

LOCATION: 54 Somerset Road, Barnet, Herts, EN5 1RG

REFERENCE: TPO/00249/13/B **Received:** 08 May 2013
WARD: Oakleigh **Expiry:** 03 July 2013
CONSERVATION AREA N/A

APPLICANT: OCA UK Ltd

PROPOSAL: 1 x Oak (T2 Applicants Plan) – Fell. T9 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 (T2 Applicants Plan), T9 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: 23rd May 2013

Consultees: Neighbours consulted: 8

Replies: 1 – Support

The grounds for support can be summarised as:

- Some trees are wonderful in the right place but the preservation order on the Oak and Willow trees have caused great expense and hardship to homeowners.
- The Willow tree has caused blocked sewage pipes.
- It is a beautiful Oak tree but in the wrong place

- Fear that the roots of the Oak may cause damage to other properties.

It should be noted that the Willow – T10 of the Tree Preservation Order - is not subject of this current application.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

It is stated in the applicant's submissions that the property was constructed in 1853, the original building has been extended and the Council's records include the following application:

- **N05724** – Single storey front extension. **Conditional Approval** – 19th April 1978

Treeworks:-

N05724G/03/TRE – Oak - Thin crown by 20% and remove major deadwood. T9 of TPO. **Conditional Approval** – 1st December 2003.

The Willow T10 of the Order also stands in the front garden of 54 Somerset Road. There have been previous applications for treatment of this tree, most recently where the reason for the proposed work was cited as "the owners are having to have new drains laid as the roots of the Willow have infiltrated the drains at nos. 52 and 54 Somerset Road" - application reference **N05724F/03/TRE** - Weeping Willow - Removal. T10 of TPO was **Refused** at the Chipping Barnet Area Planning Sub-Committee on the 17th December 2003.

PLANNING APPRAISAL

1. Introduction

This application has been submitted by OCA UK Ltd acting as agent on behalf of Infront Innovation (Leicester) - dealing with a claim on the Buildings Insurance for 54 Somerset Road, Barnet, Herts, EN5 1RG.

The application was initially submitted via The Planning Portal on the 24th April 2013, however, it was incomplete and additional supporting documentation/clarification was requested by the Council. All of the mandatory information was received on the 8th May 2013 and the application was registered in respect of "1 x Oak (T2 Applicants Plan) - Fell. T9 of Tree Preservation Order."

The original house has two single storey front extensions (since 1965 according to Ordnance Survey plans) and is now subdivided to a main dwelling ('Audley Lodge') and a separate flat. The flat occupies the western part of the ground floor from the front of the building to the rear including the smaller extension (approximately 1.5 metres deep). The larger extension (approximately 3 metres deep) arising from the eastern part of the front elevation is the closest part of the building to the Oak and is used as the main dwelling's living room.

2. Appraisal

Tree and Amenity Value

The subject Oak stands in the front garden of the property within a small lawn area. The tree stands about 12/13 metres from the roadway, about 8 metres from the flank boundary between 54 and 54a Somerset Road and about 9 metres from the front elevation of 54 Somerset Road.

The mature Oak is about 15 metres in height with a trunk diameter of 102cm (measured at 1.5 metres above ground level). The tree has had some previous lifting and thinning treatments, as well as some previous reduction in size/shape. There has been regrowth from the previous treatments and the tree has dense foliage of healthy form and colour. There is some – mostly very minor – deadwood visible. There are also some apparently localised pockets of rot and bark tears at some of the previous reduction points.

The Oak is visible from Somerset Road, as part of a group when viewed from in front of 54 Somerset Road and more clearly as an individual tree from further along the roadway in either direction. It is one of the largest and oldest front garden trees within the roadway – the Oak seems commensurate with the original property and provides a historic link with the early, more spacious development, of the area which has been infilled with more modern properties with small front gardens – the trees help to soften the urban appearance of the now densely built residential dwellings. It also contributes to the general character and appearance of the area.

