



LONDON BOROUGH

COMMITTEE REPORT

LOCATION: Westwood House, The Bishops Avenue, London N2 0BA

REFERENCE: TPF/00200/15 **Received:** 8 April 2015
WARD: Garden Suburb **Expiry:** 3 June 2015

CONSERVATION AREA

APPLICANT: Mr Mesforoush and Mrs Shabazi

PROPOSAL: 2 x Oak (Applicant's Ref T1 and T4) – Remove. Standing in group G27 of Tree Preservation Order.

RECOMMENDATION:

That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed felling of 2 x Oak (Applicant's Ref T1 and T4) – Standing in group G27 of Tree Preservation Order

Option 1: REFUSE

REFUSE CONSENT for the felling of 2 x Oak (Applicant's Ref T1 and T4) 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.

Option 2: SPLIT DECISION

REFUSE CONSENT for the felling of 1 x Oak (Applicant's Ref T1) 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.

And

APPROVE CONSENT for the felling of 1 x Oak (Applicant's Ref T4) **SUBJECT TO CONDITIONS:**

1. The species, size and siting of the replacement tree shall be agreed in writing with the Local Planning Authority and the tree 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 is 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.

Option 3: APPROVE

APPROVE CONSENT for the felling of 2 x Oak (Applicant's Ref T1 and T4) 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 6 months (or as otherwise agreed in writing) 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 Site Notice: 16th April 2015

Consultees:

Neighbours consulted: 6

Replies: 0

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

- **F/03656/13**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Refused

Decision Date: 10 October 2013

Appeal: Dismissed

Description: Part single and part two storey side extensions with 3no. rooflights. New rooflight to existing garage. Single storey rear extension. Creation of a new basement with 2no. lightwells. Provision of internal lift. Roof extension including rooflights.

- **F/04109/12**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Refused

Decision Date: 26 March 2013

Description: Part single and part two storey side extensions with rooflights including a new porch. Creation of a new basement with 3no. lightwells. Provision of internal lift. Roof extension including rooflights.

- **F/01003/11**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Withdrawn

Decision Date: 13 April 2011

Description: Demolition of existing two storey family dwelling. (CONSERVATION AREA CONSENT)

- **F/00788/11**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Withdrawn

Decision Date: 13 April 2011

Description: Demolition and rebuild of two storey family dwelling including rooms in roofspace and basement level.

- **F/02619/10**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Withdrawn

Decision Date: 4 October 2010

Description: Demolition and rebuild of two storey family dwelling including rooms in roofspace and basement level.

- **F/02620/10**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Withdrawn

Decision Date: 29 September 2010

Description: Demolition of existing two storey family dwelling. (CONSERVATION AREA CONSENT)

- **C03018K/01/TRE_B**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Refused

Decision Date: 17 August 2001

Description: 4x Oak, 1x Hornbeam - remove, all standing in group G27 of TPO.

- **C03018E/04/TRE_B**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Trees: Not to Make TPO

Decision Date: 8 November 2004

Description: 2 x Cypress - Fell as Close to Ground Level as Possible

- **C03018L/03**

Address: Westwood, The Bishops Avenue, London, N2 0BA

Decision: Refused

Decision Date: 1 June 2004

Description: Erection of a replacement three storey plus basement dwelling following demolition of "Westwood House."

PLANNING APPRAISAL

1. Introduction

An application form and various supporting documents proposing the felling of two Oak trees (applicant's ref. T1 and T4) in the garden of Westwood House, The Bishops Avenue, London N2 0BA for the reason that the "Trees are implicated in clay shrinkage subsidence damage" were submitted via the Planning Portal on 1st May 2014 by MWA Arboriculture Ltd acting as agent for Mr Mesforoush and Mrs Shabazi. However, there were shortcomings in the

submission so clarification and additional information was sought – the application was registered on 8th April 2015.

It is alleged that the rear left hand corner of Westwood House is damaged.

The application documents also refer to the proposed removal of a third Oak (applicant's ref. T3) which is standing close to Oak T4 on The Bishops Avenue frontage. Oak T3 is also in group G27 of the Tree Preservation. However, Oak T3 is dead and could therefore be removed pursuant to the exemptions in the tree preservation legislation (subject to replacement planting provisions). It may be noted that the tree was dead in December 2013, but it is unclear for how long prior to that it had been dead. The proposed removal of Oak T3 does not form part of this application.

