

TPO/00462/09/F – 1 x Oak – Crown Clean, Remove Limb Growing over Number 16 as Specified, Thin by 20% as Specified, Reduce Limbs Growing Towards Number 16 by 2m. T14 of Tree Preservation Order

- Refused 21st October 2009

TPO/00179/10/F – 1 x Oak – Crown Clean, Thin by 20% as Specified, Tip back property side laterals by 2m. T14 of Tree Preservation Order

- Conditional approval 20th May 2010

TPP/00468/15 – 1 x Oak (applicant's ref. T1) - Crown thin by 20% including removal of deadwood, lifting of low branches and shortening of branches encroaching towards house. T14 of Tree Preservation Order

- Conditional approval 1st September 2015

TPP/0375/20 – 1 x Oak (applicant's ref. T1) - Cut roots as necessary to install root barrier to rear of the property in accordance with Optera Structural Solutions Arboricultural Method Statement. T14 of Tree Preservation Order

- Conditional approval 3rd July 2020

PLANNING APPRAISAL

1. Introduction

The applicant initially submitted an application form, sketch plan, arboricultural report, drainage report and soil testing on 28th March 2019 via the Planning Portal. However, insufficient information was provided to allow validation of the application and there ensued considerable discussion and correspondence with both the applicant and his subsequently appointed agent (representing Direct Group / Davies Property Solutions) as to what clarification and additional information was required.

It should be noted that if 'subsidence' is cited as a reason for proposed treatment of tree(s) included in a Tree Preservation Order, it is necessary to submit specified supporting documentary evidence:

- the application form stating:

"For works to trees covered by a TPO Please indicate whether the reasons for carrying out the proposed works include any of the following. If so, your application must be accompanied by the necessary evidence to support your proposals. (See guidance notes for further details)..... If YES, you are required to provide for: Subsidence A report by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots and repair proposals. Also a report from an arboriculturist to support the tree work proposals."

- the associated guidance clarifying:

"Reports should be provided by a structural engineer and/or a chartered surveyor and be supported by technical analysis from other experts (ie for root and soil analysis). These reports must include the following information:

- * A description of the property, including a description of the damage and the crack pattern, the date that the damage first occurred/was noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map.

- * Details of vegetation in the vicinity and its management since discovery of the damage. Include a plan showing the vegetation and affected building.

* Measurement of the extent and distribution of vertical movement using level monitoring. Where level monitoring is not possible, state why and provide crack-monitoring data. Data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s).

* A profile of a trial/bore hole dug to identify foundation type and depth and soil characteristics.

* The sub-soil characteristics including soil type (particularly that on which the foundations rest), liquid limit, plastic limit and plasticity index.

* The location and identification of roots found. Where identification is inconclusive, DNA testing should be carried out.

* Proposals and estimated costs of options to repair the damage.

In addition, you must include a report from an arboriculturalist to support the tree work proposals, including arboricultural options for avoidance or remediation of indirect tree-related damage.”

There was significant delay in the requisite supporting information being provided. Initially incomplete, the application was validated on 29th January 2020 following receipt of clarification and the relevant additional information.

There followed subsequent delay thereafter in formal consideration of the application because of site visiting constraints imposed as a result of Covid 19.

The applicant said that arrangements had been made to board up the ground floor windows and glass doors at the back of the house in August 2019 (5 months prior to validation of the application), on the advice of his builder because of fears of the glass shattering and leaving the house vulnerable in the absence of the residents. However, during the site visit he confirmed that, with the onset of Covid restrictions, the boarding was removed as the house was continually occupied. He also clarified that early cracking had been filled due to concerns about possible entry of insects etc.

