

# **BARNET**

**LONDON BOROUGH**

## **COMMITTEE REPORT**

**LOCATION:** Boundary Convent of St Mary at the Cross Priory Field Drive, Edgware, Middlesex, HA8 9PU and 33 Highview Avenue, Edgware, Middlesex, HA8 9TX.

**REFERENCE:** TPO/00315/13/H **Received:** 03 June 2013

**WARD:** HA **Expiry:** 29 July 2013

**CONSERVATION AREA** N/A

**APPLICANT:** MWA Arboriculture

**PROPOSAL:** 1 x Oak (T1 Applicants Plan) – Remove. T5 of Tree Preservation Order.

### **RECOMMENDATION:**

**That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed removal of 1 x Oak (T1 Applicants Plan), T5 of Tree Preservation Order, either:**

REFUSE CONSENT for the following reason:

The loss of the tree of special amenity value is not justified as a remedy for the alleged subsidence damage on the basis of the information provided.

Or:

**APPROVE SUBJECT TO CONDITIONS**

1. The species, size and siting of the replacement tree(s) shall be agreed in writing with the Local Planning Authority and the tree(s) shall be planted within 12 months of the commencement of the approved treatment (either wholly or in part). The replacement tree(s) shall be maintained and / or replaced as necessary until 1 new tree(s) are established in growth.

Reason: To maintain the visual amenities of the area.

2. Within 3 months of the commencement of the approved treatment (either wholly or in part) the applicant shall inform the Local Planning Authority in writing that the work has / is being undertaken.

Reason: To maintain the visual amenities of the area.

### **Consultations**

Date of Press and Site Notices: 20<sup>th</sup> June 2013

Consultees:

Neighbours consulted: 4

Replies: None

## **MATERIAL CONSIDERATIONS**

### Relevant Recent Planning History:

There is no relevant recent planning history in respect of either treatment to Oak T5 of the Tree Preservation Order or any development works at 33 Highview Avenue.

### Convent of St Mary at the Cross Priory Field Drive, Edgware, Middlesex, HA8 9PU

There is a current planning application in respect of redevelopment works at this site.

**H/00459/13** – *“Conversion and alterations to existing Abbey Building to create 2no. single family dwelling houses and 2no. self-contained flats. Erection of 5no. 2 storey single family dwelling houses including rooms in roof-space (2no. semi-detached pairs, 1no. detached) following demolition of existing 1930s and 1950s extension. Associated hard/soft landscaping and creation of 20.no parking spaces.”* Registered 4<sup>th</sup> February 2013. At undetermined at the time of writing this committee report. The Oak tree – T5 of the Tree Preservation Order is located directly opposite the existing Abbey Building which is proposed for conversion into residential dwellings.

## **PLANNING APPRAISAL**

### 1. Introduction

This application has been submitted by MWA Arboriculture acting as agent on behalf of insurers dealing with a claim on the Buildings Insurance for 33 Highview Avenue, Edgware, Middlesex, HA8 9TX.

The application was initially submitted on the 19<sup>th</sup> February 2013. However, it was incomplete and additional supporting documentation/clarification was requested by the Council. All of the mandatory information was received on the 3<sup>rd</sup> June 2013 and the application was therefore registered on that date. Initially the application was registered with the site address as “Convent of St Mary at the Cross Priory Field Drive, Edgware, Middlesex, HA8 9PU”. However, during the site visit it became apparent the tree may straddle the boundary between the Convent and 33 Highview Avenue and consequently the site address has been amended.

The Tree Preservation Order was made on the 14<sup>th</sup> March 1983 and includes several individual and group designated trees within the grounds of the Convent of St Mary at the Cross. The Order was confirmed on the 16<sup>th</sup> September 1983. Part of the former Convent grounds and an allotment site has since been redeveloped as Priory Field Drive.

### 2. Appraisal

#### Tree and Amenity Value

The subject Oak stands at the boundary between the Convent of St Mary at the Cross and 33 Highview Avenue. It is over 20 metres in height and is mature with a trunk diameter of over 90cm when measured at 1.5 metres above ground level. The tree has had some previous lifting treatment (to about 6 metres from ground level) and some branch

reductions. There has been some regrowth from the previous treeworks. The tree has foliage of good form, colour and a reasonable density. There are one or two apparently localised pockets of rot at some previous reduction points and there are no major structural faults apparent.

