

BARNET

LONDON BOROUGH

COMMITTEE REPORT

LOCATION: 10 Kestrel Close, London, NW9 5DJ

REFERENCE: TPO/00123/13/H **Received:** 08 March 2013
WARD: BO **Expiry:** 03 May 2013
CONSERVATION AREA N/A

APPLICANT: OCA UK Ltd

PROPOSAL: 1 x Oak (T1 Applicants Plan) – Fell. Standing in Group G21 of Tree Preservation Order.

RECOMMENDATION:

That Members of the Planning Sub-Committee determine the appropriate action in respect of the proposed felling of 1 x Oak (T1 Applicants Plan), Standing in Group G21 of Tree Preservation Order, either:

REFUSE CONSENT for the following reason:

The loss of the tree of special amenity value is not justified as a remedy for the alleged subsidence damage on the basis of the information provided.

Or:

APPROVE SUBJECT TO CONDITIONS

1. The species, size and siting of the replacement tree shall be agreed in writing with the Local Planning Authority and the tree shall be planted within 12 months of the commencement of the approved treatment (either wholly or in part). The replacement tree(s) shall be maintained and / or replaced as necessary until 1 new tree is established in growth.
Reason: To maintain the visual amenities of the area.
2. Within 3 months of the commencement of the approved treatment (either wholly or in part) the applicant shall inform the Local Planning Authority in writing that the work has / is being undertaken.
Reason: To maintain the visual amenities of the area.

Consultations

Date of Press and Site Notices: 21st March 2013

Consultees: Neighbours consulted: 21

Replies: None

MATERIAL CONSIDERATIONS

Relevant Recent Planning and Building Control History:

Kestrel Close was built as part of the redevelopment of the former RAF West Camp site.

10 Kestrel Close:-

- Certificate of Lawfulness **H/00112/09** – Single storey rear extension - registered 13th January 2009 and was deemed **Lawful** on the 10th March 2009.
- Building Control Regularisation Application **R/09/00091** received 15th January 2009. **Certificate of Regularisation issued** on the 30th March 2011.

Treeworks:-

TPO/17577/08/H – 1 x Oak - Reduce Crown Density by 20%, and Lift to 3.5m, Retain Basic Size and Shape. Standing in Group G21 of Tree Preservation Order **Conditional Approval** - 12th June 2008.

PLANNING APPRAISAL

1. Introduction

This application has been submitted by OCA UK Ltd acting as agent on behalf of Cunningham Lindsey (Solent) - dealing with a claim on the Buildings Insurance for 10 Kestrel Close, London, NW9 5DJ.

The application was initially submitted via The Planning Portal on the 18th December 2012, however it was incomplete and additional supporting documentation/clarification was requested by the Council. All of the mandatory information was received on the 8th March 2013 and the application was registered in respect of "1 x Oak (T1 Applicants Plan) - Fell. Standing in Group G21 of Tree Preservation Order."

2. Appraisal

Tree and Amenity Value

The subject Oak stands in the L-shaped rear garden of 10 Kestrel Close, adjacent to the rear boundary with flats in Pocklington Close and overhanging a car parking area at Kestrel Close. The property has been extended and the Oak is about 10 metres from the single storey rear extension.

The Oak is about 15/16 metres in height and is Early Mature - Mature. It has a trunk diameter of 47cm (at 1.5 metres above ground level). The tree has no major structural faults and the crown has a good distribution of apparently healthy buds and fine branch structure. Only very minor deadwood is apparent. The tree has been previously lifted and thinned.

The London Borough of Barnet (RAF West Camp, Hendon, NW9) Tree Preservation Order 1988 was made on the 29th January 1988 and confirmed on the 1st August 1989. It was made prior to, and in association with, the residential redevelopment of the RAF site. During the making of the Order particular regard was given to trees which provided screening between the former RAF West Camp site and the adjacent residential properties. The vast majority of the trees included within the Order are adjacent to the boundary of the former RAF site. These boundary trees (including the Oak) were specifically protected and retained throughout the redevelopment of the site. Their

retention helps to add a sense of maturity to the development and integrates the development into the surrounding residential area.

