



COMMITTEE REPORT

LOCATION: Land adjacent to 18 – 20 The Thomas Watson Cottage Homes and Colgate Court, Leecroft Road, Barnet, Herts EN5 2TJ

REFERENCE: TPF/0347/17 **Received:** 16 May 2017
WARD: Underhill **Expiry:** 27 September 2017

CONSERVATION AREA -

APPLICANT: Subsidence Management Services
AGENT: Innovation Group Environmental Services

PROPOSAL: 1 x Oak (standing in applicant's ref. TG1) – Remove.
Standing in group G1 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 (standing in applicant's ref TG1), Standing in group G1 of Tree Preservation Order, either:

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 this tree shall be planted before the end of the next planting season following the commencement of the approved treatment (either wholly or in part). If within a period of five years from the date of any planting, the tree(s) is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective), further planting of appropriate size and species shall be planted at the same place in the next planting season.

Reason: To maintain the visual amenities of the area.

2. Within 3 months of the commencement of the approved treatment (either wholly or in part) the applicant shall inform the Local Planning Authority in writing that the work has / is being undertaken.

Reason: To maintain the visual amenities of the area.

Or: 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.

Consultations

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

Date of Site Notice: 17th August 2017

Consultees:

Neighbours consulted: 33

Replies: 1 1 support 0 objections

The consultation response in support commented:

- The Trustees of the Thomas Watson Cottage Homes fully support this application.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History (reverse chronological order):

Treeworks at 64 The Croft:

TPP/0227/16 –

1 x Oak - Pollard down to the crown break to create a monolith for a wildlife habitat. T1 of Tree Preservation Order

1 x Oak - Reduce by a max of 1.5 metres. T2 of Tree Preservation Order

- conditional approval 23rd May 2016

TPF/0273/15 –

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

- conditional approval 13th July 2015

TPO/00472/12/B –

3 x Oak (T1, T2 and T3 Applicant's plan) – Reduce by 30%. T1, T2 and T3 of Tree Preservation Order

- refused 29th October 2012

TPO/00710/09/B –

3 x Oak – Reduce size of crown by 30%. T1, T2 and T3 of Tree Preservation Order

- conditional approval 18th January 2010

N03502Q/07/TRE –

3 x Oak – Reduce size of crown by 30%. T1, T2 and T3 of Tree Preservation Order

- conditional approval 2nd November 2007

N03502M/01/TRE –

3 x Oak – Reduce size of crown by 30%. T1, T2 and T3 of Tree Preservation Order

- conditional approval 17th December 2001

TREN03502L –

3 x Oak – Reduce size of crown by 30%. T1, T2 and T3 of Tree Preservation Order
- conditional approval 28th January 1998

Treeworks at the Thomas Watson Cottage Homes (relating to northern part of site only):

N00416AG/08/TRE –

6 x Plane - thin by 30% as specified, Remove dead and diseased wood, lift to crown break. Reduce to clear phone lines by 1m - Group G2 of Tree Preservation Order. 5 x Plane - thin by 30% as specified, remove dead and diseased wood, lift to crown break. Reduce to clear phone lines by 1m. Sever ivy. Shorten crown on building side by 20% - Group G3 of Tree Preservation Order. 2 x Oak - thin by 30% as specified, remove dead and diseased wood and epicormic growth. T6 and T7 of Tree Preservation Order. 1 x Oak - remove lowest branch roadside. Standing in Group G1 of Tree Preservation Order
- conditional approval 5th March 2008

TREN00416E –

Oak – Remove deadwood, T6 and T7; Oak, Holly and Plane – Remove deadwood, G1 and G5, Plane and Holly – Remove deadwood, G2, G3 and G4 of Tree Preservation Order
- Exemption Notice 26th February 1999

Planning permission N00416AC/03 was granted in 2005 for “Erection of 8no. additional dwellings on land adjoining Thomas Watson Cottage Homes/Colgate Court. Erection of new residential development on part allotment land adjoining Boardman Close at a density no greater than 175 habitable rooms per hectare with associated changes to landscaping and access. (OUTLINE)” with a number of reserved matters and conditions being approved in August 2009 (B/01883/09); November 2009 (B/03330/09) which included some tree-related provisions. Building Control records include a Certificate of Completion for the 8 new single storey dwellings dated 22nd June 2011.

