THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) LAW, 2005

AND SECTION 19 OF THE LAND PLANNING AND DEVELOPMENT (GENERAL PROVISIONS) ORDINANCE, 2007

NOTIFICATION OF REFUSAL OF PLANNING PERMISSION

PROPOSALS: Fell protected tree to north boundary.

LOCATION: Lumiere, Becquet Road, St. Peter Port.

APPLICANT: Mr & Mrs G Harrison

I refer to the application referred to below received as valid on 27/07/2023 regarding the above proposals as described more fully in the application and drawings referred to below.

Date of refusal of permission: 05/10/2023

Drawing Nos: Tyrrell Dowinton Associates: 1536.03.43

Application Ref: FULL/2023/1333

Property Ref: A41034A000+A410370000

The Development & Planning Authority has decided to refuse your application under the provisions of section 16 of the Land Planning and Development (Guernsey) Law, 2005 for the following reasons:-

1. Based on the information available the application to remove the mature Lime Tree (T3) would be premature and more time is required to assess the direction of travel of the tree's health. The removal of the tree at this time, and not in the full knowledge of its health and longer-term survival, would also have a detrimental impact on the landscape character of the area contrary to Policy GP1 of the Island Development Plan.

OTHER REMARKS:-

Right of appeal against planning decisions

Your attention is drawn to the provisions of Section 68(1) of the Land Planning and Development (Guernsey) Law 2005, which provides a right of appeal, against a decision to refuse an application for planning permission or outline planning permission to the Planning Tribunal on the merits. An appeal to the Planning Tribunal under section 68 of the Law against this decision must be made before the expiry of

the period of six months beginning with the date on which the Authority made this decision.

Copy of representations made

In reaching this decision the Development & Planning Authority took into account any written consultations made under Section 11(1) of the Land Planning and Development (General Provisions) Ordinance, 2007 ('the Ordinance'). A copy of any consultation responses made to the Authority under section 11 will be included with this decision in accordance with section 19 of the Ordinance.

A J ROWLES
Director of Planning
Planning Service

States of Guernsey
Planning Service

PLANNING APPLICATION REPORT

Application No:	FULL/2023/1333
Property Ref:	A41034A000+A410370000
Valid date:	27/07/2023
Location:	Lumiere Becquet Road St. Peter Port Guernsey GY1 2TH
Proposal:	Fell protected tree to north boundary.
Applicant:	Mr & Mrs G Harrison

RECOMMENDATION - Refusal with Reasons:

REASONS FOR REFUSAL

1. Based on the information available the application to remove the mature Lime Tree (T3) would be premature and more time is required to assess the direction of travel of the tree's health. The removal of the tree at this time, and not in the full knowledge of its health and longer-term survival, would also have a detrimental impact on the landscape character of the area contrary to Policy GP1 of the Island Development Plan.

OFFICER'S REPORT

Site Description:

The site is occupied by a large detached dwelling that has recently been constructed. Accessed off Becquet Road the land drops significantly east to west and north to south over the site. The dwelling has been designed to be multi-level to accommodate the differences in ground level.

The tree is on the roadside boundary, protected by a Tree Protection Order. Other trees forming the south west boundary are also subject to a TPO.

The site is located Outside of the Centres. The cliff path bounds the site to the east.

Relevant History:

FULL/2018/2315 - Demolish existing and erect replacement dwelling with associated landscaping, create new vehicle access and remove hedge to west boundary (revised) – granted.

FULL/2017/2421 - Fell protected tree and works to other protected trees – granted.

Existing Use(s):

01 Dwelling houses

Brief Description of Development:

Permission is sought to fell a tree that is the subject of a Tree Protection Order within the curtilage of Lumiere (formerly Le Petit Bijou).

The application submission outlines that previous works to the property have not threatened tree T3, a lime tree, but its condition appears to be in decline. It is proposed that the removal of this tree would be mitigated through the planting of three Birch trees and/or a single Hawthorn or Cherry tree which are considered suitable direct replacements for the loss of tree T3.

The application has been accompanied by a report by Richard Loyd, an arboricultural consultant. The Preservation Order was introduced in 2011 and applied to three Lime trees and four pines. Tree T3 adjoins a public thoroughfare in the northwest corner of the property and has been assessed to be in the second stage of its lifecycle and would grow to become substantially larger. There is a historic wound at ground level but this is "not actively progressing" and there is evidence that a parasitic pathogen is present. The report notes the prolonged drought of the summer of 2022 which could account for deterioration in vigour and condition but this would not account for "the early stages of stag heading … in the upper scaffold structure". Its decline therefore means it now has less landscape value in the locality. The report explains that it has been assessed against the British Standard: 5837 as being in such a condition that it cannot realistically be retained as a living tree for longer than 10 years. The report recommends proactive, sustainable tree planting where replacement trees have a long-lasting contribution to the locality and refers to Birch, Hawthorn or Cherry as suitable replacements for their architectural form, sustainability and biodiversity contribution.

