



COMMITTEE REPORT

LOCATION: 20 Wordsworth Walk, London NW11 6AU

REFERENCE: TPF/0183/18

Received: 18 April 2018

WARD: GS

Expiry: 13 June 2018

CONSERVATION AREA Hampstead Garden
Suburb

APPLICANT: Subsidence Management Services

PROPOSAL: 1 x Birch (applicant's ref. T1) – Fell, T4 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 Birch (applicant's ref T1), T4 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 including replacement planting

Consultations

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

Consultees:

Neighbours consulted: 5

Replies: 0

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

TCA/00373/13/F – 1 x Beech (T4 applicant's plan) – Fell
- 6 week notification period expired 8th August 2013

TCA/00175/14/F – 1 x Prunus and 1 x Acer - Remove
- 6 week notification period expired 11th April 2014

TPF/0322/17 – 1 x Birch - Remove
- Application Invalid on Receipt (received 4th May 2017)

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of the Birch tree in the front garden of 20 Wordsworth Walk in connection with alleged property damage to the house was submitted via the Planning Portal in March 2018. The submission followed an incomplete application for removal of the same tree the previous year and two s211 Notices of Intent for removals of other trees at the site in 2013 and 2014.

20 Wordsworth Walk is a two-storey end-terrace house apparently built in 1910. The front garden is about 0.5m below the level at which the house and path are set, with a step down from the path to the lawn. The Birch is thus growing at a lower level than the building.

As discussed further in the report, it appears that there had been an insurance claim in 2012 for damage to the house which had been investigated with tree removals and repairs implemented, but damage returned and further investigations took place. In May 2017 an application to remove the Birch was submitted, but there was insufficient mandatory supporting documentary evidence for validation at that time. The current application included more than the May 2017 version but our Structural Engineer commented that there were still discrepancies and shortcomings in the information – clarification was thus requested.

On 18th April 2018 an e-mail was received from the agent with additional information and the application was validated accordingly.

2. Appraisal

Tree and Amenity Value

The Birch subject of this application stands just inside the flank boundary with 18 Wordsworth Avenue and about 3 metres from the roadside frontage.

The mature Birch is approximately 16 metres in height. It has a relatively narrow crown with typical pendant branches, but as the tree has been trimmed back to clear the adjacent street light and has one quite large lateral extending towards the house it has a slightly wider spread to the south-west (house) than the north-east (road). It has been lifted in the past but otherwise, apart from clearance of the street light, little previous treatment is apparent. The Birch appears to be in reasonable condition with no major faults apparent.

The Birch is very clearly visible from Wordsworth Walk, especially the hammerhead end, although views from Hogarth Hill are restricted by a large Oak and another Birch (both

included in the Tree Preservation Order) that stand further to the north-west in other Wordsworth Walk front gardens.

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

As the Conservation Area Character Appraisal Statement notes “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.....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.” In describing the overall character of the Artisans’ Quarter it notes “The retention of boundary oak trees from the pre-existing field boundaries, together with the street trees, hedges and the generous gardens, make a lush green setting for the houses. Where roads are too narrow for street trees, trees in front garden take on an increased importance.” and included amongst the Principal positive features are “trees and greenery rise above cottages in some areas”; and “front gardens contribute to the setting of houses and the ‘Garden Suburb’ aesthetic”.

The Birch is considered to be of importance to the character and appearance of the Hampstead Garden Suburb Conservation Area – it is a prominent healthy front garden tree in a road too narrow for street trees which contributes to the setting of the houses and the ‘Garden Suburb’ aesthetic.

The application

The application submitted by Innovation Group Environmental Services as agent for Innovation Group Subsidence Management Services was registered on 18th April 2018. The reasons for the proposed removal of the Birch (applicant’s reference T1) cited on the application form is:

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.

Estimated costs of repair to the building are £25k if the influence of the tree(s) remain and £6k 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).

Should the tree/s remain the total cost of repairs will be the Superstructural repairs + Alternative method of repairs = £31.5[k]

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).

Note: Further monitoring results may be submitted if these become available during the course of this application.

