



COMMITTEE REPORT

LOCATION:	12 Meadway Close, London, NW11 7BA		
REFERENCE:	TPF/0956/20	Received:	16/11/2020
WARD:	Garden Suburb	Expiry:	16/06/2021
CONSERVATION AREA	Hampstead Garden		

AGENT:	JCA Limited
PROPOSAL:	Crown reduce by 30% (4 to 5m), maintain at reduced height every three years, and install copper root barrier 1 x oak T4 (applicant's ref.) – Standing in T1 of the Tree Preservation Order

RECOMMENDATION:

That Members of the Planning Committee determine the appropriate action in respect of the proposed

Crown reduce by 30% (maintain at reduced height every three years) and install copper root barrier 1 x oak T4 (applicant's ref.) – Standing in T1 of the Tree Preservation Order

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

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.

The branches shall be pruned in accordance with the recommendations in British Standard BS3998:2010 (Recommendations for Tree work).

Reason: To safeguard the health of existing tree(s) which represent an important amenity feature.

Consultations

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

Date of Site Notice: 04/11/2020

Consultees:

Neighbours consulted: 63

Replies: 60 objections have been received to the removal of the oak tree.

The reasons for given in within the objections can be summarised as follows:

- Loss of visual tree amenity,
- Loss of wildlife habitat,
- Loss of air quality,
- Loss of an historic tree,
- Evidence does not implicate the tree,
- The reason to remove the tree is to save insurance companies money and loss of tree that predates the Hampstead Garden Suburb.

There was 1 letter of support which can be summarised as follows:

14 Meadway Close, providing supporting information relating to the damage that occurred to the garage at same property 14 Meadway Close.

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

TPP/0804/21 1 x Oak – Remove (Invalid)

ENF/1047/21 Damage Caused to Oak Tree - T1 of TPO (Pending consideration)

TCP/0800/21 1 x Apple – Remove (Pending consideration)

TCM/0423/21 1 x Magnolia - Thin by 20% and Reduce height by up to 20% as Specified in letter dated 30th April 2021 from Anthony George and Associates Ltd;

1 x Cypress and 1 x Magnolia – Remove Six week expired

TCM/0804/20 2 x Magnolia - Thin by 20% and reduce height by up to 20% as specified in Anthony George and Associates' report dated 14th September 2020; Six week expired

1 x Cypress – Remove Six week expired

TPF/0037/20 1 x Oak (applicant's ref. T1) - Fell. T1 of Tree Preservation Order (Invalid)
TCP/07102/14 1 x Apple - remove fallen lodged branch Six week expired
TCF/07101/14 1 x small dying Apple – remove Six week expired
TPO/00671/10/F 1 x Oak (T1 Applicants Plan) - Reduce Lateral Branches, Extending over Garden of 30 Meadway by 2-2.5m and Prune back Lower Previously Cut Branches to Boundary Line. T1 of Tree Preservation Order refused appeal dismissed
TCA/00536/10/F 1 x Apple (T2 Applicants Plan) - Cut back Overhanging Branches to Boundary Line. Six week expired
C/07375/A dated 07/12/1981 approved with conditions - single story extension over garage
C/07375 dated 02/12/1980 refused - single story extension over garage

PLANNING APPRAISAL

1 Introduction

An application form proposing felling of 1 x oak (applicant's ref. T4) standing in the rear garden of 12 Meadway in connection with alleged damage to following structures at the property:-

Left wall, Rear wall, Garage, Lounge, Dining room, Study, Hall, Stairs, Landing, Bedroom 1, Bedroom 2, Annexe and Boiler Room.

Left wall, Rear wall, Garage, Lounge, Dining room, Study, Hall, Stairs, Landing, Bedroom 1, Bedroom 2, Annexe and Boiler Room.

There were various clarifications and requests for additional information. Following the receipt of this further information and correspondence from the agent, the application was validated on the 21st April 2021.

The assessment of the application was delayed due to the discovery of holes drilled into a large surface root within the garden of 30 Meadway. The tree has suffered significant foliage die back since this event. Therefore, an enforcement investigation was undertaken to find the cause of the holes and upper crown die back.

In December 2021 an alternative tree work specification was submitted to reduce the overall size of the tree by 5m and install a root barrier to protect the property.

