



## Consultations

Date of Site Notice: 10<sup>th</sup> September 2015

Consultees:

Neighbours consulted: 65

Replies: 63            0 support            62 objections plus request for procedural clarification from tree owner

(1 additional objection 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
- Presence of tree influenced design and layout of area with gap between housing to allow for retention and views of existing mature boundary tree
- Tree identified on Parker and Unwin 1911 plan of Hampstead Garden Suburb
- Oak significant to streetscene especially since recent storm damage to nearby mature Oak
- Oak can be seen by the general public from Asmunds Hill which is much used by pedestrians walking to and from nearby schools and shops
- Oak is a fine specimen which gives much pleasure to residents of The Orchard
- Oak is wonderful backdrop to the street view / part of green back-drop which contributes to the unique rural atmosphere of Hampstead Garden Suburb
- Important landmark in area
- Oak of good form, healthy and significant size
- Oak integral part of Suburb's history
- Historical significance being one of boundary oaks retained by Unwin in the original layout of the artisans quarter
- Mature trees essential to unique green character and appearance of Suburb Conservation Area
- Trees like this oak are a very important feature of Hampstead Garden Suburb and constitute a fundamental characteristic of the area
- This oak is unquestionably an amenity of great proportions, physically and emotionally
- The Suburb's character is slowly being eroded by the removal of many of its mature trees – cumulative effect of felling individual oaks across the Suburb is detrimental to its nature, appearance and character
- Felling would result in a stark gap in the leafy view which would be horribly apparent
- Oaks iconic species in Hampstead Garden Suburb
- Oak described in HGS 2012 Tree Survey as "Tall shapely tree, visible through gap between houses on Asmunds Hill, old boundary oak, winter views of church dome through winter tracery"
- Beautiful tree appreciated by residents for decades, living history
- It's too easy to cut down a tree and all its years of glory and its future is gone, in one day's labour
- Value for screening / privacy
- Importance for wildlife, particularly bats and birds (including Woodpeckers and Owls)
- Felling of this mature oak tree would have a huge impact on the natural wild life and local environment
- Role of tree in filtering pollution and noise

- Important function in oxygenating our air
- Contribution to reduction of standing water / local flooding
- Marks passage of seasons
- Very appealing view all year round, even in winter when it forms a striking sculptural silhouette
- Alternatives to tree removal
- Felling excessive
- Previous request to fell this Oak resulted in making of Tree Preservation Order
- Such trees should not be removed unless compelling reasons and evidence of need and no alternatives
- Evidence to support the case to remove this important tree is scant
- Root identification report failed to conclusively identify any species other than Ash
- Arboricultural Consultant's report states that "There is currently no positive root identification to implicate T2 (Oak)"
- Other nearby properties underpinned
- Need for felling not justified 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
- Residents do not wish the tree removed, it is the insurer's agents who wish to remove this as it will be cheaper than dealing with the subsidence in other ways
- Cynical attempt by the insurance company to sue the council for the difference for so called remedial works to secure the property and underpinning
- Argument based on cost to insurers does not take account of wider cost to community
- The value of the tree to the community and to local wildlife significantly outweighs the comparatively modest financial cost of repairs to the building
- CAVAT value of tree in excess of £50,000
- Insurance company have no understanding of the tree's considerable importance locally

## **MATERIAL CONSIDERATIONS**

Relevant Recent Planning History:

Treeworks

**TCA/00069/14/F** - 1 x Oak (T2 Applicants Plan) - Remove  
 - Tree Preservation Order made 24<sup>th</sup> February 2014

## **PLANNING APPRAISAL**

### 1. Introduction

An application form proposing removal of an Oak tree (applicant's ref. T2) and a section of mixed species hedge in the rear garden of 12 Asmunds Hill in connection with alleged damage at the property was submitted via the Planning Portal in January 2014. A s211 Notification of Intended Conservation Area Treeworks was thus registered, under reference TCA/00069/14/F. In accordance with the Town and Country Planning Act 1990

