

BARNET

LONDON BOROUGH

COMMITTEE REPORT

LOCATION: Berkeley Court, 39 Ravenscroft Avenue, London NW11 8BG

REFERENCE: TPF/0077/17

Received: 21 April 2017

WARD: Childs Hill

Expiry: 16 June 2017

CONSERVATION AREA -

APPLICANT: Mr Chandu Hirani

AGENT: Keoghs LLP

PROPOSAL: 1 x Oak (applicant's ref. T1) – Remove, T1 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 T1), T1 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.

Recommended Informative if consent is approved:

The applicant should note that the felling of the tree has ground heave potential which may affect neighbouring properties.

Consultations

Consultation was undertaken in accordance with adopted procedures which exceed statutory requirements:

Date of Site Notice: 25th May 2017

Consultees:

Neighbours consulted: 25

Replies: 3 0 support 3 objections

The grounds of objection can be summarised as:

- Magnificent old tree which gives pleasure to residents and the public and is a haven for birds
- It would be an irreplaceable loss to Beechcroft Avenue which has lost other fine old trees due to construction
- The applicant's engineering report appears to accept there is some risk of heave
- If heave were in fact to occur, the cost of damage to Berkeley Court could greatly exceed the cost of damage to the applicant's property allegedly caused by the oak, which the report acknowledges is 'slight' damage only
- Before felling is permitted there should first be tried major pruning of the crown volume, followed by pruning at regular intervals to see if this is effective to prevent further damage. I note the option of 'severe pruning' as an alternative to felling is referred to in the applicant's report.
- The felling of this tree should be permitted only as a last resort
- Trees are being overpruned and felled regularly in this area.
- This area is being ruined with over development and to lose mature trees will leave a barren depressing new build area
- Importance of trees in tackling air pollution
- It took many years for this tree to grow to fell it will help downgrade and ruin this once leafy area
- An arboricultural consultant's report obtained by Ravenscroft Management Ltd (the Management Company of Berkeley Court) in 2012, in connection with previously raised concerns about the Oak's alleged involvement in property damage concluded that on the balance of probabilities the subject Oak was not responsible (*extract supplied by objector*)
- There has been previous correspondence between Keoghs and Ravenscroft Management Ltd (*extracts supplied by objector*) but, although acknowledging that more extensive investigation and monitoring was conducted in 2016, Ravenscroft Management Ltd still does not believe that Keoghs have adequately established that the Oak is implicated as being the main cause or even seriously implicated.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Oak Tree

C03450K/06/TRE – 1 x Oak - Lift to 5m, Thin 25%, Remove Deadwood. T1 of Tree Preservation Order

- conditional approval 14th September 2006

TPO/00164/09/F – 1 x Oak – Reduce Crown 40%. Cut back to leave a bare frame work for future management

- withdrawn 14th April 2009 (work proposed to a different tree not included in the Order)

TPP/07143/14 – 1 x Oak (applicant's ref. T6) - Crown thin 20%, crown lift to 4 metres (including removal of 1 branch as specified). T1 of Tree Preservation Order

- conditional approval 11th August 2015

158 Golders Green Road

C03786 – change of use from house to 7 bed-sitting room flats and two ground floor ? room classrooms for languages tuition

- refused 5th July 1972

C03786A – Change of use from dwellinghouse to guest house, with car parking area at front

- refused 4th February 1992

C03786B – Conversion to three self contained flats with forecourt parking

- conditional approval 5th February 1993

C03786C – Dormer window to front elevation

- conditional approval 9th February 1994

C03786D/02 – Change of use from 2 residential units to offices for legal and financial services (Class A2).

- withdrawn 5th March 2003

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of the Oak tree at the rear of Berkeley Court in connection with alleged property damage at 158 Golders Green Road was submitted via the Planning Portal in January 2017. There were discrepancies and shortcomings in the information – clarification and additional information was thus requested.

