



COMMITTEE REPORT

LOCATION: 113 The Reddings, London, NW7 4JP.

REFERENCE: TPF/0432/19

WARD: Mill Hill

CONSERVATION AREA N/A

Received: 3rd July 2019

Expiry: 28th August 2019

AGENT: Environmental Services

PROPOSAL: 2 x Oak (applicant's ref. T2, T4) - Fell. 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 2 x Oak (applicant's ref. T2, T4) – Standing in group G1 of the Tree Preservation Order, either:

REFUSE CONSENT for the following reason:

The loss of these trees 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, cultivar, size and siting of two replacement trees shall be agreed in writing with the Local Planning Authority and these replacement trees 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.

Consultations

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

Date of Site Notice: 1st August 2019

Consultees:

Neighbours consulted: 2

Replies: 1 Objection from the Mill Hill Preservation Society

The grounds of objection are:

"The Society has examined this application on the LBB website and in location, and we are concerned about the two trees being removed. The oak trees were certainly there long before The Reddings was built in the 1950s and are slow growing. The trees in question form part of a line of oak trees near the backs of the houses along that side of the street and if one house, albeit the extension, is being affected others should be also.

We have looked at the position of house and oak trees and they appear to be on the Claygate Beds (a mixture of clay, sand and gravel), but very close to the underlying London Clay. The last 'Event Year', when the clay soil was significantly affected by the lack of rain was 2007 but these oak trees seem to be on a clay/sand/gravel mix which will be less susceptible to desiccation and shrinkage. In order to prove what is happening to the foundations of any building, a 12 month (minimum) monitoring period would be needed and also trial pits dug and tree root samples taken and examined.

Indeed the Innovation Group report states that cracking was first noticed in March 2018 and their report recommending tree removal is dated April 2018. Four weeks to make that decision is totally inadequate and cannot be science based. According to our committee member who examined the site, and who has an engineering background, it seems doubtful that (assuming the foundations of the extension were built adequately) they are being affected by the roots of trees suddenly in 2018.

We object strongly to the removal of these trees on the evidence available and request that proper investigations are undertaken. Please be in touch if you require further information."

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

Building works at 113 The Reddings, London, NW7 4JP.

W08852 – Single-storey side and rear extension.

- Conditional approval 14th September 1988.

W08852A – Side and rear roof extension.

- Refused 4th May 1999.

W08852B/00 – Roof dormer windows to sides and rear of the house.

- Conditional approval 14th March 2000.

There are no recent previous applications or notifications in respect of treatment to the Oak trees that are subject of this application.

PLANNING APPRAISAL

1. Introduction

An application form proposing felling of 2 x Oak (applicant's ref. T2 and T4) standing in the rear garden of 113 The Reddings in connection with alleged damage to that property was submitted via the Planning Portal in June 2019.

There were various discrepancies and shortcomings in the information - clarification and additional information was thus requested. Following the receipt of further information and correspondence from the agent, the application was registered on the 3rd July 2019.

The application has been submitted by Environmental Services acting as agent on behalf of Subsidence Management Services – who are dealing with a claim of alleged subsidence damage at 113 The Reddings.

2. Appraisal

Trees and Amenity Value

The subject Oak trees both stand within the rear garden of 113 The Reddings adjacent to the rear boundary of the property. The rear extension at 113 The Reddings is the closest part of the house to the subject trees. Oak (applicant's ref. T2) is the right-hand tree (when viewed from the house) and stands about 13.5-14 metres from the rear extension; Oak (applicant's ref. T4) is the left-hand tree (when viewed from the house) and stands close to the northernmost corner of the plot about 18-19 metres from the rear extension.

Oak (applicant's ref. T2) is about 17-18 metres in height and is a mature tree with a trunk diameter of 80cm (measured over the bark at 1.5 metres above ground level). The tree has an approximate branch spread of 8 metres to the north, 7 metres to the east, 9 metres to the south and 5.5 metres to the west. The tree has had some previous crown lifting treatment and has a form that is slightly suppressed by Oak (applicant's ref. T4) which is the larger tree. Dense Ivy growing up the trunk made close inspection of the trunk difficult. The foliage of the tree appeared to be of reasonable form, density and colour – indicative of a good physiological condition. There was some (mostly minor) deadwood within the crown – but the tree had no obvious major structural faults apparent.

