



COMMITTEE REPORT

LOCATION: 37 Denman Drive North, London NW11 6RD

REFERENCE: TPF/0830/18 **Received:** 6 November 2018
WARD: GS **Expiry:** 10 January 2019
CONSERVATION AREA Hampstead Garden Suburb

APPLICANT: John Cromar’s Arboricultural Company Ltd

PROPOSAL: 1 x Willow (applicant’s ref. T8) – Remove and replace with Betula jacquemontii as consented by HGST. T20 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 Willow (applicant’s ref T8), T20 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:

Date of Site Notice: 22nd November 2018

Consultees:

Neighbours consulted: 10

Replies: 22 0 representations 0 support 22 objections

It may be noted that one objector sent two separate objections and another sent one objection in a personal capacity and another as representative of the Hampstead Garden Suburb Resident’s Association Trees and Open Spaces Committee.

The main grounds of objection are summarised below:

Amenity value

- The Willow in question is a grand tree that adds considerable grace to the road, it is approximately 50 years old and whereas I agree it has grown too large, this is somewhat the fault of the council for not allowing it to be pruned when necessary
- To remove it would be a travesty, not only because it is so beautiful but because it is part of the landscape of cottages and local foliage
- The mood at present is preservation of environment, the removal of beautiful trees would contravene this
- I strongly object to the proposal as the existing mature willow tree makes a very valuable contribution to the street scene and is a significant asset and visual amenity.
- Most residents in the neighbourhood, enjoy and value this landmark tree. It's removal could not be compensated for with the proposed replacement species which in any event would take years to mature before any significant environmental benefit could be reached.
- Barnet is one of London's greenest boroughs and must remain so.
- All mature trees should be left anywhere unless they are a matter of imminent danger because our health and the future of this planet depends on them.
- The Garden suburb is an environment that was designed to have trees, especially mature trees, and it is a pleasure for all residents and duty for owners of land with mature trees that they be kept. Replacement with a young tree does not replace 50-100 years of growth.
- It is a major feature of the Denman Drives. It embellishes and beautifies the corner where it lives and adds importantly to the 'Countryside' feel of the area.
- Its image sits in the Photo Gallery of Smart phones of countless thousands of visitors to the area. It, and other such magnificently mature specimen trees, are silent ambassadors of Hampstead Garden Suburb.
- It is considered a tree of special amenity value by most local residents as well as by our Council.
- This tree is very much loved and admired in the area, it would be a very sad day if it were removed. We have had to lose so many of our local trees - please do not allow this application to go ahead.
- A key element of this is the contribution trees make to the character of the area and this Willow, in the front garden of 37 Denman Drive North, is a dominant feature of this section of Denman Drive North which was noted in the Hampstead Garden Suburb Tree Survey, undertaken jointly by the London Borough of Barnet, the HGS Trust and the Residents Association, as a *huge tree, spreading shape, a green focus near the corner of the street.*
- Clearly, HGS valued the "magnificent willow, which added greatly to the ambience" and so by logic according to HGS, removal of the willow would greatly reduce the ambience of the street, "one of the most picturesque in the Suburb"
- Its loss would have a serious detrimental effect on both the road and on the nearby pedestrian access into Little Wood
- This willow tree is a beautiful mature tree on a very distinctive site and should be conserved with pruning work undertaken to preserve it as necessary
- the mature trees planted in both Denman Drive South and North form an essential part of the landscape and the charm of the streets and indeed the Suburb as a whole.
- Too many old trees have fallen victim of the councils rather aggressive tree maintenance process which have seen many beautiful specimens being felled without apparent reason. The negative effect this has on the Suburb is devastating - it slowly changes the character of our neighbourhood

