

LOCATION: 53 Oakleigh Park South, London, N20 9JL

REFERENCE: TPO/00763/13/B **Received:** 02 December 2013

WARD: Oakleigh **Expiry:** 27 January 2014

CONSERVATION AREA None

APPLICANT: OCA UK Ltd

PROPOSAL: 1 x Oak and 1 x Lime (T1 and T2 Applicants Plan) – Fell. T123 and T124 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 and 1 x Lime (T1 and T2 Applicants Plan), T123 and T124 of Tree Preservation Order, either:

REFUSE CONSENT for the following reason:

The loss of the trees 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 trees shall be agreed in writing with the Local Planning Authority and the trees shall be planted within 12 months of the commencement of the approved treatment (either wholly or in part). The replacement trees shall be maintained and / or replaced as necessary until 2 new trees 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: 26th September 2013

Consultees:

Neighbours consulted: 8

Replies: 2

0 – Support

2 – Objection.

The grounds for objection can be summarised as:

- *“Oak trees are magnificent, a wildlife haven as well as fabulous for your health. This is a beautiful tree.”*
- *“because Oak roots are found it is absolutely no proof they are totally responsible”*
- The application to fell the trees appears to be motivated by financial considerations
- The insurance company *“should not have taken the risk insuring an already existing building that quite clearly has a tree neighbour... It [the risk] was definitely foreseeable by the insurance companies as they know from long term experience that houses built with trees near pose this threat.”*
- The loss of trees is *“permanent and affects our health and the planet and the only one who gains are the insurance companies.”*
- Unsubstantiated allegations that insurance companies are involved in fraudulent practices.
- *“This is the same owner who previously owned 51 Oakleigh Park South. They removed every tree from 51 Oakleigh Park South, front and rear without permission. Our concern is they intend to do the same next door at 53 Oakleigh Park South.”*

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

TREN11509 - Reduce size and density of crown by 30% - Oak tree (T124) and Lime tree (T123) of TPO.

- Conditional approval 17th September 1997

TREN11509A - Lime - reduce size and density by 30% T123 of Tree Preservation Order; Oak - reduce size and density by 30% T124 of TPO.

- Withdrawn 3rd November 1997

N11509AB/99/TRE - Lime - reduce size of crown by 30%, standing in T123 of Tree Preservation Order. Oak - reduce size of crown by 35%, standing in T124 of Tree Preservation Order.

- Conditional approval 20th December 1999

PLANNING APPRAISAL

1. Introduction

This application has been submitted by OCA UK Ltd acting as on behalf of insurers dealing with a case of alleged subsidence at 53 Oakleigh Park South, London, N20 9JL.

The application was initially submitted on the 6th September 2013. However, it was incomplete and additional supporting documentation/clarification was requested. All of the mandatory information was received on the 2nd December 2013 and the application was registered on that date.

The Tree Preservation Order was made on the 24th October 1969 and includes a number of Individual, Group and Area designated trees growing on properties in Oakleigh Park South, Oakleigh Avenue and surrounding roadways.

2. Appraisal

Trees and Amenity Value

The Oak stands in the rear garden of the property about 6 metres from the rear elevation of the house and 2-3 metres from the garage. The Lime stands within 5 metres of the front boundary of the property and adjacent to the left hand edge of the driveway (when viewed from the roadway). The two trees are clearly visible from Oakleigh Park South and the junction between Oakleigh Park South and Oakleigh Avenue (the Oak being visible above and between the properties). Oakleigh Park South and Oakleigh Avenue do not have any street trees and as such the large trees growing within the gardens of the residential properties contribute significantly to the suburban character and appearance of the area, helping to screen and soften the dwellings. An estimate of the age of these trees and comparison with historic Ordnance Survey maps suggests that the Oak is a former field boundary tree which considerably predates the construction of properties in Oakleigh Park South and Oakleigh Avenue.

