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By email only to: [Elaine.Quigley@camden.gov.uk](mailto:Elaine.Quigley@camden.gov.uk)

27 July 2022

Dear Elaine,

## 2022/1085/P – 35 Elsworthy Road London NW3 3BT

We are instructed by the owner of 37 Elsworthy Road to make representation in relation to the above planning application which has been made under Section 73 of the Town and Country Planning Act 1990.

Whilst our client does not object in general to works / improvements to the neighbouring dwellinghouse (subject to appropriate controls being attached to any new permission to limit harm to their amenity for the duration of any works), our client has significant concerns about the risks that development could pose to trees in their garden.

In this regard please attached an **Arboricultural Advice Note** which explains the situation. We are happy for this to be shared with the applicant and would be grateful if you would pass it to your tree officer, too.

### Background

As the applicant has noted in the planning application submission, planning permission (2014/5463/P dated 14/01/2015) was previously granted for the excavation of a large part of the existing garden at 35 Elsworthy Road. The applicant notes that this permission has been 'implemented' such that the permission remains alive, but so far as our client is aware, no works have been undertaken in the vicinity of his trees (in fact our client is not aware of any works having taken place at all).

Whilst seven years have passed since that permission and the potentially-endangered trees have grown since then, we highlight that the tree report for 2014/5463/P was based only on an estimate of the trees' diameters – at no time was our client asked permission for anyone to enter his land to inspect those trees.

We also note that 2022/1085/P was not accompanied by an up-to-date tree assessment to reflect the passage of time since the 'original' application was determined.

### Arboricultural Advice Note

The attached **Arboricultural Advice Note** has been prepared with the benefit of a site visit. This illustrates the much larger Root Protection Area than was originally assumed in 2015 and it concludes that the proposal is likely to detrimentally affect the trees on our client's site – trees which are afforded statutory protection. Understandably the assessment is only concerned with our client's site, but there are other trees in the vicinity of the proposed excavation which may well have grown and might be affected to a greater extent than originally assumed.

## Approach to Section 73 Applications

In their covering letter dated 15 March 2022, the applicant's agents state that:

*"...regard must be had to the "fall back" position wherein the 2014 planning permission has been lawfully implemented and the development can therefore continue to be built out. These are material considerations which should be taken into account when assessing this application for proposed amendments to the previously approved scheme."*

We agree that the previous permission is a material consideration – but the key issue for the decision-maker is the weight that can be given to that material consideration, and also whether there any new material considerations that should be taken into account, a concept which is clearly set out in the national Planning Practice Guidance<sup>1</sup> which says in respect of S73 applications:

**What is the application considered against?**

Development plan and material considerations, under section 38(6) of the 2004 Act, and conditions attached to the existing permission. Local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.

## Material Considerations in this Case

In our opinion only limited weight may be given to the "fall back" position, not least because the changes now proposed suggest that the applicant is not intending to implement that 'original' permission.

Furthermore, if the scheme were to go ahead in a form akin to that in the "fall back" position, it could result in harm to trees which benefit from statutory protection (whether in our client's garden or in other locations surrounding the proposed excavation. We would not expect any responsible developer to proceed with such works when they have been made aware of the potential for harm to be caused.

We also note that since the 'original' planning application was determined a new Local Plan has been adopted, as has updated guidance (Camden Planning Guidance – Basements – January 2021). Thus there has been a clear change to the policy context which, in accordance with the national guidance reproduced above, should form the basis for determining this application (and to which, we argue, significant weight ought to be given).

Thus we do not consider that the "fall back" should be given any material weight; we would go as far as saying that the only thing that the "fall back" does establish is the principle of excavation in the garden, but not the extent of excavation – the extent that is acceptable should be informed by material considerations that are known at the time that the current application is determined.

## Concluding Remarks

We believe that Camden's 2021 guidance presents a solution to this issue, at least insofar as our client's trees are concerned, given that its support for more limited excavation than that which was originally approved would complement the need to safeguard statutorily-protected trees.