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of an Oak tree at the Thomas Watson Cottage Homes site in connection with alleged property damage at 1 Thomas Watson Cottage Homes was submitted via the Planning Portal in May 2017. There were discrepancies and shortcomings in the information – clarification and additional information was thus requested.

On 2nd August 2017 an e-mail providing further documentary evidence was received from the agent. An e-mail was sent to the agent “Thank you for the additional information of which our Structural Engineer notes: Ground heave calculations now provided, however the soil Moisture content values used on the calculation do not appear to agree with latest SI results, and the soil suction values from the borehole were not included.” - to which the agent sent a further e-mail “Please see attached soils report which does include suction

values. We will request our engineer confirms the ground heave calculations with the latest SI. The points noted do not warrant non validation of the TPO application so can we have a copy of the acknowledgement to confirm the application is no[w] registered.” - the application was registered. However, as discussed below, further clarification was requested following the site visit undertaken by the Case Officer and Structural Engineer. The application is being referred to the first available Chipping Barnet Area Planning Committee Meeting following receipt of further information.

As set out in the report, this application follows a previous application by the same agent to remove an Oak tree at 64 The Croft also in connection with alleged property damage at 1 Thomas Watson Cottage Homes in 2015 (TPF/00273/15).

2. Appraisal

Tree and Amenity Value

The original Thomas Watson Cottage Homes, comprising eight individual and semi-detached bungalows together with a central hall symmetrically arranged on three sides of an open landscaped square and surrounded by trees and gardens, were built in 1914 on the western side of the end of Leecroft Road. Colgate Court was subsequently built in 1996 on the eastern side of Leecroft Road, aligned with the open side of the square; followed by eight additional cottages (numbers 13 – 17 and 18 – 20, Jubilee Cottages) as part of the 2003 outline planning permission.

The affected property, 1 Thomas Watson Cottage Homes, is the Warden’s detached bungalow at the northern ‘flange’ of the square, on banked land facing onto Leecroft Road. To the south of the dwelling is the semi-detached bungalow forming numbers 2 and 3 of The Thomas Watson Cottage Homes; to the north of the Warden’s detached garage is the rear boundary of 64 The Croft (which is accessed via a long drive running parallel with Leecroft Road). The part of the Leecroft Road carriageway and associated footway beside 1 Thomas Watson Cottage Homes is lower than the land on either side of it – with the strip of land on which the Oak stands being perhaps 0.5 metres above the roadway, and the front of the dwelling and secondary footpath immediately serving the Cottages perhaps some 1 metre above the roadway. A 6” rainwater sewer runs beneath the footpath at the top of the bank immediately in front of 1 Thomas Watson Cottage Homes. This 6” rainwater sewer links in due course to a 12” rainwater sewer running along the centre of Leecroft Road. A wall with an arched gateway links 1 Thomas Watson Cottage Homes with the neighbouring semi-detached bungalows - the gateway provides access to the pathway running to the central Hall along the rear of the Cottages. Beneath this path is a 6” soil sewer which links to 12” soil sewer also running along the centre of Leecroft Road.

1 Thomas Watson Cottage Homes stands on the opposite side of Leecroft Road from the subject Oak. As well as being set back on either side of the road, they are separated both by 9 metres carriageway and footpath, through which at least two 12” sewers run (and any other services), and further by the level changes across this part of the site.

There are a significant number of mature trees at the Thomas Watson Cottage Homes estate - including a number of field boundary trees pre-dating the original cottages and

others which, judging by their size and position, were almost certainly planted as part of the 1914 landscaping. Four field boundary Oaks were retained and incorporated into eastern side of the landscaped square (on the west of Leecroft Road), with a dense screen of trees along the eastern side of Leecroft Road (most of which were retained and protected as part of subsequent developments).

The subject Oak is an early mature tree, some 15 metres in height, standing on the eastern side of Leecroft Road, relatively close to the main gateway. It is the most significant tree in the group on the strip of land between the car park area in front of 18 – 20 Thomas Watson Cottage Homes (built to the north of Colgate Court as part of the 2003 outline planning permission) and the main Leecroft Road spine running between the original Cottage Homes and later development. The Oak has been previously lifted and thinned, but not significantly reduced. It appears to be in good condition with no major faults apparent.