2. Appraisal

Trees and Amenity Value

Westwood House is located at the junction of The Bishops Avenue and Byron Drive (a cul-de-sac off the western side of the main Avenue). There are a number of mature trees along both of the roadside boundaries. The rear boundary, to the south of the rear garden, abuts Byron Drive; the eastern flank boundary of the garden (and access to the site) faces The Bishops Avenue.

The MWA plan is 'not to scale – indicative only' and does not show all of the trees in the garden – it includes only 5 Oaks and 2 Hornbeam plus a group of Laurel / Rhododendron. By contrast the BS5837 arboricultural report submitted as part of the 2013 redevelopment application (prepared by a different arboricultural consultant) detailed 7 Oaks, 3 Hornbeam, 2 Wild Plum, 1 False Acacia plus a group of Oak, Cypress and Hornbeam with a Laurel understorey. The MWA report states "*Vegetation not recorded is considered not to be significant to the current damage of pose a significant risk in the foreseeable future*" – although it may be noted that some of the 'other Oaks' are closer to the building than MWA's Oak T1.

The MWA plan shows Oak T1 ("Applicant's ref. T1") standing in the lawn at some distance from the building, towards the corner of the rear garden / junction with Byron Drive and The Bishops Avenue. The garden area is set approximately 1.5 metres above the level at which the building stands, with a small Yorkstone paved area and retaining wall immediately around the house. Oak T1 is large mature tree - the MWA schedule details it to be located at 15.35 metres from the building; 17 metres in height, with a trunk diameter of 810mm (measured at 1.5m above ground level), and a crown spread of 17.6 metres. The BS5837 arboricultural report details broadly similar dimensions but also notes the Oak to be of normal growth vitality, good structural condition, high landscape contribution, BS Category B1,2 with a useful life in excess of 40 years – these accord with my own observations on site. The Oak has been previously lifted, thinned, and there have been some branch removals (some previous storm damage); there is some minor deadwood and localised rot but the tree is generally in good health with no major faults apparent. The Oak, one of the best trees in the vicinity, is set slightly closer to The Bishops Avenue frontage and is very clearly visible from both Byron Drive and The Bishops Avenue, and as part of a group from White Lodge Close.

The MWA plan shows Oak T4 ("Applicant's ref. T4") as being on The Bishops Avenue frontage, adjacent to the tarmac parking area, and aligned with the single storey side extension. Oak T4 is also a large mature tree - the MWA schedule details it to be located at 4.36 metres from the building; 19.1 metres in height, with a trunk diameter estimated to be 750mm (at 1.5m above ground level), and a crown spread of 16.3 metres. The BS5837 arboricultural report details two Oaks that could correspond with T4 of the MWA plan but,

assuming that the subject Oak is set south of the main entrance and aligned to the south east of the side extension, it indicates the tree to be 15 metres in height, with a trunk diameter of 660mm, and a crown spread of 12 – 13 metres; and additionally notes the Oak to be of moderate growth vitality, good structural condition, medium landscape contribution, BS Category B1 with a useful life of 20 - 40 years, but observing there to be minor dieback, some small shoot death, sparse canopy in places, retaining wall at base. At the time of my own inspection, the sparseness of the canopy and dieback were clearly evident. The tree has been previously lifted and thinned. The Oak is very clearly visible from The Bishops Avenue and as part of a group from White Lodge Close and Byron Drive.

The Bishops Avenue was constructed in about 1887 on land which had at one time been part of the Bishop of London's hunting park. The Appeal Decision (dismissing the 2013 development application) notes that the original detached dwelling, 'Westwood', which was built in 1900, now comprises two semi-detached properties – of which Westwood House is one with the adjoining Ha Kha Manor / Shaikha Manor, 9 Byron Drive being the other half. The mature Oaks (and Hornbeams) at the site are likely to have been part of the Bishop's Wood.

The site is within the Hampstead Garden Suburb Conservation Area – in which trees and landscaping are integral to the character and appearance. As The Bishops Avenue Character Appraisal Statement notes:

"This [view from the south] is enhanced by the lines of trees which form a link between the treed bank within Kenwood and the Arcadian quality of the Avenue itself."

