LOCATION: 58 Corringham Road, London NW11 7BX

REFERENCE:	TPO/00417/13/F	**Received:**	26 July 2013
WARD:	GS	**Expiry:**	20 September 2013
CONSERVATION AREA	Hampstead Garden Suburb		

APPLICANT: OCA UK Ltd

PROPOSAL: 1 x Oak (T6 Applicant's Plan) – Fell, T51 of Tree Preservation Order.

RECOMMENDATION:

That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed felling of 1 x Oak (applicant's ref T6), T51 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 6 months (or as otherwise agreed in writing) 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: 8th August 2012

Consultees:
Neighbours consulted: 10
Replies: 52 0 support 52 objections
(5 additional objections received after consultation period expired raising similar grounds)

The grounds of objection can be summarised as:

- Oak is an original field boundary tree that predates houses
- Tree is shown on historic maps since at least 1864 (estimated age between 100 to 250 - 300 years old)
- Presence of trees influenced design and layout of area with setback of housing to allow for retention of existing mature boundary trees
- Tree identified on Parker and Unwin 1911 plan of Hampstead Garden Suburb
- Oak significant to streetscene especially as road generally lacks other such impressive trees or attractive street trees
- Oak can be seen from many angles by the general public
- Important landmark in area – located at one of main entrances to the Suburb for those walking to Golders Green Station or to Hampstead Heath Extension
- Oak of good form, in good condition and significant size
- Oak integral part of Suburb's history
- Mature trees essential to unique green character and appearance of Suburb Conservation Area
- Removal devastate character of both Corringham and Rotherwick roads – destroying fundamental balance of greenery versus bricks, pavement and road
- Oaks iconic species in Hampstead Garden Suburb
- Tree irreplaceable if removed / beauty and majesty take generations to replace
- Value for screening / privacy
- Importance for wildlife, particularly birds (including Green and Greater Spotted Woodpeckers, Owls, Jays and other larger species)
- Role of tree in filtering pollution and noise
- Tree provides shade / passive cooling
- Removal would permanently alter the corner and cause light blight from lighting and telephone mast
- Screens light and noise from Northern Line depot
- Marks passage of seasons
- Alternatives to tree removal
- Felling excessive
- Such trees should not be removed unless compelling reasons and evidence of need and no alternatives – the very high level of proof that should be required has not been demonstrated
- Inaccuracies in supporting information submitted by applicant
- Awareness of removal / alteration of internal walls although agents state 'no structural alteration'
- Number of houses in vicinity affected by 1976 drought – those undergone structural alteration particularly affected
- Only 2 of 6 level monitoring points show net downward movement (and then only 1mm); 4 others show net upward movement (antithesis of subsidence)

- Movement expected on a building with shallow foundations moving up and down as ground swells and shrinks seasonally – many houses in vicinity move seasonally
- Proximity of Metropolitan Water Board strategic mains supplying London (42" and 48" diameter, laid in 1907) – differential soil moisture not due to drying presence of Oak but relative wetness from leaking main
- Impact on water table if removed
- Other nearby properties underpinned
- Need for underpinning unsubstantiated in light of reported damage
- Risk of heave
- Proposed tree removal has implications for foundations of neighbouring properties
- Alternative causes for alleged property damage
- Tree felling is insurance company default position
- Sole reason for application is to get compensation from the Council at the expense of the taxpayer for an insurance company
- Argument based on cost to insurers does not take account of wider cost to community
- Value of tree immeasurable to community compared with difference between costs of repair if tree retained or removed (£26k - £9k = £17k)
- Applicant / insurance company / assessor not live in area
- Timing ploy so consultation during holiday period
- Silver Birch inappropriate replacement

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

58 Corringham Road

C09997H/01/TRE - Reduce density of an Oak by 30% T51 of Tree Preservation Order.
- conditional approval 14th March 1996

C09997J/01/TRE - Oak - reduce density by 25%, T51 of TPO
- conditional approval 13th August 2001

C09997Q/07/TRE - 1 x Oak. Thin by 25%, Deadwood. T51 of Tree Preservation Order.
- conditional approval 18th October 2007

also Notices of Intent of proposed works to other trees at the site not included in the Order

60 Corringham Road

TPO/00352/13/F - 2 x Norway Maple (App Ref T2, T3) and 1 x Hawthorn (App Ref T4) - Fell
- six week notification period expired 2nd August 2013

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of an Oak tree (applicant's ref. T6) in the front garden of 58 Corringham Road in connection with alleged property damage at 60 Corringham Road was submitted via the Planning Portal in January 2013, however, there were shortcomings in the information – clarification was thus requested. Further information was submitted on 26th July 2013, allowing registration of the application.