Including the additional information submitted subsequently, the supporting documentation comprised:

- Arboricultural Report dated 16th March 2017
- LBG Schedule of Repair Works dated 4th June 2015
- Root Identification dated 25th October 2012
- Root Identification dated 23rd February 2017
- Root Identification dated 23rd August 2017
- Soil Analysis dated 5th November 2012
- Soil Analysis dated 9th March 2017
- Soil Analysis dated 5th September 2017
- Geotechnical dated 31st October 2012
- Geotechnical dated 10th March 2017
- Geotechnical dated 4th September 2017
- Visit Report dated 3rd August 2017
- Supplementary Engineer’s Report dated 17th January 2018
- level monitoring 19/6/13 – 22/2/18 (12 readings with large gaps in timing)
- updated level monitoring – 17/4/18

The agent explained that the initial 2012 insurance claim had been handled by others (documents refer to Halifax) and they had been instructed subsequently – the Visit Report states the Reason for Revisit to be “To review the current position bearing in mind the property was previously repaired and these repairs failed almost immediately after they were completed.” The Supplementary Engineers Report is so entitled because the initial

claim “was dealt with by internal Engineers at Lloyds Banking group” and the original Engineer’s report had not been passed to the agent.

In the e-mail dated 18th April 2018, in response to clarification as to the inconsistency between the proposals and estimated costs of repair cited on the application form and engineer’s report, the agent stated “Reserve costs – Reserve costs are as per the engineers report.” In the same e-mail, it was confirmed that “The Engineer believes the datum is stable”; pursuant to the 2012 claim C1, T3 and T4 were removed in September 2013, and details provided of the repair works. The Arboricultural Report indicates that C1 is/was a Vine in the corner of the front elevation by the return to the front door, T3 a Prunus on the flank boundary with 18 Wordsworth Walk relatively close to the front elevation, and T4 a Beech almost opposite on the flank boundary with 22 Wordsworth Walk; the Supplementary Engineer’s Report notes that the previous repairs were completed by the end of 2015.

It appears that the Beech (T4) was removed pursuant to TCA/00373/13/F and (notwithstanding the date discrepancy) the Prunus (T3) TCA/00175/14/F – not being a tree, the Vine C1 was not subject of tree preservation legislation. However, although its removal was included as part of TCA/00175/14/F, it may be noted that the Acer was retained and its presence is recorded as Norway Maple T9 in the Arboricultural Report dated 16th March 2017.

Although the Arboricultural Report dated 16th March 2017 stated “*We note that this is a reoccurrence of damage first reported to insurers in 2012; an arboricultural report REF: NL/0810121516/TPREV1 was produced at this time and advocated tree works based on a review of available site investigations. This report should be read in conjunction with the above noted previous arboricultural report and all available site investigations.*” – the earlier report was not submitted. It had, however, been submitted in connection with an earlier s211 Notice of Intent, TCA/00175/14/F.

Given the fragmentation of investigations it is not straightforward to cross-reference some of the information. The Arboricultural Report and Engineering Opinion Report submitted as part of TCA/00175/14/F were also checked. In roughly chronological order, the following points may be noted:

2012 investigations:

The damage was described as “Subsidence crack damage to front left corner along both front elevation and left flank wall”

The indicated mechanism of movement “Front left corner subsiding”

Category of damage “Category 3 Moderate Damage in accordance with BRE Digest 251”

‘Damage noticed by tenants October 2011 but not reported until it became worse in 2012’

Trial Pit / Borehole 1 in corner of front elevation by return to front door (TP / BH1)

Control Trial Pit / Borehole 2 in rear garden (TP / BH2)

Birch and Beech roots identified from 0.8 – 1.8m depth Trial Pit / Borehole 1

Soil testing showed shrinkable but not desiccated soils according to the Engineer, although the arboricultural report contends that the “Soil suction testing indicates the presence of moderate to very severe desiccation in accordance with BRE digest 412 for TP/BH1”.

In 2013 / 4, a Beech, Prunus and Vine were removed. However, the Supplementary Engineer's Report notes that the Hampstead Garden Suburb Trust did not give their approval for the removal of the Silver Birch. Level monitoring was undertaken up until October 2014 and the property was deemed stable following the removal of the Beech tree. Repairs were then undertaken.

There are level monitoring readings for 19/6/13, 20/8/13, 10/10/13, 20/9/14, 13/11/14.

By the end of 2015, repair works had been implemented which included internal redecoration, meshing over cracks internally, stitching anchors, raking out mortar joints and resin injection internally and externally.

The Supplementary Engineer's Report notes that "The damage returned to the property in November 2016 and in February 2017 Innovation Subsidence Management Services were appointed to handle the claim; indicating that "The property is tenanted, new tenants moved into the property in July 2016 and in November notified the Landlords of cracking to the lounge, front bedroom and hall, stairs and landing. This prompted them to submit a further claim to insurers."

It would seem that various investigations took place, as the Arboricultural Report is dated 16th March 2017; the Geotechnical Report 10th March 2017 (based on site investigations on 21st February 2017); with Root identification dated 23rd February 2017 and Soil Analysis 9th March 2017. Trial Pit / Borehole 3 (TP / BH3) was excavated close to TP / BH1 and a further Borehole 4 (BH4) close to BH2 in the rear garden. Birch root was identified from TP / BH3. It appears that level monitoring was recommenced on 14th February 2017.