"The winding nature of the Avenue adds a certain relaxed informality to the area which the woodland and Arts and Crafts nature of many original building reinforces to create a 'natural' vernacular air and much sought after benign relationship between the built and natural environment."

"The attendant loss of trees and greenery and denser levels of building are eroding the special semi-rural character of this part of the conservation area and replacing it with a more urban feel."

"The lines of trees in verges and along front boundaries add grandeur to the Avenue, guide the eye along, and clearly define spaces. This boundary between public and private further underlines the exclusivity of properties and the area providing soft screening and privacy. As such they are a vital part of its special character."

Both the Oaks, T1 and T4, have significant public amenity value – contributing as individuals and as part of a group to the streetscape in terms of screening, historic value, as well as to the character and appearance of the area.

It is considered that the loss of three mature Oaks (including the dead Oak, T3) from the boundary screening would be of considerable detriment to public amenity and that replacement planting would take decades to attain similar stature and make a commensurate contribution to the character and appearance of the area. However, due regard has to be taken of the reason (and supporting documentary evidence) for the proposed removal and the condition of the trees.

Background to the application

As noted above, the agent initially submitted an application form and various supporting documents proposing the felling of two Oak trees (applicant's ref. T1 and T4) in the garden of Westwood House, The Bishops Avenue, London N2 0BA for the reason that the "Trees are implicated in clay shrinkage subsidence damage" to the property via the Planning Portal on 1st May 2014. This submission was cross-referenced with the list of information that the

Portal's Guidance Notes state must be provided if the reason for the proposed treework is subsidence and was considered inadequate on several grounds. The agent was advised that the following information / clarification would be required:

- Sketches of damage required
- Check if relates to recent extension
- Any previous underpinning?
- Geological strata from geological map?
- What is source of Willow tree root?
- Details of management?
- No level monitoring provided
- No reason for absence of level monitoring
- Insufficient crack monitoring to check for enhanced seasonal movement
- Sketches of monitoring points required
- Location of B/H2?
- Ground heave assessment required
- Number of Oak trees – DNA analysis required to check which tree roots implicated

The agent responded, contending that the requisite information had been submitted, and was accordingly advised that our Structural Engineer had noted the following:

1. *The crack monitoring consists of four readings over a period of November 2013 to May 2014. The maximum recorded movement is very small, i.e. 0.85mm, and one set of results show a small increase which is the opposite of what would be expected with tree related movement. The monitoring provided is not sufficient to confirm that the building is being affected by **enhanced** seasonal movement.*
2. *Level monitoring undertaken relative to a stable datum over a period of 9 months is preferred in these cases because it provides detailed information on the movement of the whole building. This significantly assists with the assessment of the likely causes of the damage.*
3. *There are a number of oak trees near the building. Oak T4 is next to what appears to be a recent extension (according to our records there was an extension to the building in 1991) which does not appear to be damaged. It is possible the deeper foundations of the extension are acting as a root barrier to oak T4 which MWA have recommended for removal. For this reason I would suggest DNA profiling of the root samples is undertaken to confirm T4 is implicated.*
4. *It is noted the trees are older than the property and according to my preliminary assessment there is a heave potential of 24mm. This would be enough to cause further damage to the building. Therefore I suggest MWA do their own heave assessment in accordance with BRE Digest 412 and then assess the implications on this building, and any other buildings within the influence zone of the oak trees recommended for removal.*
5. *Whilst the photos help to illustrate the damage, sketches can be used to identify crack patterns and suitably annotated to show; crack widths, tapering of cracks, location of cracks related to a plan of the building.*

In February 2015 additional information was submitted which addressed some, but not all, of the matters raised. The agent was advised that:

- no detailed sketches had been provided

- level monitoring period was too short
- no heave assessment

In March 2015 a sketch of the cracks and some heave information were received, also clarification that no vegetation management had been undertaken since the start of the notification period. Our Structural Engineer requested an explanation of their heave contention but the agent declined to clarify.

On 8th April 2015, the agent indicated that he considered that “requirements for a valid application have been met in full”; that “The authority may ask for more information or evidence to help determine an application, but it has no power to require information beyond that specified in the standard application form”; and threatened to submit an appeal for non-determination and various letters of complaint unless the application was registered. He stated that the application was to be registered on the basis of “All the information listed in the original application and all that subsequently submitted via e-mail in response to your various requests.”

