



COMMITTEE REPORT

LOCATION: 10 Manor Hall Avenue, London, NW4 1NX

REFERENCE: TPF/0778/17 **Received:** 12th January 2018
WARD: Finchley Church End **Expiry:** 9th March 2018
CONSERVATION AREA N/A

APPLICANT: MWA Arboriculture Ltd

PROPOSAL: 1 x Oak (applicant's ref. T1) - Remove. T3 of Tree Preservation Order.

RECOMMENDATION:

That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed removal of Oak (applicant's ref. T1) - T3 of the 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 one replacement tree shall be agreed in writing with the Local Planning Authority and this replacement tree shall be planted before the end of the next planting season following the commencement of the approved treatment (either wholly or in part). If within a period of five years from the date of any planting, the tree(s) is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective), further planting of appropriate size and species shall be planted at the same place in the next planting season.

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 January 2018

Consultees:

Neighbours consulted: 10

Replies: 3

1 support (received on the 11th April 2018 – several weeks after the end of the public consultation period for this application).

2 objections (one of which was received shortly after the end of the public consultation period).

The grounds of support can be summarised as:

- Concerns about seasonal detritus (falling leaves/branches).
- *“This tree has been causing immense damage and cracking to walls and foundation, causing subsidence. When I built my extension a couple of years ago, with Barnet’s knowledge the builders had to put down concrete over 10 feet down to prevent problems.”*

The grounds of objection can be summarised as:

- Concerns about ground heave causing damage if the tree is removed.
- The loss of the tree would be detrimental to the character and beauty of the area.
- The tree is a beautiful, healthy, extremely large specimen (one of the objector’s states that the tree is “over 200 years old”) and is highly visible.
- The Oak may not be the cause of the damage.
- The houses should be piled/underpinned rather than the tree removed.
- Other recommendations made in the Arboricultural Report have not been implemented.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Oak Tree

TREW02818B – Reduce crown density by 15% and remove epicormics growth of Oak – T3

- Conditional approval 15th September 1992

TREW02818C – Reduce and thin Oak by 20% T3 of Tree Preservation Order.
- Refused 16th November 1995

TREW02818D – Oak thin crown by 20% T3 of Tree Preservation Order.
- Conditional approval 1st March 1996

TREW02818E – Turkey Oak – Remove, T3 of Tree Preservation Order.
- Refused 12th November 1998

TREW02818F/01 – Oak – crown thin by 15% and deadwood, T3 of TPO.
- Conditional approval 19th March 2001

TREC16165/05 – Oak – Reduce crown 30%, Prune to Shape and Tidy up. T3 of Tree Preservation Order.
- Refused 11th April 2005

TREC16165A/05 – Oak – Thin crown 25% Removing Deadwood. Reduce Spread by no more than 25% as Specified. T3 of Tree Preservation Order.
- Conditional approval 27th June 2005

TPO/17892/08/H – 1 x Oak - Reduce Crown 30%, Prune to Shape and Tidy. T3 of Tree Preservation Order.
- Refused 30th October 2008

TPO/00109/09/H – 1 x Oak - Lift to 5.5m, Thin by 25%. T3 of Tree Preservation Order.
- Conditional approval 14th April 2009

TPO/00754/12/F – 1 x Oak (T1 Applicants Plan) - Lift to 6m all Round, Thin by 25%, (Deadwood). T3 of Tree Preservation Order.
- Conditional approval 5th February 2013

TPP/00292/15 – 1 x Oak (applicant's ref T1) - Reduce Crown overall by 10m cutting back to leave a bare framework. T3 of Tree Preservation Order.
- Refused 8th July 2015

TPP/0284/16 – 1 x Oak (applicant's ref. T1) - Crown reduction by 1.5 - 2 metres leaving balanced crown. T3 of Tree Preservation Order.
- Conditional approval 29th June 2016

The property of 10 Manor Hall Avenue is shown on the historic Ordnance Survey map dating from 1936 – but not on the map dating from 1914.

Linksway, London, NW4

The terraced properties of 9 to 15 Linksway are shown on the historic Ordnance Survey map dating from 1970 map – but not on the map dating from 1968 (the Council's records indicate building control approval was granted for these properties in August 1968).

