

# BARNET

## LONDON BOROUGH

### COMMITTEE REPORT

<b>LOCATION:</b>	935 Finchley Road, NW11 7PE		
<b>REFERENCE:</b>	TPF/0159/20	<b>Received:</b>	02.03.2020
<b>WARD:</b>	Childs Hill	<b>Expiry:</b>	26 <sup>th</sup> November 2020
<b>CONSERVATION AREA</b>	N/A		

<b>AGENT:</b>	Environmental Services		
<b>PROPOSAL:</b>	T1 - Poplar - fell (applicants plan). Standing in group G9 of Tree Preservation Order TRE/HE/29/.		

**RECOMMENDATION:**

**That Members of the Planning Committee determine the appropriate action in respect of the proposed felling of 1 x poplar (applicant's ref.) – Standing in group G9 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 one replacement tree 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: 04/11/2020

Consultees:

Neighbours consulted: 3  
40 Golders Green Crescent  
933 Finchley Road  
937 Finchley Road

Replies:

None

## MATERIAL CONSIDERATIONS

### Relevant Recent Planning History:

C14100/00/TRE\_B 16 Lombardy Poplar - remove, 5 Lombardy Poplar - reduce by 25%, all standing in group G9 of TPO. Approved subject to conditions 01.08.2000

C14100A/04/TRE\_B 3 x Poplar - Crown Reduce 30%; 1 x Poplar - Fell. Standing in Group G9 of Tree Preservation Order Approved subject to conditions 12.07.2004

C00719L/07/TRE\_B 1 x Poplar - Remove Dying Major Front Stem. Standing in Group G9 of Tree Preservation Order Approved subject to conditions 27.04.2007

TPF/0303/19 1 x Lombardy Poplar (applicant's ref. T7) - Remove. Standing in group G9 of Tree Preservation Order Approved subject to conditions 11.06.2019

TPP/0266/19 6 x Lombardy Poplar (applicant's ref. T1 - T6) - Reduce back to previous pruning points. 3m or as close to "lateral" pruning points as possible. Standing in group G9 of Tree Preservation Order; 1 x Lombardy Poplar (applicant's ref. T7) - Reduce by 60%. Standing in group G9 of Tree Preservation Order; (2 x Oak (applicant's ref. T7, T8) - Remove deadwood. Standing in area A1 of Tree Preservation Order); 2 x Sycamore (applicant's ref. T10, T11) - Reduce by 2m. Standing in area A1 of Tree Preservation Order; Approved subject to conditions 11.06.2019

TPF/0159/20 T1 - T1 - Poplar - fell 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.

Applicants additional description *"Estimated costs of repair to the building are ?35k if the influence of the tree(s) remain and 9.5k 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 = ?44.5k 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.”*

TPF/0425/20 1 x Lombardy Poplar (applicant's ref. T1) - Remove and Replant with another poplar. Standing in group G9 of Tree Preservation Order

## **PLANNING APPRAISAL**

### **1 Introduction**

An application form proposing felling of 1 x Lombardi poplar (applicant's ref. T1) standing in the rear garden of 935 Finchley Road NW11 in connection with alleged damage to a rear extension at 939 Finchley Road was submitted via the Planning Portal in March 2020.

There were various clarifications and requests for additional information were made. Following the receipt of this further information and correspondence from the agent, the application was registered on the 1<sup>st</sup> October 2020

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 939 Finchley Road

### **2 Appraisal**

#### Trees and Amenity Value

The subject Lombardi poplar tree stands within the rear garden of 935 Finchley Road adjacent to the rear boundary of the property. This tree is part of a row of mature poplar trees growing around the tennis court area at the rear of 40 Golders Green Crescent. These trees are all protected by the TPO TRE/HE/29/G9.

The subject tree is visible from Finchley Road from over the top of properties 933 to 941 Finchley Road. It is an integral part of the belt of trees at the rear of properties in this part of Finchley Road. It is also part of a row of established trees surrounding tennis courts at 40 Golders Green Crescent. Previous applications have reduced the number of these poplar trees at this location due to poor condition. The character is still singularly recognisable and retains the merits that initiated the TPO in 1969.