The Oak is about 18 to 20 metres in height and a trunk diameter of 83cm when measured above the bark at 1.5 metres from ground level. The Lime is about 16 metres in height and has a trunk diameter of 60cm when measured above the bark at 1.5 metres from ground level. Both trees are mature trees and both have been previously reduced, thinned and lifted. There has been regrowth from the previous treatments and there are some apparently localised pockets of rot at some of the previous reduction points. The Lime has vigorous budding throughout the crown and the Oak has a reasonable distribution of apparently healthy buds. The crown of both trees contains some deadwood. Some of the branches of the Lime are crossing and there is some bark to bark contact. The Oak has a small shallow cavity at the base of its trunk and another cavity in one of the buttress roots. The overall structural condition of the Oak appears reasonable and the Lime has no obvious major structural faults.

The application

The reasons given for the proposed removal of the Oak and the Lime (T1 and T2 of the applicant's plan) are:

- 1. The above tree works are proposed as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building.*
- 2. The above tree works are proposed to limit the 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 £10,000 and £100,000, 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 the peaceful enjoyment of their property.*
- 4. It is the case than 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 instance the planting of an Ornamental Apple, Malus Mokum, with a stem girth of 10-12cm, container grown and planted at a location within 1-2m of the stump of English Oak T1, would be a suitable replacement. In respect of Lime T2 I consider that in this instance the planting of a Silver Birch tree, with a stem*

girth of 10-12cm, container grown and planted at a location within 1-2m of the stump of Lime T2 would be a suitable replacement.

OCA UK Ltd have submitted various documentary evidence in support of this application. All of this information has been independently assessed by our Structural Engineer who has commented as follows:

“Trees

The OCA report shows the locations trees of around the property. Their report shows the Oak tree T1 at the rear of the house and the Lime tree T2 is in the front garden. T1 is 5.7m from the building and 19.9m high, T2 is 10.5m from the building and 18.1m high.

The other tree indicated is Tree of Heaven T3 and Cherry/Laurel/Holly H1.

Damage

The damage to the building was discovered in February 2012. Previous damage was not considered significant and superficial repairs were undertaken during redecorations.

The damage consists of slight cracking of ceilings throughout the house, and some cracking at window heads.

The photographs provided show the cracks to the ceilings, there appears to be some hairline cracks of the walls. There is a photo of the roof purlin with a slightly open joint, this may be indicative of wall movement or it could be the way it was constructed.

The damage is classified as category 1 in accordance with BRE Digest 251.

Subsoil investigations

CET carried out a subsoil investigation on 21/6/12. This consisted of trial pits and boreholes to the front, BH2, and the rear, BH1, of the house. According to the met office records the June of 2012 had particularly heavy rainfall.

Results of the investigations were as follows;

- 1. The foundations vary between 950mm and 1000mm deep.*
- 2. In BH1 there is stiff clay with a very sandy clay layer at 2.5m to 3m which coincides with a ground water strike at 3.2m. Roots extend to 2.5m, root fragments to 3m depth.*
- 3. BH2 was only 1.7m deep due to an obstruction, roots extend to 1.5m depth.*
- 4. Lime tree roots identified in the front borehole and Oak roots identified in the rear borehole.*

Soil Testing

The soil analysis results are not conclusive with regard to desiccation, however there is some indication of desiccation at 2.5m to 3m depth at the rear and at 1.5m depth under the front foundations.

No ground heave prediction has been calculated.

Monitoring

Level monitoring has been carried out from 18/7/12 to 21/8/13.

Most of the recorded movement occurred at the rear left hand side with a maximum overall movement of 6mm, and at the front with a maximum overall movement of 3mm. The pattern of movement is seasonal.

Drainage

The foul water drain was surveyed, the underground pipe is pitch fibre and has partially collapsed due to pressure over. It is likely the drains are leaking, which would explain the higher moisture contents at the underside of the foundations.

Root ingress was recorded in the manhole.

Conclusion

The foundation depth would be reasonable if the building were not within the influence zone of trees.

The soil test results are not conclusive however this may be due to the leaking drains and the wet summer of 2012. However there is some indication of desiccation at 2.5m to 3m depth at the rear and 1.5m depth at the front.

The monitoring results indicate the house has suffered a minor episode of subsidence of the foundations with slight damage occurring to the ceilings and hairline cracks to some walls.