2 Appraisal

Trees and Amenity Value

The subject oak tree stands within the rear garden of 12 Meadway Close adjacent to the rear boundary of the property. The tree has public amenity to Meadway, a main arterial road through the Hamstead Garden Suburb as it can be viewed between the large gap between 30 Meadway and 14 Meadway Close. The tree is also visible from Meadway Close between the properties. The oak tree is protected by the TPO TPO/CA/401 - T1

The oak is a large mature specimen that predates the Hamstead Garden Suburb and may have been part of the old field system boundaries shown on historic plans 1896 to 1898. The field boundary is shown to be very close to the location of the tree.

The tree, as objectors have highlighted has significant amenity and historical value, and adds considerably to the character and appearance of the conservation area.

3 The application

The application submitted by JCA Limited was received on the 16.11.2020. The reasons for the proposed felling of the oak tree (applicant's ref. T4) but gave no reasons. However, within the submitted engineering appraisal report the following statement can be found.

"If the Oak tree T4 is removed then we consider works including structural crack repairs and redecoration works at an approximate cost of £30,000 will be appropriate to repair the damage.

If however the tree is not felled then it will be necessary to consider underpinning of the foundations of the property in the area of damage in addition to structural crack repair and redecoration needed to repair the damage.

The total cost of this option is estimated as £200,000 along with significant ancillary costs such as alternative accommodation."

4 The supporting documentation comprises:

BVS ENGINEERING APPRAISAL REPORT REF 0496335
Richardson's Botanical Identifications positive tree root identification
Catalyst Claims Geotechnical Survey Report ref: 106977
JCA Limited Arboricultural Survey ref 16231/ChC
Level monitoring
Photographs of damage

Appendix 5 Site plan

Optera Structural Solutions: SOW 6072 Desktop quotation to install a compact root barrier across the rear of 12 Meadway Close, Golden Green, London NW1 1 7BA on behalf of Building Validation Services.

4.1 Additional Information

On the 15th December an alternative proposal was submitted to the planning authority to reduce the height of the tree and install a root barrier:

Optera Structural Solutions SOW 6072 Desktop quotation to install a compact root barrier across the rear of 12 Meadway Close, Golden Green, London NW1 1 7BA on behalf of Building Validation Services

The total value for the services detailed in this SOW, including contract management, all labour, plant and materials (unless detailed via a PC SUM) totals £31,812.50 +VAT.

5 Appraisal of supporting information

The BVS ENGINEERING APPRAISAL REPORT REF 0496335 shows that the affected property 12 Meadway has suffered considerable amount of structural damage to the main house and garage. The main house and garage was constructed in the 1930's. In 1981 an application for a first floor extension over the garage was approved. Supporting plans for this application show a proposed 1m deep foundation.

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

It is unclear from the documentation when movement first occurred at the property, all the information provided relates to evidence for this application initially made in 2020. Council tree officers have requested further supporting evidence which was provided, and the application was validated in April 2021.

Tree roots from the TPO oak tree have been found and positively identified.

Soil sampling has found that there is clay soil with high shrinkage potential

Level monitoring shows that there is seasonal movement with levels dropping and recovering during dry and wet periods.

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

1. *The damage to the rear of the house and garage is consistent with subsidence of the foundations.*
2. *The garage appears to be a later construction than the house and no evidence that it had building control approval.*
3. *Foundation depth 0.95m, oak roots identified below the foundations to a depth of 1.5m.*
4. *Soil tests did not include suction values, and results were not conclusive with regard to soil desiccation.*
5. *The level monitoring results Aug'20 to Feb'21 indicate enhanced seasonal movements to the rear of the property and garage.*
6. *The other trees in the rear garden could be a minor contributory factor to the subsidence damage however only oak roots ID below the foundations.*

On the basis of the above the Oak tree T4 is likely to be implicated in the subsidence damage to the property.

Both the Council's Structural Engineers and the author of the arboricultural report have suggested the apple tree (T2) to be a contributory factor in the damage at 12 Meadway Close and a section 211 notice has been submitted to remove this tree (TCP/0800/21). This notice has expired and the removal of this tree can proceed.