As discussed in more detail in the main body below, subsequent to the validation of the application subject of this report, during the period when site visiting was precluded by Council adopted protocols based on Government Guidance and following extensive correspondence between the applicant; agent; Ward Members; Case Officer; and the Service Director – Planning and Building Control, an e-mail was received from James Reeves, Regional Technical Manager, Davies Subsidence and Surveying (as representative for the agent for TPP/0218/19) stating "As a result, should you not be able to give planning consent for the Oak's reduction, I will be proposing the installation of a copper-lined geotextile root barrier across the rear garden of the site to prevent any further movement occurring to the building through this Summer and beyond." A separate application, submitted by an agent who has made several 'root barrier' applications through the borough in the recent past, was made accordingly. This separate application, received on 2nd June 2020, was registered under reference TPP/0375/20 "1 x Oak (applicant's ref. T1) - Cut roots as necessary to install root barrier to rear of the property in accordance with Optera Structural Solutions Arboricultural Method Statement. T14 of Tree Preservation Order". Although originally stating on the application form "The reasons for the work are due to subsidence damage to the property.", amended application documents were subsequently submitted via the Planning Portal which clarified that the reason for the application was not 'Subsidence' per se but the proposed work of installing a barrier was for the purpose of preventing potential subsidence damage to property - thus the requirement for specified mandatory supporting documentary evidence was circumvented. Particularly in the light of the Covid 19 uncertainties, consideration of the 'root barrier

application' was expedited and conditional approval was granted on 3rd July 2020 under delegated powers.

2. Appraisal

Tree and Amenity Value

The Oak stands in the rear garden close to the rear boundary and adjacent to the flank boundary with number 16 Sutcliffe Close. Visible from Sutcliffe Close above the properties, the tree is also visible from surrounding properties. It is also very clearly visible from the communal land to the rear of the property and acts as a screen between this land and properties in Sutcliffe Close. This tree makes a significant contribution to the character and appearance of the Hampstead Garden Suburb Conservation Area. The Hampstead Garden Suburb Conservation Area is internationally renowned for the way in which mature landscape features have been incorporated into the built environment and this mature Oak appears to be a former field boundary tree that was retained when Hampstead Garden Suburb was originally designed.

The Hampstead Garden Suburb Character Appraisal Statement is one of many documents setting out the importance of trees to the character and appearance of the area e.g.:

- "Trees and hedges are defining elements of Hampstead Garden Suburb. The quality, layout and design of landscape, trees and green space in all its forms, are inseparable from the vision, planning and execution of the Suburb".
- "Wherever possible, in laying out the design for "the Garden Suburb" particular care was taken to align roads, paths, and dwellings to retain existing trees and views. Extensive tree planting and landscaping was considered important when designing road layouts in Hampstead Garden Suburb, such that Maxwell Fry, one of the pioneer modernists in British architecture, held that "Unwin more than any other single man, turned the soulless English byelaw street towards light, air, trees and flowers".
- "Unwin's expressed intention, which he achieved, was: 'to lay out the ground that every tree may be kept, hedgerows duly considered, and the foreground of distant views preserved, if not for open fields, yet as a gardened district, the buildings kept in harmony with the surroundings.'"
- Trees contribute fundamentally to the distinctive character and appearance of the Conservation Area in a number of different ways, including:
 - Creating a rural or semi-rural atmosphere
 - Informing the layout of roads and houses with mature field boundary trees
 - Providing links with pre-development landscape and remaining woodland
 - Creating glades, providing screening and shade, and marking boundaries
 - Framing views, forming focal points, defining spaces and providing a sense of scale
 - Providing a productive, seasonal interest and creating wildlife habitats

Sutcliffe Close stands in the 'Northway, Middleway and Southway - Area 8' of the Hampstead Garden Suburb Conservation Area Character Appraisal Statement. The Statement notes that the homes in Area 8 "were mostly designed for middle class owner residents, with garage provision" and that there "is a mixture of detached and semi-detached houses, with generous plot sizes throughout". In describing the overall character of Area 8 it comments "This is a quiet, attractive residential area. The fan shaped layout is well designed, utilising the sloping terrain to produce impressive views of the Central Square architecture at the top of Northway, Middleway and Southway roads (...) The closes fill the spaces between the principal roads providing more intimate environments.