F/05621/13 – Demolition of existing end of terraced property and creation of a new two-storey end of terraced property. At 15 Linksway, London, NW4 1JR
- Conditional approval 13th February 2014

The CIL form submitted as part of F/05621/13 described the development as “Demolition of existing end of terraced property and reconstruct to match existing following subsidence damage”

The Council’s Building Control records show that an Initial Notice was received from Assent Building Control Ltd on the 18th December 2013 in respect of “Demolition and Rebuild End of Terrace Property” at 15 Linksway, London, NW4 1JR. This was cancelled on the 9th January 2017 (see I/13/18209).

A second Initial Notice was received from Salus on the 28th September 2016 in respect of “Replacement Dwelling” at 15 Linksway, London, NW4 1JR. A Final Certificate of Completion was received on the 26th May 2017 (see I/16/03371).

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of the Oak tree in the rear garden of 10 Manor Hall Avenue in connection with alleged property damage at 14 Linksway was submitted via the Planning Portal in October 2017. There were discrepancies and shortcomings in the information - clarification and additional information was thus requested.

Following the receipt of further information and correspondence from the agent and the application was registered on the 12th January 2018.

The application has been submitted by MWA Arboriculture Ltd acting on behalf of loss adjusters dealing with alleged subsidence at 14 Linksway.

14 Linksway stands in a line of seven terraced houses (9 to 15 Linksway – the properties are numbered sequentially). Number 14 is the second house in the row when counting from the north and stands between numbers 13 and 15 Linksway. These dwellings were constructed in the late 1960’s / 1970. As noted above, 15 Linksway (the end of terrace property, immediately adjacent to 14) has recently been demolished and rebuilt. The BASE Engineering Report dated 13th July 2017 (which has been submitted in support of this application) states: “In November 2016, the adjoining property, No 15, was demolished and rebuilt on a piled raft. This work has only recently been completed.” The commencement of these adjacent building works is of relevance to the monitoring data submitted with the current treeworks application as it coincides with a significant downward movement observed in the submitted levels monitoring data. The BASE Engineering Report dated 13th July 2017 also notes: *“It is evident that some brickwork to the rear elevation [of number 14 Linksway] was replaced during the reconstruction to No 15.”*

A group of unprotected Ash trees at the Golf Club growing in proximity to the site were removed in December 2015.

2. Appraisal

Tree and Amenity Value

The subject Oak stands in the rear garden of the property immediately adjacent to the rear boundary between 10 Manor Hall Avenue and 12 Linksway.

The mature Oak subject of this application is approximately 20 metres in height and has a trunk diameter of over 90cm (measured over the bark at 1.5 metres above ground level). The tree has been previously lifted, thinned and with some minor previous reduction (see relevant planning history above). There has been regrowth from the previous treatment and the tree has buds of apparently good form throughout its crown, there is some minor deadwood, but the Oak appears to be in reasonable condition with no major faults apparent. The trunk forks at about 4M from the ground.

It is clearly visible and prominent above and between the properties from Manor Hall Avenue and Linksway. It makes an important contribution to the appearance of the area, dominating the local landscape and forming part of a line of mature trees at the end of the gardens of properties in Manor Hall Avenue. The Oak is one of the mature trees which are remnants of the former wooded belt / shaw / elongated copse that was part of the agricultural landscape shown on the 1896 Ordnance Survey map, and retained on the edge of Hendon Golf Club on the 1914 Ordnance Survey map. Part of the original Golf Club land was subsequently developed for housing – including Linksway. The tree would have been within the wooded belt and is estimated to be considerably in excess of 100 years old – it significantly predates the construction of the surrounding houses and was retained when development took place.

The application

The application submitted by MWA Arboriculture Ltd was registered on the 12th January 2018. The reason(s) for the proposed removal of the Oak (applicant's reference T1) cited on the application form are:

The above tree is considered to be responsible for continuing root induced clay shrinkage subsidence damage to the subject property – 14 Linksway, Hendon. London NW4 1JR.

A previous application for reduction of the tree in April 2016 was consented by the Council on 29th June 2016 (Application Number: TPP/0284/16). The works were undertaken in November 2016.

Level monitoring of the building has recorded further subsidence to the rear of the property during the summer of 2017 confirming an ongoing influence from the oak tree and that reduction works have failed to arrest movement associated with the effects of the tree on soil volumes below foundation level.

