1.5m above ground level for single stemmed trees (and average diameter utilised for multi-stemmed trees) and other vegetation and detailed within the tree data table in millimetres

6.0  Root Protection Area (RPA)
   •  The root protection areas are calculated in accordance with the equations contained within BS5837:2012
   •  The highest/top figure within the tree data table represents the overall recommended root protection area in metres squared
   •  The second highest/middle figure within the tree data table represents the radius of a circle centred on the main stem of the tree in question in linear metres (which contains the required root protection area in metres squared and is shown on the accompanying drawings). Specific / amended root protection areas may be shown for trees that are not open grown

7.0  Physiological Condition
   •  G = Good, F = Fair, P = Poor, D = Dead

(Note: if applicable observations are also recorded within the tree data table)
Key to Tree Data Tables

8.0 Age Class

- Y = Young
- MA = Middle Aged
- M = Mature
- OM = Over Mature
- V = Veteran

9.0 Structural Condition & Comments

- Notes regarding structural condition (e.g. physical defects) and, if applicable, overall condition

10.0 Preliminary Management Recommendations

- Preliminary management recommendations including tree works, tree protection requirements, obvious ecological factors, further investigations of suspected defects etc.

11.0 Estimated Years

- Estimated remaining contribution to the local/wider landscape in years

12.0 BS5837:2012 Tree Quality Assessment (Cat Grade)

- **Category A** = trees of high quality and value and in such a condition as to be able to make a substantial contribution to the local and/or wider landscape for the next 40 years or more

- **Category B** = trees of moderate quality and value and in such a condition to make a significant contribution to the local and/or wider landscape for the next 20 years or more

- **Category C** = trees of relatively low quality and value and in such a condition to provide an adequate contribution to the local and/or wider landscape for the next 10 years or more or young / self-seeded trees with a stem diameter below 150mm

- **Category U** = trees in such a poor condition that any existing landscape value would be lost within 10 years and/or trees that need to be removed for reasons of sound arboricultural management and/or health & safety
APPENDIX 2

Drawing Number DPA-69908-01
APPENDIX 3

Site Photos
Site Photos

Photographs of Beech T1 of Tree Preservation Order EL:17/05

Photo 1 - view of Beech T1 from Clare Hill directly adjacent to the front (or north) of the property.

Photo 2 – view of Beech T1 from Clare Hill (to the North-East of the property). Note views of T1 obscured as you move away from standing directly in front of 11 Clare Hill.
Site Photos

Photographs of Beech T1 of Tree Preservation Order EL:17/05

Photo 3 – view of Beech T1 from Clare Hill (to the North-West of the property).