On 21st April 2017 a letter responding to the queries and providing additional documentary evidence was received from the agent and the application was registered accordingly. However, as discussed below, further clarification was requested following the site visit undertaken by the Case Officer and Structural Engineer – in response to which Keoghs noted that their originally named Case Handler was on outside secondment and requested additional time to provide the information. The application is being referred to the first available Finchley and Golders Green Planning Committee Meeting following receipt of further information.

158 Golders Green Road has been divided into three tenanted flats. The TPO application has been submitted by an agent acting on behalf of Mr Chandu Hirani who is named as Insurance Policyholder.

2. Appraisal

Tree and Amenity Value

The subject Oak stands to the rear of Berkeley Court communal garden adjacent to the parking area, close to the boundary with 158 and 160 Golders Green Road. Berkeley Court stands on the corner of Ravenscroft Avenue and Beechcroft Avenue. It is a part 3- / part 4-storey building comprising 11 flats with 3 integral garages and a row of 8 garages with vehicular access from Beechcroft Avenue (conditional planning permission C03450G was granted 25th January 1978).

The mature Oak subject of this application is approximately 15 metres in height and just over 1 metre in trunk diameter (at 1.5m above ground level). The tree has been previously lifted, thinned, and cut back to provide clearance (including some sizeable branch removals in distant past which are well occluded); there is some deadwood, but the Oak appears to be in reasonable condition with no major faults apparent. Both the trunk diameter and historic Ordnance Survey maps suggest that the Oak was formerly a field boundary tree pre-dating the suburban development of Golders Green.

The mature Oak is clearly visible from Beechcroft Avenue (it aligns with the vehicular access to Berkeley Court) and is visible above and between properties in Ravenscroft Avenue; but, although visible from the rear of properties, public views from Golders Green Road are restricted because of the height and close spacing of built form.

The Oak stands just outside, but very close to, the Golders Green Town Centre Conservation Area – the boundary of which extends to include Golders Green Library, immediately adjacent to 158 Golders Green Road.

The application

The application submitted by Keoghs Ltd was registered on 21st April 2017. The reason(s) for the proposed removal of the Oak (applicant's reference T1) cited on the application form is:

The tree I am requesting to be felled is an Oak Tree ('T1'). T1 is located within the grounds of Berkeley Court, Ravenscroft Avenue, London, NW11 8BG which neighbours 158 Golders Green Road, London, NW11 8HE ("the Property"). The site plan is located in the Arboricultural Report of Margaret MacQueen of OCA UK Limited dated 31st August 2016. This report is appended to this application.

We are requesting that T1 be felled and for the stump to be chemically treated. This is due to subsidence damage to the Property caused by the roots of T1. Evidence in support of the application is appended.

The evidence which has been gathered shows that T1 is the substantive and effective cause of subsidence damage to the Property. The current instance of damage began in 2014 which is the third occasion of subsidence damage at the Property caused by T1 since 2010.

Evidence has been collated in order to establish that damage has been caused by T1. This evidence can be summarised as follows:

1. Site investigations

Investigations were performed by CET who determined that the soil was of a clay variety and that the tests observed soil desiccation to a depth of 3.5m below ground level. Furthermore tree roots recovered from a trial pit and a borehole showed live roots of an oak variety present within close vicinity of the property.

2. Level Monitoring

Level monitoring data has been gathered between 5 February 2015 and 20 December 2016. This has shown clear signs of cyclical movement indicative of tree root subsidence.

3. Arboricultural Assessment

Margaret MacQueen, within her report dated 31st August 2016, has confirmed that T1 is causing/contributing to the subsidence damage. So as to prevent further damage/further instances of damage occurring the only recommended course of action at this stage is for T1 to be felled and for the remaining stump to be chemically treated. This recommendation is summarised within the report from OCA dated 31st August 2016.

4. Structural Engineer Assessment

Michael Robinson, within his report of 12th August 2016, considered the evidence and confirmed that the effective and substantive cause of the damage was due to clay shrinkage exacerbated by the moisture demands of T1. Mr Robinson has recommended that T1 be removed and has confirmed that there is not an unacceptable risk of heave.