The rear extension at 939 Finchley Road is the closest part of the house to the subject tree. Lombardi poplar tree (applicant's ref. T1) is located 30m to the south east of the extension. Other Lombardi poplar trees within the TPO G9 (applicant's ref. TG 1) are located 35m from the affected property these trees are growing within the grounds of 40 (Mitvah Hall) Golders Green Crescent.

Poplar (applicant's ref. T1) is about 20 metres in height and is a mature tree with a trunk diameter of around 80cm. The tree is fastigate in form and therefore has a very narrow upwardly growing crown typical of this tree species.

The upper crown is establishing after the recent crown reduction of 3m under application TPP/0266/19. Approximately 1m of new growth has occurred indicating that the tree is in good health. No detailed assessment of the condition of tree has been undertaken, however recent applications in 2019 and 2020 for pruning and removal have not justified the works on the grounds of stem decay, a common issue for this species of tree. Therefore, it is reasonable to conclude that the trees structural and physiological health is good.

### **3 The application**

The application submitted by Environmental Services was registered on the 1<sup>th</sup> October 2020. The reasons for the proposed felling of the Lombardi poplar tree (applicant's ref. T1) 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 £35k if the influence of the tree(s) remain and 9.5k 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 = £44.5k*

*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.”*

### **4 The supporting documentation comprises:**

Arboricultural Consultancy for Lloyds Bank report ref: SA-243436 revised 19/03/2019

Drainage Investigation Report For Subsidence Management Services at 939a Finchley Road, London, NW11 7PE report Ref: C42530 D14500 dated 20<sup>th</sup> November 2018.

Innovation Group Engineers Addendum Report Ref: IFS-LBG-SUB-18-00-78545  
05/02/2020

GEOTECHNICAL for Subsidence Management Services 939a Finchley Road, London, NW11 7PE Client: Subsidence Management Services Client Report Date: 22 November 2018 Our Ref: C42530G1975

ROOT IDENTIFICATION for Subsidence Management Services 939a Finchley Road, London, NW11 7PE Report Date: 14 November 2018 Our Ref: R24766

SOIL ANALYSIS for Subsidence Management Services 939a Finchley Road, London, NW11 7PE Report Date: 27 November 2018 Our Ref: C14191S42530 Laboratory Ref: L14413

LEVEL MONITORING for Subsidence Management Services **939a Finchley Road, London, NW11 7PE** Report Date: 8 January 2020 Our Ref: M12103

LEVEL MONITORING for Subsidence Management Services **939a Finchley Road, London, NW11 7PE** Report Date: 28 April 2020 Our Ref: M12103

LEVEL MONITORING for Subsidence Management Services **939a Finchley Road, London, NW11 7PE** Report Date: 24 June 2020 Our Ref: M12103

LEVEL MONITORING for Subsidence Management Services **939a Finchley Road, London, NW11 7PE** Report Date: 12 August 2020 Our Ref: M12103

Innovation Group: Engineers Addendum report dated 05/02/2020 ref IFS-LBG-SUB-18-0078545

Photographs of damage

Amended site plan dated 2<sup>nd</sup> September 2020

The Engineers Addendum Report by Innovation Group dated 5<sup>th</sup> February 2020 states that the damage was first noted and notified to the insurer in September 2018. The report provides details of the damage – which is internal and external to the rear extension that was constructed in 1984 and at its junction with the main building.

The council has no records of any planning permission for the extension nor are there records of Building Control approval for the rear extension. As the authority is not required hold Building Control records for this length of time.

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.”*

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.”*

The foundation level monitoring shows seasonal movement of the rear extension. There are a number of mature trees in proximity to the affected part of the building these have been identified as Lombardi poplar T1 and TG1 and apple T2 on the site plan. The poplar trees are genetically identical and therefore DNA testing is not appropriate. T1 is the largest and closest tree to the reported damage.