The Oak is very clearly visible from Leecroft Road and The Croft. In terms of size, shape, and condition; it is the best tree in the group standing on the strip of land described above. As well as being an integral part of the screening between the original Homes and the new Jubilee Cottages, the Oak contributes significantly to the character and appearance of the Thomas Watson Cottage Homes estate. In describing the Cottage Homes, the Barnet Society notes “The Watsons and their architects are also likely to have been aware of George Cadbury’s garden village at Bourneville (1879–1970s) and Lord Lever’s garden city at Port Sunlight (1888–c. 1914). In Barnet, their vision is echoed on a miniature scale.”

The application

The application submitted by Innovation Group Environmental Services as agent for Subsidence Management Services was registered on 2nd August 2017. The reason(s) for the proposed removal of the Oak (described as the closest Oak to the front left corner of the property in the Mixed Species group applicant’s reference TG1) 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 £25,000.00 if the influence of the tree(s) remain and £7,160.00 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 = £32,160.00

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.

Please note that further to a previous application DNA evidence was requested by Barnet Council which was obtained and the removal of the Oak to the front right hand confirm was done in April 2016 (location refers to ST1 in the included Arb report). Further damage has occurred (continuing to move) hence this application.

The supporting documentation comprised:

- Innovation group Engineer's Report dated 28 December 2011
- Innovation group Addendum Engineer's Report dated 20 March 2015
- Innovation property Visit Report dated 9 November 2016
- Innovation group 2nd Addendum Engineer's Report dated 9th May 2017
- Environmental Services / Innovation property Arboricultural Report dated 1 March 2017
- SubsNetUK Soil Analysis dated 23 February 2017
- SubsNetUK Geotechnical dated 10 February 2017
- SubsNetUK Root Identification dated 31 January 2017
- Geological strata map
- Level monitoring 25/11/14; 23/1/15; 18/3/15; 12/5/15; 8/7/15; 2/9/15; 25/6/16; 18/8/16; 22/9/16; 30/12/16; 24/2/17; 25/4/17; 29/6/17; (30/8/17 on graph)
- Crack monitoring 18/10/13; 12/12/13; 4/2/14; 27/3/14; 23/5/14; 14/7/14; 4/9/14; 25/11/14; 23/1/15; 18/3/15; 12/5/15; 8/7/15; 2/9/15; 25/6/16; 18/8/16; 30/12/16; 24/2/17; 25/4/17; 29/6/17
- Heave Prediction Calculations using Suction Profiles and Water Content Profiles

Following the site visit by the Case Officer and Structural Engineer, an e-mail was sent to the agent which included:

The suggestion in the Addendum Engineer's Report that "There are no drains close to the front left corner of the property where the worst area of movement is taking place" is contradicted by our observations of drainage runs on site, as borne out by the attached plan.

Please clarify, particularly in the context of the statement in the 2011 Engineer's Report stating "Besco were using a sit on roller to compress the soils under the path and it was during the operation of the roller passing the building that the front wall was seen to crack by the operative."

To which the agent responded:

"Our Engineers comments are as follows: The front left corner where the worst damage is located is away from both runs shown on the attached plan, if these were involved then most movement would be seen at each gully location and not at pin 5, the roller is just a side issue the underlying predominant cause of the continuous significantly enhanced seasonal movement is the adverse effects of adjacent vegetation as seen by the level monitoring."

Eliciting from our Structural Engineer:

"The plan shows a foul and surface water drain under the garden wall where significant subsidence has occurred. Therefore it is very possible the drains are

leaking and affecting the sub-soil in this area. Although the drains are not next to the house they are not that far away.

I suggest a drain survey and test is carried out.”

To which the agent responded on 2nd October 2017:

“If this was solely a drainage issue we would not see recovery in the monitoring there would be progressive downward movement.

... the level monitoring shows two periods of recovery indicating drains are not the cause.

With regards to reduction of the tree we feel removal is the only long term solution or alternative repairs (underpin).”