(as amended), if the Local Planning Authority wishes to control treatment of a tree subject of a s211 notice of intended treeworks, it must make a Tree Preservation Order (TPO). An application for TPO consent would then be required and would be determined in accordance with the provisions of the relevant legislation. It is not possible to grant consent or refuse a s211 notice of intent. Several objections to the proposed removal of the Oak (TCA/0069/14/F) were received from local residents as well as the Hampstead Garden Suburb Trust, and it was considered appropriate to include the Oak in a Tree Preservation Order (TPO). If a tree is included in an Order, a full TPO application for consent is necessary for its treatment, and hence the submission of mandatory supporting documentation in accordance with statutory requirement – thus allowing more detailed assessment of the tree's potential involvement in the alleged subsidence than would be possible under the s211 notification procedure. The London Borough of Barnet 12 Asmunds Hill, London, NW11 6ET Tree Preservation Order 2014 was made on 24<sup>th</sup> February 2014 and was confirmed without modification on 22<sup>nd</sup> August 2014.

Subsequent to the inclusion of the Oak in the Order, an application was received via the Planning Portal on 29<sup>th</sup> May 2015 for the proposed felling of the tree - however, there were shortcomings in the information – clarification was thus requested. Further information was submitted on 16<sup>th</sup> June, 10<sup>th</sup> July, 20<sup>th</sup> August and 27<sup>th</sup> August 2015, allowing registration of the application.

12 Asmunds Hill is a grade II listed, two-storey, semi-detached, residential dwelling house, located on the western side of Asmunds Hill, with the rear garden abutting The Orchard. It is within Area 2 of the Hampstead Garden Suburb Conservation Area.

## 2. Appraisal

### Trees and Amenity Value

The subject Oak stands at the end of the rear garden, adjacent to the flank boundary with 14 Asmunds Hill and the rear boundary with The Orchard. The Oak is a mature tree some 15 metres in height which has been topped at 8 metres in the distant past and a new crown has reformed – giving it a large spreading canopy; it has been previously thinned, but it appears to be in good physiological condition with no major faults apparent; the foliage is of good form and colour taking account of the time of year.

The Oak is very clearly visible in the gap between 12 and 14 Asmunds Hill and there are glimpsed views above rooftops from other locations (this part of Asmunds Hill is characterised by alternating pairs of semi-detached and terraces of four dwellings); it is also very clearly visible from The Orchard (which provides sheltered housing for the elderly) – both from the communal gardens and the parking area. The Oak contributes significantly to the screening between The Orchard and the housing in Asmunds Hill

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 is located to form a focal point to the garden area and a backdrop to the streetscene, as attested by objectors, who also note that the public amenity value of the tree is enhanced by the number of pedestrians using the area.

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 housing. 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:

“The Artisans’ Quarter was designed as a new kind of community in which attractively designed housing for a wide range of income groups was set within a green environment. The provision of large gardens and open recreational spaces was central to the vision. Social accommodation for needy groups (widows, orphans and the elderly) was provided together with community facilities such as schools, a community centre and allotments.”

“The density of development is relatively high for the Suburb. However, houses were provided with generous gardens and there are areas of allotments, tennis courts and greens which provide generous open green spaces. Housing layouts were designed to retain existing mature trees.”

“The retention of boundary oak trees from the pre-existing field boundaries, together with the street trees, hedges and generous gardens, make a lush green setting for the houses.”

Principal positive features are noted as including:

“mature oaks from earlier woodlands or field boundaries still thrive, particularly in allotments and back gardens or as focal points in the layout”

“trees and greenery rise above cottages in some areas”

“there are glimpsed views, between houses, of greenery”

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 and standing water uptake; 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, screening and privacy, 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 Environmental Services acting as agent for Subsidence Management Services was registered on 27<sup>th</sup> August 2015. The reasons for the proposed removal of the Oak (applicant’s reference T2) cited on the application form are:

- 1. The tree works are proposed to stop the influence of the tree(s) on the soil below building foundation level and provide long term stability.*
- 2. Estimated costs of repair to the building are £20K if the influence of the tree(s) remain and £4.5k if the proposed tree works are allowed to proceed. Granting permission will limit these costs. In the event of a refusal we, or our clients, will seek to secure compensation for the additional costs incurred through Section 202(e).*
- 3. Should the tree/s remain the total cost of repairs will be the Superstructural repairs + Alternative method of repairs = £24.5K.*
- 4. It is the expert opinion of both the case engineer and arboriculturalist that on the balance of probabilities the supporting information demonstrates the influence of the tree(s).*
- 5. Further monitoring results may be submitted if these become available during the course of this application.*

The supporting documentation comprised:

- SubsNetUK Drainage report for Infront Innovation dated 10<sup>th</sup> December 2013
- SubsNetUK Geotechnical report for Infront Innovation dated 5<sup>th</sup> December 2013
- SubsNetUK Soils Analysis report for Infront Innovation dated 12<sup>th</sup> December 2013

- SubsNetUK Oedometer Testing report for Infront Innovation dated 12<sup>th</sup> December 2013
- SubsNetUK Root Identification report for Infront Innovation dated 25<sup>th</sup> November 2013
- Marishal Thompson Group Arboricultural report dated 26<sup>th</sup> November 2013
- Infront Innovation Engineer's Report dated 4<sup>th</sup> November 2013
- SubsNetUK Level Monitoring report for Subsidence Management Services dated 14<sup>th</sup> April 2015 (6 readings 14/02/14 – 17/03/15) with clarification that the level monitoring had been set up following drain repairs in February 2014.
- Infront Innovation Engineering Report dated 19<sup>th</sup> May 2015 (taking account of Infront Innovation Engineer's Report 4/11/13, SubsNet Site Investigation Report 5/12/13, Marishal Thompson Arboricultural Report 26/11/13, SubsNet Monitoring Report 11/5/15)
- Crawford Certificate of Structural Adequacy dated 24<sup>th</sup> April 2013 (issued "following the completion of remedial work following your claim" confirming that Mitigation action included [unspecified] vegetation removal had been undertaken on completion of which Crawford Adjusters were satisfied that property stability had been achieved and that repair work consisting generally of superstructure crack repairs and associated redecorations had been undertaken in March 2013)
  - submitted in response to requests for clarification of details of any underpinning / building works (the agent stated "unaware of any structural repairs undertaken, attached is certificate for remedial works completed in 2013")
  - the dating of the damage (the agent referred to the Engineer's Report also stating "Previous subsidence claim in 2010, repairs completed in April 2013, cracks re appeared November 2013").
- In response to querying vegetation management, there was e-mail clarification that "We are not aware of any vegetation works undertaken since the subsidence claim reported". It was pointed out to the agent that there was an apparent discrepancy between the root identification and the vegetation noted on the site plan / arboricultural report. The agent agreed to investigate and subsequently sent e-mail clarifications dated 13<sup>th</sup> and 14<sup>th</sup> August 2015 that: (i) the site had been revisited by an Innovation Group arborist who had walked around the whole garden and inspected vegetation in both properties either side and to the rear, noting "It was agreed by all parties that there was no obvious evidence of Ash trees whether they were still in situ, recently removed or self-sown sapling. There was two stumps not noted at the time of our original site visit but these were Holly and Yew and were found to be dead/dying. No Ash was located in the nearby hedges or shrub groups. We would advise that the Fraxinus roots found should be tested again to ascertain if they are in fact actually Fraxinus."; and (ii) the tiny fragments of root from 12 Asmunds Hill had been reanalysed and "We confirm the results of the original report. Even though the ash root is so small, it has all the features which make a very positive identification of Fraxinus spp. It is in good condition. Could it have been from a recently (at the time) removed tree; otherwise a sapling which was not obvious in the group of shrubs?"
- Updated level monitoring to 22<sup>nd</sup> August 2015 (9 readings 14/02/14 – 22/8/15).

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

**Trees**

The Marishal Thompson report shows the locations trees of around the property. Their report shows the Oak tree T2 in the rear garden at a distance of 10.5m from the building and 15m high.

## **Damage**

The damage was discovered in October 2013 and is a re-occurrence of previously repaired damage.

The damage consists of cracking to the rear elevation. Internal cracks up to 3mm wide.