- The tree is a notable, beautiful feature in this corner of Hampstead Garden Suburb, a conservation area. Because of the atmosphere it creates, it is, for instance, often photographed by ramblers and passers-by.
- Large trees are more essential than they have ever been in this time of climate change and consequent loss of greenery and insect and bird life.
- Each time a large tree is felled, there is a sharp reduction in bird life, insect life, and wildlife; it is now accepted and understood that humans cannot survive without insects, birds and wildlife. Moreover, as our summers become hotter and dryer, here in London and the UK, we should remember that each tree felled contributes to higher temperatures and increased global warming which will be disastrous for this area as well as the planet.
- On an aesthetic level, it should be noted that this tree contributes to the character of the neighbourhood
- By far the most spectacular tree in the street is the willow in the gardens of 39 and 37. Whether in winter without foliage or in spring and summer with leaves, this is a magnificent specimen tree, probably not bettered anywhere on the Suburb.
- I have always understood that "Conservation" is to provide guidelines for the preservation of high value amenities. This beautiful willow tree must surely be a high priority for protection within this definition
- This tree forms a focal point of Denman Drive and was noted in the survey undertaken by Barnet and HGS Trust. It's loss would be detrimental to the street and also the entrance the Little Oak Wood.
- Denman Drive is a particularly rural location. It is a narrow road and Denman Drive North and South do not have street trees but derive their rural character from the trees in front gardens as well as the glimpses of Big Wood and Little Wood behind. This willow makes a very significant contribution to the streetscape.
- Big Wood and Little Wood, remnants of ancient woodland, were retained as part of the design and trees in gardens such as this willow provide a link with that background.
- Mature trees are particularly valuable for their contribution to environmental diversity and habitats as well as for their visual amenity.
- This magnificent willow, possibly the most magnificent in the Suburb, has enormous amenity value to the road, the Suburb, and the community by dint of its size and beauty. If this tree cannot be preserved, then it is hard to imagine one that can be. Its removal would be an enormous loss.
- It stands close to the entrance to Little Wood, our local nature reserve, and provides a link from the street scene to the trees in the woodland beyond.
- It should be added that both Denman Drive North and South are very narrow roads and do not therefore have any street trees, so the leafy aspect to this section of the neighbourhood is provided by garden trees such as this willow.
- Also, since we are very close to the major roads the A1, and A406 I would have thought a mature tree such as this is hugely important to mitigate the effects of pollution.

Application submissions

- The applicant has no connection with the neighbourhood and presumably is instructed by Insurers who have a commercial interest. Damage to no. 39 has allegedly been caused by the willow. However there may be other causes including general lack of rainfall.

- All the properties in this neighbourhood are in proximity to trees and it would be a sorry state of affairs if proximate vegetation was to be removed every time movement cracks are detected in the adjoining buildings.
- It seems to me that when repair works are implemented in No. 39 this should include action to ensure the longer term stability of the property.
- Interestingly No. 37 has made no claims of damage due to the willow and they are closer to it.
- Underpinning is an option reportedly costing less than £100,000 which is unlikely to represent even 10% of the value of the property, a very small price to maintain a mature willow tree, rather than replacing it with a young and inappropriate silver birch.
- I understand that this tree was the subject of a planning application for removal in June 2007 and the decision was made to keep the tree at that time, so why remove it now?
- My house was underpinned in 2007/8 due to subsidence at which time local trees were blamed, however, this turned out to be totally unproven. Thankfully no trees were removed.
- I feel sure sensible management of the problem can be undertaken without the need to damage this tree.
- In addition, the 15 November 2018 note from Nell Hadley of Davies Group Ltd gives their preferred option as removing this willow *... and the monitoring extended for a further period of 6 months minimum to ascertain whether stability and or recovery occurs prior to repair and remedial works being implemented. Should this not be successful then the engineers have already prepared and tendered scheme for remedial underpinning work.*
- We consider it is this strengthening of the foundations of no 39 that is needed and urge you to reject this application
- In 2007 there was the same debacle about this tree: the residents' objections were accepted and the tree was left standing. Nothing has changed since then, so who will benefit from a re-run of the same arguments? Presumably there is some gain for someone in re-playing an old issue
- There is an entire wood behind the house in question. May we presume that the next proposal will be to chop down every tree in it?
- Where is the logic to a proposal that singles out one tree, the willow, for removal? Presumably it was the only tree within view that the proposers know the name of.
- If the application is to remove and *replace* the tree, may we expect, given the misguided logic here, that in a few years' time there'll be an application to chop down the replacement tree?
- It should not be necessary to fell a large tree when there are other methods available to protect the underpinnings of the house in question.
- It is true that these great trees come at a price. For regular pruning / pollarding and unfortunately with the effect on nearby buildings, which may need treatment. My own property required underpinning at a time before I arrived, which was covered by insurance. As one who has to fund the regular cost of maintaining my willow tree I really do have sympathy for my near neighbours at 37 and 39.
- The supporting documents do not justify the removal of this tree. Any property built backing on to woodland should have appropriate foundations which do not require trees to be removed. The Arboricultural Report identified both oak (from Little Wood) and willow roots in one of the trial pits, so removing this willow is unlikely to be sufficient.

