

Press release 26th June 2020 Hackney Council and Berkeley Homes win injunction against the Happy Man Tree. Local people are threatened with prison and fines if they continue to protest.

The Friends of the Happy Man Tree are devastated by the outcome of the hearing today in the High Court of Justice Business and Property, where the Judge authorised the serving of a sweeping injunction on 'Persons Unknown' in favour of Berkeley Homes and Hackney Council.

The injunction* is against Persons Unknown, defined as anyone and everyone physically near the tree and 'seeking' to stop the tree being cut down. Once the injunction is in place, Persons Unknown must vacate the area and not stop the work to cut the tree down. Breaching this injunction is seen as contempt of court with the likelihood of imprisonment and an unlimited fine. This is a draconian catch all legal weapon to use and is controversial for that very reason. In the past this has been used by powerful organisations and corporations against ordinary citizens. That is happening here.

"This legal blunderbuss is a bullying and extreme weapon for any organisation to use. We are upset to see that Hackney Council and Berkeley Homes have resorted to the tactics of the rich and powerful to achieve their aim. Throughout this protest we have asked for dialogue. Instead they are using an injunction against anyone, threatening unlimited fines and imprisonment. This shows Berkeley Homes and Hackney Council as morally bankrupt because of their failure to engage with the protest. They may well be able to cut the tree down, but they are losing the argument"

Despite being deeply upset about the pending loss of the much loved Happy Man Tree, the members of Woodberry Down are determined to fight on.

Residents of the Woodberry Down estate have been concerned about the fate of the Happy Man Tree for many months, but the community that has come together, and grown immeasurably, to save the Happy Man Tree has done so in just a few short weeks. This community has been organising and learning all the time about campaigning, the law and the wider value of trees at high speed. Over time local tree experts and environmentalists have shown their support for the campaign.

They are determined that their community will continue to grow, learn and evolve in order to fight for and save the many other mature beautiful trees that are at risk as part of the development of Woodberry Down.

The community plans to connect with other local communities around the country, to learn from their experiences, to share their own experiences and to unite to ensure that in the future the voices of local people and their love of nature is heard.

*Under the terms of the injunction, a notice that work will be starting will be given by Hackney Council and/or Berkeley Homes. By 9am on the second day after the notice, the injunction comes into force.

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See below for notes to editors Q&A

Notes to Editors **The Happy Man Tree: questions and answers**

What is the Happy Man Tree?

The Happy Man tree sits on the pavement outside the now closed and soon to be demolished Happy Man public house in Woodberry Grove, just off Seven Sisters Road. It is a London plane tree. This used to be the most widespread species in London, but human activity has meant that it has dropped to fourth. We do not know exactly how old this particular tree is, but it appears on an Ordnance Survey map for 1870. It was respected during the post-second world war regeneration of Woodberry Down which gave birth to the old estate.

Why is it threatened?

It is due to be destroyed as part as the latest stage in the regeneration of Woodberry Down. This is the Phase 3 of the regeneration, which will supply 600 new homes, 41 per cent of which will be “affordable”, by a Hackney Council definition. Approximately half of these will be social homes, mainly homes for the Council tenants on the old estate. The roof of the tree and its roots are both judged to make impossible the building of one proposed block in Phase 3.

What is the regeneration?

The regeneration is a 30+ years project to demolish the old estate and replace it with new homes. All council tenants will be offered homes in the new development, but 60 per cent of these will be for private sale. Due to this timescale, some tenants in the old homes will die before the new ones are available. The private sales will help subsidise the building of the affordable homes. When the regeneration was first planned, this was one of the few options available for building affordable homes for rent. In Woodberry Down these new affordable homes are managed by Notting Hill Genesis, a housing association. The developer is Berkeley Homes who are guaranteed a 20 per cent profit from the scheme. The old homes are still rented from Hackney Council, except those (c.30%) purchased under the right to buy scheme.

To what extent has the local community been given a voice in the regeneration?

There was widespread consultation over the general plans for the regeneration and the major changes to it. This took the form of, at the start, public information meetings and later consultations at events or roadshows. Data was collected which showed wide-spread support for the regeneration. No ballot was taken - if the scheme was starting now this would be obligatory.

What are the normal guidelines for trees in housing developments: have these been followed?

The Hackney Council’s own planning guidance states: “The layout of development schemes should ensure that they incorporate existing trees where possible and should include appropriate planting, particularly of locally sourced/provident and native species.....”

It is clear from this that the tree should be retained. Moreover, this guidance also clearly states “mitigation” – that is planting new trees - is not sufficient: old trees should be retained, **and** new ones planted. When WDCO pointed this out, and also pointed to similar breaches of guidelines from the London Plan and the National Design Guide, both Berkeley and the Council Planning department said that these were only guidelines and could be ignored.

