



COMMITTEE REPORT

LOCATION:	Lee Close (near 13 - 24), Barnet EN5 5HP		
REFERENCE:	TPF/1068/20	Received:	07.12.2020
WARD:	High Barnet	Expiry:	29.07.2021
CONSERVATION AREA			

AGENT:	PRI - Insurance Services
PROPOSAL:	1 x Oak (applicant's ref. T1) - Fell and treat stump. T2 of Tree Preservation Order

RECOMMENDATION:

That Members of the Planning Committee determine the appropriate action in respect of the proposed felling of 1 x oak T1 (applicant's ref.) – Standing in T2 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: 17.06.2021

Consultees:

Neighbours consulted: 68

Replies: 2 objections have been received to the removal of the oak tree.

Objection 1

Resident at present address since 1997 and find it very disturbing that anyone would wish to fell this Oak tree which is a focal point for a large array of wildlife in the local vicinity. Tree also provides privacy & shade for both residents & users of the nearby public footpath in addition to the ecological benefits it provides for citizens living, working or otherwise present in the local area.

Objection 2

Detrimental affect on wildlife. Even owls can be heard in the tree at times

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

B/01681/12 Change of use of public open space to extend the residential curtilage of 30 Cromer Road, including erection of new boundary fence and widening of hardstanding on front garden. Erection of part three storey side side extension and part single storey side and rear extension. Finally Disposed of

N08744 Single storey rear extension. Approve subject to conditions

N/02271/D application approved subject to conditions (1974) detail not available.

PLANNING APPRAISAL

1 Introduction

An application form proposing felling of 1 x Oak (applicant's ref. T1) - Fell and treat stump. T2 of Tree Preservation Order in connection with alleged damage at 30 Corner Road

The application has been submitted by PRI - Insurance Services acting as agent on behalf of Plexus – who are dealing with a claim of alleged subsidence damage at 30 Cromer Road.

2 Appraisal

Trees and Amenity Value

The subject oak tree stands within the grounds of Lee Close (near 13 - 24), Barnet EN5 5HP a flatted development in proximity to 30 Cromer Road. The subject oak tree is part of a group of 2 ash and 2 oak trees growing along the boundary between Lee Close and Cromer Road.

These trees are protected by TPO/CA/305/G1 (x 2 ash x 1 oak) TPO/CA/305/T1 oak which are located on the grass verge on Cromer Road. The tree preservation order was made in 1995.

The subject tree provides a high level of visual softening between the development at Lee Close which was built on the Former Depot Lytton Road in the late 1990's and Cromer Road built in the 1970's.

It is likely that the subject tree pre-dates these developments by over 100 years Cromer Road was built on a former cricket ground (1932 to 1941) historic maps and Lee close on an allotment site. The trees are detailed on the historic map (1865 to 1894) along side the public footpath that runs along the rear boundary of 30 Cromer Road and Lee Close.

These trees provide significant visual amenity and wildlife habitat to both the residential properties within Lee Close and Cromer Road. Their presence in the street scene is considerable feature and a reduction in tree numbers would be a significant loss to the community.

The tree preservation order protecting these trees was made in 1995 during the planning process for Lee Close.

The subject oak tree T1 (applicant's plan) is approximately 18m high and has a stem diameter of around 900mm. The tree is in good health with no obvious physiological or structural defects that would merit the felling of this tree.

3 The application

The application submitted by Environmental Services was registered on the 07.12.2020. The reasons for the proposed felling of the oak tree (applicant's ref. T1) cited in section 5 of the application form are:

"Our Ref: 139577

*Statement of Reasons for Tree Preservation Order Application to fell and treat x1 tree (T1)
at: Land in the grounds of Lee Close, Barnet EN5 5HP*

- 1. The above tree works are proposed as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building.*
- 2. The above tree works are proposed to limit the extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs are likely to vary between £10,000 and £30,000, depending upon whether the tree/s can be removed or must remain.*
- 3. The above tree works are proposed to limit the duration of any claim period and therefore allow the landowner their right to the peaceful enjoyment of their property.*
- 4. It is the case that an alternative to felling such as pruning or significant 'pollarding' of the tree would not provide a reliable or sustainable remedy to the subsidence in this case. We do not consider that any other potential means of mitigation, including root barriers, would be effective or appropriate in the circumstances.*
- 5. We are satisfied that the evidence obtained following completion of our Arboricultural Implication Assessment report completed 25th June 2019 clearly links Oak tree as the cause of damage to the risk address*
- 6. Insurers understanding the requirement to offer replacement planting in the event consent to fell is granted."*

4 The supporting documentation comprises:

Arboricultural Consultancy for Oriel Services limited ref: 132891
Cunningham and Lindsey INSURANCE CLAIM CONCERNING SUSPECTED
SUBSIDENCE ENGINEERING APPRAISAL REPORT Date: 29/05/2019 Our Ref:
6871382
CET Property Services Level monitoring from 06/11/219 to 06/11/2020
CET Property Services SITE INVESTIGATION FACTUAL REPORT
EPSL European Plant Science Laboratory tree root EPSL Ref: R28760