- This is re-enforced by the fact that at the front of the house, which is much closer to the willow, it seems only some minor movement was noted and that the cracking at the front was said not to be consistent with this movement.
- If remedial work is required it should consist of the strengthening of the foundations and not the removal of this tree which makes such an important contribution to the visual amenity of the area.
- Carmichaels recommended EITHER very heavy pollarding, every two years OR removal/replacement - another firm (AGA) recommended the latter [removal] as the former would be more expensive, although there was no costing given. This apparently was the justification for removal of an irreplaceable asset to the streetscape

Insurance

- These companies trying to destroy trees need to be stopped for good. They want a concrete jungle.
- It is accepted within an Article IV Conservation Area that building work generally needs to be carried out to a higher standard of aesthetics than elsewhere and that is inevitably more costly for the residents. This is also reflected in the high level of home buildings insurance premiums paid in this area. In particular, a property built backing onto one of the few remnants of Ancient Woodland in Barnet should have appropriate foundations which do not require trees to be removed.
- This is the *Garden Suburb*. All the houses have managed to stay standing despite the fact that we are closely surrounded by very large trees with a massive, ancient, entangled root system. Any horticulturalist will confirm that it is ridiculous to suppose that getting rid of one tree will make any difference to whatever it is that the insurers pretend would be altered by its eradication.
- I am sure the insurance company is looking for a cheap option which might not work anyway as other trees could be involved as well.

Other

- If the council was to allow at least 50% to be removed, the tree would not need pruning so often
- Should the application go ahead, please reconsider the replacement. The area and indeed the road has no need of another *Betula Jacquemontii*, there are far more interesting trees available
- In any event, the grounds for its removal, if examined in the round, are weak. Proper and regular pollarding is an obvious and easy alternative that would yet preserve the beauty of the tree, the streetscape and the said amenity value. I have a willow in my garden and pay for its regular pollarding as many other residents must do with their trees. This tree should not be an exception to that approach - indeed its magnificence is such that it should be the LAST exception.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Willow tree (details of other treeworks at the site not included)

C08945B/00/TRE – Willow – Reduce density 25%. T20 of Tree Preservation Order
- Conditional approval 11th July 2000

C08945F/02/TRE – Weeping Willow – Reduce density 20%. T20 of Tree Preservation Order

- Conditional approval 4th October 2002

C08945H/06/TRE – 1 x Willow – Reduce density by 35% as specified to include the removal of 1 low branch as specified. T20 of Tree Preservation Order

- Conditional approval 5th December 2006

C08945K/07/TRE – 1 x Willow – Fell. T20 of Tree Preservation Order

- Refused 3rd July 2007

TPO/07648/08/F – 1 x Willow – Thin by 20%. T20 of Tree Preservation Order

- Conditional approval 4th July 2008

TPO/00006/12/F – 1 x Willow – Reduce height by 15%, Thin remainder by 30% including removal of deadwood, lifting of low branches and necessary shaping. T20 of Tree Preservation Order

- Conditional approval 2nd March 2012

TPO/00734/13/F – 1 x Storm Damaged Willow – Shorten exposed lateral branches by as much as 50% as specified. T20 of Tree Preservation Order

- Exemption Notice issued 28th November 2013

TPP/0756/16 – 1 x Willow – Crown thin 25% as specified. T20 of Tree Preservation Order

- Conditional approval 28th December 2016

TPF/0612/17 – 1 x Willow (applicant's ref. T8) – Remove and replace with *Betula jacquemontii*. T20 of Tree Preservation Order

- Withdrawn 5th November 2018

Building Control records indicate that 37 Denman Drive has been fully underpinned in the past; 39 has not been underpinned.

PLANNING APPRAISAL

1. Introduction

On 6th November 2018, an application proposing the removal of the Weeping Willow in the front garden of 37 Denman Drive North (and its replacement by a Himalayan Birch) in connection with alleged property damage at 39 Denman Drive North was received via the Planning Portal; amended information was submitted via the Portal on 12th November 2018; with updated monitoring and costings of repairs options being received via e-mail on 15th November 2018. The application replaced TPF/0612/17 which had been withdrawn on 5th November 2018 due to inaccuracies on its application form.