The Council's Structural Engineer having visited the site and assessed all the submitted information, notes:

Further to your request to review the site investigation results at the above, with regard to the tree preservation order for the one of the two Oak trees in the group of trees TG1 which is closest to The Thomas Watson Cottage, I would comment as follows;

Trees

The arboricultural report of 1/3/17 shows the locations trees of around the property. The report shows the group of trees TG1 at a distance of 17.2m from the building and 16.5m high. It is not clear if these dimensions refer to the Oak closest to the building or is an average of all the trees in the group.

The other trees in group TG1 include another Oak tree, a Holly and a Beech.

Other trees indicated in the report include two Oak trees in the grounds of 64 The Croft and Cypress hedge opposite the LHS flank wall.

In April 2016 an Oak tree at the adjacent site, 64 The Croft, was removed (shown as ST1) and a hedge was removed 26/9/12.

Damage

The damage to The Thomas Watson Cottage was first discovered in 2011.

The damage consists of tapered cracking to the front bay and the front LHS of the house.

Following the tree removal works in April 2016 further on-going damage was identified to the building on 9/11/16.

The damage is classified as category 3 in accordance with BRE Digest 251.

Subsoil investigations

SubNetuk carried out a subsoil investigation on 23/1/12 and 26/1/17. We only have details of the later SI. This consisted of a trial pit and borehole to the front LHS of the property. A control borehole was located in the rear garden to compare and contrast results.

Results of the investigation were as follows;

1. The foundations are 850mm deep.
2. Stiff Clay was encountered to the full depth of the borehole 4m deep.
3. Roots extend to 2.5m depth.
4. Oak tree roots identified below foundations.

Soil Testing

The soil analysis results indicate desiccation at 2.0m depth.

Two ground heave calculations have been undertaken indicating heave potentials of 42mm and 64mm.

However, the calculations have not used the soil test results from the control bore. The engineer for the Insurer advised this is because the soil in the control bore was also affected by roots and assumed soil parameters were used in the calculation to give a 'worst heave value' and 'the actual heave in reality is likely to be far less'.

Monitoring

Level monitoring has been carried out from 23/1/15 to 30/8/17 with a gap in the readings between 2/9/15 and 25/6/16.

The rear LHS of the building is used as a datum which is unlikely to be fully stable.

Most of the recorded movement is occurring at the front LHS of the property, with a maximum overall movement of 19mm. The pattern of the monitoring results indicates a seasonal trend of movement which has increased in magnitude since the tree removal in April 2016.

Crack monitoring has been carried out from 12/12/13 to 29/6/17 with a gap in the readings between 2/9/15 and 25/6/16.

The crack monitoring results show relatively small amount of movement which is surprising given the large seasonal movement indicated in the level monitoring results.

Drainage

There are no drains close to the front LHS corner of the house, and the soil testing and level monitoring result do not indicate a leaking drain problem.

Conclusion based on SI results

The site investigation results indicate the Oak tree closest to the building in the group TG1 would be implicated in damage to the front LHS of the building. The second Oak in the group TG1 could also be implicated as a contributory factor.

The removal of the Oak tree in April 2016 did not succeed in stabilising the building.

I understand the two remaining Oak trees are close together in the TG1 group and the removal of one Oak only may not be sufficient to prevent ongoing subsidence damage occurring to the building.

The ground heave calculations are based on assumed values for the control borehole to give the 'worst heave value'.

The Oak trees are noted as being younger than the property therefore the effects ground heave following tree removal is unlikely to cause significant additional damage to the building.

The level monitoring results indicate enhanced seasonal movement and an increasing subsidence of the foundations following the removal of the Oak tree in April 2016. This is the opposite of what would be expected but may be explained by the relatively dry autumn of 2016 and winter period 2016/17.

Also according to the delegated report of the 12/6/15 the Oak tree which was removed was in a poor condition and therefore probably not abstracting significant moisture from the ground.

The crack monitoring results show relatively small amount of movement which is surprising given the large seasonal movement indicated in the level monitoring results and does not agree with the Engineer's report of 9/11/16 which identified further damage had occurred.

The severity of the damage is classified as moderate.

It may be more effective to carry out reduction works to both Oak trees which may be sufficient to require only superstructure repairs to the building.

Both Oak trees would need to be regularly reduced to maintain at the reduced size.