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 1.5m.*

The Tree Preservation Order that includes the oak tree (T1) was made in 2010 which posts dates the construction of the garage with extension by 20 years. The tree would have to have been a substantial specimen at the time of garage extension was built in the early 1980s and should have had due regard to the presence of the oak tree.

However, given that the foundations for the extension appear to be only 0.9 metres deep (see the Catalyst Claims Geotechnical Survey Report ref: 106977), it is evident that the extension was not constructed with due regard for the presence and future growth of the oak tree or in accordance with the NHBC guidelines.

As the oak tree predates the construction of the garage and main dwelling house at 12 Meadway Clos, there may be a risk of further damage caused by soil heave, however, this has not been confirmed and no predicted heave calculations have been submitted with this application. As such, it is unlikely for the Council to be liable for any damage if the removal of the tree is granted.

The reduction of the subject oak tree would have significant impact on public amenity and possible health of the tree but it would mean that cultural links to past land use and the character and appearance of the area is preserved. This is more desirable than the previous proposal for removal. Due to the rapid die back observed in summer of 2021, it is very likely that the crown reduction of some kind will be required regardless of the subsidence issues.

The tree owner's structural engineer has on 15th December 2021 proposed an alternative remediation method. To install a 3m deep root barrier between the tree and the affected property and reduce the height of the tree by 30%. This revised works schedule if approved would maintain the tree, but at a much-reduced size. The tree owner would have a responsibility to maintain the tree at this size every three years. This would be in accordance with best practice (Hortlink 212) to maintain a consistent level of soil moisture content.

The implications for this proposal would be, a reduced loss of visual tree amenity. However, the works mean that the estimated £200,000 worth of structural works would not be required. Approving the lesser works means that it is unlikely that the tree owner would pursue the council for compensation to this level.

6 Enforcement action undertaken

On the 26th August 2021 an enforcement complaint was raised by Ed Jones (Tree Officer) who, following a site visit to investigate this application found 4 holes drilled into a surface root on the western side of the tree. There was also evidence of substantial amount of the upper crown foliage that had died off.

Such rapid die back of tree foliage is very unusual and is often an indicator of an adverse event such as poisoning or insect activity like oak processionary moth or brown tail moth. No insect activity was noted, and poisoning had been assumed.

A letter requesting information about this was sent to 30 Meadway, 14 Meadway close and 12 Meadway close on 27th August 2021. These properties adjoin the land the tree is situated on.

A response has received from the owners of 14 Meadway close and 12 Meadway close stating they have no knowledge of any occurrence.

No response was received from the owner of 30 Meadway and from further investigation it appears that the owner is not present. Due to their absence, the enforcement action has been currently paused.

If the committee decides to approve the crown reduction application then the need for further enforcement is unlikely and the case can be closed.

7 Legislative background

As the oak 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: *"If the Oak tree T4 is removed then we consider works including structural crack repairs and redecoration works at an approximate cost of £30,000 will be appropriate to repair the damage.*

If however the tree is not felled then it will be necessary to consider underpinning of the foundations of the property in the area of damage in addition to structural crack repair and redecoration needed to repair the damage.

The total cost of this option is estimated as £200,000 along with significant ancillary costs such as alternative accommodation."

When considering this the higher figure of £200,000 must be used.

The above statement remains true for the revised tree work specification, should the committee refuse the application for the crown reduction and root barrier.

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 oak 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 *"oak tree would be implicated in the subsidence damage to the extension"*; although the apple tree 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 oak tree 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 at 12 Meadway may be in excess of an extra £200,000 if the subject oak tree is retained.

8 COMMENTS ON THE GROUNDS OF OBJECTION

Objections have been received which relate to the loss of public visual tree amenity, loss of wildlife habitat, loss of a historical tree and the impact on character of the conservation area. These objections relate to the reason the tree preservation order was made.

The revised tree work specification would address the concerns raised by local residents, apart from loss of visual amenity of the tree viewed from Meadway.

9 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.

10 CONCLUSION

The Council's Structural Engineers have assessed the supporting documentary evidence and have noted that the subject oak tree is implicated in the subsidence damage to the property. 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 oak tree.

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

If it is concluded on the balance of probabilities that the 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 5m crown reduction and installation of a copper root barrier, there may be a compensation liability (in the application submissions it is indicated that the repair works for 12 Meadway Close may be in excess of an extra £200,000 if the subject oak 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.