The application

It is alleged that the Oak is implicated in damage to the property of 54 Somerset Road, Barnet, Herts, EN5 1RG. 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 £12,500 and £70,000 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.*

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

- Engineer’s Report by Innovation Group dated 9th January 2012
- Site investigation Report by Mat Lab Ltd dated 8th February 2012
- Laboratory Report by Mat Lab Ltd dated 24th February 2012
- Levels monitoring by Geo-serv for a period between 14th February 2012 and 11th December 2012 comprising 5 sets of readings
- Arboricultural Assessment Report by OCA UK Limited dated 23rd April 2013.
- Statement of reasons for application
- E-mail dated 8th May 2013.

The Council’s Structural Engineer has assessed the information and commented as follows:-

Trees

The OCA report shows the locations trees of around the property. Their report shows the Oak tree T2 in the front garden at a distance of 9.6m from the building and 15.8m high. The other trees indicated are Weeping Willow T1, Dawn Redwood T3, False Acacia T4 and Ash T5.

Damage

The damage to the building was discovered in December 2011.

The damage consists of cracking to the right hand side of the house. No plans or sketches were provided to show the pattern or distribution of the cracks.

The internal cracks vary between 1mm to 3mm. There are 1mm external cracks on the front elevation and a 15mm external vertical crack to the right hand side flank wall, which is at the junction of the rear extension and the house and appears to be old damage.

An extension to the house was built in 1978.

The damage is classified as category 3 in accordance with BRE Digest 251. This appears to be on the basis of the large crack in the flank wall and the remainder of the damage would be classified and category 2 (slight).

Subsoil investigations

Mat Lab carried out a subsoil investigation on 31/1/12. This consisted of two trial pits and boreholes, one to the rear right hand side of the property, BH2, and one at the front right hand side of the property BH1.

Results of the investigation were as follows;

1. The foundations are 1000mm deep.
2. Stiff brown Clay was encountered for the full depth of the boreholes.
3. Roots extend to 2.5m depth in BH1 and to 2m depth in BH2.
4. Oak tree roots identified in both boreholes
5. Both boreholes were dry.

Soil Testing

The soil analysis results indicate desiccation at 2.25m depth in BH1. The results for BH2 are not conclusive with regard to desiccation.

A ground heave prediction has been calculated in accordance with BRE Digest 412 using the soil suction test results. The predicted potential ground heave is 30mm at the front and 14mm at the rear. The ground heave calculations were not provided.

Monitoring

Level monitoring has been carried out from 14/2/12 to 11/12/12 using location 17 at the rear left hand corner of the building as the datum level. This is unlikely to be fully stable and the movement recorded will be relative to any movement occurring at location 17.

Most of the recorded movement is occurring at the front elevation, with the maximum overall movement of 6mm occurring at the front right hand side. The pattern of movement appears to be modified by the wet summer of 2012 when June and July recorded particularly heavy rainfall, however the monitoring results do indicate a seasonal trend of movement to the front elevation.

There is negligible movement recorded to the rear elevation, although this may be due to these readings being close to the datum which has the same foundation.

There is no evidence that the movement of the rear detached garage is due to the Oak tree T2.

Drainage

The trial pits and boreholes were dry, and the cyclical pattern of movement demonstrated by the monitoring indicates the underground drainage was not implicated in the damage; water leaking from drainage usually causes progressive widening of the cracks.

Conclusion

The site investigation results indicate that the Oak tree T2 is likely to be implicated in damage to the front of the building.

Some of the crack damage appears to be old and may be associated with the construction of the 1978 extension. To assist with the assessment of which damage may be related to foundation subsidence due to tree root action further information would be required in the form of sketches of the crack patterns and detailed plans showing areas of damage. A distortion survey may also be of benefit.

The predicted potential ground heave of 30mm could cause damage to the building and take several years to complete. The heave calculations were not provided and it would be useful to have a copy of these to check on what basis the ground heave prediction was calculated.

A heave assessment of all properties within the influence zone of Oak tree T2 should be undertaken before the T2 Oak tree is considered for removal.