The Oak significantly predates the construction of Highview Avenue (and the subsequent conservatory at number 33). An estimate of its age suggests that it was part of the original boundary planting for the Abbey of St Mary of Nazareth (Hospital for Incurables) which used to occupy the site. The tree is visible from Highview Avenue above and between the properties. It is also visible from the Convent grounds. The tree contributes to the general character and appearance of the area and in particular contributes significantly to boundary screening of the Convent site. As noted above there is a current application for development works at the Convent and the subject Oak is located adjacent to, and helps to screen the part of the Convent site that is proposed for redevelopment.

### The application

The reason given for this application to remove the Oak tree – T5 of the Tree Preservation Order is: *“The tree is a material cause of clay shrinkage subsidence damage.”*

The agent has submitted various documentary evidence in support of this application. This information has been assessed by the Council’s Structural Engineer who has commented as follows:

#### ***“Background information.***

*The property allegedly damaged by the tree root action of Oak T1 is 33 Highview Avenue. A rear conservatory has been constructed, this appears to be a relatively recent addition.*

#### ***Trees***

*The Marishal Thompson report shows the location of the oak tree T1. Their report shows the Oak tree T1 in the grounds of the Convent of St Mary at the Cross, at a distance of 20m from the building and 17.5m high.*

*The Marishal Thompson report does not show the location of the other oak trees in the Convent grounds which I understand are a similar distance from the damaged property.*

#### ***Damage***

*The damage to 33 Highview Avenue was discovered in June 2010.*

*The damage consists of 20mm cracking at the junction of the conservatory and the rear of the house and distortion of the conservatory window frame. Minor cracking is also noted to the rear left hand side dining room and rear left hand side bedroom.*

*The damage is classified as category 4 in accordance with BRE Digest 251.*

#### ***Subsoil investigations***

*Mat Lab carried out a subsoil investigation on 7/6/12. This consisted of two trial pits and boreholes, one to the rear of the conservatory, EH2, and one at the rear of the garage EH1.*

*Results of the investigation were as follows;*

- 1. The conservatory foundations are 700mm deep, the garage foundation is 800mm deep.*
- 2. Stiff brown Clay was encountered for the full depth of the boreholes.*
- 3. Roots extend to 1.5m depth in EH1 and to 2m depth in EH2.*
- 4. Oak tree roots were identified in EH1, roots in EH2 could not be identified.*

5. Both boreholes were dry.

### **Soil Testing**

*The soil analysis results indicate desiccation at 1m to 2m depth in EH2. The results for EH1 are not conclusive however there appears to be some desiccation at 1.25m depth.*

*A ground heave prediction has been calculated in accordance with BRE Digest 412 using the soil moisture content test results for EH1. The predicted potential ground heave is 22mm, however the control soil moisture contents used in the calculation may not be representative as the low soil moisture contents in EH1 occur below the zone of the roots.*

### **Monitoring**

*Level monitoring has been carried out from 7/6/12 to 3/1/13 using location 1 at the rear corner of the garage as the datum level. This is unlikely to be fully stable and the movement recorded will be relative to any movement occurring at location 1.*

*Most of the recorded movement has occurred at the rear of the conservatory, with a maximum overall movement of 8.6mm. The pattern of movement appears to be modified by the wet summer of 2012 when June and July recorded particularly heavy rainfall, however the monitoring results do indicate a seasonal trend of movement to the rear conservatory.*

*There is negligible movement recorded to the rear of the house, although this may be due to these readings being close to the datum which has the same foundation.*

### **Drainage**

*The trial pits and boreholes were dry, and the cyclical pattern of movement demonstrated by the monitoring indicates the underground drainage was not implicated in the damage; water leaking from drainage usually causes progressive widening of the cracks.*

### **Conclusion**

*The site investigation results indicate that the Oak tree T1 is likely to be implicated in damage to the rear conservatory. Given that there are other Oak trees which are a similar distance from the property it is probable these other Oak trees are also contributing to the damage to the conservatory.*

*The monitoring shows negligible movement to the rear elevation of the house therefore the minor cracking to the rear left hand side of the house is unlikely to be related to subsidence of the house foundation due to tree root action.*

*According to the NHBC guidelines taking into consideration the proximity of the Oak tree T1 the conservatory foundations should have been 1.5m deep."*

There is no information within the application submissions to confirm when the rear conservatory at 33 Highview Avenue was built, although aerial photographs indicate it was built sometime between the summer of 1999 and June 2003. The Council has no Planning or Building Control records which relate to the construction of this conservatory.

The Council's structural Engineer has noted that the foundations for the conservatory do not accord with the NHBC guidance and are shallow (700mm deep). The NHBC guidance recommends that the foundations should be 1.5 metres deep. The only root found below 1.5m "showed insufficient cells for recognition."