The application

The application submitted by MWA Arboriculture Ltd acting as agent for Mr Mesforoush and Mrs Shabazi was registered on 8th April 2015. The reason for the proposed felling of the two Oaks (applicant’s reference T1 and T4) cited on the application form is:

Trees are implicated in clay shrinkage subsidence damage.

The supporting documentation to be considered as part of the application:

- MWA Arboricultural Appraisal Report dated 30/1/14
- Crack monitoring 15/11/13 – 17/03/14
- Crack Monitoring 15/11/13 – 30/5/14
- Crack Monitoring 15/11/13 – 29/1/15
- Crack Monitoring 15/11/13 – 19/5/15
- Level Monitoring 31/7/14 – 29/1/15
- Level Monitoring 31/7/14 – 19/5/15
- Monitoring site plan
- Crack sketch dated 3/15
- Maule Engineering Report dated 28/4/14
- DNA test dated 10/10/14
- Geo Investigate Intrusive Site Investigation Report dated 10/12/13
- Geo Investigate Intrusive Site Investigation Report dated 12/8/14

The Council’s Structural Engineer has assessed the information submitted via the Planning Portal under reference PP- 03364984 date submitted 1st May 2014 as well as the subsequent e-mail correspondence with attached additional and updated information. In addition to the observations above, he has noted:

Further to the latest SI information I would comment as follows;

- 1. The level monitoring for 31/7/14 to 29/1/15 and the crack monitoring for 15/11/13 to 29/1/15 does indicate enhanced seasonal movement to the corner of the building closest to T1. Overall maximum movement in level monitoring is 15.7mm.*
- 2. The DNA analysis identifies Oak T1 roots in BH1 and Oak T4 roots in BH5. Both located at rear LHS corner.*
- 3. No detailed sketches provided however photos of damage provided, photo 4 shows cracking consistent with subsidence to the rear LHS corner of the house opposite the Oak tree T1.*

On the basis of the above and the previous ground investigation, Oak trees T1 and T4 would be implicated in the damage to the rear LHS corner of the house. The only outstanding issue is an estimate of clay heave potential and the likely effect on the house.

Followed by:

I must admit I am not sure how a ground heave of 24mm equate to a crack closure of 2.4mm. Perhaps they would like to explain.

I think we should have their heave calculations.

On 28th May 2015 (further to updated monitoring data 19/5/15):

Not much change to the monitoring values since the previous set in Jan 2015, however this is not surprising this time of year.

I think we still await ground heave calculation.

However, it appears that the agent is unwilling to provide clarification of the heave calculation, with comments such as:

- *“On the issue of heave, engineers have already assessed this and have concluded it to be within acceptable limits (see engineers report). This was clarified in my e-mail to you of 3 June 2014. An uplift of 24mm (your estimate in your e-mail of 16th June) very broadly equates to crack closure of approximately 2.4mm. Cracks in excess of this were recorded hence crack closure will absorb your 24mm of uplift. Irrespective of this, this issue of heave is for insurers to deal with and is not something which should prevent the registering of an application for works subject to a tree preservation order.” (13/3/15)*

Our Structural Engineer requested an explanation as to why it was contended that a “ground heave of 24mm equate to a crack closure of 2.4mm” but the agent declined to clarify, responding:

- *“An assessment of heave has already been provided to you but notwithstanding this heave calculations are irrelevant to the application being registered.” (8/4/15)*

Notwithstanding the Appeal Inspector’s statement that Westwood House is a semi-detached dwelling created by subdivision of the 1900 ‘Westwood’, the Maule Engineering Report (28/4/14) describes the property as a ‘detached house built circa 1935’.

The Maule report says that MWA Arboriculture Ltd “Visited the property on 9 January 2014 and issued their report on 30 January 2014..... They concluded that three Oak trees all belonging to the homeowner should be removed. Two of these were directly implicated in causing the subsidence damage whilst the third tree was noted to be dead and was recommended to be removed or made safe for Health and Safety reasons.” The Maule report also notes that “The monitoring was initiated on 15 November 2013 and is ongoing.” Continuing that the main fractures had “displayed closing movements of up to 0.85mm magnitude” between 15 November 2013 and 27 March 2014.