Oak (applicant's ref. T4) is over 20 metres in height and is also a mature tree with a trunk diameter of 95cm (measured over the bark at 1.5 metres above ground level). The tree has an approximate branch spread of 9-10 metres to the north, 9 metres to the east, 11.5 metres to the south and 7 metres to the west. This tree has also had some previous minor crown lifting treatment. This Oak is the dominant specimen in the group and has a spreading crown of good form. The foliage of the tree appeared to be of reasonable form, density and colour – indicative of a good physiological condition. There was some (mostly

minor) deadwood within the crown and some branch snags which have resulted from previous breakage of some minor branches – but the tree had no obvious major structural faults apparent.

The Reddings comprises an elongated oval roadway with detached and semi-detached houses that was built on agricultural fields during the early-mid 1950s. The Tree Preservation Order was made in 1956 in connection with the residential development of The Reddings - the Order referring to the area as Housing Site No. 14, Lawrence Street, Mill Hill NW7 and the individual sites are identified by plot numbers. The houses and roadway are not shown on the 1951 Ordnance Survey map – but are shown on the Tree Preservation Order map.

The residential area is verdant and retains many links with its pre-development agricultural landscape, including retention of belts of former field boundary trees which have informed the layout (aligning with site boundaries). 113 The Reddings backs onto the extensive Lawrence Street Allotments, through which runs public footpath H18 (linking Lawrence Street with Marsh Lane and small Public Open Spaces); there are also fields and woodland in close vicinity. Although The Reddings is not within, it is very close to, the designated boundaries of Mill Hill Conservation Area and Green Belt. The land is quite steeply sloping – the Ordnance Survey 110m contour running almost at right angles through 113 The Reddings with the 120m contour less than 40m away to the north-east.

The two trees stand adjacent to the rear boundary of the property and both trees significantly predate the construction of The Reddings. These Oak trees are remnants of the former agricultural field boundary that existed prior to the residential development of the land. The two Oak trees are components of a belt of mature vegetation adjacent to the rear boundaries of most of the odd numbered properties in this stretch of The Reddings which has importance both visually and ecologically, for example as wildlife habitat. The Oaks (applicant's ref. T2 and T4) can both be seen above and between the houses from The Reddings as well as sections of Reddings Close and Lawrence Street; they are visible as being within a group of mature trees from parts of the Mill Hill Conservation Area. The two Oaks are seen as part of a backdrop of mature trees standing behind the houses and from these viewpoints appear to stand at the eastern end of the line of trees standing adjacent to the rear boundaries of 77 to 113 The Reddings. In addition, the subject Oak trees are also visible from the public footpath crossing the allotments – from where they also appear as part of a further group with several (non-TPO) trees standing within the allotment land which, being shorter, are less visible from other directions. The views of the subject Oak trees from publicly accessible locations are enhanced both by the topography of the land (the trees stand at a higher level than the house and roadway) and the relatively open allotment land to the rear. These Oak trees make a very important contribution in helping to screen and soften the built form of the residential houses, maintaining a verdant character to the residential roadway.

The application

The application submitted by Environmental Services was registered on the 3rd July 2019. The reasons for the proposed felling of the two Oak trees (applicant's ref. T2 and T4) cited in section 5 of the application form are:

"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 £40k if the influence of the tree(s) remain and £3.3k 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 = £43.3k

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)."

The supporting documentation comprises:

- "Arboricultural Consultancy for Esure" report by Environmental Services dated 30th April 2018.
- Claim Assessment Report by Innovation Group dated 28th March 2018 which includes some information about, and photographs of, the damage at 113 The Reddings.
- Engineers Addendum Report by Kevin Phillips of Innovation Group dated 16th May 2019.
- Geotechnical Report for Subsidence Management Services by SubsNetuk dated 13th April 2018 and including details of trial pit/borehole logs for two trial pits/boreholes (TP/BH1 and TP/BH2) dug on the 6th April 2018 and foundations details for the extension at 113 The Reddings.
- Geotechnical Report for Subsidence Management Services by SubsNetuk dated 3rd October 2019 and including details of borehole logs for two additional boreholes (BH3 and BH4) dug on the 19th September 2019 and DNA Analysis of the roots found in samples taken from those boreholes.
- Level Monitoring Report for Subsidence Management Services by SubsNetuk dated 26th April 2019 and including level monitoring results for a period of between 6th June 2018 and 20th April 2019 (comprising 6 sets of readings).
- Level Monitoring Report for Subsidence Management Services by SubsNetuk dated 11th July 2019 and including level monitoring results for a period of between 6th June 2018 and 4th July 2019 (comprising 7 sets of readings).
- Root Identification Report for Subsidence Management Services by SubsNetuk dated 9th April 2019 and including roots analysis results for samples taken from two trial pits/boreholes (TP/BH1 and TP/BH2).
- Soils Analysis Report for Subsidence Management Services by SubsNetuk dated 13th April 2018 including soils analysis for samples taken from two trial pits/boreholes (TP/BH1 and TP/BH2) on the 10th April 2018.