On 4th May 2017, an application to remove the Birch was submitted via the Planning Portal, but could not be validated as not all of the mandatory supporting documentary evidence was supplied (a number of requisites were omitted and, for example, there were no monitoring readings between 13th November 2014 and 14th February 2017, so it was not possible to demonstrate seasonal movement).

The Visit Report dated 3rd August 2017 notes "*We have not had the benefit of sight of the Arb report, which we assume was commissioned. We need to have sight of this document along with correspondence in relation to the recovery action that we assume would have been pursued previously. We could also benefit from sight of the repair schedule of works to understand the level of repairs completed to date.*" and recommends:

"Level monitoring should continue.

We should obtain the Arb report and final schedule of work documents from Insurers of the policyholder if they have them available.

Site investigations have been instructed to confirm the existence of roots and desiccated soils below foundations. Once we have that report and on the assumption we find evidence of subsidence we should start communicating with the implicated vegetation owners again with a further request to remove the implicated vegetation.

If this is resisted and or refused again, consideration of an appropriate engineering solution will need to be considered to halt the influence of vegetation that might well have to stay in place."

The current application, validated on 18th April 2018, included the Arboricultural Report dated 16th March 2017; but also level monitoring updated to 22nd February 2018 (14/2/17, 18/4/17, 23/6/17, 15/8/17, 3/10/17, 23/11/17, 22/2/18); and it appears that further investigations had taken place, as there was also a Geotechnical Report dated 4th September 2017 (based on site investigations on 18th August 2017); with Root identification dated 23rd August 2017 and Soil Analysis 5th September 2017. Trial Pit / Borehole 5 (TP / BH5) was excavated at the northern end of the front projection (i.e. adjacent to 18 Wordsworth Walk) and a further Trial Pit / Borehole 6 (TP / BH6) beneath the front window (i.e. between TP / BH3 and TP / BH6). Birch root was identified from both TP / BH5 and TP / BH6. There was also the Supplementary Engineer's Report dated 17th January 2018. Subsequently monitoring readings for 17th April 2018 were also submitted.

The Supplementary Engineer's Report describes internal cracking of 2mm around the front and side windows in the lounge, 1mm cracking above the front door in the hallway, and 1mm cracking to the front wall of the front bedroom; and externally "The front left hand corner of the front projection and the left hand corner window of the main house have both dropped resulting in cracks around the ground floor windows and front door." The damage is assessed as Category 1 (Very Slight) according to BRE Digest 251. The following Repair costs are stated "*Where it is possible to mitigate further movement by removal of the implicated vegetation, we consider that superstructure repairs alone will suffice. The current estimated cost of this work is in the region of £6,000.00. Where it is not possible to prevent further damage caused by seasonal movement induced by the effects of the implicated vegetation, it will be necessary to stabilise the building by the installation of an intervention technique such as a root barrier.*

Whilst no detailed designs have currently been developed for a suitable scheme of stabilisation, we believe that it would be reasonable to anticipate additional costs in the region of £10,000 to £15,000. "

Our Structural Engineer has assessed the information and notes the following:

- Birch tree roots extend to 1.8m depth.
- The house foundations are 0.8m deep which is reasonable for a property of this age.
- There appears to be some desiccation of the soil occurs at 1.65m deep.
- The damage is very slight (category 1) and is a re-occurrence of previous damage.
- The cracking has occurred after the Beech tree was removed.
- The recent monitoring indicates enhanced seasonal movement to the front of the house.

On the basis of the above the Birch tree is likely to be implicated in the re-occurrence of damage to the front of the house. Although no roots from the Oak tree in the front garden of no.18 were identified the oak tree may be a contributory factor. According to the arboricultural report the oak is to be crown reduced and regularly maintained.

The cracks are described as being within BRE Category 1 - BRE Digest 251 *Assessment of damage in low-rise buildings* includes a 'Classification of visible damage to walls with particular reference to ease of repair of plaster and brickwork or masonry'. It describes category 1 damage as "*Fine cracks which can easily be treated by normal decoration. Damage generally restricted to internal wall finishes; cracks rarely visible in external brickwork. Typical crack widths up to 1mm.*" The BRE Digest concludes "Category 2 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.”