The Council's Structural Engineer has confirmed that the soil investigations indicate desiccation at 1 metre to 2 metres depth in borehole 2 and that *"the monitoring results do indicate a seasonal trend of movement to the rear conservatory."* The Council's Engineer has advised that *"there is negligible movement recorded to the rear of the house, although this may be due to these readings being close to the datum which has the same foundation."*

On this basis the Oak is implicated in subsidence damage to the rear conservatory at the property. Whilst there are a number of other trees adjacent to the boundary between the Convent and properties in Highview Avenue, the subject Oak is the closest very large tree. The next nearest Oak trees are to the rear of 35/37 Highview Avenue.

However, it appears that the conservatory was not constructed with due regard to the presence of the trees, as the foundations for the conservatory are less than half the depth recommended in the NHBC guidelines.

The Council's Structural Engineer has advised that *"the predicted potential ground heave is 22mm, however, the control soil moisture contents used in calculation may not be representative as the low soil moisture contents in EH1 occur below the zone of the roots."*

### 3. Legislative background

Government guidance advises that when determining the application the Council should (1) assess the amenity value of the tree and the likely impact of the proposal on the amenity of the area, and (2) in the light of that assessment, consider whether or not the proposal is justified, having regard to the reasons put forward in support of it. It should also consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.

Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides that compensation is payable for loss or damage in consequence of refusal of consent, grant of consent subject to conditions or refusal of any consent, agreement or approval required under such a condition. The provisions include that compensation shall be payable to a person for loss or damage which, having regard to the application and the documents and particulars accompanying it, was reasonably foreseeable when consent was refused or was granted subject to conditions.

This application is being referred to Members for decision because one of the exceptions to the Delegated Powers of the Assistant Director of Planning and Development Management is "where she / he considers that an application should be refused where such a decision will result in the Council being made liable for payment of compensation".

In this case the agent has indicated that *"provided the tree management is approved and works are carried out expeditiously, we anticipate that superstructure repairs and decorations only will be required. If tree management is not carried out, it may be necessary to consider a much more costly and disruptive scheme of stabilisation, such as underpinning. Budget estimates are presently as follows:-*

*Superstructure repairs and decorations - £15,538*

*Underpinning and Repairs - £50,000."*

The Court has held that the proper test in claims for alleged tree-related property damage was whether the tree roots were the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage'. The standard is 'on the balance of probabilities' rather than the criminal test of 'beyond all reasonable doubt'.

In accordance with the Tree Preservation legislation, the Council must either approve or refuse the application i.e. proposed removal of the tree. The Council as Local Planning Authority has no powers to require lesser works or a programme of cyclical pruning management that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the tree is so high that the proposed removal of the tree is not justified on the basis of the reason put forward together with the supporting documentary evidence, such that TPO consent is refused, there may be liability to pay compensation pursuant to Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012. It is to be noted that the Council's Structural Engineer has concluded that the Oak is implicated in subsidence damage to the conservatory. Hence there is likely to be a compensation liability (it is indicated in the application submissions that repair works would be at least an extra £35,000 if the tree is retained) if consent for the proposed removal of the tree is refused.

## **COMMENTS ON THE GROUNDS OF OBJECTION**

N/A.

## **EQUALITIES AND DIVERSITY ISSUES**

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies is set out in Section 149 of the Act. The duty requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

The council have considered the above act but do not believe that the application would have a significant impact on any of the groups as noted in the Act.

## **CONCLUSION**

MWA Arboriculture (acting as agent for insurers dealing with a subsidence claim at 33 Highview Avenue) are proposing to remove an Oak tree standing at the boundary between 33 Highview Avenue and the Covent of St Mary at the Cross Priory Field Drive. The tree is T5 of the Tree Preservation Order. The reason for the proposed removal of this tree is: *"The tree is a material cause of clay shrinkage subsidence damage."*

The tree is considered to be of public amenity value and its loss would be detrimental to the character and appearance of Highview Avenue and the Convent land at Priory Field Drive. In addition the loss of this tree would remove a significant portion of the boundary screening between properties in Highview Avenue and the Convent land. The Council's Structural Engineer has reviewed the evidence submitted and concluded that the tree is likely to be implicated in subsidence damage to conservatory at 33 Highview Avenue. However, the conservatory does not appear to have been constructed with due regard to the presence of the tree and has been built with very shallow foundations. The Council must decide whether it is prepared to refuse consent to the proposed removal of the tree.

and face a possible compensation claim potentially in excess of £35,000 or allow the removal of the tree subject to replacement planting.