Further comments following site inspection of the 19/9/17

The Oak tree in group TG1 closest to the building is significantly larger than the other Oak tree in the group.

There is evidence of previous tree reduction work but the Oak trees appear not to have been maintained for a number of years allowing them to grow to their present size.

The damage to the property appears to be progressing with cracks to the internal walls, door frames out of square affecting door opening and closing, subsidence of ground floor slab with gaps occurring between floor and skirting board.

The focal point of the damage is the LHS of the building opposite the Oak tree closest to the building.

The Oak tree removed in April 2016 opposite the RHS of the building was a much smaller tree and appears to have been regularly reduced /pollarded according to photos in the planning record folder. There was no damage evident to the RHS of the building however the resident believes this part of the cottage may have been underpinned.

There is a main drain run opposite the LHS of the building, it runs under the garden wall next to the archway where a large horizontal crack has occurred.

Conclusion

The Oak tree closest to building is considered to be the most significant cause of the damage to the building and would be implicated in any claim for damages.

The occurrence of the damage to the cottage in 2011 most likely coincides with a lack of maintenance of the oak trees.

The removal of the closest Oak tree may not be sufficient to completely stabilise the building without reduction works and maintenance of the second Oak tree in the TG1 group, particularly as its growth it will no longer be inhibited by the larger Oak tree closest to the building.

It may be possible to stabilise the building by significantly reducing both oak trees and regularly maintaining at the reduced size. The monitoring of the building should continue following the tree works to confirm full recovery and allow superstructure repairs to be carried out.

The drain run opposite the LHS of the building should be surveyed to check its condition and repair if necessary.

The main area of damage, as described in the Engineer's Reports is mainly to the front bay and front left side of the bungalow, it was first noticed in 2011.

The 2011 Engineer's Report assesses the crack damage as BRE Category 3 (Moderate) and notes *"The cracks to the front bay which were evident before the front path was relayed are tapered in nature and they increase in width with height which is indicative of subsidence as a result of the shrinkage of the clay subsoil due to the moisture extracting influence of the vegetation to the front of the property. We would add however that the cracking to the front left corner happened at the same time as the paths being relayed so this damage may relate purely to this operation or to a combination of both vibration and clay shrinkage."*

The 2015 Engineer's Report, prepared with benefit of investigations undertaken following the initial Report, also assesses the crack damage as BRE Category 3 (Moderate) and notes *"The DNA report has implicated the neighbours oak tree T1. With regards to the parts of the property closest to the oak tree not being affected we can only assume that these are on deeper foundations beyond the influence of the tree roots."*

The Oak referred to as "the neighbours oak tree T1" was growing at the adjacent site, 64 The Croft. An application to fell the tree was submitted by Environmental Services Innovation group (the same agent as for this current application) and was granted conditional approval on 13th July 2015 under reference TPF/0273/15 – "1 x Oak (applicant's ref. T1) - Fell. T3 of Tree Preservation Order." The Oak was apparently felled in April 2016. It is depicted as ST1 on the plan submitted with the current application.

Despite the felling of the Oak implicated by the DNA report, the Engineer's Visit Report dated 9th November 2016 notes *"The policyholder reported worsening and additional damage" which is described and recommends "Further site investigations are required in conjunction with additional monitoring as it appears that the remaining vegetation to the front of the building is causing on going subsidence to the property and therefore additional tree mitigation works are likely to be required before repairs can be considered."*

The 2017 Engineer's Report, prepared with benefit of these further investigations notes *"After initial mitigation works were carried out in the summer of 2016 in respect of the third party oak ref: T1 it is clear that there has been ongoing subsidence movement to the front left corner of the property and this has been more widespread passing back further into the property" concluding that this is the result of the remaining vegetation close to the front left corner of the bungalow within the group of trees TG1 and recommends that "the vegetation works are completed in accord with the tree report [i.e. the removal of the closest Oak to the front left corner of the property in the Mixed Species group applicant's*

reference TG1] *and the property monitored to stability and once proven repairs to the subsidence damage can be completed.*”

During the site visit by the Case Officer and Structural Engineer, the resident of 1 Thomas Watson Cottage Homes confirmed that the damage had been getting worse since the removal of the Oak at 64 The Croft (which had previously stood on the other side of the detached garage to the north i.e. to the front right hand corner of the Cottage).