The Claim Assessment Report by Innovation Group dated 28th March 2018 states that the damage was first noted and notified to the insurer on the 16th March 2018. The report provides details of the damage – which is internal and external to the rear extension that was constructed in 1988 and at its junction with the main building (see application W08852 in relevant recent previous planning history above).

The report includes photographs of the damage and states that “*It is common practice to categorise the structural significance of the damage in this instance, the damage falls into Category 3 (Moderate).*”

BRE Digest 251 *Assessment of damage in low-rise buildings* includes a ‘Classification of visible damage to walls with particular reference to ease of repair of plaster and brickwork or masonry’. It describes category 3 damage as “*Cracks which require some opening up and can be patched by a mason. Repointing of external brickwork and possibly a small amount of brickwork to be replaced. Doors and windows sticking. Service pipes may fracture. Weather-tightness often impaired. Typical crack widths are 5 to 15mm, or several of say, 3mm.*”

However, the “*minor cracking is evident on the junction of the original right hand flank wall of the property and front wall of the [utility] room*” and “*the grouting on the junction of the applied wall tiling has cracked and fallen out*” in the Kitchen referred to in the report would correspond to lower Categories of the BRE classification (Categories 0, 1 and 2).

BRE Digest 251 notes that “*For most cases, Categories 0, 1 and 2 can be taken to represent ‘aesthetic’ damage, Categories 3 and 4 ‘serviceability’ damage and Category 5 ‘stability’ damage. However, these relationships will not always exist since localised effects, such as the instability of an arch over a doorway, may influence the categorisation. Judgement is always required in ascribing an appropriate category to a given situation.*”

Although publicly available on the Council’s website (with the exception of the Level Monitoring Report dated 11th July 2019 and Geotechnical Report dated 3rd October 2019 which were added subsequently on receipt), from the comments it seems likely that the author of the objection letter may not have viewed all of the technical supporting information.

The Council’s Structural Engineers, having assessed all the submitted information, note:

- “*1. Cracking appears to be consistent with subsidence of the foundations showing that rear extension is pulling away from the main property.*
- 2. From the Level monitoring and root identification reports is shown that the trees and the seasonal movement are tree related matters. Pyracanth[a] could be a contributory factor.*
- 3. The DNA identification indicates that both Oak trees T2 and T4 are implicated.*
- 4. Please note that foundation depth of the rear extension recorded from BH/TP1 and BH/TP2 for a High Shrinkage soil is less than the anticipated depth required by the NHBC 4.2 Guide for the tree distance recorded to the rear extension. According to LABC foundation calculation site the required depth of the foundation at the rear extension should be 2.07m.*

Conclusion;

Oak trees would be implicated in the subsidence damage to the extension.”

Both the Council’s Structural Engineers and the author of the “Arboricultural Consultancy for Esure” report have suggested the Pyracantha to be a contributory factor in the damage at 113 The Reddings. It should be noted that the consent of/notification to the Local Planning Authority is not required for the removal of the Pyracanth sp. Hedge. Removal of the unprotected hedge may help limit moisture extraction from the soil by vegetation.

The consent/notification of the Council also not be required for the removal of any other unprotected vegetation (such as the Ivy growing up Oak (applicant's ref. T2) and Ash trees (T1 and T3 of the "Arboricultural Consultancy for Esure" report by Environmental Services dated 30th April 2018).