2. Appraisal

Tree and Amenity Value

The Willow tree stands in the corner of the front garden of 37 Denman Drive North close to the front boundary of the property and the flank boundary between 37 and 39 Denman Drive North. 37 Denman Drive North is sited at a corner in the roadway and the tree stands almost at the apex of this corner, it is thus very clearly visible and one of the most prominent trees in this part of the Hampstead Garden Suburb Conservation Area. It is also

visible from the public footpath that leads from Denman Drive to Little Wood. This footpath runs between the flank boundaries of 37 and 35 Denman Drive. The tree is visible from surrounding properties.

The Willow is a mature tree about 12 metres in height; as is apparent from the planning history above, it has been regularly maintained – mainly by thinning but with some branch removal and extensive reduction following storm damage, with subsequent regrowth from the previous treatments. The tree has a lean towards numbers 37 and 39 Denman Drive, this lean appears historic. The tree appears in reasonable condition with dense well-formed foliage. The crown contains some minor deadwood.

The Willow tree is particularly prominent within this part of the Hampstead Garden Suburb, especially given its location on the corner of Denman Drive. The Willow helps to provide screening for the properties in this road heightening their sense of privacy and softening the built form. It helps to filter noise and pollutants and provides a habitat for a variety of species. This tree is of a high public amenity value – contributing significantly to the streetscene and the character and appearance of the Hampstead Garden Suburb Conservation Area.

Denman Drive lies in the northern part of the Suburb, a forking road between Oakwood Road and Erskine Hill, set between two areas of woodland. In this part of the Suburb (identified as part of Character Area 6 of the Hampstead Garden Suburb Character Appraisal Statement) “there are extensive open spaces and woodland. Northway Gardens forms a green corridor between Falloden Way and Oakwood Road. Big Wood and Little Wood are Ancient woods bordering Denman Drive and Oakwood Road, and form a notable feature of the topography” as noted in the Character Appraisal Statement. Most of the area was designed before the First World War and was largely built by 1915. Like Oakwood Road, Denman Drive was developed to provide housing for rent at low to modest rates. Architecturally, it continued the artisan cottage tradition. It is an area of relatively low-density residential development – a mixture of semi-detached and terraced two-storey houses without basements; all houses having generous gardens.

The Introduction of the Character Appraisal Statement includes the following information relevant to the public amenity value of the Oak(s):

Views and Vistas - “Glimpsed views - Throughout the Suburb there are views of trees above rooflines, and glimpsed views between houses of trees and planted areas behind. For example, the views above and between houses to Turners Wood provide continuity between the woodland and the mature trees retained in gardens, as well as a sense of scale. Similarly, the mature oaks in Oakwood Road and Denman Drive unite Big Wood, Little Wood and the woodland of Northway Gardens/Mutton Brook. Whether or not individual specimens pre-date the development, they help to provide a link with the pre-development landscape and remaining woodland as well as reflecting the philosophy that informed the design of the Garden Suburb. The many footpaths frame views between hedges and lead onto attractive small greens or allotments. These glimpsed views are an important characteristic of the Suburb which need to be preserved.”

Streets and Open Spaces – “The roads within the Conservation Area are public open spaces of great quality. 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 used the natural contours of the land to create a relationship between the imposing buildings in Central Square and the cottages of the Artisans' Quarter. The axial roads provide through routes but the gradual slope of the hill was accommodated with less formal road layouts suited to smaller scale housing. The layout of roads often follows old tracks, contour lines, or old hedge boundaries curving around remnants of pre-existing woodlands or the boundary oaks of the old field system. Closes and formal squares infill land between the main routes providing more intimate spaces and picturesque streetscapes. Everywhere, great care has been taken to vary the building line so that some houses are set back behind small greens, others step forward creating a sense of enclosed space and providing attractive views."