There is a green ambience, with abundant street trees, views of Big Wood behind the Northway houses, widespread hedging and some grass verges. Apart from the lower section of Kingsley way and Northway, roads are quiet and the closes have a particularly intimate character." Included amongst the Principal positive features are "Closes provide peaceful, intimate spaces"; and "widespread use of twittens provides quick pedestrian access routes between the closes and main roads". In terms of 'Landscape and trees', the Statement observes "a few old trees which pre-date housing development remain on streets or in gardens". The architecture of Sutcliffe Close is described as "Architect J.W. Binge designed the symmetrical Sutcliffe Close in 1926. Each side of the road is made up of a symmetrical group of three, flanked either side by an asymmetrical semi-detached pair. All houses have small set-back garages. At the end of the road sits a group of four, which is again symmetrical. The groups of three and four have internal twitten access passageways to their back gardens."

18 Sutcliffe Close is one of the group of four houses at the end of the road. The Oak is considered to be of importance to the character and appearance of the Hampstead Garden Suburb Conservation Area - it is a mature tree clearly visible from the intimate Close; the tree contributes significantly to the green ambience; providing links with the pre-development landscape; helping to provide screening and mark boundaries; provides seasonal interest and wildlife habitat; it contributes fundamentally to the rural / semi-rural atmosphere and peaceful intimate setting of the houses and the 'Garden Suburb' aesthetic.

The Oak is a mature tree, about 17 - 18 metres in height, which has been previously lifted to about 5m, thinned and with some lateral shortening. There has been regrowth from the previous works. The tree has an open spreading canopy and possibly has lost a primary leader at some point in the distant past – the spread is approximately 8m / 9m / 9m / 12m – there is a slight gap in the lower canopy attributable to a dead branch. Foliage is of reasonable form, density and colour. Some minor deadwood. The tree is in reasonable condition with no obvious major structural faults.

The resident confirmed that neither of the treatments conditionally approved in September 2015 (TPP/00468/15 – Crown thin by 20% including removal of deadwood, lifting of low branches and shortening of branches encroaching towards house) nor in July 2020 (TPP/0375/20 – Cut roots as necessary to install root barrier to rear of the property in accordance with Optera Structural Solutions Arboricultural Method Statement) have been implemented.

The application

The application submitted by John Dodds with involvement from various representatives of Direct Group / Davies Property Solutions as agent was validated on 29th January 2020. The reason(s) for the proposed reduction of the Oak (applicant's reference T1), T14 of the Tree Preservation Order cited on the application form is:

“Very large solitary oak tree to rear of back garden. Very close to boundary of garden of number 16. (sketch plan provided under additional documents – oak tree shown as T1 in Arborists report. The tree is shown as T14 in the TPO). The rear projection of the house has suffered significant structural damage due to subsidence. Full investigation (additional document) was undertaken by specialist engineers including soil and root analysis. From this evidence and their own separate inspection (additional document) an Arboricultural Consultant concluded that the oak tree was the cause of the subsidence. The recommendations to

prevent further damage were a) reduction of crown by 4m-5m all around and b) maintain at reduced dimensions by way of regular pruning at intervals of 3 years maximum. Permission is sought both for 1) the initial crown reduction and 2) for the regular pruning.”

The application was registered as “1 x Oak (applicant's ref. T1) - Reduce crown by 4m - 5m all round. T14 of Tree Preservation Order”. It was not considered appropriate to include the second undefined “regular pruning” aspect given the vagueness of the “maintain at reduced dimensions by way of regular pruning at intervals of 3 years maximum” – open-ended unspecified treatment regardless of implication for the health, condition, or appearance of the tree; and there being a statutory default two-year duration to a consent – providing the Local Planning Authority the opportunity to consider the reasonableness of any repeat treatment application.