Live poplar tree roots have been identified below the foundations which are 0.8m deep for the extension and 0.9 for the main building.

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. could be a contributory factor.*

*3. 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 a minimum of 1.1m.*

*Conclusion;*

*Poplar tree would be implicated in the subsidence damage to the extension.”*

Both the Council’s Structural Engineers and the author of the “Arboricultural Consultancy for Lloyds Bank” report have suggested the apple tree (T2) to be a contributory factor in the damage at 939 Finchley Road. It should be noted that the consent of/notification to the Local Planning Authority is not required for the removal of the apple, which has now been removed.

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 a minimum of 1.1m.*

The Tree Preservation Order that includes the poplar trees (T1 and TG2) was made in 1968 which predated the construction of the rear extension by 16 years. For the trees to be included within a TPO they would have to have been substantial and provide public amenity. 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 early 1980s should have had due regard to the presence and mature growth of the TPO poplar trees.

However, given that the foundations for the extension appear to be only 0.8m to 0.9 metres deep (see the GEOTECHNICAL for Subsidence Management Services 939a Finchley Road, London, NW11 7PE Client: Subsidence Management Services Report Date: 22 November 2018 Our Ref: C42530G1975), it is evident that the extension was not constructed with due regard for the presence and future growth of the TPO poplar trees or in accordance with the NHBC guidelines.

The poplar trees predates the construction of the extension at 939 Finchley Road. There may be a risk of further damage caused by soil heave. This has not been confirmed and no predicted heave calculations have been submitted with this application. However, it is unlikely for the Council to be liable for any damage if the removal of the tree is granted.

Removal of the subject poplar tree would be of significant detriment to public amenity and the character and appearance of the area as it would increase the gap in the line of mature vegetation adjacent to the rear boundary of the properties and around the tennis court, increasing visibility of the built form and eroding the verdant suburban character of the area.

## **5 Legislative background**

As the poplar tree is 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 £35k if the influence of the tree(s) remain and £9500k 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 = £*

The Engineers Addendum Report by Innovation Group dated 16<sup>th</sup> May 2019 which the agent has submitted with this application gives different figures stating that the potential cost of “Superstructure repairs” is “£9,500.00” and the “potential additional cost” of “Foundation stabilisation” is “£44,000.00.”

In an email dated 12/11/2020 by the applicant the difference between £35,000 and £44,000 was explained as *“The 35k is the alternative repair so foundation stabilisation (underpin the full extension). The 44k is this cost plus superstructure repairs...”*

When considering this the higher figure should be used.

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 poplar tree that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the poplar tree 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 *“poplar trees would be implicated in the subsidence damage to the extension”*; although the apple 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).

If it is concluded on the balance of probabilities that the roots of the poplar 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 939 Finchley Road may be in excess of an extra £44,000 if the subject poplar tree is retained.

## **6 COMMENTS ON THE GROUNDS OF OBJECTION**

No objections made

## **7 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.

## **8 CONCLUSION**

The agent, Environmental Services, proposes to fell one poplar tree standing in the rear garden of 935 Finchley Road because of its alleged implication in subsidence damage to the single storey rear extension of that property.

The subject poplar tree has high public amenity value and is visible from publicly accessible locations. It is 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 this poplar tree will reduce the sylvan character that is visible over the top of the houses between no. 933 to 941 Finchley Road. This tree is also visible to the occupiers of 40 Golders Green Crescent and the users of the tennis courts.

The Council's Structural Engineers have assessed the supporting documentary evidence and have noted that the subject poplar tree is implicated in the subsidence damage to the extension. However, the subject tree is not the only causative factor in the alleged subsidence damage, the primary reason is deficient foundations. It is uncertain if there is a risk of heave damage as a consequence of felling this poplar tree.

The financial implications for the public purse, and public amenity value/benefits of the subject poplar tree need to be weighed.

If it is concluded on the balance of probabilities that the poplar 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 this tree, there may be a compensation liability (in the application submissions it is indicated that the repair works for 939 Finchley Road may be in excess of an extra £44,000 if the subject poplar tree is 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.