Relevant Policies of any Plan, Subject Plan or Local Planning Brief:

Island Development Plan Policies:

GP1: Landscape Character and Open Land

Representations:

None

Consultations:

Agriculture, Countryside and Land Management Services - T3 is the upper tree of what was three trees in a line (T1-3), T2 having been removed following an application from the current owners in 2017. The tree is a mature lime (*Tilia spp*) which is probably either a large leafed lime or a European lime. Both species have similar characteristics, showing resilience to pruning and construction injury.

The tree had lost the majority of its leaves prematurely although it had retained an "inner crown" of foliage. Tree T2 in comparison retained a full canopy of leaves with both trees showing clear signs of autumnal colours prior to leaf fall.

No signs of fungal decay or disease were noted. The stem appeared upright and stable with no obvious visual indications of instability. Pruning in the past to remove lower branches (crown lifting) has been done and most if not all of the pruning wounds had occluded. No black spots or slime flux was noted on the stem or primary branches. T1 has retained the majority of leaves. T3 has lost a lot of its leaves from the outer part of the canopy.

General comments in response to the Loyd report
"…The central Lime tree within the front elevation of the property has been removed following an appeal of the protection order…"

Comment: T2 was removed following an application to Planning, in 2017. It was not an appeal since the application was approved.

"…I would suggest the Lime is only in the second stage of its lifecycle, and therefore should there be enough sustaining factors available to promote growth, a tree of this genus would become substantially larger.
I am cautious to accept that the available mass of rooting media is suitable for the long-term retention of this tree.
The deterioration in vigour and condition could be attributed to a prolonged drought during the summer of 2022, although this would not account for the early stages of stag heading within the tree's upper scaffold structure…"

Comment: It is unclear as to what is meant by "…*the second stage of its life cycle*…" As trees grow from seedling to maturity they do so in response to their surrounding environment and are influenced by living and non-living factors (biotic and abiotic factors) as well as their own genetic code. Arboriculturists sometimes categorise the life of a tree into three basic stages: immature, mature and post mature. There are no hard and fast rules which determine when one stage moves to another and no set time for any stage. It would appear that T3 is showing signs of stress which may well have been response to last year's drought but it is likely other factors are involved, including construction injury, because trees do have mechanisms and strategies to resist drought. What is unclear at this time is whether the tree is showing symptoms of prolonged stress which mark the onset of irreversible decline or whether the tree is "downsizing" i.e. reducing the size of its active crown deliberately – a process known as retrenchment.

One key factor which determines the life expectancy of a tree, amongst others, is available rooting volume. Where rooting volume is restricted a tree will exhaust the available nutrients earlier compared to a tree growing in open ground, for example. In the case of T3 there will be some restriction to rooting volume caused by less hospitable soil conditions e.g. compacted soil under the road, drier soils under the dwelling house/garage.

Construction injury cannot be ruled out, even if a change of levels was not apparently made. However this assertion does not preclude the possibility that injury occurred during construction through a temporary change in levels.

"…The decline of the tree now reflects its diminishing landscape value to the locality, and it is becoming a redundant component in contributing to the visual aesthetics of the area…"

Comment: It is too early to judge whether this is the case. If the tree canopy is undergoing some level of retrenchment the visual amenity may reduce but not to the extent it is redundant. Again it is too early to judge.

"…Category U is defined as a tree in such condition that they cannot realistically be retained as living trees in the context of current land use for longer than 10 years..".

Comment: Again it is too early to make a judgement call. The definition and application of "category U" has to be applied with care since it is taken from British Standard BS5837: Trees in Relation to Design, Demolition & Construction. The assessment categories are generally applied during the tree survey stage prior to the drawing up of development plans where it may be more expedient to remove trees without a long-term future, thereby maximising the potential for developing a site. Using the same categories, post development, is less relevant especially where a public visual amenity value remains.

"…The justification of retention for any tree with such defects within a high target area can only be considered given the risk of collateral damage it could cause if it were to fail. On closer inspection, there is a historic, partially included wound at ground level on the East side of the stem. Whilst this is a penetrating cavity within the structural component of the stem, it is dry and appears not to be actively progressing. I am unable to ascertain the presence of any active pathogen within the stem, although there is evidence of upper crown deterioration and low general vigour for this genus, which would indicate there is a parasitic pathogen present..".