Trees and Hedges – *"Trees and hedges are defining elements of Hampstead Garden Suburb. The quantity, layout and design of landscape, trees and green space in all its forms, are inseparable from the vision, planning and execution of the Suburb. Trees and landscaping provide a complimentary setting to the built form. It was the intention that dwellings and nature should be in such close relationship. Henrietta Barnett was clearly influenced by Ebenezer Howard's views that "Human society and the beauty of nature are meant to be enjoyed together... Town and country must be married and out of this joyous union will spring a new hope, a new life, a new civilisation." and ".. Parks and gardens, orchards and woods, are being planted in the midst of the busy life of the people, so that they may be enjoyed in the fullest measure". 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 the distant view preserved, if not as open fields, yet as a gardened district, the buildings kept in harmony with the surroundings."*

"Many very old boundary oaks survive in roads, gardens and open spaces and have great impact, both visually and environmentally, as individual trees..... The maturity of planting in the Suburb results in many fine, specimen trees in gardens enhancing the general streetscapes. Where roadways are too narrow to incorporate street trees, trees in gardens are crucial to the verdant appearance of the streetscape. 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"

The Character Appraisal Statement includes the following relevant information in respect of Character Area 6:

"Even within the context of Hampstead Garden Suburb this area is notable for its lush, green character. Big Wood and Little Wood are the remnants of ancient woodlands; the mature oaks in these two woods rise above the cottages in Oakwood Road and the two forks of Denman Drive. Mutton Brook runs through the attractively landscaped Northway Gardens which also has tennis courts and a children's playground. Everywhere there are mature street trees, well maintained hedges and attractive garden planting"

"The street layout and architectural styles fully exploit the setting. To the South, roads are curved both to retain mature trees and also to provide soft, picturesque street views."

“Principal positive features:

Layout and public realm

- curve of streets and planning of cul-de-sacs relate sympathetically to the topography
- road layouts frame views; focal points draw the eye up and down slopes
- pre-existing woodlands and areas of open meadow beside Mutton Brook are incorporated into the layout
-
- footpaths (twittens) link roads providing safe pedestrian shortcuts through the area from north to south and east to west.

Landscape and trees

- woods and Northway Gardens provide attractive green spaces and recreational areas for residents
- Big Wood and Little Wood are ancient woodlands of historic interest
- views to trees and open green spaces in the distance
- trees in gardens, especially mature trees
- number and scale of trees are well chosen to enhance streetscapes
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- planting in front gardens often complements and enhances the buildings”

Denman Drive North and Denman Drive South is described in greater detail as:

“Denman Drive is horseshoe-shaped, divided into Denman Drive North and Denman Drive South. The top of the horseshoe leads from Big Wood to Little Wood. Hedges and trees are a key feature lending charm to the area that feels secluded and enclosed by greenery (Photograph 3) [Photograph 3 shows the subject Willow]..... Long front gardens give a sense of tranquillity and space. They are, in the main, charmingly maintained in a cottage style. Privet hedging marks the boundary with the pavement and the majority of houses maintain small wooden gates of the correct proportions (....). On the whole the original character of the area has been well maintained.”

Of Little Wood, the Statement observes:

“Little Wood is an historic area of semi-natural broadleaved woodland. Covering 1.1 hectares, it is situated on a north facing slope behind the gardens of homes on Addison Way, Oakwood Road, Erskine Hill and Denman Drive North. There is twitten access from all but Erskine Hill and many surrounding properties have direct access through back garden gates. Now designated a Local Nature Reserve, it is owned by the London Borough of Barnet and managed in partnership with the Big & Little Wood Management Group. Little Wood and Big Wood are remnants of a much larger area of woodland shown on 1746 maps. They were probably originally managed as mixed coppice-with-standards, but converted to oak in the early 19th century. English oak now dominates within Little Wood, with an understory of hazel, rowan, wild cherry, mixed hawthorn, holly, blackthorn and elder. The ground flora is dominated by brambles and bracken, with bluebells, ivy and creeping soft grass. The wood provides habitat for bats, squirrels and a range of birds. The main distinguishing feature is an open-air theatre used for performances during the summer (.....). The surrounding high hedge and canopy of mature oak trees creates an intimate, atmospheric space. The wood is much used by local residents for recreation and as an attractive cut-through between roads.”

The Weeping Willow in the front garden of 37 Denman Drive North is a non-native specimen that has clearly been planted after Denman Drive was constructed – nonetheless, it is prominently located in the streetscape and contributes significantly to the character and appearance of this part of the Hampstead Garden Suburb Conservation Area by providing screening and shade; marking boundaries; framing views; forming focal

points; and has photographed as an example of “a key feature lending charm to the area that feels secluded and enclosed by greenery”.