On 21st June 2013, a separate s211 Notice of Intent to fell 2no. Norway Maple (applicant's ref. T2, T3) and a Hawthorn (applicant's ref. T4) 'as a remedy to subsidence at 60 Corringham Road' was registered. The accompanying supporting documentation was the same as that originally submitted via the Portal in January 2013 (referred to above) plus some additional Suburb Trust correspondence.

58 and 60 Corringham Road are a pair of locally listed two-storey semi-detached dwellings in Hampstead Garden Suburb Conservation Area. The garden of 58 Corringham Road stands to the south of the T-junction of Corringham and Rotherwick Roads (adjacent to No. 66 Rotherwick Road); No. 60 faces Corringham Road with the Thames Water / Metropolitan Water Board wayleave running along the flank boundary to the south-east (between Nos. 60 and 62).

2. Appraisal

Trees and Amenity Value

The subject Oak stands on the Corringham Road frontage of No. 58 and is the largest tree in the group located at the corner of Corringham and Rotherwick Roads. The Oak subject of this application is approximately 18m in height with a trunk diameter (at 1.5m above ground level) of 112cm. The tree forks at approximately 3 metres and has been previously pruned in the distant past (especially to provide clearance above the roadways) with subsequent regrowth; it has been previously lifted (including the removal of a quite large branch) and thinned, but it appears to be in reasonable condition with no major faults apparent; the foliage is of good form and colour.

The mature Oak is one of the original field boundary trees that pre-date the development of the Suburb. The tree is marked on an old Suburb map dating from 1911 drawn by Parker and Unwin, the Suburb's master-planners. The tree (and others adjacent) were retained and influenced the design and layout of this part of the Suburb – the Oak(s) are very prominently located and are very clearly visible as a focal point from Corringham Road and Rotherwick Road.

Hampstead Garden Suburb is internationally renowned for the way in which mature landscape features have been incorporated into the built environment. As noted by many of the objectors, the Oak is older than the surrounding development (it was originally a field boundary tree), was present at the time the Hampstead Garden Suburb was designed and influenced layout of streets and houses. The retention of trees such as this Oak was an integral part of the design ethos during the development of the Garden Suburb. The Hampstead Garden Suburb Character Appraisal Statement is one of many documents setting out the importance of trees to the character and appearance of the area e.g.:

- “Trees and hedges are defining elements of Hampstead Garden Suburb. The quality, layout and design of landscape, trees and green space in all its forms, are inseparable from the vision, planning and execution of the Suburb”.
- “Wherever possible, in laying out the design for “the Garden Suburb” particular care was taken to align roads, paths, and dwellings to retain existing trees and views. Extensive tree planting and landscaping was considered important when designing road layouts in Hampstead Garden Suburb, such that Maxwell Fry, one of the pioneer modernists in British architecture, held that “Unwin more than any other single man, turned the soulless English byelaw street towards light, air, trees and flowers”.
- “Unwin’s expressed intention, which he achieved, was: ‘to lay out the ground that every tree may be kept, hedgerows duly considered, and the foreground of distant views preserved, if not for open fields, yet as a gardened district, the buildings kept in harmony with the surroundings.’”
- “Trees contribute fundamentally to the distinctive character and appearance of the Conservation Area in a number of different ways, including:
    - Creating a rural or semi-rural atmosphere
    - Informing the layout of roads and houses with mature field boundary trees
    - Providing links with pre-development landscape and remaining woodland
    - Creating glades, providing screening and shade, and marking boundaries
    - Framing views, forming focal points, defining spaces and providing a sense of scale
    - Providing a productive, seasonal interest and creating wildlife habitats