Since the original application expert engineering opinion has been obtained and the associated reports are attached to this application together with the other technical reports/evidence previously submitted.

The removal of the oak offers the only predictable long term arboricultural solution in abating the influence of the tree. In the event the tree is retained underpinning costs are currently estimated at £160,000.

The installation of a root barrier has been considered and discounted on the basis that it would have to extend across the gardens of several properties and consent by the respective owners is unlikely to be obtained.

A replacement tree will be funded by insurers.

The supporting documentation comprises:

- Crawford Technical Report on a Subsidence Claim 14 Linksway Hendon London NW4 1JR dated 22nd January 2015

- Crawford Addendum Technical Report 14 Linksway Hendon London NW4 1JR Subsidence Claim dated 21st April 2016

- Crawford Addendum Technical Report No. 2 14 Linksway Hendon London NW4 1JR Subsidence Claim dated 17th October 2017

- CET Site Investigation Factual Report dated 27th January 2015

(including trial pit / borehole data 27/01/2015; soil testing 28/1/15; root id 01/02/15)

- MHN Ltd Level Monitoring – Relative Survey Readings 29/07/2015 – 09/01/2018

- BASE Engineering Report dated 13th July 2017

- MWA Arboricultural Appraisal Report dated 30th March 2015

- MWA Arboricultural Review report dated 9th January 2018

- Heave Calculations

- Confirmation that the data for the control bore used in the heave calculations was “*an assumed suction profile...based on past analysis of control borehole data in London Clay. This is considered conservative given tests are carried out on remoulded samples of overconsolidated clay which will, by its geological stress history, have some natural suction.*”

- Confirmation that in relation to the estimated costs of options to repair the damage “*the original estimate for underpinning in the Crawford Addendum Report of 13th April 2016 was £80,000 but this was based on a partial piling scheme. Subsequent level monitoring has shown the degree of movement would require a full piled slab at an estimated £160,000, as discussed in the Crawford Addendum report of 17 October 2017.*”

The Council’s Structural Engineer having assessed all the submitted information, notes:

Damage

Cracking occurred to 14 Linksway in 2013 and got significantly worse in 2014. Damage occurred to No. 14 following the rebuilding of No. 15 on a piled raft started 2013.

Site Investigation

CET site investigation 27th January 2015 indicates desiccated soil for full depth of borehole, 3m deep.

Oak tree roots in rear borehole full depth.

Monitoring

Foundation movement consistent with enhanced seasonal movement. Movement reduced following tree work to Oak tree

Heave

Potential ground heave calculated as 87mm at rear of property.

Conclusion

It appears the stabilising of the adjacent property has resulted differential movement between 15 and 14 causing cracking to No. 14.

The Oak tree T1 would be implicated in the damage to the rear of No. 14.

The Oak tree T1 predates the building of Linksway. The heave calculation indicates there was an existing moisture deficit when Linksway was built. Hence the removal of Oak tree T1 could result in heave damage to the rear of the building.

In the MWA Arboricultural Appraisal Report dated 30th March 2015 it is stated that the owner/occupier of 14 Linksway *“has been aware of subsidence to no 15 Linksway since 2011... [He] was served with a party wall notice in November 2013, for the demolition and rebuilding no. 15 on a piled raft. Minor damage developed internally to no 14 in 2013, with significant deterioration in mid-2014...[He] alerted insurers through his brokers, but took no further action as he was anticipating developments from his neighbour and their representatives. The current damage primarily affects the rear elevation of the property with damage also recorded to the front elevation and adjoining areas. Cracks of up to 30mm in width have been recorded...At the time of the engineers’ inspection 20th January 2015 the structural significance of the damage was found to fall within Category 5 (Very Severe) of Table 1 of BRE Digest 251.”*

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 5 damage as *“Structural damage which requires a major repair job, involving partial or complete rebuilding. Beams lose bearing, walls lean badly and require shoring. Windows broken with distortion. Danger of instability. Typical crack widths are greater than 25mm, but depends on number of cracks.”*

The BASE Engineering Report dated 13th July 2017 contains a more detailed description of the alleged damage. In section 5 of that report it is stated:

“The initial Engineer’s report describes the following damage to the Property:

INTERNAL

Rear bedroom – outward rotation of the rear wall with a 6 mm gap along the rear at ceiling level, extending down the rear left corner; 1 mm ceiling crack parallel to the right hand party wall.