Group G21 of the Tree Preservation Order includes 12 Ash, 2 Hornbeam, 2 Oak (one of which is the subject of this application) and 1 Lime. These trees stand adjacent to the boundary between properties in Swan Drive and Kestrel Close (built within the former RAF site), and those in Pocklington Close (which predate the redevelopment of the RAF site). All of the properties have relatively small gardens (between 10 and 15 metres in length) and the mature TPO trees adjacent to the boundary form an important screen between the properties. The Oak that is subject of this application is clearly visible from Kestrel Close, the junctions with Turnstone Close and Swan Drive, Pocklington Close and from surrounding properties. In particular it contributes significantly to the boundary screening between flats 1 to 9 Templar House and 10 Pocklington Close from Kestrel Close and Swan Drive.

The application

It is alleged that the Oak is implicated in damage to the rear extension. The reasons given for this application to fell the tree are:

- 1. The above tree works are proposed as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building.*
- 2. The above tree works are proposed to limit the extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs are likely to vary between £5,000 and £15,000 depending upon whether the tree can be removed or have to remain.*
- 3. The above tree works are proposed to limit the duration of any claim period and therefore allow the landowner their right to the peaceful enjoyment of their property.*
- 4. It is the case that an alternative to felling such as pruning or significant "pollarding" of the tree would not provide a reliable or sustainable remedy to the subsidence in this case. We do not consider that any other potential means of mitigation, including root barriers, would not be effective or appropriate in the circumstances.*
- 5. I consider that in this specific instance the planting of a Silver Birch tree, with a stem girth of 10-12cm, container grown at a location in the front garden of the above at a distance of no closer than 9m to any property, would be a suitable replacement.*

The agent has submitted the following documentary evidence in support of this application:

- Arboricultural Implication Assessment Preliminary Report on Trees by OCA UK Limited dated 3rd April 2012
- Report on "Insurance Claim Concerning Suspected Subsidence Resume of Technical Aspects" by Cunningham Lindsey dated 20th December 2011
- Factual Report of Investigation by CET Safehouse dated 12th December 2011 (including Investigation layout plan, Trial Pit/Borehole details, Soils Analysis and Root Analysis).
- Levels monitoring by Geo-serv for a period between 8th December 2011 and 23rd November 2012 comprising 5 sets of readings.
- Statement of reasons for Tree Preservation Order Application to Fell to ground level 1 English Oak (T1) at: 10 Kestrel Close, London.
- Heave calculations
- E-mails dated 5th February 2013, 6th March 2013 and 8th March 2013.

The Council's Structural Engineer has assessed the information. The Council's Structural Engineer's observations include the following:-

"The damage to the building is consistent with category 4 of table 1, BRE 251: those are large cracks between 5-15mm wide.

As per report the damage occurs in the extension. The extension was built in 2003.

According to the report the Location of damage: on the interface between the original building and the new rear extension. , external and internal cracking, floors sloping

Soil investigation results:

Only one borehole: TP/BH1, to the rear of the property. Control borehole results were not provided.

TP/BH1

Foundation: According to the soil investigation results foundations are 0.750 m deep. Foundations to the extension are shallow; the extension was built in 2003 when more than enough information was available on the subject of building near trees.

According to the Building Control records: A Building Control regularisation application was submitted in January 2009. The extension first inspected in June 2009 damage to the extension such as cracking or sloping floors was not reported. Damage to the extension was not reported during a subsequent inspection in September 2010.

Drawings submitted with the application do not contain a section where the proposed build of the floor and depth foundation can be seen.

Inspection of the floor was not carried out by the building control department and construction details were not provided for their assessment.

Conclusions

- According to the soil investigations results the soil is desiccated at 2.5m deep.

- According to the soil investigations the depth of the foundations was found to be 0.75m; this does not agree with the NHBC Standards chapter 4.2 where foundations should have been about/over 2.5m deep.

- Level monitoring results indicate a pronounce swelling and shrinking of the soil coinciding with the seasons and tree root action. There is hardly any movement to the original building. The graphical representation highlights that.

- The damage to the extension consists of cracking in the extension and sloping floors.

- Other trees in the vicinity such as Ash trees were recorded; those are within the boundary of No. 11 Kestrel Close. Although root of those trees were not found in the trial pit/borehole they are close to the property and would have an impact on the desiccation of the soil.

- According to the report live roots of Pomoideae gp. were found in the borehole this suggests trees of the above family grew in the surroundings drawing moisture of the soil.

Based on the above; although roots of the Oak were identified under the shallow foundations; other trees in the vicinity attribute to the desiccation of the soil and damage to the property including those that might have been removed.

The major problem seems to be that the extension was not build according to the NHBC standards."