As may be noted from the volume of, and matters raised in, objections detailed above, the Willow is much valued by residents as being an integral part of the character and appearance of the Hampstead Garden Suburb Conservation Area; contributing significantly to public amenity.

The application

The application submitted by John Cromar’s Arboricultural Company instructed by PBA Consulting on behalf of clients to report on the applicability of treeworks to control a reported subsidence problem at 39 Denman Drive North was registered on 15th November 2018. The reason cited on the application form for the proposal is:

“willow (T8) - Remove due to implication in subsidence damage - replace with Betula jacquemontii as consented by HGST”

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

- Hampstead Garden Suburb Trust letter and Anthony George and Associates’ Tree Report dated 29 March 2016
- PBA Consulting Crack Monitoring Record (18 readings 18/3/15 – 11/7/17)
- GeoServ Level Monitoring (13 readings 16/7/15 – 10/7/17)
- Pruning Invoice dated 2nd February 2017 (for treatment subject of TPP/0756/16)
- Bioprofiles DNA analysis dated 12th July 2018
- Engineer Investigation Report on Crack Damage dated 17th April 2015
- Auger Site Investigation Report dated 25th March 2015
- Soiltec soil testing Laboratory Report dated 9th April 2015
- Richardson’s Botanical Identifications root analysis dated 26th March 2015
- Sketch Plan
- John Cromar’s Arboricultural Company Report dated 8th November 2017
- updated PBA Consulting Crack Monitoring Record (28 readings 18/3/15 – 4/9/18)
- updated GeoServ level monitoring – (19 readings 16/7/15 – 1/8/18)
- estimated costs of repair options

In their letter of 29th March 2016 to the relevant residents, the Hampstead Garden Suburb Trust write: “Following the review of the reports supplied by Carmichaels, I enclose a copy of a report by the Trust’s Tree Consultants, Anthony George & Associates Ltd. Accordingly, the Trust now gives consent for the work specified in the report dated 29 March 2016 which is self-explanatory.”

The Anthony George and Associates’ Tree Report dated 29 March 2016 notes that he inspected various *“unidentified trees on the right hand side boundary in case they were Willow trees, this proved not to be the case, therefore the Willow roots found in the trial holes could have emanated from the large Willow on the front boundary of number 37, although somewhat hard to believe. Carmichaels and John Cromar have concluded that the mature and heavily pollarded Weeping Willow tree situated on the front boundary of number 37 is contributing to the structural movement on the rear elevation of number 39, and have therefore recommended either very heavy pollarding every two years or the removal of the tree. [...] is minded to remove the tree altogether rather than the expensive option of pollarding every two years or so, I would therefore recommend the Willow tree is removed and the stump ground out or poisoned. A replacement tree should be planted on*

the front boundary with Denman Drive and the following specie is recommended – Betula jacquemontii – Silver Birch.

The Council's Structural Engineer has assessed the information and the following points should be noted:

Trees – The Arboricultural Report and associated Sketch Plan show the locations of various trees and shrubs in the vicinity of 39 Denman Drive North:

- the Willow T8 in the corner of the front garden of 37 Denman Drive, close to the boundary with 39, at an estimated distance of approximately 13.3m from the affected property; based on a site visit on 17th June 2015 the height is cited as 9m and the stem diameter 900mm. The Report comments include *“Historically heavily reduced, pruned again in February 2017.”* It also notes that *“Tree 8 certainly does not pre-date the structure. I note construction was in 1908. Heave consequent to tree removal is not considered a significant threat in this case.”*
- three Oaks (T3, T4, T5) in Little Wood at estimated distances of approximately 23 and 28m; heights of 16m, and stem diameters of 500 / 700 / 800mm
- an Apple (T7) close to the side gate at 39, at estimated distance of approximately 2.3m; height of 5m, and stem diameter of 200mm
- two Privet hedges (H2, H6) and a Fuchsia (S1) are also detailed

Root analysis – Both microscopic and DNA testing were undertaken

The 2015 root analysis identified Salicaceae (Willow) and Quercus (Oak) roots in the trial pits at the rear of 39 Denman Drive North

The 2018 DNA analysis has confirmed the presence of roots from the Weeping Willow at the front of 37 were found in the trial pits.