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

- Arboricultural Consultancy for Direct Group Report dated 26th February 2019
- Details of vegetation management - received 29th October 2019
- Direct Group Preliminary Engineers Appraisal Report dated 24th August 2018
- Drainage Repair Company Drainage Report and Soil Testing Report dated 17th January 2019 (including Drain investigation, Root identification, Trial Pit / Borehole and Soil testing)
- Sketches and photographs of damage dated 4th September 2019 - received 1st October 2019
- Estimated repair costs / options - received 1st October 2019
- Confirmation that surveyor not aware of any previous underpinning or building work - received 29th October 2019
- Heave calculation method clarification - received 14th November 2019
- Photographs of damage - received 17th July 2020
- level monitoring 7/6/19 – 8/7/20 (8 readings at approx. 2 monthly intervals)
- crack monitoring 7/6/19 – 8/7/20 (7 readings at approx. 2 monthly intervals except September 2019)
- Generic UK Soil Moisture Deficit Chart (data from 2003, 2018, and 2020 to week 13 (w/c 23/3/20)) - received 20th April 2020

The Direct Group Preliminary Engineers Appraisal Report notes that “The policyholder confirmed that 25 years ago there was previous subsidence to the property with current Insurers and a poplar tree was removed the property monitored to stability and repairs then carried out.” The Report further noted that crack damage had re-occurred in summer 2018 to the rear projection to the kitchen which was described as “moderate vertical and diagonal tapered cracking at low level on the left and rear right corner of the rear kitchen projection. After the visit the policyholder said that significant cracking had developed in the rear left lounge on the kitchen wall. There are very slight cracks to the bedroom and bathroom above. There is also disturbance to the crazy paved patio.” In respect of Table 1 of BRE Digest 251, the Report states “In this instance, at present the damage falls into Category 3 (“aesthetic damage”)” – albeit described in the table as ‘serviceability damage’.

Monitoring ‘sufficient to show a pattern of movement consistent with the presence of the implicated tree(s)’ is a mandatory requirement for a TPO treeworks application. However, although the application had initially been submitted on 28th March 2019, monitoring was not commenced until 30th May 2019 and readings taken thereafter at roughly two-monthly intervals were submitted intermittently - which resulted in considerable delay in validation. There was no crack monitoring reading for September 2019 as “technicians observed that

the crack had been filled in and this may have affected the readings”. It may also be noted that on 15th August 2019, the agent clarified that for the level monitoring “we have not used a deep datum in this instance as it was not considered to be required. A suitable datum point has been used on the area of the property opposite from the damage and is not moving.”

The Arboricultural Report noted “Removal of the Oak (T1) would offer the most certain and reliable arboricultural solution likely to restore long-term stability; however, we have been advised that unacceptable levels of heave are anticipated in the event that the tree is fully removed and as such we have been asked to provide alternative remedial options.”

In an e-mail on 1st October 2019, the agent indicated “Our surveyor has provided an estimate of £35,000.00 for property repairs and a further £25,000.00 if partial underpinning is required to the rear elevation of the property.”

On 20th April 2020 an e-mail was received from the Regional Technical Manager of Davies Property Solutions (a different representative of the agent) which included a Soil Moisture Deficit Chart (data from 2003, 2018, and 2020 to week 13 (w/c 23/3/20)). The Chart included no details as to soil type, depth, or location from which the soil moisture deficit had been measured, nor whether the data had been derived from open ground or in proximity to mature trees – the agent subsequently confirmed that the Chart was generic for the whole UK. Being generalised, rather than context specific, the information is considered to be of negligible value in assessing this particular application.

In the same e-mail, the Regional Technical Manager stated “should you not be able to give planning consent for the Oak’s reduction, I will be proposing the installation of a copper-lined geotextile root barrier across the rear garden of the site to prevent any further movement occurring to the building through this Summer and beyond.”

As noted in the Introduction and Relevant Recent Planning History, a separate application was accordingly received on 2nd June 2020 and was registered under reference TPP/0375/20 “1 x Oak (applicant’s ref. T1) - Cut roots as necessary to install root barrier to rear of the property in accordance with Optera Structural Solutions Arboricultural Method Statement. T14 of Tree Preservation Order”. Particularly in the light of the Covid 19 uncertainties, consideration of the ‘root barrier application’ was expedited and conditional approval was granted on 3rd July 2020 under delegated powers.

No further correspondence or updated supporting evidence (e.g. monitoring information) was received from the agent following the submission of the ‘root barrier application’. All subsequent correspondence and information was received direct from the applicant.