It appears from the Maule report that MWA Arboriculture concluded that the trees were directly implicated in causing the subsidence damage in the absence of any monitoring indicating seasonal movement; any drainage survey data; or any DNA analysis. However, it may be noted that the MWA report states “Opinions and recommendations are made on the understanding that B Maule & Co. Ltd are satisfied that the current building movement and the associated damage is the result of clay shrinkage subsidence and that other possible causal factors have been discounted.”

The Maule Report notes that at the time of inspection (25/9/13) the damage was assessed as:

- *“The primary damage comprises diagonal stepped cracks, internally and externally, to the rear left hand corner of the house. Previous repairs to the brickwork in the left hand flank wall of the house were evident. It is understood these were carried out c10 years ago.*

The current fracture damage can be classed as falling within Category 2 as per BRE Digest 251.”

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.”*

No drainage information was provided. At the time of my site inspection, I noticed that the Yorkstone crazy paving around inspection chambers was uneven and had been displaced. The data for BH5 does note “slight water seepage” but the soil test results do indicate deeper desiccation.

Given the importance of the Oaks in the streetscene; the apparent presumption that the trees are implicated in subsidence damage; that the damage is assessed as BRE Category 2; and the potential heave implications (especially in the light of a sub-divided building), it may be questioned whether the proposed removal of both the TPO Oaks at this juncture is excessive / premature. However, our Structural Engineer has noted that *“Oak trees T1 and T4 would be implicated in the damage to the rear LHS corner of the house”*. Albeit that he has concerns about heave potential and the likely effect on the house.

However, notwithstanding the alleged subsidence, it should be noted that Oak T4 (the tree closer to the building) has a sparse canopy and is dying back. Given its condition, it is believed that some treatment would be justifiable on arboricultural grounds alone (especially in view of its location immediately adjacent to the public highway). As noted previously, the nearby dead Oak, T3, could be removed in accordance with the exemption provisions. Both T3 and T4 are considerably closer to the building than Oak T1. Consideration should be given as to whether it would be appropriate to remove Oak T4, the poorer tree which is closer to the building (as well as T3); then monitor the impact of the action prior to assessing

whether further action such as pruning or felling the other Oak T1 (which is a much better tree standing in excess of 15 metres from the building) would be justifiable / necessary.

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 *"costs associated with any underpinning required to the rear left hand corner of the house will be in the region of £10,000. If the movement becomes more widespread requiring even greater underpinning the associated costs will increase."*

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 - although, in this case, there is an option of making a split decision allowing the removal of one but not both trees. If it is considered that the amenity value of the tree(s) 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 borne in mind that the Council's Structural Engineer has noted that *"Oak trees T1 and T4 would be implicated in the damage to the rear LHS corner of the house"* albeit that he has concerns about heave potential and the likely effect on the house.

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 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 Oaks' 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 at least £10,000 if underpinning is required) if consent for the proposed felling 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 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 application submitted by MWA Arboriculture Ltd acting as agent for Mr Mesforoush and Mrs Shabazi was registered on 8th April 2015. The reason for the proposed felling of the two Oaks (applicant's reference T1 and T4) cited on the application form is that the trees are implicated in clay shrinkage subsidence damage.

The proposed felling of the Oaks would be significantly detrimental to the streetscene and to the character and appearance of The Bishops Avenue within the Hampstead Garden Suburb Conservation Area.

Our Structural Engineer has assessed the supporting documentary evidence and has noted that "*Oak trees T1 and T4 would be implicated in the damage to the rear LHS corner of the house*" albeit that he has concerns about heave potential and the likely effect on the house.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the trees, 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 Engineer's concerns.

If it is concluded on the balance of probabilities that the Oaks' 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 both the trees' removal, there is likely to be a compensation liability (the applicant indicates repair works would be at least £10,000 if underpinning is required) if consent for the proposed felling is refused.

However, particularly given the public amenity value of the Oaks, if it is concluded that the felling of the closer Oak (applicant's ref. T4) would address the problem regardless of the proposed removal of the other Oak (T1); 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 to fell the better Oak (applicant's ref. T1).