Whilst the Willow roots sampled were dead, it is clear that the Willow's roots extend to the rear of the property

Damage - The Engineer Investigation Report dated 17th April 2015 provides details of the damage which is predominantly to the rear right-hand corner of the 39 Denman Drive North, although there is some internal cracking throughout:

Externally damage was evident:

- Front elevation (two vertical cracks of 1mm and 0.5mm from window corners which had been repaired and reopened)
- Right hand flank elevation (a tapered vertical crack of 3mm from window corner and two stepped diagonal cracks of 3-4mm and 10-12mm at lower levels in the rear corner with some lateral displacement of brickwork)
- Rear elevation (continuation of the lower flank wall cracks; a 3-4mm horizontal crack; a 2-3mm stepped vertical crack; short 1-2mm diagonal crack; and a vertical crack of 1-2mm by bay)

Internal damage:

- Kitchen (movement around window frame)
- Dining Room (fine diagonal crack and hairline horizontal crack by bay; open joint at window sill)
- Rear Bedroom (hairline diagonal crack; repaired diagonal crack; filled crack with hairline re-opening; hairline crack across ceiling)
- Bathroom (1-2mm vertical crack; 1mm diagonal crack; hairline vertical crack)
- Front Left hand bedroom (1mm vertical crack)
- Front Right hand bedroom (1mm vertical crack)

The Engineering Report notes that the damage was initially noticed late 2013 but worsened since and is of BRE Digest 251 Classification “Up to Category 3 (moderate damage)”.

Although not noted in the Engineer Report, cracking was also evident in the understairs cloakroom (on flank) – the residents also reported that damage had worsened since the Engineer Report was written.

Subsoil Investigations – Two trial pits were undertaken, both to the rear of 39 Denman Drive North:

Trial Pit 1 was 3.5m deep at the rear right corner:

- Foundation - 800mm deep, corbelled brick on mass concrete strip
- Soil – wet silty clay becoming stiff with depth, highly plastic
- Roots – Willow (dead)

Trial Pit 2 was 3.5m deep at the rear left corner next to bay:

- Foundation - 1000mm deep, corbelled brick on mass concrete strip
- Soil – firm becoming very stiff silty clay, highly plastic
- Roots – Willow, Oak and Ivy

Soil testing - The John Cromar Report dated 8th November 2017 summarises “*The comparison of the moisture contents with the Atterberg Limits indicates that the clay soil is desiccated for the full depth of both boreholes with the exception of the sample in trial hole at 1m to 1.5m depth. The higher moisture content of 43.3 measured in this sample is thought to be due to leakage from the adjacent drains (Date of investigation 18/3/15).*”

Monitoring – Both level and crack monitoring has been carried out between 2015 and 2018 (exact dates above). Both types of monitoring show seasonal movement – the level monitoring in particular clearly demonstrates that seasonal movement has continued to affect the property after the thinning of the Willow in February 2017.

Drainage – The drains, which run mainly down the right hand side of the property, were surveyed in March 2015 and found to be almost blocked by root ingress. Apart from this, no significant defects were found. As noted above, the higher moisture content of the soil sample is thought to be due to leaking drainage. It seems possible that the drainage may have acted as a conduit for the Willow roots found to the rear of the property which may have developed preferentially in the damper conditions associated with the leaking drains.

Conclusions – The 2015 Engineer Report conclusion is that “*The pattern of cracking and damage within the property is consistent with foundation movement at the rear right hand corner. Some of the cracking and distortion to the brickwork at this corner appeared to be historic, as evidenced by the worn edges to the cracks and the presence of previous demac studs fitted to one of the cracks. However, there has clearly been some more recent movement at this location.....It is therefore concluded that the crack damage is a result of foundation subsidence caused by desiccation of the highly shrinkable London Clay subsoil due to moisture extraction from roots of the Oak trees to the rear and the Willow tree at the front. Defects in the drainage system may also have contributed to the foundation movement at the rear right hand corner. Some minor movement was noted at the front of the property, although the pattern of cracking was not really consistent with foundation movement....suggest that a watching brief is kept on the damage at the front of the property as the Willow tree at the front has the potential to cause foundation subsidence to the whole property.*”

In respect of possible pollarding, the John Cromar Report observes “*I consider that pruning having evidently failed to limit structural movement, removing the willow tree is necessary to control soil drying by it.*” However, it may be noted that the 2017 treatment was 25% thinning, not pollarding. The Willow has historically been heavily pollarded and subsequently regrown – but the suggestion referred to in the Anthony George and Associates’ letter is that such pollarding be repeated biannually, and this treatment would markedly diminish the tree’s presence in the streetscene and its public amenity value.