The supporting documentation comprised:

- OCA Arboricultural Assessment Report dated 6 March 2015 revised 31 August 2016
- Cunningham Lindsey Engineering Appraisal Report dated 16th February 2015
- Cunningham Lindsey Engineering Appraisal Report dated 12th August 2016
- CET Site Investigation Factual Report dated 22nd January 2015
(including trial pit / borehole data and soil testing 22/1/15; root id 28/1/15; drainage report 23/1/15)
- CET level and crack monitoring 5/2/15 – 20/12/16
- photographs of the damage
- copy letter from Keoghs to Ravenscroft Management Ltd dated 29th September 2016 with some details of repair works in respect of historic damage and holding out liability in common law negligence and nuisance
- confirmation that no repair works including any drain repairs have been undertaken in relation to the current damage
- Cunningham Lindsey Heave prediction calculation dated 7th April 2017

Following the site visit by the Case Officer and Structural Engineer, an e-mail was sent to the agent which included:

I have received comments from our Structural Engineer which include the following:

- 1. The soil test results are inconclusive with regards to desiccation in the zone of tree root depth, this may be due to the time of year of the SI (Jan 2015) or possibly leaking drain.*
- 2. Previous SI results from 2010 and 2011 not provided.*
- 3. Drains in a poor condition, no water test done to check for leaks.*

4. *Ground heave assessment dated 7/4/17 uses control bore results which have not been provided, the results indicate a potential ground heave of 48mm.*
5. *The brickwork below dpc has deteriorated due to frost action.*

He advises a full assessment of the ground heave potential for causing damage to this and other surrounding properties should be undertaken

Leaking drains / overflowing gullies were observed on site

I would be grateful for any information / observations you may have to address these matters.

The agent's substantive response, received on 14th July 2017, included:

"1. It is not agreed that the soil test results are inconclusive. The soil testing completed in January 2015 demonstrated desiccation at depths of 1.5m and 2.5m. Roots were observed at the underside of the foundation and within the borehole to a depth of 1.3m. The evidence concludes that the subsoil has been affected as a result of moisture extraction from the adjacent Oak tree.

2. I attach copies of the site investigation reports from October 2011 and October 2010.

3. Following completion of the CCTV survey, drainage repairs were undertaken in August 2015. Thereafter, monitoring has demonstrated a clear pattern of cyclical movement that cannot be related to possible drain leakage.

4. With regard to the heave assessment, a remote borehole was not utilised. The calculations were based upon interpolation of the suction readings from the borehole and with an upper limit line of the anticipated equilibrium profile being based upon the readings taken at 3.5m, 4.5m and 5.0m.

5. The issue of possible frost damage to areas of brickwork is irrelevant to the property damage caused by tree root subsidence.

A full assessment on the ground heave potential has been completed in accordance with BRE Digest 412. Our client's appointed Structural Engineer considers that a potential heave risk of 48mm is within acceptable limits. A degree of upward movement may correct some of the subsidence damage which has occurred to the rear of the property and any additional movement would be accommodated within the superstructure repairs."

Updated monitoring data was provided to 4/7/17.

No additional heave information was supplied.

The Council's Structural Engineer having visited the site and assessed all the submitted information, notes:

Further to your request to review the site investigation results at the above, with regard to the tree preservation order for Oak tree T1, located in the grounds of Berkley Ct, and alleged subsidence at 158 Golders Green Road, I would comment as follows;

Trees

The OCA report shows the locations trees of around the property. Their report shows the Oak tree T1 in the grounds of Berkley Ct at a distance of 23m from the building and 14.2m high.

Damage

The damage to 158 Golders Green Road was first discovered in Summer 2010, damaged returned in October 2011 and additional cracking noted in September 2014.

The damage consists of tapered cracking to the rear extension of the house. The crack pattern is consistent with subsidence of the foundations.