Hall – 6 mm gap along the top of the wall and over the bathroom door, airing cupboard door and front bedroom door; 1 mm crack at the top of the right hand party wall; 1 mm ceiling crack parallel to the right hand party wall.

Front bedroom – 3 mm crack over front window; 1 mm crack along the top of the left hand party wall.

Living room – 2 mm crack along the top of the right hand party wall; 3 mm diagonal crack to the right of the patio door; cracks and gaps between the frame to the patio door and the reveal, with gaps around the patio door up to 30 mm where it has jumped off the runners.

Kitchen – 3 mm diagonal crack to the rear wall.

EXTERNAL

Front elevation – 3 mm diagonal crack above front door up to the party wall line.

Rear elevation – 2 mm diagonal crack over the patio door; gap at damp proof level, adjacent to the patio door, maximum 27 mm wide, and up to 100 mm deep; distortion to patio door with gaps up to 2 mm width to the frame.

5.2. *The damage was opined [in the 2015 Crawford Engineers Report] to be Category 5 according to the classification in BRE Digest 251.*

5.3. *A selection of photographs taken during my inspection on 09/05/2017 is presented in Appendix I. On the basis of this inspection, I can confirm that the current damage is broadly similar to that described in para 5.1, although the rear patio door has now been replaced with an infill panel (Plate I.1).*

5.4. *I also noted that the floor slab along the rear wall appears to have dropped (Plate I.2) and there is no longer a gap at damp proof level visible externally. It is evident that some brickwork to the rear elevation was replaced during the reconstruction to No 15 (Plate I.1).*

5.5. *The current damage is consistent with subsidence that has principally affected the rear elevation. In particular, it appears that the rear elevation has rotated outwards slightly causing the gap to develop at ceiling level in the rear bedroom (Plate 1.3)."*

The majority of the cracks referred to in the BASE Engineering Report are stated to be between 1 and 6mm (which would correspond to Categories 2 and 3 of the BRE classification). The largest cracks are stated to be around and adjacent to the rear patio door, which the report states *"has now been replaced with an infill panel."* In the Crawford report dated 17th October 2017 it is stated: *"If tree removal were carried out...Remedial works would be limited to structural repairs and redecorations of the affected areas,"* rather than *"a major repair job, involving partial or complete rebuilding."*

In the Crawford Addendum Technical Report dated 21st April 2016 it is recommended that *"It is understood that the Oak tree holds high amenity value, however, it is important that the influence of the tree is removed to avoid further damage occurring to 14 Linksway.*

As a first step towards mitigation, we recommend a 30% crown reduction to see if this will abate the tree's influence. If stability is confirmed via the level monitoring exercise, the superstructure repairs will be introduced." It should be noted that application TPP/0284/16 for crown reduction by 1.5 – 2 metres was granted conditional approval on 29th June 2016 and appears to have been implemented in November 2016. The treatment specified in application TPP/0284/16 was less than the 30% recommended in the Crawford Addendum Technical Report.

In the Crawford Addendum Technical Report No. 2 dated 17th October 2017 it is stated that: *"Whilst reduction of T1 Oak has had some impact, this has not been sufficient to stabilise the rear of the property... It would therefore be concluded that removal of the Oak tree is the only realistic tree mitigation option available to stabilise the property in the long term."*

Levels monitoring data submitted in support of this application shows a significant downward movement between May 2016 and November 2016. In excluding cyclical tree reduction as a management option the author of the BASE Engineering Report has referred to this stating: "In my experience, it would be very unusual for canopy reduction to be fully effective on a tree that is capable of causing seasonal foundation movements of 48 mm."

However, it should be noted that the 14th November 2016 monitoring reading coincided not only with the pruning works but also with the commencement of the demolition and rebuilding works at 15 Linksway. The cumulative impact of these factors has contributed to the apparent large downward movement between 25th May and 14th November 2016 - the downward movement during the summer months in both the year before and after 2016 was significantly less. The historic rainfall data for the Heathrow weather station (taken from metoffice.gov.uk) confirms that in 2015 there was 562mm of rainfall (380.4mm between May and November); in 2016 there was 590.6mm of rainfall (341.6mm between May and November); and in 2017 there was 574.4mm of rainfall (364.4mm between May and November). 2016 does not therefore appear to have been significantly drier than either 2015 or 2017 (indeed there appears to have been more rain in 2016 – the slightly drier summer following a wetter winter) and the downward movement noted in 2016 does not therefore appear to be solely due to the presence of the subject tree and given the timing of the building works (and that such works involved replacement of some bricks in the rear elevation of 14 Linksway) it seems probable that the building works had a major influence on the downward movement that was recorded.

