

BARNET

LONDON BOROUGH

COMMITTEE REPORT

LOCATION:	King Alfred Phoenix Theatre, Ivy House, 94 - 96 North End Road London, NW11 7SX		
REFERENCE:	TPP/0969/21	Received:	07.12.2021
WARD:	Childs Hill	Expiry:	01.02.2022
CONSERVATION AREA	N/A		

AGENT:	JCA Ltd Unit 80 Bowers Mill, Barkisland, Halifax, HX4 0AD
PROPOSAL:	T6 (T64): Sycamore - Cut the entire tree to ground level T7 (T65): Horse Chestnut - Cut the entire tree to ground level T8 (T66): Sycamore - Cut the entire tree to ground level

RECOMMENDATION:

That Members of the Planning Committee determine the appropriate action in respect of the proposed felling of T6 sycamore, T7 horse chestnut, & T8 sycamore— Standing in group A25 of the Tree Preservation Order TRE/HE/3 made 11.07.1957, 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 three replacement trees shall be agreed in writing with the Local Planning Authority and these replacement trees shall be planted before the end of the next planting season following the commencement of the approved treatment (either wholly or in part). If within a period of five years from the date of any planting, the trees 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: 20.01.2022

Consultees:

Neighbours consulted: 3
151 North End Road, London, NW11 7HT
King Alfred School 149 North End Road London
Ivy House, 94 - 96 North End Road London

Replies:

None

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

There are no recent applications to prune the trees applied for under this application. A repeat tree works application has been submitted by Custom Cutters Tree Specialists Ltd on behalf of the tree owners King Alfred School reference TPP/0944/21 received on 07.12.2021. This application was withdrawn on 5th July 2022.

If the application is refused (or deemed refused due to non-determination) such that the trees cannot be removed, then it is expected that either a root barrier solution will be required, or alternatively underpinning. Whilst neither scheme has been fully priced at this stage, current estimates are approximately £40,000 for the root barrier solution, and £75,000 for underpinning. These estimates are of course subject to change as further information comes to light.

In the event that the trees can be removed, then it is expected that superstructure only works (i.e. crack repairs and redecoration) would be achievable for approximately £20,000.

If the application is refused the applicants may seek compensation for any losses associated with this decision.

PLANNING APPRAISAL

1 Introduction

An application form proposing felling of 2 x sycamore (T6 & T8 Applicants reference) and x 1 horse chestnut tree (applicant's ref. T7) standing in the King Alfred Phoenix Theatre Ivy House, 94 - 96 North End Road London NW11 7SX.

The application was registered on the 22nd December 2021 but there were various discrepancies and shortcomings in the information - clarification and additional information was thus requested. Following the receipt of further information and correspondence from the agent,

The application has been submitted by JCA Ltd acting as agent on behalf of 360 Globalnet who are dealing with a claim of alleged subsidence damage at 90 North End Road, London, NW11 7SX

2 Appraisal

Trees and Amenity Value

The subject trees stand within the grounds of King Alfred Phoenix Theatre, Ivy House, 94 - 96 North End Road London, NW11 7SX. Ivy House is a Listed Building and the grounds are an integral part of the setting of this building which includes these trees. These mature trees are standing in area A25 of the Tree Preservation Order TRE/HE/3 made on 11.07.1957.

The trees positioned on the north east corner of the gardens are highly prominent to the North End Road (A502) a major road that runs north south through the borough. They stand above the level of highway and can be seen for a considerable distance both north and southwards. The gardens is part The King Alfred School and the eastern campus also has mature trees along the road side boundary.

Together these trees provide significant visual softening around the school entrance. They provide a backdrop to Hamstead Heath and Golders Green open spaces. As such these trees have very high public amenity values and are very important in the urban setting.

The trees implicated in causing structural damage to 90 North End Road are located on land raised above the property. Located to the south of the property the trees have been estimated at T6; 5.5m, T7; 11m and T8; 13m from the side elevation of the house.

3 The application

The application submitted by JCA Ltd and arboricultural consultancy, was registered on the 22nd December 2021 . The reasons for the proposed felling of the x 2 sycamore and x 1 horse chestnut. cited in section 5 of the application form are:

“Please see the JCA Arboricultural Report (Ref; 15776/AJB Arboricultural Report). The application is for the removal of T6, T7 and T8 as they are implicated in subsidence related damage to the adjacent property of 90 North End Road.”

4 The supporting documentation comprises:

JCA Ltd Arboricultural Consultancy for 360 Globalnet ref: DLG-SN-19-001152
Drainage Repair Company for 360 Globalnet ref: DLG-SN-19-001152 including
Drainage report, tree root identification,
Soil analysis,
Engineers report for 360 Globalnet ref: DLG-SN-19-001152
Tree root identification 360 Globalnet ref: DLG-SN-19-001152
Subsidence monitoring service ref:-ZBM06556GLOB for 360 Globalnet ref: DLG-SN-19-001152
Photographs of damage

The Engineers report states that damage was first notified in October in 2019 and an onsite assessment of the building was undertaken. The report shows the hair line cracking that was observed during my site visit on 8th February 2022. These fine cracks were evident around the building.

The report recommended a drainage survey, which was commissioned and found 4 sections of drains defective and leaking. In March 2020 repairs to these defects were completed.

Tree root analysis

No tree roots were identified within the Trial pit 1 at the rear of the property.

Tree roots were found in Trial Pit 2 located at the front of the house close to the trees implicated in causing the alleged subsidence growing within the grounds of King Alfred Phoenix Theatre, Ivy House, 94 - 96 North End Road London, NW11 7SX. The tree roots were identified as Acer (sycamore) and Aesculus (horse chestnut).