The agent has not provided any evidence of drain survey or testing – indeed, the Engineer’s Reports erroneously seek to suggest that there are no drains close to the front left corner of the property. However, in response to observations by the Case Officer and Structural Engineer on site, the information about sewer runs was supplied by the Clerk to the Trustees of the Thomas Watson Cottage Homes who facilitated access for the visit. Our Structural Engineer has also remarked on the apparent discrepancy between the relatively small amount of movement shown by the crack monitoring compared with the level monitoring and Engineer’s report of 9/11/16; he has also noted the apparent lack of recent maintenance pruning of the trees at the site.

Given the importance of mature trees to the character and appearance of the Thomas Watson Cottage Homes estate, there is concern about ‘attrition’ in the light of this current application to remove another Oak as damage is apparently worsening since the removal of the Oak formerly at 64 The Croft implicated by the DNA report.

However, our Structural Engineer observes “*The Oak tree closest to building is considered to be the most significant cause of the damage to the building and would be implicated in any claim for damages.*” But he also notes “*The removal of the closest Oak tree may not be sufficient to completely stabilise the building without reduction works and maintenance of the second Oak tree in the TG1 group, particularly as its growth it will no longer be inhibited by the larger Oak tree closest to the building. It may be possible to stabilise the building by significantly reducing both oak trees and regularly maintaining at the reduced size. The monitoring of the building should continue following the tree works to confirm full recovery and allow superstructure repairs to be carried out. The drain run opposite the LHS of the building should be surveyed to check its condition and repair if necessary.*” Given the public amenity value of the Oak and the possibility that lesser works may be a solution, it may be questioned whether the proposed removal of the TPO Oak at this juncture is excessive / premature – particularly in the absence of drain surveying.

3. Legislative background

As the Oak is included in a Tree Preservation Order, formal consent is required for its treatment from the Council (as Local Planning Authority) in accordance with the provisions of the tree preservation legislation.

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

consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.

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

In this case the application submissions indicate that *"Estimated costs of repair to the building are £25,000.00 if the influence of the tree(s) remain and £7,160.00 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 = £32,160.00"*

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 Oak tree closest to building is considered to be the most significant cause of the damage to the building and would be implicated in any claim for damages"*.

The statutory compensation liability arises for loss or damage in consequence of a refusal of consent or grant subject to conditions - a direct causal link has to be established between the decision giving rise to the claim and the loss or damage claimed for (having regard to the application and the documents and particulars accompanying it). Thus the cost of rectifying any damage that occurs before the date of the decision would not be subject of a compensation payment. In this case, damage of BRE Category 3 was noted in 2011 and has been reportedly worsening since; in addition there is suggestion of other causative factors.

If it is concluded that addressing other factors together with pruning would resolve the alleged problem, regardless of the proposed tree removal, it may be argued that loss or damage would not be in consequence of a refusal of TPO consent to fell.

However, if it is concluded on the balance of probabilities that the Oak's roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the tree's removal, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £17,840 if the tree is retained) if consent for the proposed felling is refused.

COMMENTS ON THE GROUNDS OF OBJECTION

Not applicable.

EQUALITIES AND DIVERSITY ISSUES

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

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

CONCLUSION

The agent, Innovation Group Environmental Services, proposes to fell the significant Oak standing as part of a group on the eastern side of Leecroft Road at the Thomas Watson Cottage Homes site because of its alleged implication in subsidence damage to 1 Thomas Watson Cottage Homes.