As noted above our structural engineer has noted that "Movement reduced following tree work to Oak tree."

It should be noted that alleged subsidence damage was a reason for (or mentioned) in submissions for the five previous applications for treatment to this tree (see "Relevant Recent Planning History" above). However, all of those applications were for pruning treatment to the tree and all except the most recent previous application (TPP/0284/16) did not include technical evidence about the alleged damage or that would implicate the tree as a causative factor in any alleged damage.

There appears to have been no application for treatment of the subject Oak tree associated with the damage and subsequent demolition and rebuilding of 15 Linksway.

The potential heave calculations submitted as part of this application are 87mm in the borehole at the rear of the property and 50mm in the borehole at the front of the property.

In the BASE Engineering Report it is stated: "*As a general rule, tree removal is a safer and surer option unless there is an unacceptable risk of long term heave*" Continuing "*In this case, the soil tests indicate a significant heave potential in the soil. As the appointed claim handler, it would be for Crawford & Co to assess the effect that this heave may have on the insured property and the left hand adjoining property that is closer to the tree.*"

In the Crawford Addendum Technical Report No. 2 dated 17th October 2017 it is stated:

“With tree removal, the issue of heave has to be considered carefully. Calculations of heave risk were undertaken after the initial site investigation in January 2015 and indicated 50mm at the front and 85mm at the rear. Since removal of trees at the front, there has been 7mm upward movement indicating that the heave calculation was significantly pessimistic. One reason is the difficulty in carrying out a control borehole in this area away from the influence of any trees, and hence conservative assumptions were used for equilibrium suction values.

Based on the level monitoring, it would be estimated that between 40-50mm of this ‘heave’ was seasonal recovery of the subsoil and hence a more realistic heave estimate is approximately 40mm. If the same errors as occurred at the front, then the overall heave estimate would reduce to between 10-15mm.

We also take into account the pattern of movement shown by the level monitoring. This showed a persistent moisture deficit following the dry Autumn and Winter 2016/17 which suggest that, in Winter 2015, the soil was closer to its natural moisture content. We are also aware that No.15 was deemed to be stable following tree reduction works, indicating that the desiccation is at the edge of the zone of influence of the tree. In such cases, a persistent moisture deficit which gives a heave issue is less likely to build up since the soil is more likely to fully rehydrate during winter months.

Accordingly, whilst heave cannot be entirely discounted, we consider the risk of adverse heave movement to be low if the tree is removed.”

Even with the revisions suggested above Crawford’s state that they are unable to “entirely discount” the possibility of heave and, having reviewed the evidence the Council’s own Structural Engineer has also concluded that “the removal of Oak tree T1 could result in heave damage to the rear of the building.”

In discussing the cost of repairing the damage it is stated in the Crawford report dated 17th October 2017 that: *“Given the depth of desiccation, any underpinning would need to be in the form of a piled slab to include the party wall with No. 13. We consider that this, in turn, is likely to cause differential movement across No. 13 and their Party Wall Surveyor can, from an engineering perspective, argue that underpinning should encompass the whole of No. 13 given the influencing distance of the tree. Theoretically, this argument would apply along the whole terrace, rendering underpinning realistically very difficult from a logistical and financial perspective. We estimate that the costs of underpinning No. 14 would be approximately £160,000 and the whole terrace, approximately £400,000-£450,000. Given that Buildings cover is limited to the Sum Insured for No. 14, this would not be financially possible. Accordingly, underpinning is only a realistic option if the whole terrace (excluding No.15 which has been rebuilt) are amenable, which is extremely unlikely.”*

It is stated in the reasons for this application that *“The installation of a root barrier has been considered and discounted on the basis that it would have to extend across the gardens of several properties and consent by the respective owners is unlikely to be obtained,”* in the Crawford report dated 17th October 2017 it is written: *“Given the location of the tree relative to the property, any tree root barrier would need to extend across the back of at least 3 gardens. It is very unlikely that consent would be granted by 2 neighbours, especially when we understand they have no issues at present,”* and in the BASE Engineering Report that: *“There is a range of opinion within the industry as to whether a root barrier can provide a satisfactory long term solution and there are many*

cases where roots have, in the fullness of time, been found to grown under, round or through a barrier. However, in this case, there is the added disadvantage that the root barrier would have to extend across the back gardens of four or five separate properties. For this reason alone, it is unlikely to be acceptable.”