There is no evidence the damage to the rear detached garage is related to root action of the Oak tree T2.”

On receipt of these comments, an e-mail was sent (on the 31st May 2013) to the agent requesting the information for the Council's Structural Engineer.

It should be noted that the Council had previously request (in an e-mail dated 1st May 2013) that the agent provide “a floor plan of the property with the areas of damage clearly marked”. The outstanding mandatory information required for validation was received by the Council with the agent's e-mail dated 8th May 2013 – hence the application was registered on that date. However, the requested annotated floor plan was not included in the submissions – the agent stating in their e-mail “we have requested the floor plan from our client.”

At the time of writing this report the Council has not received the requested further information.

Notwithstanding this the Council's Structural Engineer has advised that “the Oak tree T2 is likely to be implicated in damage to the front of the building.”

This damage includes an external crack below the window of the eastern single storey front extension (the closest part of the building to the Oak tree), and a number of internal cracks in rooms adjacent to the front elevation and at the union between the original building and both the later single storey front extensions.

The Council's Structural Engineer has advised that further information in the form of a distortion survey and sketches of the crack patterns and detailed plans showing areas of damage would be necessary to determine whether or not the Oak was implicated in other damage which has been noted.

The Council's Structural Engineer has confirmed that the soil analysis results indicate desiccation at 2.25m depth in BH1 (adjacent to the front elevation). The results in BH2 (adjacent to part of the original property) were not conclusive with regard to desiccation. Oak roots were found in soil samples from both boreholes.

Level monitoring results do indicate a seasonal trend of movement to the front elevation and negligible movement recorded to the rear elevation. The results may have been affected by the south-east corner of the building being used as the datum.

The ground heave predictions which have been provided indicate that potential ground heave is 30mm at the front and 14mm at the rear – but in the absence of details of the calculations, the Council's Structural Engineer has not been able to assess the accuracy of the heave predictions.

The Council's Structural Engineer has also advised that "*a heave assessment of all properties within the influence zone of the Oak tree should be undertaken.*" Whilst no evidence has been submitted to indicate that the Oak is implicated in any damage to any other property, there is a possibility that the removal of the Oak may result in heave damage to neighbouring properties.

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 £12,500 and £70,000, 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 *"The site investigation results indicate that the Oak tree T2 is likely to be implicated in damage to the front of the building."* On the basis of the evidence currently available, whilst not all of the visible cracking/damage at 54 Somerset Road is attributable to the Oak and the Council's Structural Engineer has advised *"the predicted potential ground heave of 30mm could cause damage to the building and take several years to complete,"* given that the Oak is implicated in subsidence damage to the front of the building there is likely to be a compensation liability (the applicant indicates repair works would be an extra £57,500 if the tree is retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF REPRESENTATION

Dealt with in the body of the report above

EQUALITIES AND DIVERSITY ISSUES

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

The Council have considered the Act but do not believe that the application would have a significant impact on any of the groups as noted in the Act.

CONCLUSION

OCA UK Limited (acting as agent for Infront Innovation (Leicester) dealing with a building insurance claim at the site) are proposing to fell an Oak tree standing in the front garden of 54 Somerset Road. The tree is T9 of the Tree Preservation Order. The reason for the proposed felling of this tree is that it is allegedly implicated in property damage.