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

Subsoil investigations

CET carried out a subsoil investigation on 30/9/10, 18/10/11 and 22/1/15. These consisted of trial pits and boreholes to the rear of the property. No control borehole was undertaken to compare and contrast results.

Results of the investigation were as follows;

1. The foundations are between 850mm to 1.0m deep.
2. Stiff Clay was encountered to the full depth of the borehole 6m deep.
3. Roots extend to 1.5m depth.
4. Oak tree roots identified below foundations.

Soil Testing

The soil analysis results indicate desiccation at 2.5m depth and to a lesser extent at 1.5m.

Ground heave calculations indicate a heave potential of 48mm.

Monitoring

Level monitoring has been carried out from 5/2/15 to 4/7/17.

Most of the recorded movement is occurring at the rear of the property, with the maximum overall movement of 13mm. The pattern of the monitoring results indicates a seasonal trend of movement to the rear extension.

Crack monitoring has been carried out from 5/2/15 to 4/7/17.

During this period the cracks open during the summer and close during the winter which indicates seasonal movement of the building.

Drainage

The drain survey of 30/9/10 did not identify any serious defects to the underground pipes. The gullies are in a poor condition and were overflowing during our inspection. However these are remote from the area of damage.

Conclusion

The site investigation results indicate that the Oak tree T1 is likely to be implicated in damage to the rear of the building.

The ground heave calculation was carried out without the benefit of a control borehole and is based on an interpolation of soil test results which could affect the reliability of the assessment. The estimated potential ground heave of 48mm relates to the rear of no. 158 Golders Green Road only, however other properties within the influence zone of the Oak tree could also be affected by the removal of the Oak.

Of particular concern is the rear of Golders Green Library, it closer to the Oak tree T1 than 158 Golders Green Road approximately 16 metres from the tree, and appears to be built circa 1920 and is likely to have relatively shallow foundations.

It is recommended the extent of the site investigations are increased to include Golders Green Library and any other properties within the influence zone of the Oak tree, and the ground heave assessment based on the soil test results from a control bore to compare the results.

The maximum desiccation occurs at a depth of 2.5m however the Oak root depth is recorded as 1.5m. Even allowing for the possibility tree roots will affect the soil below the depth they have reached, it is unlikely this would extend to one metre deeper than the tree roots.

Without the benefit of a control borehole to compare results it is difficult to know if this is an anomaly of the soil or a rogue result.

The severity of the damage is classified as slight. Therefore a reduction of the Oak tree may be sufficient to stabilise the building and allow superstructure repairs only to be carried out. The Oak tree would need to be regularly reduced to maintain at the reduced size.

The main area of damage, as described in the August 2016 Cunningham Lindsey Report, "is to the rear addition and takes the form of tapering diagonal cracks. This pattern of damage indicates a downwards movement to the rear. The damage which forms the subject of this claim is a continuation of the earlier damage." The Report notes that "There has been a history of damage to the property with cracking initially developing during Summer 2010The Third Party tree owners were approached regarding the influence of an Oak tree with a request that the tree be felled. However as the house was let to tenants who had raised concerns regarding the extent of damage to the property a decision was made to proceed with superstructure repairs so as to avoid a protracted claim for loss of rent whilst mitigation measures were being pursued. Localised repairs were completed in around April 2011. Damage returned in October 2011 and further investigations were undertaken....Following discussions it was agreed with the Adjusters that a subrogated claim would not be pursued against the Third Party if the tree were to be reduced and it was on this basis that it further repairs were undertaken and with the Third Party being placed on notice. Repair works were carried out in June 2013 but some additional repairs were found necessary and the claim was noted closed off until April 2014. However additional cracking was noted in September 2014...It is this damage which forms the subject of this claim."

Whilst on site the Case Officer and Structural Engineer observed an unrelated problem with a blocked and leaking drain that had been leaking for so long that damp had penetrated the solid wall into the kitchen / living area – this was referred to Environmental Health.