On the basis of the submitted information, our own Structural Engineer has some concerns that the wrong tree is being implicated as the main cause of damage and considers that further investigation may be required to check if trees at the rear of the property are implicated. Although accepting that Willow roots may have been attracted to grow in vicinity of drain run, particularly if drains are leaking, and this could explain how identified Willow roots were found at rear right hand corner; he observes “*If the front willow tree was causing damage at the rear of the property, which is possible, I would have expected severe movement and damage to also occur at the front of the house. There is no record of this.*”; also noting “*In this case we have the greatest amount of movement occurring to the part of building the furthest from the tree, the site investigations and interpretative reports have not satisfactorily explained why this is occurring.*”

Our Structural Engineer considers that other trees may be implicated to movement at the rear of the building. Oak roots were identified in trial pits and there are mature Oaks in Little Wood to the rear of the site. Andy Tipping, the Council’s Greenspaces Trees and Woodlands Manager, has confirmed that some treeworks were undertaken to an Oak in Little Wood on 23rd July 2016 in connection with a related subsidence claim in 2015. The monitoring all post-dates treework undertaken by Greenspaces in Little Wood.

However, given the presence of DNA identified Willow roots, it would be difficult to wholly dissociate the tree from the damage - albeit that other trees may also be implicated.

Given the importance of the Willow in the streetscene; the suggestion that regular heavy pollarding may address the problem; and potential other causative / contributory factors it may be questioned whether the felling of the Willow is justified – although the DNA root identification should not be disregarded.

3. Legislative background

As the Willow 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), and it appears that the Suburb Trust have previously given consent for the removal of the Willow and replacement planting by a Himalayan Birch (as specified in the current application).

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 accordance with mandatory requirements, estimated costs options to repair the damage have been submitted. In this case the applicant has indicated:

Option A – tree removal - £25,000 - £30,000

Option B – partial underpinning and superstructure repairs - £50,000 + VAT

Option C - full underpinning and superstructure repairs - £80,000 - £90,000 + VAT

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 some concerns that the wrong tree is being implicated as the main cause of damage - however, albeit that other trees may also be implicated, given the presence of DNA identified Willow roots, it would be difficult to wholly dissociate the tree from the damage.

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 that addressing other factors 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 Willow'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 partial underpinning repair works would be an extra £20,000 - £25,000 and full underpinning an extra £55,000 - £65,000 if the tree is retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION

Most matters addressed in the body of the report. As some objectors have noted, there was a previous application to fell the Willow in 2007. The application was submitted by others - it was refused, the relevant Committee considering that the felling of the tree was not appropriate in the light of the supporting information put forward - an informative was added "*You may wish to consider a re-application in the event that you obtain further supporting documentary evidence including further monitoring results so that any seasonality of movement can be assessed, detailed sketches of the cracks and monitoring stud locations, drain survey, trial pit and borehole next to the rear elevation, a plan showing all nearby trees and hedges.*" – the current application has considerably more supporting evidence. However, as may be noted from the relevant planning history, there have not been refusals for lesser works as suggested by some objectors.

CONCLUSION

The applicant, John Cromar's Arboricultural Company, proposes to fell the significant mature Willow standing in the front garden of 37 Denman Drive North, adjacent to pathway into Little Wood, because of its alleged implication in subsidence damage to 39 Denman Drive North - and to plant a replacement Himalayan Birch as agreed with the Hampstead Garden Suburb Trust in 2016.

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

The Council's Structural Engineer has assessed the supporting documentary evidence and has noted that the subject Willow has been DNA identified as the source of Willow roots found. However, there are significant concerns about "*the greatest amount of movement occurring to the part of building the furthest from the tree, the site investigations and interpretative reports have not satisfactorily explained why this is occurring*".

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree and its importance to the character and appearance of the Hampstead Garden Suburb Conservation Area, it is necessary to consider whether or not the proposed felling is justified as a remedy for the alleged subsidence damage on the basis of the information provided.

If it is concluded on the balance of probabilities that the Willow'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 partial underpinning repair works would be an extra £20,000 - £25,000 and full underpinning an extra £55,000 - £65,000 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 Willow is excessive and has not been demonstrated to be necessary 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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