5 Findings

Damage at the property was first notified by the house holder to their insurers in August 2018 and subsequent site investigations were carried out during 2019 and 2020. Following the receipt of the application to fell the protected tree the councils structural engineer provided the following comments:-

"Further to the application I would comment as follows;

- 1. Full details of the damage with annotated photos and sketches of the crack patterns.*
- 2. Damage appears to be in the rear and side extension, does extension have building control approval.*
- 3. TP1 foundation 1.4m, slightly shallow for an oak tree 18m from building.*
- 4. The engineer's report does have SI data but not monitoring.*
- 5. The monitoring is sufficient to show enhanced seasonal movement.*
- 6. Boreholes backfilled with concrete have been used as stable datum.*
- 7. Rear BH is shallow at 2.6m, hand auger refusal. Roots appear to be full depth of borehole, full extent of*

roots not determined.

8. Soil tests are not conclusive regarding desiccation, soil suction or Oedometer testing not done."

A site visit undertaken on the 29th September 2021 found that all the vegetation within 30 Cromer road (H1) and the small shrub group (SG1) have been removed.

The submitted level monitoring indicates that there is some seasonal movement occurring which appears to be in the rear and side extension. The level of movement seems to be slight in nature. The submitted sketches of the damage provided also show crack widths between 2mm and 5mm.

It is common practice to categorise the structural significance of the damage in this instance, the damage falls into Category 2 (slight).

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 2 damage as "Cracks easily filled. Recurrent cracks can be masked by suitable linings. Cracks not necessarily visible externally; some external repointing may be required to ensure weather-tightness. Doors and windows may stick slightly and require easing and adjusting. Typical crack widths up to 5 mm."

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. The trial bore holes BH 1 located at rear extension find high plastic soils to 2.6m deep where the trial pits ends for the following reason *"BH ends at 2.6m. Claystone too dense to hand auger. BH dry and open on completion."* Tree roots were found to be below the 1.4m deep foundations and identified as (Quercus) oak. The structural engineer notes that a foundation depth of 1.4m is "slightly shallow for for an oak tree 18m from building."

The BH 2 located to the front of the property was abandoned for the following reason:-*"Hand dug trial pit to 650mm, then used bar through voids down face of brickwork to possible top of the foundation Abandoned at 1250mm, made ground collapsing."* A trail pit was dug in a different location at the front of the property and found the following highly shrinkable clay soils at 2.5m.

The Council's Structural Engineers, having assessed all the submitted information, note:
*"Following the addition information provided I can confirm that we have sufficient supporting information to validate this application.
Looking at the overall picture and the additional monitoring provided it is likely that the Oak tree is implicated to the damage incurred to the property."*

The Council's Structural Engineer has also noted: *"that foundation depth of the rear extension recorded from BH/TP1 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 at least 1.5m

The Tree Preservation Order that includes the oak tree (T1) was made in 1995 which post dates the construction of the rear extension which gained planning permission in 1987. 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 oak trees.

The oak tree predates the construction of the extension at 30 Cromer Road so 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 oak tree would be of significant detriment to public amenity and the character and appearance of the area as it would increase the visibility of the development at Lee Close. By increasing visibility of the built form and eroding the verdant suburban character of the area.

Only 2 objections have been received

6 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: *"The above tree works are proposed to limit the extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs are likely to vary between £10,000 and £30,000, depending upon whether the tree/s can be removed or must remain."*

On the 16th December 2021 the Council received a letter from Plexus ref: GRH-SED.001-156 stating the following *“We understand that due to the presence of underground services in the area, including a gas main, owned by third parties, it is not viable to operate heavy digging machinery at the site. Therefore, the current engineering view is that the appropriate scheme to be implemented is Option 4 : Piled Slab : estimated >£300,000. Please note that this scheme is expected to require the Insured to move into alternative accommodation for up to one year.”*

This increase in cost is considerable from the £30,000 originally stated within the application.

When considering this the higher figure of £300,000 should be used. It is highly likely that the applicants will pursue the Council for any additional cost incurred if this application is refused.

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 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”*. There is also 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 for 30 Cromer Road may be in excess of an extra £300,000 if the subject oak tree is retained.

7 COMMENTS ON THE GROUNDS OF OBJECTION

Objectors have commented on the loss of visual amenity and impact on wildlife. If the application is approved there will be a loss of visual tree amenity.

The tree preservation order legislation and guidance does not cite provision of habitat as a reason to make an order. However oak trees are a species of tree that does provide a high level of ecological value and habitat niches.

8 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.

9 CONCLUSION

The agent, PRI - Insurance Services, proposes to fell one oak tree standing within the grounds of Lee Close (near 13 - 24), because of it's alleged implication in subsidence damage to the single storey rear extension of that property.

The subject oak 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 oak tree will reduce the sylvan character of land between Lee Close and Cromer Road.

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 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 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 felling of this tree, there may be a compensation liability (in the application submissions it is indicated that the repair works for 30 Cromer Road may be in excess of an extra £300,000 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.

