

COMMITTEE REPORT

Location 15 The Ridings Alverstone Avenue Barnet EN4 8DR

Reference: TPP/0112/22 Received: 18th February 2022
Accepted: 18th February 2022

Ward: East Barnet Expiry 15th April 2022

Case Officer: Jonathan Mills

Applicant: Edwards

Proposal: 1 x Oak (applicants ref.T1) - Fell to near ground level and treat stump to inhibit regrowth. Standing in 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 (applicants ref.T1) - Fell to near ground level and treat stump to inhibit regrowth. Standing in T2 of 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.

Informative

1 Wildlife

Any and all works carried out in pursuance of this consent / notice will be subject to the duties, obligations and criminal offences contained in the Wildlife and Countryside Act 1981 (as amended). Failure to comply with the provisions of the Wildlife and Countryside Act 1981 (as amended) may result in a criminal prosecution.

2 Bio-security

Tree and shrub species selected for landscaping/replacement planting provide long term resilience to pest, diseases and climate change. The diverse range of species and variety will help prevent rapid spread of any disease. In addition to this, all trees, shrubs and herbaceous plants must adhere to basic bio-security measures to prevent accidental release of pest and diseases and must follow the guidelines below.

“An overarching recommendation is to follow *BS 8545: Trees: From Nursery to independence in the Landscape. Recommendations* and that in the interest of Bio-security, trees should not be imported directly from European suppliers and planted straight into the field, but spend a full growing season in a British nursery to ensure plant health and non-infection by foreign pests or disease. This is the appropriate measure to address the introduction of diseases such as Oak Processionary Moth and Chalara of Ash. All trees to be planted must have been held in quarantine.”

3 Ground heave

The applicant would be required to provide the Council with a waiver of liability and indemnity agreement to protect the Council from any third party claims arising out of the implementation of this consent to fell T2. Included in a Tree Preservation Order TPO/CA/124 and to provide appropriate compensation in the event of any ground heave damage to surrounding properties.

Consultations

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

Date of Site Notice: 24.03.2022

Consultees:

Neighbours consulted: 3

Replies: None

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

House constructed in 1990.

PLANNING APPRAISAL

1 Introduction

1 x Oak (applicants ref.T1) - Fell to near ground level and treat stump to inhibit regrowth. Standing in T2 of Tree Preservation Order.

Appraisal

Trees and Amenity Value

The subject oak tree stands within the rear garden of 15 The Ridings, Alverstone Avenue Barnet EN4 8DR. Alongside rear garden is a public footpath from Alverstone Avenue over the railway line onto Netherlands Road.

The subject tree has high public amenity being viewable from the public footpath and Alverstone Road over the roof line and between the properties. There is an historic element as the tree provides a link to past land uses.

The garden is elevated above the street which gives the tree greater prominence to the street scene. The oak tree stands within a reasonably sized garden and approximately 11 meters from the affected extension.

This tree and another oak to the front of 18 The Reddings were protected in 1980 to secure their retention through the development of The Reddings in accordance with government guidance. Prior to the development the land seems to have been undeveloped, see historic maps (1898).

Application N/03444/R: Former Goods Yard Oakleigh Park Station East Barnet approved in 1983 appears to be the primary approval for The Reddings development.

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
Size	< 2m ²	2 to 5m ²	5 to 10m ²	10-20m ²	20-30m ²	30-50m ²	50-100m ²	100-150m ²	150-200m ²	+ 200m ²
Duration	<2 year		2-5 yrs	5-40 yrs	40-100 yrs	100+ yrs				

	s								
Importance	None	Very Little	Little	Some	Considerable	Great			
Tree Cover		Woodland	Many	Some	Few	None			
Suitability to setting	Not	Poor	Just	Fairly	Very	Particularly			
Form		Poor	Average	Good					

Current **Helliwell** point values: From 1st January **2022**. Individual Trees: £42.97. This tree scores 5 x 4 x 2 x 3 x 2 x 2 making an amenity score of 480 x £42.97 provides an amenity of £20,625.60.