In respect of this particular area of the Suburb, the Hampstead Garden Suburb Character Appraisal Statement sets out (at section 3.2 of Area 5 Rotherwick Road, Hampstead Way):

- On the corner of Corringham and Rotherwick Roads, the houses are set back from the street behind a retained group of large oak trees that once stood on a field boundary and now have a major impact on the appearance of the road.
- These streets [Rotherwick Road and Corringham Road] lead from the busy Finchley Road to the serenity of the Heath extension. The housing reflects this movement, with symmetrical groups of semi-detached houses near to Finchley Road, and formal courtyard compositions close to the Heath providing a transition to the large houses of Hampstead Way. A broad strip of grassed land belonging to Thames Water runs behind the gardens from Golders Green to the Wild Hatch footpath, seen from gaps between Nos. 60, 62 and 87, 89 Corringham Road.
- Whilst Corringham Road lacks street trees to soften its appearance, the hedged gardens are generally attractive and the ambiance is very green.
- All the houses in this section of Corringham Road are statutorily or locally listed and constitute a particularly good townscape sequence.

The Character Appraisal Statement specifies as a ‘Principal positive feature’ “individual examples of impressive, mature trees, possibly pre-dating the Suburb” (at 2.1 of Area 5), whereas “this area is overlooked by a large floodlight and mobile phone mast at Golders Green Station which is unsightly and a source of severe light pollution” is noted as a ‘Principal negative feature’ (at 2.2 of Area 5).

The Oak is considered to be of special amenity value - in terms of its visual contribution to the streetscape; its environmental contribution to e.g. air quality, noise attenuation, and to wildlife; its value for screening; and its historical significance in the layout of the Suburb. As noted by objectors, the Oak provides very significant public amenity in a number of different ways – historic (former field boundary tree influencing layout of streetscape); environmental (filtering pollution, noise, light, screening and privacy, shade and passive cooling, wildlife habitat); and social (local landmark, iconic, marks passage of seasons). It contributes significantly to the character and appearance of the Hampstead Garden Suburb Conservation Area. The mature Oak is an original field boundary tree, if it was removed any replacement planting would take many years to attain a similar size and stature and its historic attributes would be lost - thus there would be considerable detriment to public amenity for decades and substantial harm to the character and appearance of the Conservation Area.

The application

The application submitted by OCA UK Ltd was registered on 26th July 2013. The reasons for the proposed removal of the Oak (applicant's reference T6) cited on the application form are:

1. *The above tree works are proposed as a remedy to the differential foundation movement at [60 Corringham Road] and to ensure the long-term stability of the building.*
2. *The above tree works are proposed to limit the extent and need for extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs are likely to vary between £9,000 and £26,000 depending upon whether the tree/s can be removed or have to remain.*
3. *The above tree works are proposed to limit the duration of any claim period and therefore allow the landowner their right to peaceful enjoyment of their property.*
4. *It is the case that an alternative to felling such as pruning or significant 'pollarding' of the tree would not provide a reliable or sustainable remedy to the subsidence in this case. We do not consider that any other potential means of mitigation, including root barriers, would be effective or appropriate in the circumstances.*
5. *I consider that in this specific instance the planting of a Silver Birch tree, with a stem girth of 10 – 12cm, container grown at a location in the front garden of the above, planted within 1-2m of the stump of T6 would be a suitable replacement.*

The supporting documentation comprised:

- OCA Arboricultural Assessment Report dated 25 January 2013 based on survey dated 30 March 2012 including Cunningham Lindsey Engineering Appraisal Report dated February 2012 and CET Safehouse Ltd 'Factual Report of Investigation' dated 3rd February 2012 and level monitoring 02/02/12 - 01/11/12

- Updated level monitoring to 18/2/13.

- There was also e-mail clarification that "[the policyholder] has confirmed that there has been no building works at the property during the twenty or so years that he has lived there. We understand that the property to the right, 58, has been underpinned and our policy holder has advised our client that this has been done in the last five years or so."