Comment: No evidence has been provided of specific defects which may increase the risk of failure. The report, whilst identifying a wound at ground level, goes on to state that there is no evidence that the cavity is increasing in size and there is no evidence of "…*active pathogens within the stem..*"
Deterioration of the upper crown could well be caused by pathogens but there are other causes such as construction injury or a change in soil hydrology or both. What is certain is that dieback in the crown is usually indicative of root dysfunction.

"…These (newly planted) *trees will have good architectural form, sustainable and have a greater biodiversity contribution than the current Lime tree…"*

Comment: It is the case that silver & downy birch support more invertebrate species which are specific to that type of tree compared to lime. However the scientific paper that this conclusion is based on (Southwood, 1961) focussed on species which were specific to particular types of tree and did not include generalist feeders. Age and

biomass are also not factored in. So a large established lime may have a higher biodiversity/ecological value compared to a newly planted birch for this reason.

Tree T3 is under stress as evidenced by premature leaf fall. Last year's drought was a contributory factor combined with one or more other factors. Although root pathogens cannot be ruled out is no direct evidence of disease has been offered and there is a high probability that construction injury may have had a role to play. At this stage it is not known if the tree's systems are strained (beyond the point of recovery) or whether the tree can respond and undergo retrenchment.

No evidence has been offered which might indicate that the tree is in imminent danger of failure.

More time is needed to assess the direction of travel of the tree's health; therefore it is recommended that the application be rejected or deferred if further evidence can be provided which indicates that the tree's stability is compromised or that it is in irreversible decline.

Summary of Issues:

The key issues in this case relate to the justification for and impact of the loss of T3.

Assessment against:

1 - Purposes of the law.

The objectives set out in Section 1(2} of The Land Planning and Development (Guernsey) Law, 2005, 'the Law', have been considered and this report forms part of the assessment, with policy issues set out in Section 2 below.

2 - Relevant policies of any Plan, Subject Plan or Local Planning Brief.

Policy GP1: Landscape Character and Open Land seeks to ensure that proposals do not result in the unacceptable loss of distinctive features that contribute to the wider landscape character and the local distinctiveness of the area.

The submission does not provide evidence of specific defects that would increase the risk of T3 failing. Although the accompanying report refers to an old wound at ground level which is partially occluded, this was noted to be dry and not to be actively progressing. Although deterioration of the upper crown could be caused by pathogens, of which no evidence of active pathogens within the stem were noted in the arboricultural report, this deterioration could also occur due to a construction injury or a change in soil hydrology (or both). But it is acknowledged that a dieback in the crown is usually indicative of root dysfunction.

It is not doubted that T3 is under stress which is demonstrated by the premature leaf fall that has occurred. It is noted that the drought in 2022 will have contributed to this although it is acknowledged that trees have their own mechanisms to manage drought.

Other factors may also be at play, although there is no direct evidence of disease. Construction injury cannot be ruled out. In the case of T3 there will be restriction to rooting volume caused by less hospitable soil conditions (e.g., compacted soil). It is not possible at this point in time however, to establish whether the tree is strained, beyond the point of recovery, or whether it can and will respond and undergo retrenchment (deliberate downsizing).

Although the application asserts that the decline of the tree means it has diminishing landscape value this matter is considered too early to judge. During the retrenchment process the landscape value of the tree may be reduced but this does not mean it will have no landscape value nor that the tree will not recover thereby retaining or increasing its landscape value over time. The submission also sets out how newly planted trees will have a greater biodiversity contribution than the existing Lime tree, but the conclusions reached did not take into account generalist feeders, age and biomass and the large lime may therefore have a higher biodiversity/ecological value compared to a newly planted birch because of these reasons.

In view of the above it is concluded that the removal of T3 would be premature. It is not possible to know yet whether the tree is in decline with no chance of recovery or whether it is strained and will respond and recover accordingly. The application submission does not indicate that the tree is in imminent danger of failure. It is therefore recommended that the application is refused permission.

3 - General material considerations set out in the General Provisions Ordinance.

In addition to the consideration of policy issues, Section 13 of the Land Planning and Development (General Provisions) Ordinance, 2007 identifies other material planning considerations which could be relevant. These include; the appropriateness of the development in relation to its surroundings in terms of design, layout, scale, siting and materials; the likely effect on the character and amenity of the locality; any possible fall-back position by way of extant planning permissions or exempt development; the likely effect on the reasonable enjoyment of neighbouring properties. These issues where relevant are considered above.

4 - Additional considerations (for protected trees, monuments, buildings and/or SSS's).

The proposal would have no adverse impact on protected buildings or sites.

Date: 02/10/2023