The applicant, agent and their advisers appear to have ruled out both the potential root barrier and underpinning the whole terrace (except 15) owing to difficulty in gaining consent for works that stretch across more than one property.

It should also be noted that the person who wrote in support of this application (and who lives in another property in the same terrace as 14 Linksway) stated that *“When I built my extension a couple of years ago, with Barnet’s knowledge the builders had to put down concrete over 10 feet down to prevent problems.”* Given the depth of these foundations there may be some differential movement between the extension referred to and the adjacent properties.

The person who wrote in support of this application also referred to concerns about seasonal detritus (falling leaves and branches from the tree). Trees are dynamic living organisms and will drop seasonal detritus from time to time (in the form of twigs, fruit, leaves...), this is a natural process. Concerns about such seasonal detritus are not considered sufficient to justify the removal of this mature Oak which makes a significant positive contribution to public amenity.

Given the significant public amenity value of the Oak; the possibility that lesser works may be a solution; and the potential heave implications (especially in the light of the implications for neighbouring properties which apparently have “no issues at present”), 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 *“The Oak tree T1 would be implicated in the damage to the rear of No. 14”* – he does also advise that *“the removal of Oak tree T1 could result in heave damage to the rear of the building.”*

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 the Crawford report dated 21st April 2016 it is stated: *"Repairs are estimated to be in the region of £7,000 if the tree works are introduced promptly, before the next dry season. Underpinning localised to the affected area of the damage will be needed if the tree works are denied. The cost of this work is estimated to be approximately £80,000."* However, in the Crawford report dated 17th October 2017 it is stated: *"If tree removal were carried out...Remedial works would be limited to structural repairs and redecorations of the affected areas. The extent depends on the amount of soil recovery but we estimate the overall costs to be in the region of £7,000-£10,000...Given the depth of desiccation, any underpinning would need to be in the form of a piled slab to include the party wall with No. 13. We consider that this, in turn, is likely to cause differential movement across No. 13 and their Party Wall Surveyor can, from an engineering perspective, argue that underpinning should encompass the whole of No. 13 given the influencing distance of the tree. Theoretically, this argument would apply along the whole terrace, rendering underpinning realistically very difficult from a logistical and financial perspective. We estimate that the costs of underpinning No. 14 would be approximately £160,000 and the whole terrace, approximately £400,000-£450,000. Given that Buildings cover is limited to the Sum Insured for No. 14, this would not be financially possible."*

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 (either to the subject TPO Oak tree – or to any other adjacent vegetation). 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 *"The Oak tree T1 would be implicated in the damage to the rear of No. 14."* - albeit having significant concerns about 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. In this case it is to be noted that *"At the time of the engineers' inspection 20th January 2015 the structural significance of the damage was found to fall within Category 5 (Very Severe) of Table 1 of BRE Digest 251"* and that the

July 2017 Engineering Report confirms that *“the current damage is broadly similaralthough the rear patio door has now been replaced with an infill panel.”* Also *“It is evident that some brickwork to the rear elevation was replaced during the reconstruction to No 15.”*

If it is concluded that other factors (including the rebuilding of No. 15 Linksway) were a substantial cause of the damage and / or addressing such 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 may be a compensation liability (the applicant/agent indicates repair works for No. 14 Linksway may be an extra £150,000 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 agent, MWA Arboriculture Ltd, proposes to fell the significant mature Oak standing in the rear garden of 10 Manor Hall Avenue because of its alleged implication in subsidence damage to 14 Linksway.

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 14 Linksway. However, there are shortcomings in the information provided. There are also concerns about heave implications for 14 Linksway and other properties, some of which are closer to the tree and which are currently unaffected.

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, and the potential that lesser works may address the 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 may be a compensation liability (the applicant indicates repair works to 14 Linksway may be an extra £150,000 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 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.