- A heave calculation

The Council's Building Control has no record of any underpinning at No. 58.

The Council's Structural Engineer having assessed the information, notes:

The damage to the building is consistent with category 2 of table 1, BRE 251: those are cracks up to 5mm wide which can easily field in internally and repointed externally. Actual crack size; 3mm as per report.

Location of damage: *As per report the damage occurs on the front elevation entrance and bay window area.*

Soil investigation results at No 60 Corringham Road *:*
Two boreholes were undertaken:
TP/BH1 *next to the bay window* ***BH2*** *in the front garden*

TP/BH1
Foundation: *According to the soil investigation results foundations to the bay are 1m deep.*

Roots: ***TP/BH1*** *According to the borehole log, roots of Quercus spp. and Pomoideae gp. and Acer spp were found and identified up to 1.7m deep next to the bay.*
BH2 *roots were found in the control borehole up to 0.9m deep but not identified.*

Desiccation: *soil is desiccated in both of the boreholes suction test levels are high at 2m deep. (Refer to Graph)*

Soil Description*: stiff silty clay.*

Monitoring results:
Level monitoring results indicate the soil shrinkage and swelling related to the seasons and tree root action the most active points are 4 and 5 coinciding with the location of trees in the front garden of No.60 and T5 (Holly) in No. 58.

Drains: *Drain runs were not marked up on the submitted layouts but do not seem relevant in this case.*

Heave
According to the heave calculations submitted it is unlikely that the property will be adversely affected by the removal of the trees.

Conclusions
- According to the soil investigations results the soil is desiccated at about 2m deep.
- Level monitoring results indicate a pronounce swelling and shrinking of the soil coinciding with the seasons and tree root action.
- The damage to the property seems to be consistent with tree root action.
- Roots of trees such as of Quercus spp. and Pomoideae gp. and Acer spp were found and identified in the BH1, next to the bay. Those coincide with the trees within the front garden of No.60; Norway Maples, Hawthorns, etc,.
The English Oak grows within the front garden of no. 58 and is about 20m away from the affected area, all the other trees are closer than the Oak and can be regarded as significant contributors to the desiccation of the soil.

Based on the above; although roots of the Oak were identified under the foundations; other trees in the vicinity contribute to the desiccation of the soil and damage to the property including those that might have been removed/ reduced in the past; therefore the Oak cannot be solely implicated in the damage to the property

The applicant's plan shows four trees in the front garden of 60 Corringham Road (i.e. immediately in front of the area of alleged damage):

- two early mature Norway Maples (stem diameters 230 – 350mm; heights 3.9 - 4.3m, reduced and pollarded) at 4.5m and 4.6m from the building (applicant's ref T2, T3) and an early mature Hawthorn (stem diameter 100mm; height 5.9m, no significant previous treatment) at 2.9m from the building (applicant's ref T4). Notice of Intent TCA/00352/13/F for the felling of these three trees was registered on 21st June 2013 – but had not been implemented at the time of inspection.
- Another early mature Norway Maple (stem diameter 320mm; height 9.7m, no significant previous treatment) at 5.4m from the building (applicant's ref T1). Although OCA recommends the felling of this tree, no formal Notice has been submitted. This tree stands in the location marked on the Tree Preservation Order of T50, a Flowering Cherry.
- A mid-aged Lilac shrub (stem diameter 470mm; height 3.7m, no significant previous treatment) at 4.8m from the building / 1m from the garage is also shown (S1).

The applicant's plan shows three trees in the front garden of 58 Corringham Road:

- The Oak subject of this report (applicant's ref T6) at approx. 14.5m from the building
- An early mature Holly (stem diameter 120mm; height 7.2m, no significant previous treatment) at 7m from the building (applicant's ref T5). No work is proposed for this tree.
- A fully mature Oak (stem diameter 950mm; height 15m, no significant previous treatment) at 22m from the building (applicant's ref T7). No work is proposed for this tree.

The applicant's plan shows an early mature group of Blackthorn with no significant previous treatment (G1) close to the Lilac in the water board land adjacent.