Therefore, we respectfully request that the Council seeks for the proposal to be revised in such a way as to safeguard the future of our client's trees. We also suggest that the Council ensures that any building line does not unduly restrict the future growth of these trees or harm their vigour, and that any new structure is sufficiently protected against future growth of the trees' roots.

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/864175/Annex\\_flexible\\_options.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864175/Annex_flexible_options.pdf)

Our client would be happy for their tree consultant to liaise with your tree colleague and with the applicant's advisors. Should you see any merit in this please do let me know and I will put you in touch.

Should you have any other queries in relation to this matter please do not hesitate to contact Paul Burley at this office via [paul.burley@montagu-evans.co.uk](mailto:paul.burley@montagu-evans.co.uk) or on 020 7866 8602.

Yours faithfully,

*Montagu Evans*

**Montagu Evans LLP**

Enc. **Arboricultural Advice Note**

# Arboricultural Advice Note

Project: 35 ELSWORTHY ROAD, LONDON, NW3 3BT

TN01: 2022/1085/P - ARBORICULTURAL EFFECT

July 2022

## 1. Introduction

- 1.1. My name is James Bardey. I hold a BSc Honours Degree in Arboriculture, I am also a professional member of the Arboricultural Association. I hold the position of Principal Arboricultural Consultant at Aspect Arboriculture Limited; part of a multidisciplinary practice which provides landscape planning, ecological and arboricultural consultancy services to the private and public sectors.
- 1.2. I joined Aspect Arboriculture in 2012, where I advise on arboricultural matters connected to residential, commercial and industrial development projects, as well as landscape restoration. Many of the sites I advise clients on are within, or adjacent to, sensitive settings and have contained trees of local or national importance, including: veteran trees, ancient woodlands, trees in conservation areas, historic parks and gardens, greenbelt and trees subject to tree preservation orders.
- 1.3. My advice is sought with regards to undertaking an updated and extended survey of my clients' trees sited adjacent to the neighbouring development. The express purpose of is to allow accurate consideration of the development's arboricultural effect.
- 1.4. It is noted that the tree survey undertaken in 2014 did not have the benefit of access to my client's land to measure the trees and accordingly had to rely on an estimation of stem diameter. For clarity when making comparisons, Aspect have retained the previous tree numbers for the two trees included within the submitted survey (T19 & T20), and have supplemented this information with an additional T19a set to the southeast, all of which are False Acacia.

## 2. Assessment

- 2.1. Contrary to the submitted tree survey information, it was found that both T19 and T20 are significantly larger than previously estimated. Importantly, this increase relates to both the stem diameters and overhanging canopy spreads. The accuracy of both attributes is imperative because the canopy measurements are used to assess whether any direct conflict will occur between proposed structures and existing trees, whilst the stem measurements are used to calculate the rooting area required to support the trees, thereby defining their Root Protection Areas. The table below sets out the difference in the salient attributes:

Tree No:	Stem Diameter 2014 (mm)	Stem Diameter 2022 (mm)	RPA Radius 2014 (m)	RPA radius 2022 (m)	Canopy Spread (w) 2014 (m)	Canopy Spread (w) 2022 (m)	Height 2014 (m)	Height 2022 (m)
T19	170	260	2.0	3.0	3.3	4.25	9.5	16
T20	170	460	2.0	5.4	4.0	7.25	9.5	16