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 information has been provided to suggest that damage has progressed above Category 2.

The agent declined to provide a full assessment of the ground heave potential for causing damage to 158 Golders Green Road and other surrounding properties – instead relying on a soil suction method calculation without benefit of a control borehole. The applicant's Structural Engineer apparently "considers that a potential heave risk of 48mm is within acceptable limits. A degree of upward movement may correct some of the subsidence damage which has occurred to the rear of the property and any additional movement would be accommodated within the superstructure repairs." However, this assertion disregards the heave implications for other surrounding properties – objectors have voiced concerns about the potential effect on Berkeley Court and our own Structural Engineer has identified that:

"The ground heave calculation was carried out without the benefit of a control borehole and is based on an interpolation of soil test results which could affect the reliability of the assessment. The estimated potential ground heave of 48mm relates to the rear of no. 158 Golders Green Road only, however other properties within the influence zone of the Oak tree could also be affected by the removal of the Oak.

Of particular concern is the rear of Golders Green Library, it closer to the Oak tree T1 than 158 Golders Green Road approximately 16 metres from the tree, and appears to be built circa 1920 and is likely to have relatively shallow foundations.

It is recommended the extent of the site investigations are increased to include Golders Green Library and any other properties within the influence zone of the Oak tree, and the ground heave assessment based on the soil test results from a control bore to compare the results."

Our Structural Engineer observes "*The severity of the damage is classified as slight. Therefore a reduction of the Oak tree may be sufficient to stabilise the building and allow superstructure repairs only to be carried out. The Oak tree would need to be regularly reduced to maintain at the reduced size.*" The Cunningham Lindsey Report refers to previous discussions with the tree owner in which it was agreed that a subrogated claim would not be pursued if the tree were reduced – however, no application was submitted for such treatment nor was any reduction undertaken. The only treework application since 2010 (indeed since 2006) was for lifting to 4m and 20% thinning (TPP/07143/14). In

addition, the estimated repair cost options refer to the tree as being 'removed / severely pruned' – again suggesting that lesser works may be an alternative.

Given the public amenity value of the Oak; that the damage is assessed as BRE Category 2; the possibility that lesser works may be a solution; and the potential heave implications (especially in the light of the implications for neighbouring properties), it may be questioned whether the proposed removal of the TPO Oak at this juncture is excessive / premature. However, our Structural Engineer has noted that *“Oak tree T1 is likely to be implicated in damage to the rear of the building”* – albeit that he suggests *“The severity of the damage is classified as slight. Therefore a reduction of the Oak tree may be sufficient to stabilise the building and allow superstructure repairs only to be carried out. The Oak tree would need to be regularly reduced to maintain at the reduced size”* as well as having concerns about heave potential.

3. Legislative background

As the Oak is included in a Tree Preservation Order, formal consent is required for its treatment from the Council (as Local Planning Authority) in accordance with the provisions of the tree preservation legislation.

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 application submissions indicate that *“If the [Oak] tree is removed / severely pruned then I consider that works including structural crack repair and redecoration at an approximate cost of £5,500 will be appropriate in order to repair the damage. If the [Oak] tree is not removed / severely pruned then it may be necessary to consider underpinning of the foundations of the property in the area of damage, in addition to structural crack repair and redecoration needed to repair the damage. A claim for loss of rent will also need to be considered. The total cost of this option is estimated at £34,000.”*

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

In accordance with the Tree Preservation legislation, the Council must either approve or refuse the application i.e. proposed 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 that "*Oak tree T1 is likely to be implicated in damage to the rear of the building*" - albeit having significant concerns about other factors and heave implications.

The statutory 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.

Underpinning appears an excessive remedy on the basis of current information for BRE category 2 crack damage – for which BRE guidance notes "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 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."