Soil analysis

The submitted soil analysis (Professional Soil Laboratory) ref: PSL-19/7269 found clay soil in both trial pits with a plasticity index of between 33% & 37%. This means the clay soil has a moderate capacity for shrinkage and expansion when wet or dry. The moisture content of the soil is 31% in trial pit 1 and 29% in trial pit at 2m which demonstrates there is a slight amount of desiccation.

Level monitoring

The council's structural engineers have observed that monitoring results for Feb 20 to May 21 are consistent with enhanced seasonal movement to the foundations with a focal point at the front LHS corner (as viewed from front) of the building. However future readings and the results are not consistent. Clarification has been sought from the applicant but no response has been received.

No crack monitoring has been provided, however the pictures provided and those observed during the site visit showed only hair line cracks.

In the absence of the applicants commentary on the extent of cracking, the following assessment has been made based on the images by the Council's engineer as damage falls into Category 2 (BRE Digest 251 *Assessment of damage*).

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 - Cracks easily filled. Recurrent cracks can be masked by suitable linings. Cracks not necessarily visible externally; some external repointing maybe required to ensure weather-tightness. Doors and windows may stick slightly and require adjusting and easing. Typical crack widths up to 1 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 (Feb 20 to May 21) shows seasonal movement of the front left hand side of the property. This is consistent with the location of the trees implicated in the application.

DNA sampling of the sycamore tree roots was requested to see if it was the roots from T6 or T8 beneath the foundations, unfortunately this information has not been supplied.

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

- The damage to the building appears to be relatively slight, the category of damage in not noted in the engineers report but from the photos I would estimate it to be category 2, in accordance with BRE Digest 251.
- The boreholes are only 2.4m deep with two soil samples tested in each and no soil suction tests carried out. This does make the assessment of soil desiccation more difficult. However, there is some evidence of soil desiccation in TP2 at 2m depth.
- Roots were found to a depth of 2.1m below the front LHS foundation and were identified as Sycamore and Horse Chestnut.
- No DNA was carried out to confirm both Sycamore trees have roots extending to below the foundations. T6 Sycamore is the most likely source of the roots being 5.5m from the building. T8 is much further from the building at 13m distance.

- See below for comments on the level monitoring.

It appears the building has suffered a relatively minor episode of foundation subsidence and on the balance of probability the T7 Horse Chestnut and T6 Sycamore trees are the most likely to be implicated in the damage.

To implicate the T8 sycamore I think DNA evidence would be required, particularly as the NHBC guidance for building near trees would specify a 1.3m deep foundation where a Sycamore tree is 13m from the building which is only marginally deeper than the existing foundation of 1.1m.

DNA testing was requested but not provided.

The impact of removing these trees the subject trees would be of significant detriment to public tree amenity and impact on the character and appearance of the area by removing three large mature trees growing on an elevated area above the main road.

Replacement trees could be a condition of any approval granted; however, these trees would take many decades to re-establish a similar level of public tree amenity.

5 Legislative background

As the trees are included in a Tree Preservation Order, formal consent is required for their treatment from the Council (as Local Planning Authority) in accordance with the provisions of the tree preservation legislation.

Government guidance advises that when determining the application the Council should (1) assess the amenity value of the tree(s) and the likely impact of the proposal on the amenity of the area, and (2) in the light of that assessment, consider whether or not the proposal is justified, having regard to the reasons put forward in support of it. It should also consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provide that compensation is payable for loss or damage in consequence of refusal of consent or grant subject to conditions. The provisions include that compensation shall be payable to a person for loss or damage which, having regard to the application and the documents and particulars accompanying it, was reasonably foreseeable when consent was refused or was granted subject to conditions. In accordance with the 2012 Regulations, it is not possible to issue an Article 5 Certificate confirming that the trees are considered to have 'outstanding' or 'special' amenity value which would remove the Council's liability under the Order to pay compensation for loss or damage incurred as a result of its decision.

Estimates for the costs of repair were not provided within the original submission. This was requested and following provided as a response:

In the event that the trees can be removed, then it is expected that superstructure only works (i.e. crack repairs and redecoration) would be achievable for approximately £20,000.

Likely costs implications if the application is refused.

If the application is refused (or deemed refused due to non-determination) such that the trees cannot be removed, then it is expected that either a root barrier solution will be required, or alternatively underpinning. Whilst neither scheme has been fully priced at this stage, current estimates are approximately £40,000 for the root barrier solution, and £75,000 for underpinning. These estimates are of course subject to change as further information comes to light

When considering this application, the higher figure should be used. The suggestion that a root barrier may be installed has not been fully explored by the applicants nor have they applied to do this work. To install a root barrier would impact significantly on the sycamore T6 and would likely result in its loss.

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 trees that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the T6, T7 & T8 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, they may be liable to pay compensation. It is to be noted that the Council's Structural Engineers have noted that the "*trees would be implicated in the subsidence damage to the property*"; and there is uncertainty about the risk of heave.

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

If it is concluded on the balance of probabilities that the roots of the 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 90 North End Road, London, NW11 7SX may be in excess of an extra £75,000 for underpinning 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, JCA Ltd proposes to fell three trees standing in the grounds of King Alfred Phoenix Theatre, Ivy House, 94 - 96 North End Road London, NW11 7SX because of its alleged implication in subsidence damage to the 90 North End Road.

The subject trees have 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 forms. The loss of these trees will reduce the sylvan character of the area.

The Council's Structural Engineers have assessed the supporting documentary evidence and have noted that the subject trees are implicated in the subsidence damage to the property. However, the trees are 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 the trees.

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 two sycamore and 1 horse chestnut 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 90 North End Road may be in excess of an extra £75,000 if the subject trees are retained) if consent for the proposed tree felling is refused.

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