In respect of the current application TPP/0218/19 to reduce the Oak’s crown by 4m – 5m all round, our Structural Engineer comments on the site investigation data and our site visit are as follows:

- 1. The foundations are 1m deep which is reasonable for the age of construction of the property.*
- 2. The soil test results indicate desiccation of the clay sub-soil between 1.5m to 2.5m depth.*
- 3. Oak tree roots were identified below the foundations.*
- 4. The ‘stable’ datum used for the monitoring exercise is located at the rear LHS corner of the property and is unlikely to be fully stable, particularly as there is cracking of the rear wall in close proximity to the datum. However, the monitoring*

results to the remainder of the rear elevation are consistent with enhanced seasonal movement, and it is likely that if a truly stable datum had been used the recorded movements would have been greater.

- 5. There is extensive cracking to the rear elevation, I would classify the damage as category 3 in accordance with BRE Digest 251. The owner advised most of the present damage occurred during the recent hot, dry spring of 2020. The crack damage to the rear elevation is consistent with foundations subsidence.*
- 6. The owner advised previous large cracking below DPC level was repaired.*
- 7. The owner advised the overall size of the Oak tree has increased in the years since they bought the property in 1993.*
- 8. The oak tree is noted as significantly older than the property.*
- 9. The next door property, no. 16, is a similar distance from the oak tree, however it has a recent rear extension and the deeper foundations of the extension would act as a root barrier for the rear elevation of no. 16.*

He concludes that *“On the basis of the above the oak tree T1 would be implicated in the subsidence damage to the property.”* However, he also noted that there could be a risk of heave damage to the rear of the property, particularly if the previous large cracks below the dpc were repaired before any recovery of the ground movement occurred.

Given the importance of the Oak in the streetscene, its contribution to the character and appearance of this part of the Hampstead Garden Suburb Conservation Area, and the extant consent to the alternative way of addressing the damage, it is necessary to consider whether the proposed reduction crown by 4m – 5m all round of the significant TPO Oak at this juncture is excessive / appropriate.

The mature Oak is currently about 17 - 18 metres in height, with spread of approximately 8m / 9m / 9m / 12m, and has been previously lifted to about 5m. The proposed reduction by 4m – 5m all round would represent the removal of about 87.5% of the crown volume. Not only would the proposed reduction have significant implications for the public amenity value of the tree, negatively affecting the Oak’s appearance and essentially removing its presence in the streetscene, but it would have considerable detrimental impact on the tree’s health.

It should be noted that the British Standard BS 3998: 2010 "Tree work - Recommendations" advises:

- (at 0.3), "While tree work can be desirable to accommodate people's requirements from the tree and the land around it, any work that exposes the woody tissues is a form of damage that can be detrimental to the tree in the long term. Various organisms (e.g. certain fungi and bacteria) can destroy (decay) woody tissues in a tree. Decay is a normal process in the ageing of trees but it can be accelerated, with potentially serious consequences, if a substantial proportion of the cross-section of a stem or major branch is injured, e.g. by pruning wounds (...). This can happen either if the organisms gain entry via wounds, or if they have previously been latent within tissues and later become activated as a result of injury. Inappropriate tree work or site disturbance, leading to injury or physiological stress, can make roots susceptible to a range of organisms that can sometimes kill and / or decay them."

- (at 0.4), "However, pruning is also a form of damage, which removes foliage and locally disrupts columns of liquid and the network of living cells, so that zones of sapwood become physiologically dysfunctional. Decay tends to develop in the affected wood and can extend further within the tree, sometimes causing weakness. The amount of pruning

and the size of resultant wounds therefore need to be kept to the minimum required for the particular objective."

- (at 7.2.3.2), "Mature and old trees generally have a reduced capacity to tolerate the potentially adverse effects of wounding, especially with regard to the development of physiological dysfunction and decay"

Lonsdale (in "Principles of Tree Hazard Assessment and Management", TSO, 2nd imp. 2001) comments in respect of retention of foliage-bearing structure:

"A maximum of 30%, variously interpreted (...) is sometimes advised for the allowable reduction in crown volume, with a view to retaining enough photosynthetic area for healthy growth and the maintenance of defences against dysfunction and decay in the wood."