The application submissions confirm that the rear extension at 10 Kestrel Close was constructed in 2003. At that time, there was no involvement of either the Council's

Planning or Building Control departments. In January 2009 the owner of the property applied to the Council's Planning Department for a Certificate of Lawfulness (H/00112/09). The evidence submitted was sufficient to illustrate that, on the balance of probability, the extension of the property had been in use continuously for a period of more than four years and the Local Planning Authority therefore determined that the development was lawful under the planning legislation by virtue of time.

The Council's Structural Engineer has noted that the foundations for the extension do not accord with the NHBC guidance and are too shallow (750mm deep). The NHBC guidance recommends that the foundations should be 2.5 metres deep. It should be noted that the borehole log states "no roots were observed below 1.7 metres." The Council's Building Control Department has issued a Certificate of Regularisation (dated 30th March 2011) in respect of the construction of the extension however the submitted plans included no foundation details.

The Council's Structural Engineer has confirmed that the soil investigations indicate desiccation at 2.5M and that the level monitoring results are consistent with subsidence damage to the extension - with hardly any movement noted to the main building. The roots of the Oak tree have been found underneath the shallow foundations of the extension. On this basis the Oak is implicated in subsidence damage to the rear extension of the property.

However, the Council's Structural Engineer has also highlighted that because of the shallow foundations of the extension "*other trees in the vicinity attribute to the desiccation of the soil and damage to the property.*" It is therefore possible that the removal of the Oak may not resolve the issue and there may be future pressures for more tree/shrub removals possibly including other trees standing in group G21 of the Tree Preservation Order.

The Council's Structural Engineer considers that "the major problem seems to be that the extension was not built according to the NHBC standards" (i.e. that the foundations are not sufficient given the trees growing in proximity to the extension).

It should be noted that the applicant/agent is proposing that any replacement tree should be planted in the "front garden" of the site - away from the rear extension with its shallow foundations. Any replacement planting in front of the property would not be able to replicate the boundary screening currently provided by the Oak subject of this application. It is also unclear whether replacement planting as indicated is feasible given site constraints.

3. Legislative background

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

Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides that compensation is payable for loss or damage in consequence of refusal of consent, grant of consent subject to conditions or refusal of any consent, agreement or approval required under such a condition. 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.

This application is being referred to Members for decision because one of the exceptions to the Delegated Powers of the Assistant Director of Planning and Development Management is “where she / he considers that an application should be refused where such a decision will result in the Council being made liable for payment of compensation”.

In this case the agent has indicated that *“the estimated repair costs are likely to vary between £5,000 and £15,000, depending upon whether the tree can be removed or have to remain.”*

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, in the light of the amenity value of the tree, the proposed felling is not justified on the basis of the reason(s) put forward together with the supporting documentary evidence, there may be liability to pay compensation pursuant to Part 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 if TPO consent is refused.

It is to be noted that the Council’s Structural Engineer has concluded that *“although roots of the Oak were identified under the shallow foundations; other trees in the vicinity attribute to the desiccation of the soil and damage to the property including those that might have been removed. The major problem seems to be that the extension was not built according to the NHBC standards.”* As noted above there is potential compensation liability if consent for the proposed felling is refused (the applicant indicates repair works would be an extra £10,000 if the tree is retained).

COMMENTS ON THE GROUNDS OF OBJECTION N/A.