Was there any public consultation about the tree?

Berkeley Homes has occasionally said that the destruction of the tree was in various plans which date back to 2009. But they admit, as does the Council that nowhere was the destruction of the tree spelt out. All parties say if they had spotted this and recognised it would be a problem they would have been designed around the tree.

In the public consultation for Phase Three, an exhibition stated that 110 new trees would be planted. What it did not say is that 49 would be felled. (Recent pressure has reduced this to 44). The Happy Man Tree is the most prominent of these. Contrary to what Berkeley and Hackney Council say, there is no popular mandate for the tree’s destruction.

What is WDCO and what does it say

WDCO is Woodberry Down Community Organisation, whose 21 strong board is made up of elected representatives from the council, Notting Hill Genesis and private homes. Due to Covid 19, it has never discussed the tree at a full board meeting, but a majority of its executive – 6-2 – have supported retaining the tree.

Where does the Council and Local Labour Party stand?

The Council, at present, supports Berkeley Homes. The local Labour Party supports the tree’s retention.

When the issue of the tree first emerged was there any attempt to resolve the differences?

At first, when the issue emerged in late October 2020 discussion was confined to Hackney Council and Berkeley. When WDCO members heard of it in November, discussions began about saving the tree. However, most of these centred on Berkeley Homes producing “evidence” on why it was too late to save the tree. Much of this was one sided and countered by evidence from WDCO. Eventually other options began to be considered.

What options were discussed to save the tree?

The options of replanting the tree or pollarding it were ruled out by all parties. Pollarding would have been severe and not addressed the issue of the tree’s roots. Three options were then discussed on redesigning around the tree. It was agreed that the one to consider further would involve shortening the length of one block and make up for the loss of homes by slightly increasing the height of two other blocks. All parties agreed that they would develop this proposal. All parties agreed to aim to settle all outstanding issues in four

months. With this promise, WDCO agreed to give general support to the proposals in return that a section 73 would be applied for to retain the tree.

What is Section 73?

Section 73 allows a developer to change its plans after permission for these have been granted by the Planning Department. However, in this case the Council's planning department said, in advance of such an application being made, they would not allow it. No documentation on this decision has been made available to WDCO. WDCO believes the rules governing section 73 are open to different interpretations.

What happened after Section 73 was ruled out?

Berkeley Homes submitted their original plans on Phase 3, with the tree's destruction. They turned down appeals by WDCO to have further discussions on this and postpone their application by one or two months. In doing this they were breaking the Partnership Agreement by which the regeneration is meant to operate on a consensus basis. They said, in an email to a WDCO vice chair that that supporters of the tree were "a few individuals who did not get what they want".

The Council's Planning Committee agreed Phase 3 of the regeneration governing Phase 3: What happened there?

The Planning Committee was held virtually. Its members were told they were not allowed to read documentation supporting the tree submitted by the majority of the WDCO executive. The officers presenting the report (and supporting Berkeley) told the Committee that there had been no discussions on Section 73 and that retaining the tree would mean the loss of 28 homes. Both of these were incorrect. Supporters of the tree were given five minutes to state their case and could only respond to questions directly posed to them. The officers supporting Berkeley and Berkeley itself were, in total, given 70-90 minutes.

Is it true that incoming social tenants would have to wait at least a further year to be rehoused if the tree is kept?

WDCO has been given various estimates by Berkeley of how long a delay there would be if there was a redesign saving the tree. First it was four months, then it was nine months, then it was a year, then it was 15 months, mostly recently it is 18 months. There has been no independent research into this matter, but the escalating estimates suggest this is motivated by scaremongering rather than logic. (Of the majority of the WDCO executive who support the tree, two have yet to be re-housed. Both support retaining the tree and, if necessary, waiting a little bit longer).

How much is all this about money?

The redesign would have financial costs and these, in an email to a WDCO vice-chair, have been cited by Berkeley as one of main reasons they will not consider re-design. WDCO understands that Berkeley asked the Council to, in effect, share these costs out of possible above-agreed profits for the phase. The Council turned them down.

What should happen now?

WDCO have repeatedly asked for new discussions. These would reopen the talks about how to save the tree with the minimum of delay to the scheme. They should include both the regeneration and planning wings of the Council, as well as Berkeley Homes, Notting Hill Genesis and WDCO.

How long can a London plane tree last? How long will the proposed Phase 3 buildings last?

WDCO was originally told that the tree could be dead in 40 years. This was misinformation, the London plane has an indefinite life. The proposed new Phase 3 buildings will eventually make way for another regeneration long before the death of the tree. Unless, of course, it is killed now.

This briefing has been prepared by members of the WDCO executive who support the retention of the Happy Man Tree.

It has been distributed and printed by Friends of the Happy Man Tree

25 May 2020