The Oak tree T1 and Lime tree T2 are likely to be implicated in minor damage to the building.

No ground heave assessment has been undertaken, this is recommended were the trees proposed for removal pre-date the building.”

The Engineering Appraisal Report by Cunningham Lindsay dated 11th July 2012 which was submitted as part of this application states *“The main area of damage is visible at first floor level and predominantly takes the form of slight cracks to ceiling throughout with less extensive cracking at window heads...The level of damage is very slight, and is classified as category 1 in accordance with the BRE Digest 251 – Assessment of damage in low rise buildings.”*

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 1 damage as *“Fine cracks which can be treated easily using normal decoration. Damage generally restricted to internal wall finishes; cracks rarely visible in external brickwork. Typical crack widths up to 1mm.”*

The BRE Digest concludes *“Category 2 [Typical crack widths up to 5mm] 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.”*

A Tree Officer visited the property on the 15th January 2014 to inspect the trees and the damage at the property. It was noted during this site visit that extensive repair works were being undertaken and that the internal rooms had been stripped out and replastered.

Given that such repair works (far in excess of what is recommended for Category 1 damage in BRE Digest 251) have already been undertaken, it may be questioned whether the proposed removal of the TPO Oak and Lime at this juncture is excessive / premature.

Having witnessed the repair works which have been undertaken we wrote to OCA UK Ltd advising them of the repair works, noting that the Oak and Lime have been previously reduced and offering them an opportunity to amend the application in respect of “1 x Oak and 1 x Lime (T1 and T2 Applicants Plan) – Reduce back to most recent previous points of reduction and (Remove Deadwood). T123 and T124 of Tree Preservation Order” (such reduction would accord with previous treatments consented to these trees).

The applicant/agent has not accepted this offer.

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 £10,000 and £100,000, depending upon whether the tree/s can be removed or have 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 applicant/agent declined the opportunity to amend the application to “1 x Oak and 1 x Lime (T1 and T2 Applicants Plan) – Reduce back to most recent previous points of reduction and (Remove Deadwood). T123 and T124 of Tree Preservation Order.”

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, nor would the cost of the repair works which have been undertaken prior to the date of the decision.

If it is considered that the amenity value of the trees is so high that their proposed felling is not justified on the basis of the reasons 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 our Structural Engineer has concluded "*The Oak tree T1 and Lime tree T2 are likely to be implicated in minor damage to the building.*"

However our Structural Engineer has also raised concern that "*no ground heave assessment has been undertaken, this is recommended were the trees proposed for removal pre-date the building.*"

If it is concluded that the repair works which have already been undertaken at the property have addressed the problem, 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 subject Oak and Lime trees roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and despite the repair works which have already been undertaken, that the damage would only be addressed by the removal of these trees, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £90,000 if the trees are retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION

Mostly these have been addressed in the main body of the report.

Although unrelated to the current application, the Council did undertake a prosecution in respect of unauthorised treeworks (including removal of trees) at 51 Oakleigh Park South in 2004.

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

This application is for the proposed removal of the Oak and the Lime because of their alleged implication in subsidence damage to that property.

The proposed felling of these two trees would be significantly detrimental to the streetscene and public amenity. The replacement planting proposed by OCA UK Ltd would not be capable of achieving the same overall size, habit or lifespan as the subject Lime and Oak.

Our Structural Engineer has assessed the supporting documentary evidence and has concluded that the subject trees “*are likely to be implicated in minor damage to the building.*” However, repair works have already been undertaken.

In addition, our Structural Engineer has noted that “*No ground heave prediction has been calculated*” and recommended that such calculations should be undertaken before removing trees which pre-date the building.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the trees and their importance to the character and appearance of Oakleigh Park South and Oakleigh Avenue, 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 repair works which have already been undertaken and our Structural Engineer’s concerns about the potential for ground heave.

The Council must decide whether it is prepared to refuse consent to the proposed removal of the trees and face a possible compensation claim potentially in excess of £90,000 or allow the removal of the trees subject to replacement planting.