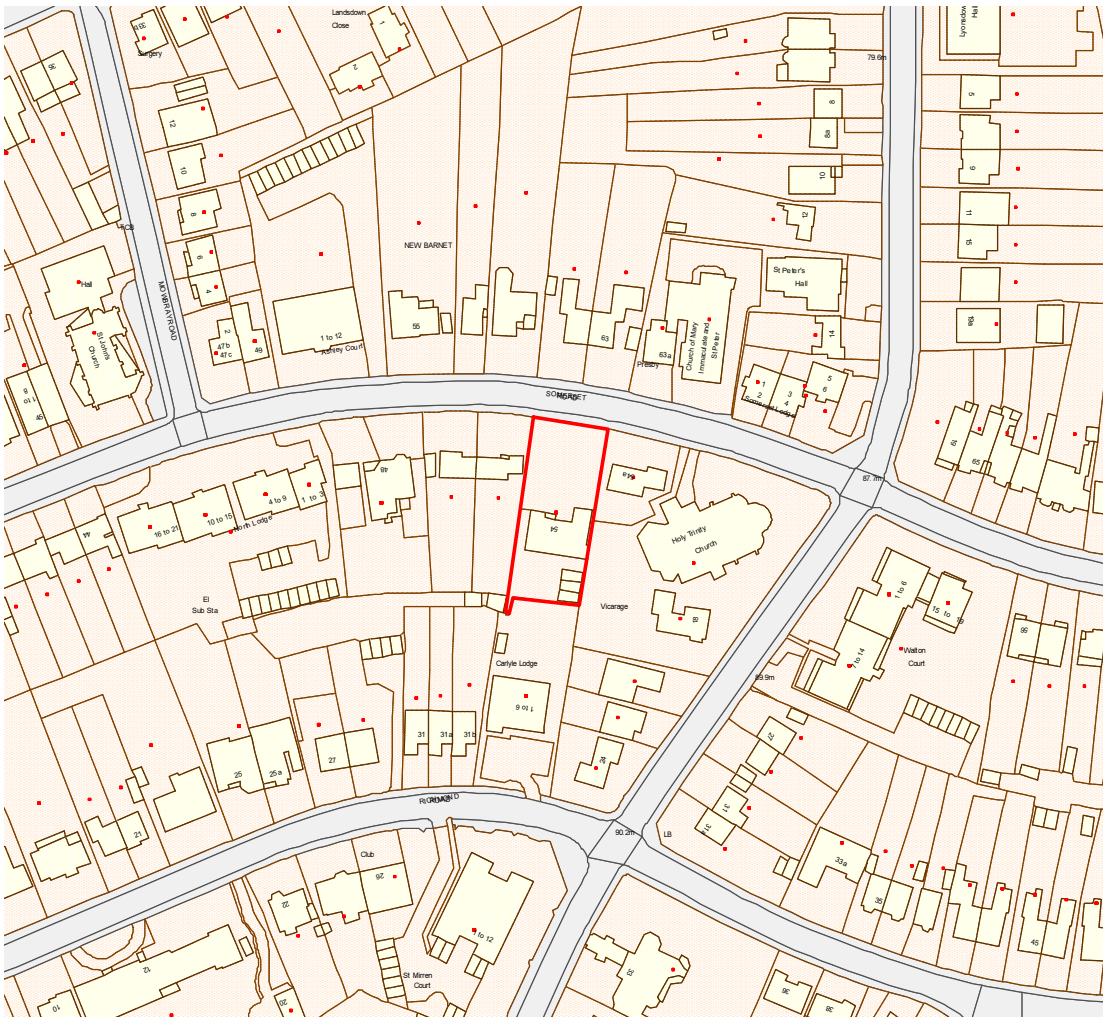
The Council's Structural Engineer has assessed the supporting documentary evidence and concluded that the Oak tree is likely to be implicated in subsidence damage to the front of 54 Somerset Road. However, the Council's Structural Engineer has advised that *"the predicted potential ground heave of 30mm could cause damage to the building and take several years to complete."* The Council's Structural Engineer also has concerns that following the removal of the Oak tree ground heave may be a problem for adjacent properties. The Council's Structural Engineer has suggested the removal of the Oak may not resolve the issue given the predicted potential ground heave – indeed removal of the tree may result in greater damage.

The tree is considered to be of public amenity value and its loss would be detrimental to the character and appearance of Somerset Road. The Council's Structural Engineer has reviewed the evidence submitted and concluded that whilst the tree is likely to be implicated in subsidence damage to 54 Somerset Road its removal may lead to greater damage to the dwelling (and possibly adjacent properties). 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 £57,500 or allow the felling subject to replacement planting.

SITE LOCATION PLAN: 54 Somerset Road, Barnet, Herts, EN5 1RG

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