The damage is classified as category 2 in accordance with BRE Digest 251.

## **Subsoil investigations**

subsNetuk.com carried out a subsoil investigation in December 2013. This consisted of one trial pit and borehole, to the rear left hand side of the property. No control borehole was undertaken.

Results of the investigation were as follows;

1. The foundations are 1300mm deep.
2. Stiff Clay was encountered for the full depth of the borehole.
3. Roots extend to 1.8m depth.
4. Ash and Oak tree roots identified below foundations. There is no obvious source of the Ash root and the Oak root was barely alive.

## **Soil Testing**

The soil analysis results indicate some desiccation at 1.8m depth.

Ground heave calculations were not provided however the oedometer test results indicate a potential ground heave of 24.3mm.

## **Monitoring**

Level monitoring has been carried out from 14/2/14 to 17/3/15; now updated to 22/8/15.

Most of the recorded movement is occurring to the rear elevation, with a maximum overall movement of 6mm. The monitoring results do indicate a seasonal trend of movement.

## **Drainage**

The drains are in a poor condition and the water pressure tests indicate the drains were leaking. The drains were repaired before the monitoring commenced and therefore will not have influenced the results.

## **Conclusion**

The site investigation results indicate the oak tree T2 is likely to be implicated in the damage to the rear of the building.

The root analysis indicated the oak root had a low starch content and therefore would not be very active. Ash tree root was also identified under the foundations however there is no obvious source of this root.

The soil tests indicate desiccation to a narrow zone of clay beneath the foundation and this reflects the depth of roots encountered in the borehole.

The monitoring indicates a maximum overall movement of 6mm, however this is based on a reading in November, it is surprising that no reading was undertaken in September or October when the recorded movement is usually at a maximum.

Undertaking significant reduction works to the oak tree is likely to reduce ground movement and this could be assessed by continuing the monitoring following treeworks.

A ground heave prediction should be calculated in accordance with BRE Digest 412 to check all the properties within the influence zone of the oak tree T2 are not adversely affected by the proposed tree removal.



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 some uncertainty about which tree roots are implicated. The application submissions are clear that Fraxinus / Ash roots have been identified and the Arboricultural Consultant's report states that "There is currently no positive root identification to implicate T2 (Oak)". As our Structural Engineer notes, the root analysis indicated the oak root had a very low starch content and therefore would not have been very active - yet there was abundant starch for the confirmed ash [of mystery location].

It is likely that undertaking significant reduction works to the TPO Oak would reduce ground movement (this could be assessed by continuing monitoring). It may be noted that the tree has been topped at 8 metres in the distant past and a new crown has reformed.

The Oak is a retained field boundary tree which predates the development of the Suburb. Concerns have been raised by various objectors about heave. Our Structural Engineer notes that "Ground heave calculations were not provided however the oedometer test results indicate a potential ground heave of 24.3mm."

In view of this and the damage having been 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 agent has indicated that "*Estimated costs of repair to the building are £20K if the influence of the tree(s) remain and £4.5k if the proposed tree works are allowed to proceed..... In the event of a refusal we, or our clients, will seek to secure compensation for the additional costs incurred through Section 202(e).*"

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 "The site investigation results indicate the oak tree T2 is likely to be implicated in the damage to the rear of the building."

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 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 some extra £20,000 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 application is seeking consent for the felling of the former field boundary Oak standing in the rear garden of 12 Asmunds Hill, it being alleged that the tree is implicated in property damage at the site.

The application submitted by Environmental Services acting as agent for Subsidence Management Services was registered on 27<sup>th</sup> August 2015.

The current application follows a previous submission proposing the removal of the Oak in January 2014 which was registered as a s211 Notification of Intended Conservation Area Treeworks. At that time, several objections to the proposed removal of the Oak were received and it was considered appropriate to include the Oak in a Tree Preservation Order (TPO) - thereby necessitating the submission of a TPO application with mandatory supporting documentation in accordance with statutory requirement and thus allowing more detailed assessment of the tree's potential involvement in the alleged subsidence than would be possible under the s211 notification procedure.