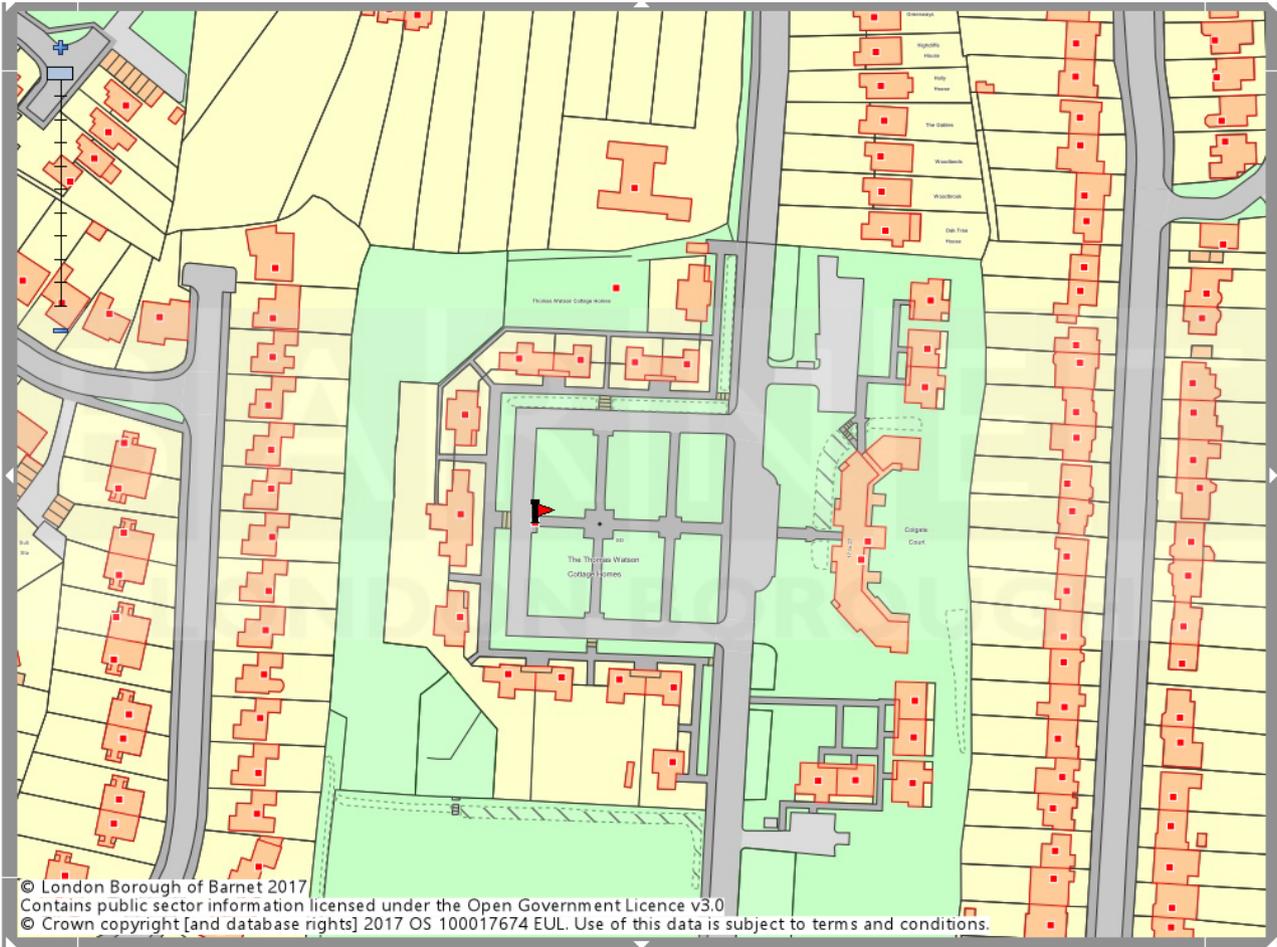
The Council's Structural Engineer has assessed the supporting documentary evidence and has noted that the subject Oak is likely to be implicated in damage to the front left corner of the building. There are possibly other causative factors which do not appear to have been investigated – our Structural Engineer has noted the lack of recent maintenance pruning of trees at the site.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree, it is necessary to consider whether or not the proposed felling is justified as a remedy for the alleged subsidence damage on the basis of the information provided and the potential that lesser works may stabilise the building.

If it is concluded on the balance of probabilities that the Oak's roots are the 'effective and substantial' cause of the damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the tree's removal, there is likely to be a compensation liability (the applicant indicates repair works would be an extra £17,840 if the tree is retained) if consent for the proposed felling is refused.

However, particularly given the amenity value of the tree, if it is concluded that on the basis of available information that removal of the Oak is excessive and has not been

demonstrated to be necessary; 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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