However, the applicant's plan does not include a further Norway Maple between the two Oaks at 58 Corringham Road, nor any other vegetation on the water board land.

The cracks are described as being within BRE Category 2 - BRE Digest 251 *Assessment of damage in low-rise buildings* includes a 'Classification of visible damage to walls with particular reference to ease of repair of plaster and brickwork or masonry'. It describes category 2 damage as "*Cracks easily filled. Recurrent cracks can be masked by suitable linings.* Cracks not necessarily visible externally; *some external repointing may be required to ensure weather-tightness.* Doors and windows may stick and *require easing and adjusting.* Typical crack widths up to 5mm." The BRE Digest concludes "Category 2 defines the stage above which repair work requires the services of a builder. For domestic dwellings, which constitute the majority of cases, damage at or below Category 2 does not normally justify remedial work other than restoration of the appearance of the building. For the cause of damage at this level to be accurately identified it may be necessary to conduct detailed examinations of the structure, its materials, the foundations and the local clear ground conditions. Consequently, unless there are clear indications that damage is progressing to a higher level it may be expensive and inappropriate to carry out extensive work for what amounts to aesthetic damage."

There is an extant Notice of Intent for the removal of a number of smaller trees that are closer to the area of the alleged damage. These trees are of markedly less significance to

the character and appearance of this part of the Conservation Area than the subject Oak. If tree removal is to be implemented (a measure considerably in excess of that indicated in the BRE digest), it may be considered that the loss of these trees would be considerably less detrimental than the felling of the Oak the amenity value of which is manifest in so many ways as attested above.

Given the importance of the Oak, it may be considered appropriate to remove the smaller trees subject of TCA/00352/13/F then monitor the impact of the action prior to assessing whether further action such as pruning or felling the Oak would be justifiable / necessary.

Given that a number of other trees are closer to the area of alleged damage, and that the damage is assessed as BRE Category 2, it may be questioned whether the proposed removal of the TPO Oak at this juncture is excessive / premature.

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.

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provide that compensation is payable for loss or damage in consequence of refusal of consent or grant subject to conditions. 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. In accordance with the 2012 Regulations, it is not possible to issue an Article 5 Certificate confirming that the tree is considered to have 'outstanding' or 'special' amenity value which would remove the Council's liability under the Order to pay compensation for loss or damage incurred as a result of its decision.

In this case the applicant has indicated that "the estimated repair costs are likely to vary between £9,000 and £26,000 depending upon whether the tree can be removed or has to remain."

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 felling. 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 felling 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. It is to be noted that the Council's Structural Engineer has noted "*all the other trees are closer than the Oak and can be*

regarded as significant contributors to the desiccation of the soil." and *"although roots of the Oak were identified under the foundations; other trees in the vicinity contribute to the desiccation of the soil and damage to the property including those that might have been removed/ reduced in the past; therefore the Oak cannot be solely implicated in the damage to the property*.".

The compensation liability arises for loss or damage in consequence of a refusal of consent or grant subject to conditions - a direct causal link has to be established between the decision giving rise to the claim and the loss or damage claimed for (having regard to the application and the documents and particulars accompanying it). Thus the cost of rectifying any damage that occurs before the date of the decision would not be subject of a compensation payment.

If it is concluded that the felling of the trees registered under Notification TCA/00352/13/F would address the problem regardless of the proposed removal of the TPO Oak, or if the damage was attributable to other causes; it may be argued that loss or damage would not be in consequence of a refusal of TPO consent to fell.

However, if it is concluded on the balance of probabilities that the Oak's roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the tree's removal, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £17,000 if the tree is retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION
Matters addressed in the body of the report.

EQUALITIES AND DIVERSITY ISSUES

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies 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 Act but do not believe that the application would have a significant impact on any of the groups as noted in the Act.

CONCLUSION
The applicant, OCA UK Ltd, arboricultural consultant on behalf of the building insurers of 60 Corringham Road, proposes to fell the former field boundary Oak standing in the front garden of 58 Corringham Road, close to the junction with Rotherwick Road because of its alleged implication in subsidence damage to 60 Corringham Road.