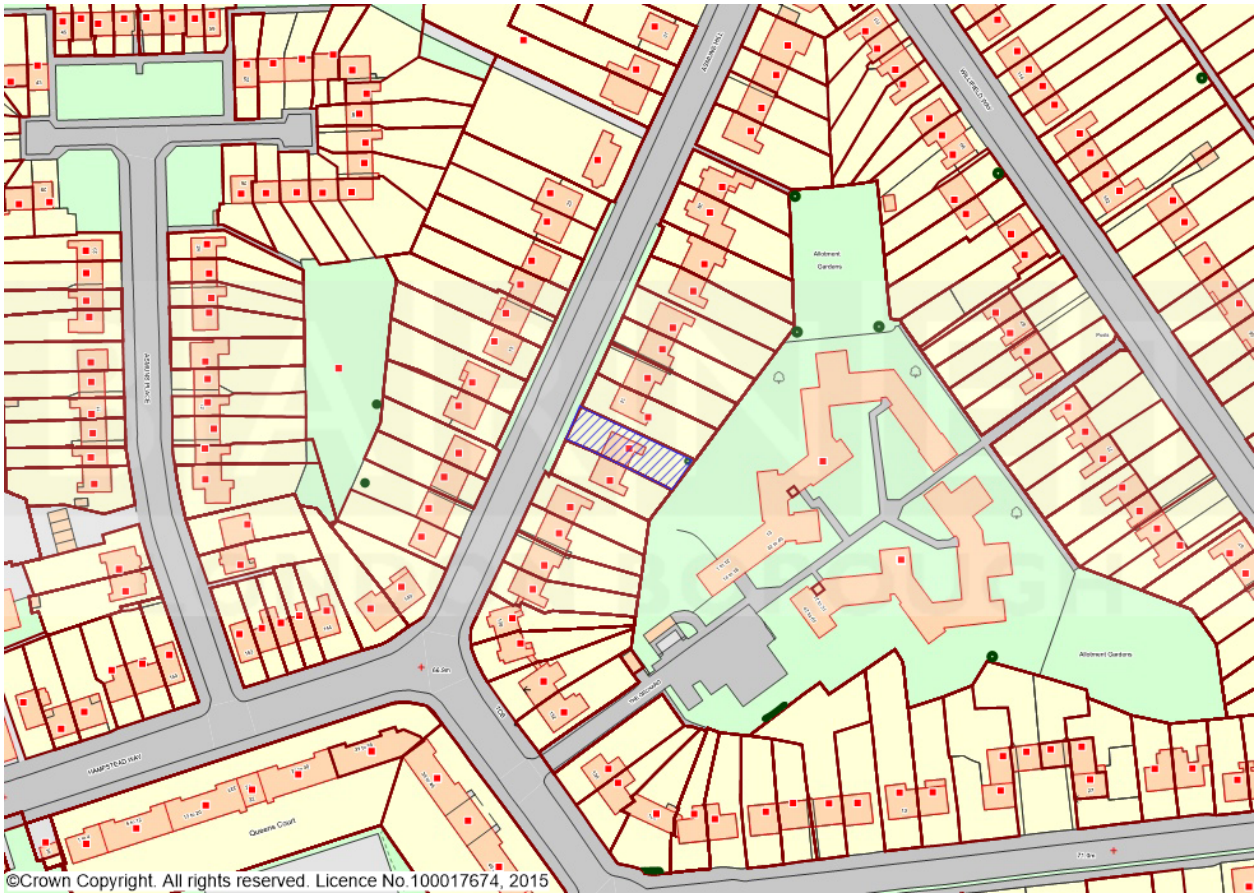
The proposed felling of the Oak would be significantly detrimental to the streetscene and would fail to preserve or enhance the character or appearance of the Hampstead Garden Suburb Conservation Area.

The Arboricultural Consultant's report submitted with the application documents states that "There is currently no positive root identification to implicate T2 (Oak)". The Council's Structural Engineer has assessed the supporting documentary evidence and has noted that "The site investigation results indicate the oak tree T2 is likely to be implicated in the damage to the rear of the building."

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 root identification and starch content as well as heave.

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 some extra £20,000 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 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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