If it is concluded that addressing other factors together with pruning would resolve the alleged problem, regardless of the proposed tree removal; or if the removal would create even greater problems due to heave; 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 £28,500 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

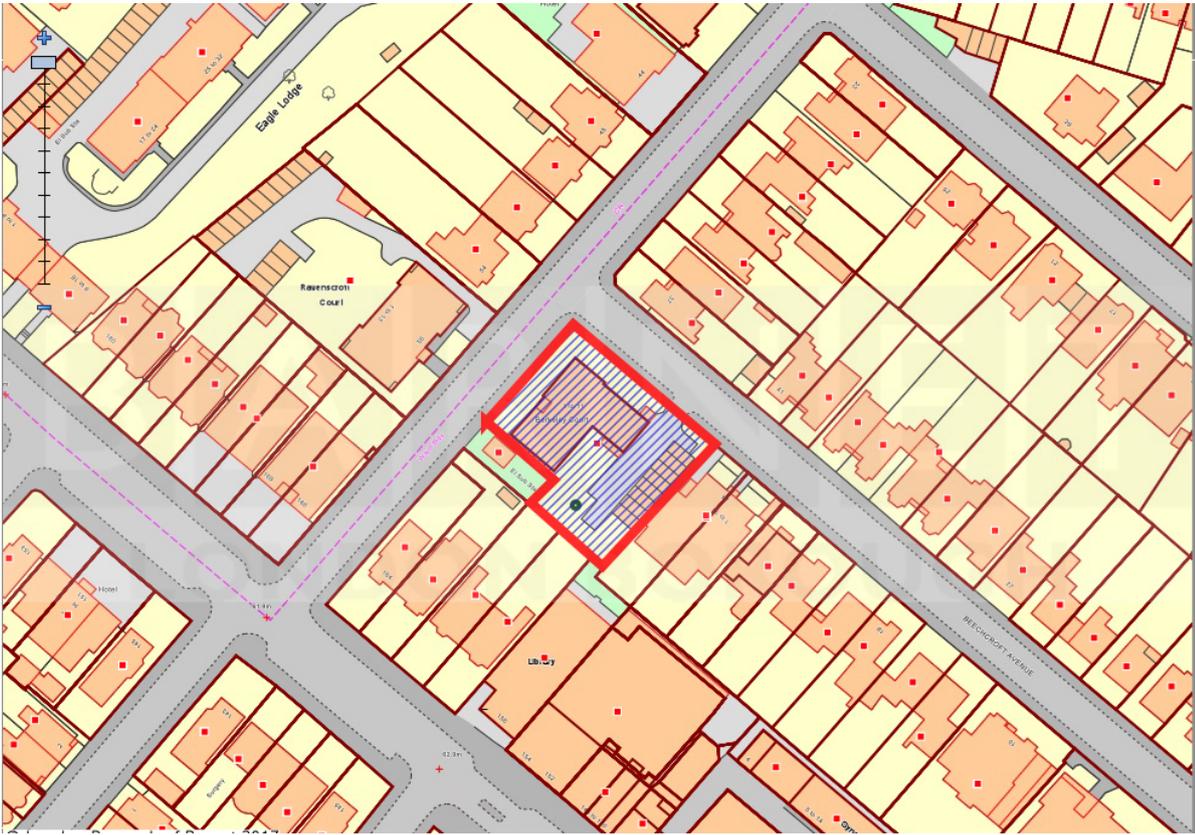
The agent, Keoghs Ltd, proposes to fell the significant mature Oak standing in the communal garden at Berkeley Court because of its alleged implication in subsidence damage to 158 Golders Green Road.

The Council's Structural Engineer has assessed the supporting documentary evidence and has noted that the subject Oak is likely to be implicated in damage to the rear of the building. However, there are shortcomings in the information provided. There are also concerns about heave implications for other properties, some of which are closer to the tree.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree, 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 about heave (including Golders Green Library), and the potential that lesser works may address the BRE category 2 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 £28,500 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 on the basis of available information that removal of the Oak is excessive and has not been demonstrated to be necessary; or if the removal would create even greater problems due to heave; 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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