

# BARNET

## LONDON BOROUGH

### COMMITTEE REPORT

<b>LOCATION:</b>	70 Hillside Gardens, Barnet EN5 2NL		
<b>REFERENCE:</b>	TPP/0680/21	<b>Received:</b>	31.08.2021
<b>WARD:</b>	Underhill	<b>Expiry:</b>	26.10.2021
<b>CONSERVATION AREA</b>			

<b>AGENT:</b>	PRI - Insurance Services		
<b>PROPOSAL:</b>	1 x Oak (applicant's ref. T1) - Fell and treat stump. T11 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 T11 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: 23.09.2021

Consultees:

Neighbours consulted: 8

Replies: 3 responses have been received, all 3 of support from 70 and 72 Hillside Gardens and The Thomas Watson Cottage Homes located on adjoining land.

## **MATERIAL CONSIDERATIONS**

### Relevant Recent Planning History:

21/0866/HSE Two storey side and rear extension following demolition of existing rear extension. New front porch extension. Approved subject to conditions

20/5442/HSE Single storey side and rear extension following demolition of the existing garage. Approved subject to conditions

B/00457/14 Part single part two storey side and rear extension. First floor rear extension.

None of these permissions have been implemented by the homeowner.

## **PLANNING APPRAISAL**

### **1 Introduction**

An application form proposing felling of 1 x Oak (applicant's ref. T1) - Fell and treat stump. T11 of Tree Preservation Order TRE/BA/52 in connection with alleged damage at 72 Hillside Gardens

The application has been submitted by PRI - Insurance Services acting as agent who are dealing with a claim of alleged subsidence damage at 72 Hillside Gardens.

Appraisal

### Trees and Amenity Value

The subject oak tree stands within the rear garden of 70 Hillside Gardens on the western side of the road. The gardens back onto The Watson Thomas Cottages Homes a gated estate at the end of Leecroft Road.

There is a significant and steep level change downwards from west to east and the subject oak tree is located at the base of the slope. Reducing significantly, the public amenity north wards to The Watson Thomas Cottages Homes.

Hillside Gardens also slopes downward from the north to south, the Hillside Gardens properties obscure the tree which can only be glimpsed between the properties of 70 and 72 and over the roofs of other properties.

Historic maps (1865 to 1894) show trees positioned along the historic field boundary that separates Hillside Gardens and Leecroft Road and The Thomas Watson Cottage Homes.

The proportions of the tree are such that this tree is likely to be the tree shown on the historic map.

The TPO TRE/BA/52 primarily focuses on protecting trees around The Watson Thomas Cottages Homes estate. But does include a few trees amongst a row of established trees along the boundary.

As requested at the previous planning committee meeting the tree should be valued to compare this against any likely costs to the council for compensation. Tree preservation orders are made to protect trees with public amenity value. Therefore, the Visual Amenity Valuation of Tree and Woodlands (The Helliwell System 2008) Guidance note 4 is the appropriate valuation system. 6 factors are used to assess the amenity value of a tree and guidance is set out within the above document. This system does not value ecosystem services, timber value, historical or cultural values which also play a role, but lesser, in determining the suitability of the tree for special protection. However, these ecosystem services values are far greater.

Factor	Points									
	0	0.5	1	2	3	4	5	6	7	8
<b>Size</b>	< 2m <sup>2</sup>	2 to 5m <sup>2</sup>	5 to 10m <sup>2</sup>	10-20m <sup>2</sup>	20-30m <sup>2</sup>	30-50m <sup>2</sup>	50-100m <sup>2</sup>	100-150m <sup>2</sup>	<b>150-200m<sup>2</sup></b>	+ 200m <sup>2</sup>
<b>Duration</b>	<2 years		2-5 yrs	5-40 yrs	40-100 yrs	<b>100+ yrs</b>				
<b>Importance</b>	None	Very Little	Little	Some	Considerable	Great				
<b>Tree Cover</b>		Woodland	Many	Some	Few	None				
<b>Suitability to setting</b>	Not	Poor	Just	Fairly	Very	Particularly				
<b>Form</b>		Poor	Average	Good						

Current **Helliwell** point values: From 1st January **2022**. Individual Trees: £42.97. This tree scores 7 x 4 x 1 x 1 x 3 x 2 making an amenity score of 168 x £42.97 provides an amenity of £7,218.96.