However, in this case, the damage is a recurrence of a previous problem. The Visit Report observes *“A review of the property confirms that it appears that the property is suffering from a continuing influence of vegetation that exists in and around the front elevation of the property with crack damage evident to areas that were previously repaired. The policyholder is far from happy that the damage has re-occurred and wants a permanent solution to prevent subsidence movement occurring again in the future.”* It should be noted that not all of the treework for which s211 notification has previously been given has been implemented. The Norway Maple (T9) is still in situ. But it is a relatively small tree and neither of the 2017 root identifications noted the presence of Acer roots, only Birch.

The Arboricultural Report suggests *“Vegetation management in the form of removal and appropriate stump treatment will help to promote the restoration of longterm stability to the insured property; pruning should not be considered as representing an effective or reliable longterm alternative solution given the size and proximity of the vegetation. Pruning is generally ineffective and in the context of the current claim we consider the above vegetation is simply too large and/or close for pruning to be effective. Removal of T1 (Birch (Silver)) will offer the most certain and reliable arboricultural solution likely to restore longterm stability.”*

Although not noted in any of the application submissions, there is a large surface root running across the front lawn - whilst its origin is uncertain (it looks like Cherry but there are no appropriate Prunus from which it could emanate), it could be from the Birch. This is of relevance given the observation in the Supplementary Engineer’s Report that *“Where it is not possible to prevent further damage caused by seasonal movement induced by the effects of the implicated vegetation, it will be necessary to stabilise the building by the installation of an intervention technique such as a root barrier”* in which case *“we believe that it would be reasonable to anticipate additional costs in the region of £10,000 to £15,000”*.

Given the importance of the Birch in the streetscene, that not all previous treeworks subject of s211 notification have been implemented, and that the damage is assessed as BRE Category 1; it may be questioned whether the proposed removal of the prominent TPO Birch at this juncture is excessive / premature. However, our Structural Engineer has noted that *“the Birch tree is likely to be implicated in the re-occurrence of damage to the front of the house.”*

3. Legislative background

As the Birch 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. In addition to this statutory requirement, the

Hampstead Garden Suburb Trust has a separate contractual mechanism of control over treeworks under its Scheme of Management. Consent is required from both bodies independently (and it is possible for consent to be granted by one and not the other).

Government guidance advises that when determining the application, the Council should (1) assess the amenity value of the tree and the likely impact of the proposal on the amenity of the area, and (2) in the light of that assessment, consider whether or not the proposal is justified, having regard to the reasons put forward in support of it. It should also consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provide that compensation is payable for loss or damage in consequence of refusal of consent or grant subject to conditions. The provisions include that compensation shall be payable to a person for loss or damage which, having regard to the application and the documents and particulars accompanying it, was reasonably foreseeable when consent was refused or was granted subject to conditions. In accordance with the 2012 Regulations, it is not possible to issue an Article 5 Certificate confirming that the tree is considered to have 'outstanding' or 'special' amenity value which would remove the Council's liability under the Order to pay compensation for loss or damage incurred as a result of its decision.

In this case the applicant has indicated that *"Where it is possible to mitigate further movement by removal of the implicated vegetation, we consider that superstructure repairs alone will suffice. The current estimated cost of this work is in the region of £6,000.00. Where it is not possible to prevent further damage caused by seasonal movement induced by the effects of the implicated vegetation, it will be necessary to stabilise the building by the installation of an intervention technique such as a root barrier. Whilst no detailed designs have currently been developed for a suitable scheme of stabilisation, we believe that it would be reasonable to anticipate additional costs in the region of £10,000 to £15,000."* (the agent's email of 18th April 2018 clarified that the engineer's report rather than application form was to be relied on in respect of the inconsistency between the proposals and estimated costs of repair).

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 *"the Birch tree is likely to be implicated in the re-occurrence of damage to the front of the house."*

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.

If it is concluded on the balance of probabilities that the Birch'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 that stabilisation of the building by the installation of an intervention technique such as a root barrier would be likely to be an extra £10 - 15,000 if the tree is retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION

Not relevant

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 confirmation of the Order would have a significant impact on any of the groups as noted in the Act.

CONCLUSION

The applicant, Innovation Group Subsidence Management Services, proposes to fell the mature Birch standing close to the frontage of 20 Wordsworth Walk because of its alleged implication in subsidence damage to the house.

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

The Council's Structural Engineer has assessed the supporting documentary evidence and has noted that the subject Birch is likely to be implicated in the re-occurrence of the damage to the front of the house. However, the damage has been assessed as BRE Category 1 (Very Slight) and tree removal may be considered an excessive response.

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 considered whether or not the proposed felling is justified as a remedy for the alleged subsidence damage on the basis of the information provided.

If it is concluded on the balance of probabilities that the Birch'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 that an intervention such as a root barrier would be an extra £10 - 15,000 if the tree is retained) if consent for the proposed felling is refused.



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