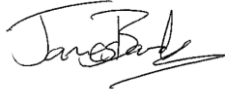
- 2.2. The updated tree survey information has been used to assess the effect of the neighbouring development on my clients' trees, and to form the basis of a new Arboricultural Impact Drawing (enclosed).
- 2.3. The findings of the survey are important because although the submitted information identified no arboricultural impact to my client's trees resulting from the adjacent scheme's introduction, both T19 and T20's oversailing canopies and the underlying Root Protection Area of T20 will be affected. This is materially different to the effect presented previously; 3<sup>rd</sup> party trees are a firm constraint to which the applicant has no control over other than the responsibility to ensure that they are unharmed.
- 2.4. **Above Ground Impacts:** The eastern canopy extents of both T19 and T20 oversail the proposed development works (by c.2m and c.3.5m respectively). and, without consideration, are likely to be impacted during construction; primarily during the installation of piling to form the basement.
- 2.5. **Below Ground Impacts:** In addition, as highlighted with an orange wash within the enclosed Arboricultural Impact Drawing, the proposals conflict with the underlying RPA of T20; occupying c.11.7m<sup>2</sup> of the tree's RPA, resulting in a severance of tree roots within a segment equating to c.13% of the total area. This is key because, as set out at Clause 5.3.1 of BS5837:2012, the RPA should be sacrosanct unless there is an overriding justification for construction taking place in this area. In the event that works within the RPA are required, the project arboriculturist should demonstrate that the trees can remain viable, including detail of deliverable and effective compensation and mitigation measures to ensure this is secured.
- 2.6. In the absence of proper safeguards, the introduction of the neighbouring development has the potential to incur damage to the canopies of both T19 & T20, and the severance of a significant portion of T20's root system. Ultimately, if installed without proposed consideration, the works are expected to detrimentally affect trees within the Elsworthy Conservation Area.
- 2.7. In addition, although not indicated on the layout, from experience the installation of piles often requires the construction of a piling mat outside the external walls; i.e. closer to the trees in question. If required, this will unavoidably increase the degree of root disturbance anticipated; assuming a 2m width piling mat, the affected segment of T20's RPA increases to c.25%, and the mat would introduce a corresponding impact to T19 equating to c.8% of the total RPA. If required, the excavation for the piling mat is likely to significantly affect T20's physiological and structural condition and would need to be excavated sensitively to minimise the impact on T19.

### 3. Conclusion

- 3.1. To conclude, the applicant is relying on an extant permission, however my clients' trees were not measured at that time. Upon inspection, my clients' trees which sit adjacent to the neighbouring development are significantly larger than previously estimated.
- 3.2. Resultantly, the consented neighbouring development will conflict with both the oversailing canopies and underlying Root Protection Area, neither of which have been accounted for within the approved Tree Protection Plan.
- 3.3. Without appropriate and deliverable safeguards, the introduction of the consented scheme is expected to detrimentally affect my clients' trees. By virtue of their being located within Elsworthy Conservation Area, my clients' trees are afforded statutory protection and must be a material consideration in considering the acceptability of the scheme.