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.

## 2 The application

The application submitted by Environmental Services was registered on the 15.09.2021. The reasons for the proposed felling of the oak tree (applicant's ref. T1) cited in section 5 of the application form are:

*"Fell and Treat Stump to T1 Oak Tree Located at 70 Hillside Gardens, Barnet, Hertfordshire, EN5 2NL.*

*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 £12,000 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 28th February 2020 clearly links the T1 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."*

### 1 The supporting documentation comprises:

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

## 2 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:-

I have reviewed the additional information and would comment on this case as follows;

1. The damage to the rear extension is consistent with subsidence of the rear extension.
2. The extension construction pre-dates the NHBC guidance for building near trees.
3. The level monitoring results indicate enhanced seasonal movement to the rear extension.

4. Where possible a control borehole should always be undertaken to compare and contrast soil test results.
5. There is a slight indication of soil desiccation at 1.7m depth.
6. Live Oak roots ID at foundation depth.
7. Dead Leguminosae at 1.6m depth. The source of these roots is not clear.
8. On the basis of the distance of the oak tree from the extension the NHBC guide recommends a foundation depth of 1.8m. This would suggest oak roots are potentially present to a greater depth than found in the borehole.

Although the extension foundations would be considered shallow by current guidelines, they appear to have been constructed before the detailed guidance in the NHBC for building near trees and probably matched the depth of the existing house foundation.

The extension has suffered subsidence damage due to tree root action affecting the clay subsoil, and on the balance of probability the oak tree T1 is likely to be implicated in the damage.

A site visit undertaken on the 9<sup>th</sup> February 2022 and found that all the vegetation within 70 and 72 Hillside gardens has remained unchanged.

The submitted level monitoring indicates that there is seasonal movement occurring which appears to be in the rear extension. The level of movement is reported as category 4 severe. During the site visit cracks were very visible in the rear of the property.

It is common practice to categorise the structural significance of the damage in this instance, the damage falls into 4 - Extensive damage, cracks 15 to 25mm.

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 "Extensive damage which requires breaking-out and replacing sections of walls, especially over doors and windows.

Windows and door frames distorted, floor sloping noticeably. Walls leaning or bulging noticeably, some loss of bearing in beams. Service pipes disrupted. Typical crack widths are 15 to 25mm, but also depends on number of cracks."

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 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 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 70 Hillside Gardens, 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.

The loss of the subject oak tree would have a considerable impact on public visual tree amenity and the character and appearance of the area. As it would reduce the impact of the 'wooded' strip of land between Hillside Gardens and The Watson Thomas Cottages.

## **Representations**

6A The Hall, Leecroft Road Barnet in support of application  
72 Hillside Gardens Barnet in support of application Reason  
70 Hillside Gardens Barnet in support of application;

### **3 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.

The application states the reasons for the works are as follows:

"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 £12,000 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 28<sup>th</sup> February 2020 clearly links the T1 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.”

When considering this the higher figure of £30,000 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 72 Hillside Gardens the repair works for may be in excess of an extra £30,000 if the subject oak tree is retained.

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

Three letters of support have been submitted for the removal of the oak tree.

70 Hillside Gardens; the reason for support from tree owner is that subsidence is also an issue at this property.

72 Hillside Gardens, also submitted a letter of support to their insurers agents application.

6A The Hall, Leecroft Road Barnet provided no reason for their support.

## **5 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.

## **6 CONCLUSION**

The agent, PRI - Property Risk Inspection, proposes to fell an oak tree standing within the grounds of 70 Hillside Gardens because of its alleged implication in subsidence damage to the rear extension of 72 Hillside Gardens.

The subject oak tree has amenity value and is visible from publicly accessible locations. It is part of a row of trees that are growing on the rear boundaries of properties on the western side of the road. These trees are 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 Hillside Gardens and Leecroft.

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 £30,000 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.