The subject oak tree T1 (applicant's plan) is approximately 14m high and has a stem diameter of around 540mm. The tree is in good health with no obvious physiological or structural defects that would merit the felling of this tree.

The tree has been previously reduced in height to approximately 12m high, however there are no records of previous applications for this work. The reduction was undertaken approximately 5 years ago.

2 The application

The application submitted by MWA was registered on the 18.02.2022. The reasons for the proposed felling of the oak tree (applicant's ref. T1) not cited in section 5 of the application form but referred to a supporting document which sets the reasons as follows:

"Reason: The above tree is considered to be responsible for root induced clay shrinkage subsidence damage to 15 The Ridings, Alverstone Avenue, Barnet, EN4 8DR.

Investigations into the damage have been conducted and the following information/evidence obtained:

1. *Engineering opinion is that damage is due to clay shrinkage subsidence. Details of the damage are included in the technical report submitted.*
2. *Foundations are bearing on to clay.*
3. *The clay subsoil has a medium to high volume change potential (NHBC Guidelines).*
4. *A comparison between moisture content and the plastic and liquid limits suggests moisture depletion in TP/BH1 (October 2020).*
5. *Roots were observed to a depth of 1.0m bgl in TP/BH1, and recovered samples have been positively identified (using anatomical analysis) as either Quercus spp. or the related Castanea spp.; the origin of which will be T1 Oak, confirming its influence on the soils below the foundations.*
6. *The observed moisture depletion is coincident with recorded root activity at depths beyond ambient soil drying effects and is consistent with the soil drying effects of the implicated tree.*
7. *Level monitoring for the period 07.06.21 to 01.02.22 has recorded a pattern of movement indicative of the effects of seasonal soil drying by the subject tree below foundation level. The uplift phase of the building can only be attributable to an expanding clay soil from a desiccated (shrunken) state due to the soil drying effects of the implicated oak.*
8. *A drainage investigation has not been undertaken. Drains can be discounted as a causal factor by reference to the level monitoring data.*

9. *Recommended works to TG1 mixed species group of MWA Arboricultural Report were completed 21.04.21.*
10. *No recent structural alterations or building works have been carried out. The property has not been underpinned.*
11. *A root barrier has been considered as an alternative to tree removal and may be viable however this requires further appraisal to evaluate the constraints of the site. The cost of a deep barrier is currently estimated to be £25k.*
12. *The evidence confirms that on the balance of probabilities the subject tree is a material cause of the subsidence damage.*
13. *Superstructure repairs and decorations are currently estimated to be £5k should the tree works be undertaken. Costs for underpinning and repairs in the event the tree works do not proceed are currently estimated to be £40k.*
14. *Replacement planting of standard size tree with agreement of Local Authority..”*

3 The supporting documentation comprises:

Revised Arboricultural Appraisal Report Subsidence Damage Investigation at: 15 The Ridings Alverstone Avenue Barnet MWA REF: SUB210125-8295Rev01 REPORT DATE: 07/04/2021
MWA Arboriculture Statement reasons for works
LEVEL MONITORING - RELATIVE SURVEY READINGS
Site Investigation Report Auger Ref: 112114.1.3.BSI
ADDENDUM TECHNICAL REPORT Crawford Reference: SU2003468
TECHNICAL REPORT ON A SUSPECTED SUBSIDENCE CLAIM Crawford Reference: SU2003468

4 Findings

Damage at the property was first notified by the house holder to their insurers in 2019 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:-

1. *The house extension appears to be a conservatory built circa 1999/2000.*
2. *The level monitoring shows enhanced seasonal movement is occurring to the conservatory, the main house is stable.*
3. *The conservatory foundations are very shallow, 0.5m deep.*
4. *The main house foundations are 1.5m deep.*
5. *Roots extend to a depth of 1m, and were identified as oak roots.*
6. *The soil test results are not fully conclusive, but there is an indication of desiccation at 1m depth.*
7. *The damage is consistent with the conservatory being affected by subsidence damage and the main house remaining stable.*
8. *No drain survey was provided. However, subsidence due to leaking drains tends to cause a progressive movement not seasonal.*
9. *A full arboricultural report was not provided with details of trees and distances from the building.*

The Oak tree would appear to be implicated in the subsidence damage to the conservatory, however, the conservatory foundations do not appear to be constructed in accordance with the guidelines for building near trees current at the time of construction, or the minimum foundation depth on a clay subsoil specified in the Building Regulations.”