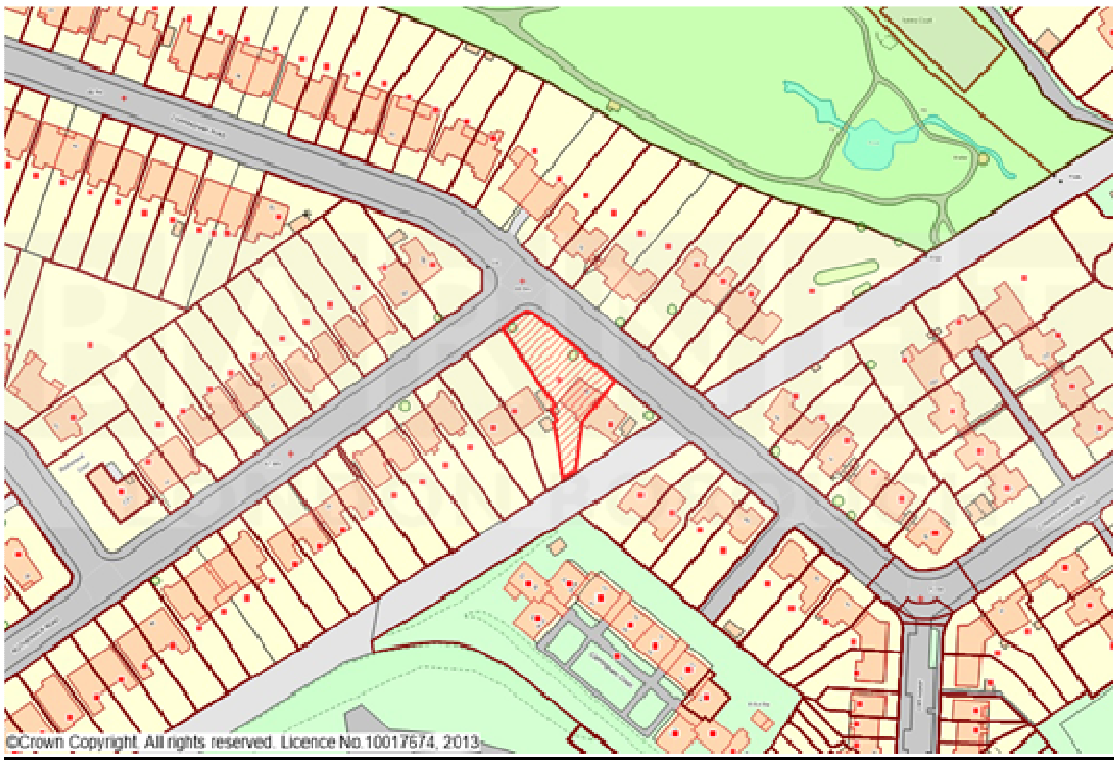
The proposed felling of the Oak would be significantly detrimental to the streetscene and would fail to preserve or enhance the character or appearance of the Hampstead Garden Suburb Conservation Area.

The Council's Structural Engineer has assessed the supporting documentary evidence and has noted that other trees are closer than the Oak and can be regarded as significant contributors to the desiccation of the soil; the Oak cannot be solely implicated in the damage to the property.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree and its importance to the character and appearance of the Hampstead Garden Suburb Conservation Area, it is necessary to consider whether or not the proposed felling is justified as a remedy for the alleged subsidence damage on the basis of the information provided, particularly in the light of the Structural Engineers' concerns about the implication of other trees and the extant Notice of Intent to fell trees closer to the area of alleged damage.

If it is concluded on the balance of probabilities that the Oak's roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the tree's removal, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £17,000 if the tree is retained) if consent for the proposed felling is refused.

However, particularly given the amenity value of the tree, if it is concluded that the felling of the trees registered under Notification TCA/00352/13/F would address the problem regardless of the proposed removal of the TPO Oak, or if the damage was attributable to other causes; it may be argued that loss or damage would not be in consequence of a refusal of TPO consent to fell, and that it would be justifiable to refuse the application.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