The proposed reduction by 87.5% would considerably exceed 30% and would result in the removal of practically all of the foliage-bearing structure of the tree that is important for the maintenance of vitality.

Such treatment would be clearly contrary to the guidance and recommendations in British Standard BS 3998: 2010, which states (at 7.7.1): "The general principle is that, following reduction, there should still be a strong framework of healthy small-diameter branches and twigs (leaf-bearing structure), capable of producing dense leaf cover during the following growing season."

The treatment proposed equates to undesirable disfiguring 'topping' as it would involve the removal of most of the crown by indiscriminately cutting through main stems and fail to maintain the main framework of the crown and a high proportion of the foliage-bearing structure. As Lonsdale notes "Topping is highly disfiguring for most kinds of tree (especially when seen in winter) and is also more likely than crown reduction to cause severe xylem dysfunction and decay in major structural parts of the wood. It is now generally regarded as an undesirable practice, and should not be undertaken except in special circumstances."

It is considered that the proposed reduction by 4m – 5m all round would be contrary to good arboricultural practice; significantly detrimental to the health and appearance of the tree; its contribution to public amenity; and to the character and appearance of the Hampstead Garden Suburb Conservation Area. Given the very high public amenity value of the tree, does the reason put forward for the proposed treatment constitute 'special circumstances' – particularly in the light of the extant consent to implement the root barrier?

The installation of the copper-impregnated root barrier and the proposed reduction of the tree represent alternative approaches to addressing the alleged subsidence problem - the former by creating a physical and biological means of deflecting root growth away from the building; the latter by removing so much of the crown that less rooting is required to support what is left of the canopy (there being a direct relationship between branch and root growth). If the consented root barrier is installed, the proposed reduction would be unnecessary.

In respect of the consented root barrier application (TPP/0375/20) – the installation of which was specifically proposed "to prevent any further movement occurring to the building through this Summer and beyond" and "to protect the property from potential subsidence damage" - it should be noted that the Optera Arboricultural Method Statement clarified that the document "provides details on the installation of a root barrier to separate the roots of

the nearby oak tree from the property. Site investigations and an arborist report have informed the design and location of the barrier."

The Optera Arboricultural Method Statement indicated the proposed root barrier would extend across the rear garden, approximately 9 metres in width, between the property and the Oak tree. The specification noted that recorded root depth is 2.5m and the minimum depth to be achieved with the copper impregnated bio-barrier would be 3.5m; the distance between the barrier and tree would be 5m+ and the shortest distance between the barrier and foundation would be 5m. It should also be noted that the Method Statement specified measures including ground protection which should help lessen the impact of the proposed works on the tree.

It is considered that the proposed position of the root barrier will provide a reasonable remaining soil rooting volume - especially given the context. It is therefore considered that the impact of the proposed root cutting would not have a significant detrimental impact on the health or the appearance of the tree - indeed, as the proposed treatment does not involve pruning of aerial parts of the tree it should barely affect its appearance at all - and consequently should not have a detrimental impact on the public amenity value of the tree.

In approving the 'root barrier application' (TPP/0375/20), it is considered that the proposed cutting of roots as set out in the Optera Method Statement would not negatively affect the tree's public amenity value - indeed, installation of the proposed barrier with appropriate ground protection measures would allow a reasonable prospect of tree retention with minimal impact on its health and appearance.

However, although the root barrier had been specifically designed to prevent any further movement occurring to the building 'through this Summer and beyond' and could have been installed at any time after 3rd July 2020, no action has been taken because the applicant chose to await site inspection / decision on the pruning application - contending that "Until the inspection takes place, we are unable to make the property safe as the damage must be visible to the inspector."