#### 4. Recommendation

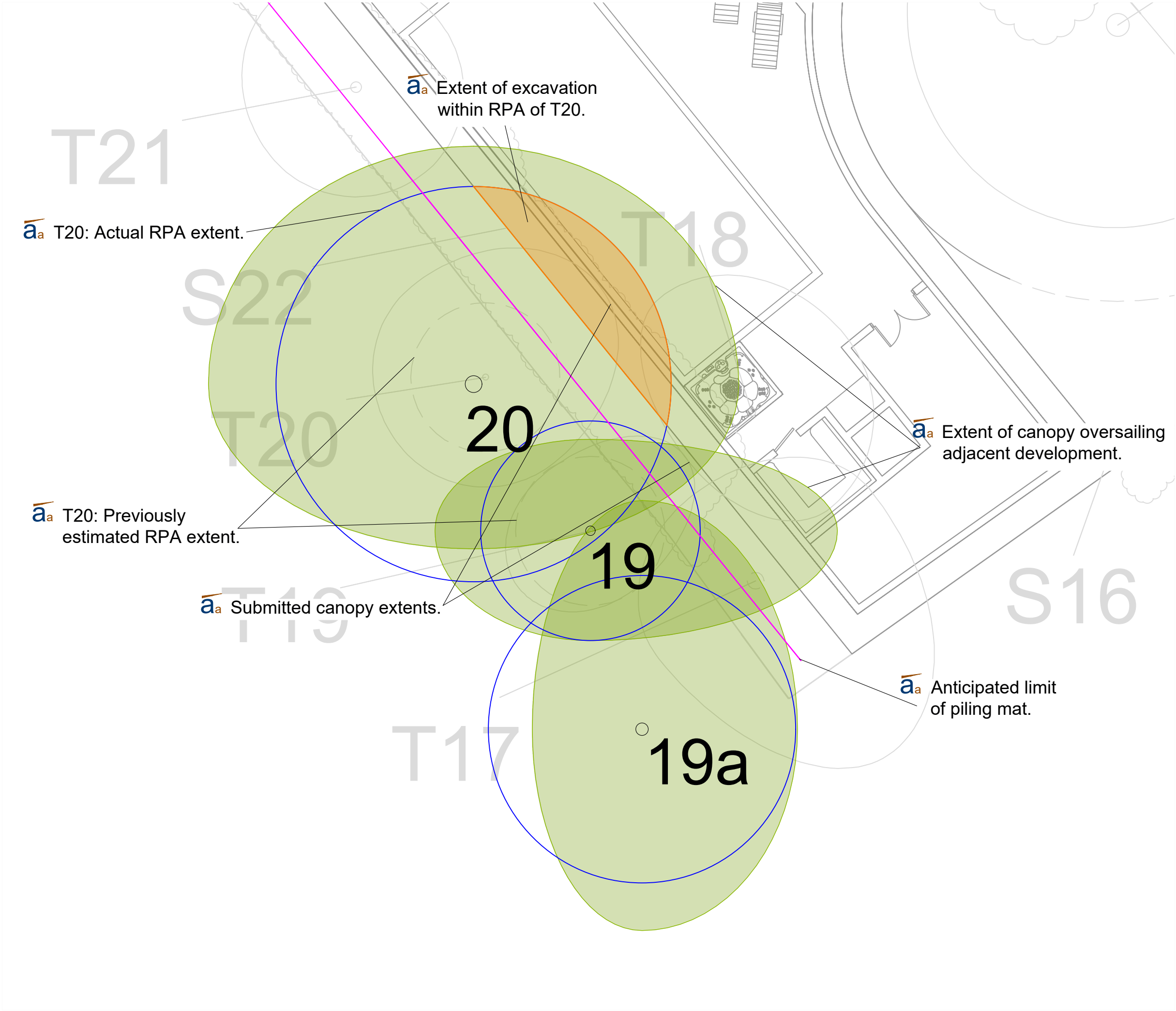
- 4.1. On the balance of the above, it is my overall professional opinion that it is critical that Camden Council request an updated Tree Protection Plan to demonstrate effective construction mitigation measures. The updated plan should accurately assess the arboricultural effect of introducing the development and detail deliverable safeguards to ensure that my clients' trees are not detrimentally affected as a result.



James Bardey *BSc (Hons) MArborA*  
Principal Arboricultural Consultant



Membership No. PR5144



1:100 @ A3

0m 1m 2m 4m

KEY:

- Tree Numbers
- Submitted Tree Canopies
- Estimated RPA
- Tree Canopies
- Category 'B' RPA
- Excavation within RPA
- Anticipated extent of Piling Mat

Note: Tree 19a has been plotted using measurements onsite in conjunction with aerial imagery. Their locations were not recorded on the plan of the site (drawing ref: 140229-P-10.dwg).

REV	DATE	NOTE	Drawn	Chk'd
REVISIONS				



TITLE

35 Elsworthy Road  
Arboreal Impact Drawing

CLIENT

Residential Land

SCALE	DATE	DRAWN
1:100 @ A3	JUL 2022	JH
DRAWING NUMBER	REVISION	
11535 AID 01		

Based on: 140229-P-10.dwg