The Council's Structural Engineer has also noted: "*that foundation depth of the rear extension recorded from BH/TP1 and BH/TP2 for a High Shrinkage soil is less than the anticipated depth required by the NHBC 4.2 Guide for the tree distance recorded to the rear extension. According to LABC foundation calculation site the required depth of the foundation at the rear extension should be 2.07m.*"

The Tree Preservation Order that includes these Oak trees was made at approximately the same time as the houses were built and the subject Oak trees predate the construction of the houses in The Reddings (by many decades, judging by their size). Given the trees' size and position, as well as the contemporaneous NHBC guidance regarding foundation depth, the construction of the single storey rear extension in the late 1980s should have had due regard to the presence and future growth of the TPO Oak trees.

However, given that the foundations for the extension appear to be only 1 metre to 1.3 metres deep (see the Geotechnical report dated 13th April 2018), it is evident that the extension was not constructed with due regard for the presence and future growth of the TPO Oak trees or in accordance with the NHBC guidelines.

As the Oak trees significantly predate the construction of the houses in The Reddings, it is uncertain whether there may be a possibility of further property damage being caused if the subject trees are removed, as the risk of heave has not been confirmed and no predicted heave calculations have been submitted with this application.

Removal of the subject Oak trees would be of significant detriment to public amenity and the character and appearance of the area as it would create a further gap in the line of mature vegetation adjacent to the rear boundary of the properties in this part of The Reddings, increasing visibility of the built form and eroding the verdant suburban character of the area.

3. Legislative background

As the two Oak trees are included in a Tree Preservation Order, formal consent is required for their 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(s) 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 trees are 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 section 5 of the submitted application form it is stated: "*Estimated costs of repair to the building are £40k if the influence of the tree(s) remain and £3.3k 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 = £43.3k.

The Engineers Addendum Report by Innovation Group dated 16th May 2019 which the agent has submitted with this application gives different figures stating that the potential cost of "Superstructure repairs" is "£5000.00" and the "potential additional cost" of "Foundation stabilisation" is "£30000.00."

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 to the privately owned TPO Oak trees that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the Oak trees is so high that the proposed felling is not justified on the basis of the reasons 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 Engineers have noted that the "*Oak trees would be implicated in the subsidence damage to the extension*"; although the Pyracantha hedge has been acknowledged to be a contributory factor and there is uncertainty about the risk of heave, it is also clear that the foundations were not constructed in accordance with NHBC guidance current at the time.

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, or rectifying damage which is not attributable to the subject trees, would not be subject of a compensation payment.

If it is concluded on the balance of probabilities that the roots of the two Oak trees are the 'effective and substantial' cause of damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the felling of these trees, there may be a compensation liability if consent for the proposed felling is refused – in the application submissions it is indicated that the repair works for 113 The Reddings may be in excess of an extra £30,000 if the subject Oak trees are retained.

COMMENTS ON THE GROUNDS OF OBJECTION

The matters raised by the objector have been discussed 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

The agent, Environmental Services, proposes to fell two Oak trees standing in the rear garden of 113 The Reddings because of their alleged implication in subsidence damage to the single storey rear extension of that property.

The subject Oak trees are considered to have a very high public amenity value. They are clearly visible from several publicly accessible locations, forming part of a tree group which is important for wildlife as well as in preserving the character of the area and softening the adjacent built form. The loss of these Oak trees will have the effect of visually shortening the line of mature trees behind the houses when viewed from The Reddings, the junction with Reddings Close, Lawrence Street and the edge of the Mill Hill Conservation Area. When viewed from the public footpath running through the allotments to the rear (east of The Reddings) the loss of these trees will have the visual effect of opening up a gap in the vegetation group.

The Council's Structural Engineers have assessed the supporting documentary evidence and have noted that the subject Oak trees would be implicated in the subsidence damage to the extension. However, the subject trees are not the only causative factor in the alleged subsidence damage and it is uncertain whether or not there may be a risk of heave damage as a consequence of felling these Oak trees.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the subject Oak trees, it is necessary to consider whether or not the proposed felling of these trees 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 two Oak trees' roots are the 'effective and substantial' cause of damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the felling of these two trees, there may be a compensation liability (in the application submissions it is indicated that the repair works for 113 The Reddings may be in excess of an extra £30,000 if the subject Oak trees are retained) if consent for the proposed tree felling is refused.

Members need to decide whether or not the proposal is justified, having regard to the reasons put forward in support of it, given the likely impact of the proposal on the amenity of the area; bearing in mind the potential implications for the public purse that may arise from the Decision for this application.