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. In addition to this statutory requirement, the Hampstead Garden Suburb Trust has a separate contractual mechanism of control over treeworks under its Scheme of Management. Consent is required from both bodies independently (and it is possible for consent to be granted by one and not the other). It may be noted that in his letter on 18th February 2020, Anthony George (the Suburb Trust's Arboricultural Consultant) suggested that "insurers investigate a root barrier, which would be viable as it would be in the rear garden where there are no services present."

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. Government guidance further advises that "In general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before

consent is granted. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work."

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 agent has indicated that "Our surveyor has provided an estimate of £35,000.00 for property repairs and a further £25,000.00 if partial underpinning is required to the rear elevation of the property."

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 reduction by 4m – 5m all round. 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 reduction by 4m – 5m all round 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 observed that the Council's Structural Engineer has noted that "*On the basis of the above the oak tree T1 would be implicated in the subsidence damage to the property*". However, it should also be borne in mind that there is an extant consent to install a root barrier – which is an alternative solution to the subsidence problem that would be significantly less detrimental to the health and appearance of the tree; and be markedly more positive in terms of preserving or enhancing the character and appearance of the Hampstead Garden Suburb Conservation Area.

The statutory compensation liability arises for loss or damage in consequence of a refusal of consent or grant subject to conditions - a direct causal link has to be established between the decision giving rise to the claim and the loss or damage claimed for (having regard to the application and the documents and particulars accompanying it). Thus the cost of rectifying any damage that occurs before the date of the decision would not be subject of a compensation payment.

If it is concluded 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 reduction by 4m – 5m all round, there is potentially a compensation liability of £25,000 if consent for the proposed reduction is refused. However, the agent themselves put forward the installation of the root barrier specifically proposed "to prevent any further movement occurring to the

building through this Summer and beyond” and the separate ‘root barrier application’ (TPP/0375/20) has already been approved.

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 confirmation of the Order would have a significant impact on any of the groups as noted in the Act.

CONCLUSION

The application submitted by Mr John Dodds with some involvement of his subsequently appointed agent (representing Direct Group / Davies Property Solutions) proposes the reduction by 4m – 5m all round of the mature Oak standing in the rear garden of 18 Sutcliffe Close because of its alleged implication in subsidence damage to the property.

The proposed reduction of the Oak would be significantly harmful to the health and appearance of the mature tree itself; detrimental to the streetscene; and would fail to preserve or enhance the character or appearance of the Hampstead Garden Suburb Conservation Area.

The Council’s Structural Engineer has inspected the site, assessed the supporting documentary evidence and has noted that *“On the basis of the above the oak tree T1 would be implicated in the subsidence damage to the property”*. However, there is an extant consent to install a root barrier – which is an alternative solution to the subsidence problem that would be significantly less detrimental to the health and appearance of the tree; and be markedly more positive in terms of preserving or enhancing the character and appearance of the Hampstead Garden Suburb Conservation Area.

Bearing in mind the potential implications for the public purse, as well as the public amenity value of the tree and its importance to the character and appearance of the Hampstead Garden Suburb Conservation Area, it is necessary to considered whether or not the proposed reduction by 4m – 5m all round 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 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 reduction by 4m – 5m all round, there is potentially a compensation liability of £25,000 if consent for the proposed reduction is refused. However, the agent themselves put forward the installation of the root barrier specifically proposed “to prevent any further movement occurring to the building through this Summer and beyond” and the separate ‘root barrier application’ (TPP/0375/20) has already been approved.

It is considered that the proposed reduction by 4 – 5 metres all round would be detrimental to the health and appearance of the Oak, and would fail to preserve or enhance the

character and appearance of the Conservation Area - such treatment would not be in the interests of public amenity. The proposed reduction by 4 – 5 metres all round is not considered justifiable given the reason(s) put forward for the treatment in the light of the extant consent to install the root barrier, which provides an alternative solution to the subsidence problem (the agent for TPP/0218/19 himself proposed “the installation of a copper-lined geotextile root barrier across the rear garden of the site to prevent any further movement occurring to the building through this Summer and beyond”). It is recommended that this application “1 x Oak (applicant’s ref. T1) – Reduce crown by 4m – 5m all round. T14 of Tree Preservation Order” should therefore be refused.



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