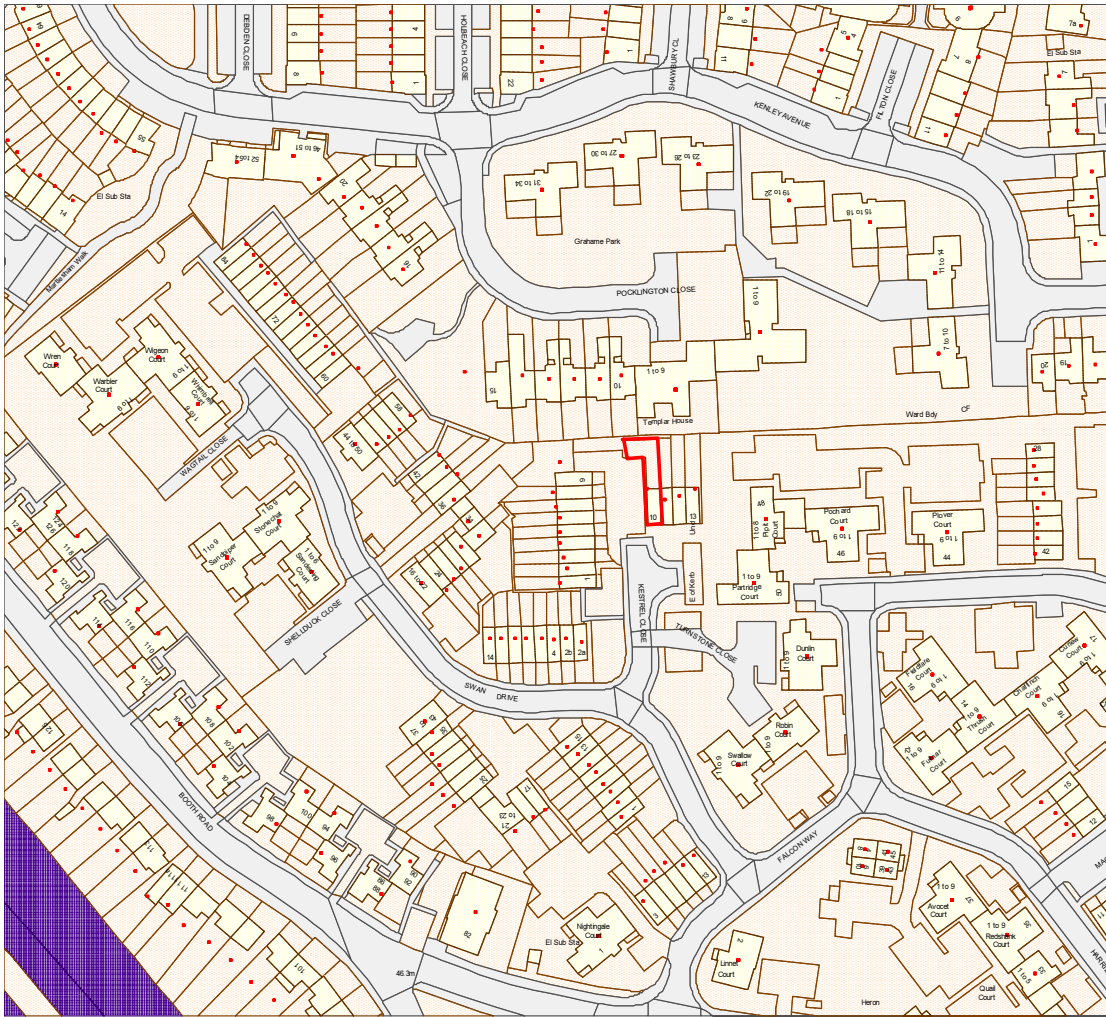
CONCLUSION

OCA UK Limited (acting as agent for Cunningham Lindsey (Solent) dealing with a subsidence claim at 10 Kestrel Close) are proposing to fell an Oak tree standing within the rear garden of 10 Kestrel Close. The tree is standing within Group G21 of the Tree Preservation Order. The reason for the proposed felling of this tree is that it is allegedly implicated in property damage.

The Council's Structural Engineer has assessed the supporting documentary evidence and concluded that the Oak tree is implicated in subsidence damage to 10 Kestrel Close. However, the Council’s Structural Engineer has advised that *“although roots of the Oak were identified under the shallow foundations; other trees in the vicinity attribute to the desiccation of the soil and damage to the property including those that might have been*

removed. The major problem seems to be that the extension was not built according to the NHBC standards.” The Council’s Structural Engineer has suggested the removal of the Oak may not resolve the issue given the shallow foundations of the extension and presence of other trees/shrubs in the vicinity.

The tree is considered to be of public amenity value and its loss would be detrimental to the character and appearance of Kestrel Close, Swan Drive and Pocklington Close. In addition the loss of this tree would remove the principal boundary screening between Kestrel Close and properties in Pocklington Close. The Council’s Structural Engineer has reviewed the evidence submitted and concluded that the tree is likely to be implicated in subsidence damage to extension at 10 Kestrel Close. However, given the very shallow foundations of the extension the removal of the tree may not resolve the issue – possibly leading to pressures for more tree/shrub removals and even further loss to public amenity. It is to be noted that the agent has indicated that they consider a replacement tree should be planted in the “front garden.” The Council must decide whether it is prepared to refuse consent to the proposed felling and face a highly probable compensation claim potentially in excess of £10,000 or allow the felling subject to replacement planting.



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