To check what the required depth for the conservatory should have been I would need to know the distance of the oak tree.

A competent builder should have been aware of the minimum requirements for foundation depth.

Following a request for additional information the arboricultural report was provided, following a review of this information the Council's engineer goes on to make additional comments on the depth of the foundations.

"In accordance with NHBC guidelines and normal Building Control practice the depth of the foundations required is calculated on the basis of the mature height of the tree. Therefore, in this case the conservatory foundation would need to be 2.3m deep for Building Control approval."

The extension was built around 1999/2000 after the construction of the main house in 1990 and the foundations should have been constructed to NHBC chapter 4.2 building near trees. This guidance was readily available at the time.

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 3 Moderate. During the site visit cracks were very visible around on extension.

It is common practice to categorise the structural significance of the damage in this instance, the damage falls into 3 - Moderate 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 3 damage as *"Crack which require some opening up and can be patched by a mason. Repointing of external brickwork and possibly a small amount of brick work 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 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. 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 1.5m. Tree roots were found to be below the 0.5m deep foundations and identified as (Quercus) oak. The structural engineer notes that a foundation depth of 0.5m is very shallow so close to an oak tree 11m from building."*

The Tree Preservation Order that includes the oak tree (T1) was made in 1980 which pre-dates the construction of the rear extension which may have been constructed without the planning permission in 1999/2000. 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 1999/2000 should have had due regard to the presence and mature growth of the oak trees.

The oak tree predates the construction of the house and extension at 15 The Reddings 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.

Representations

None

5 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 to remove the cause of movement to the rear extension and the key points are as follows:

"1. Engineering opinion is that damage is due to clay shrinkage subsidence. Details of the damage are included in the technical report submitted.

. 6. The observed moisture depletion is coincident with recorded root activity at depths beyond ambient soil drying effects and is consistent with the soil drying effects of the implicated tree.

7. Level monitoring for the period 07.06.21 to 01.02.22 has recorded a pattern of movement indicative of the effects of seasonal soil drying by the subject tree below foundation level. The uplift phase of the building can only be attributable to an expanding clay soil from a desiccated (shrunken) state due to the soil drying effects of the implicated oak.

11. A root barrier has been considered as an alternative to tree removal and may be viable however this requires further appraisal to evaluate the constraints of the site. The cost of a deep barrier is currently estimated to be £25k.

12. The evidence confirms that on the balance of probabilities the subject tree is a material cause of the subsidence damage.

13. Superstructure repairs and decorations are currently estimated to be £5k should the tree works be undertaken. Costs for underpinning and repairs in the event the tree works do not proceed are currently estimated to be £40k.

14. Replacement planting of standard size tree with agreement of Local Authority.."

When considering this the higher figure of £25,000 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 15 The Reddings the repair works for may be in excess of an extra £25,000 if the subject oak tree is retained.

6 COMMENTS ON THE GROUNDS OF OBJECTION

No objections have been received.

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, MWA Arboriculture Ltd, proposes to fell an oak tree standing within the grounds of 15 The Reddings, Alverstone Avenue Barnet EN4 8DR because of it's alleged implication in subsidence damage to the rear extension of the same property.

The subject oak tree has amenity value and is visible from publicly accessible locations. This tree 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 The Reddings and main line railway line.

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 the 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 15 The Reddings Alverstone Avenue may be in excess of an extra £25,000 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.

