

**Location** 12 Asmunds Hill London NW11 6ET

**Reference:** **TPP/0430/22** Received: 29th July 2022  
Accepted: 29th July 2022

Ward: Garden Suburb Expiry 23rd September 2022

**Case Officer:** **Jonathan Mills**

Applicant: Mr & Mrs Simon

Proposal: 1 x Oak - (applicants ref. T1) - Fell and eco plug stump. Standing in T1 of Tree Preservation Order. (application from 10 Asmunds Hill)

### **OFFICER'S RECOMMENDATION**

AND the Committee grants delegated authority to the Service Director – Planning and Building Control to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chair (or in their absence the Vice-Chair) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

**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 T1 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(s):**

#### 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.” Trees must be sourced from nurseries that have been registered under the government’s certification scheme; [www.planthealthy.org.uk](http://www.planthealthy.org.uk)

#### 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 T1. Included in a Tree Preservation Order TPO/CA/422 and to provide appropriate compensation in the event of any ground heave damage to surrounding properties.

### **OFFICER’S ASSESSMENT**

#### **Amenity:**

The subject Oak stands at the end of the rear garden, adjacent to the flank boundary with 14 Asmunds Hill and the rear boundary with The Orchard. The Oak is a mature tree some 15 metres in height, at 8 metres there is evidence that the upper crown failed or was removed and a new crown has reformed – giving it a large spreading canopy; it has been previously thinned, but it appears to be in good physiological condition with no major faults apparent; the foliage is of good form and colour taking account of the time of year.

The Oak is very clearly visible in the gap between 12 and 14 Asmunds Hill and there are glimpsed views above rooftops from other locations (this part of Asmunds Hill is characterised by alternating pairs of semi-detached and terraces of four dwellings); it is also very clearly visible from The Orchard (which provides sheltered housing for the elderly) – both from the communal gardens and

the parking area. The Oak contributes significantly to the screening between The Orchard and the housing in Asmunds Hill. This Oak is one of the original field boundary trees that pre-date the development of the Suburb. The tree is marked on an old Suburb map dating from 1911 drawn by Parker and Unwin, the Suburb's master-planners. The tree (and others adjacent) were retained and influenced the design and layout of this part of the Suburb – the Oak is located to form a focal point to the garden area and a backdrop to the streetscene, as attested by objectors, who also note that the public amenity value of the tree is enhanced by the number of pedestrians using the area.

Hampstead Garden Suburb is internationally renowned for the way in which mature landscape features have been incorporated into the built environment. As noted by many of the objectors, the Oak is older than the surrounding development (it was originally a field boundary tree), was present at the time the Hampstead Garden Suburb was designed and influenced layout of streets and housing. The retention of trees such as this Oak was an integral part of the design ethos during the development of the Garden Suburb. The Hampstead Garden Suburb Character Appraisal Statement is one of many documents setting out the importance of trees to the character and appearance of the area e.g.:

- “Trees and hedges are defining elements of Hampstead Garden Suburb. The quality, layout and design of landscape, trees and green space in all its forms, are inseparable from the vision, planning and execution of the Suburb”.
- “Wherever possible, in laying out the design for “the Garden Suburb” particular care was taken to align roads, paths, and dwellings to retain existing trees and views. Extensive tree planting and landscaping was considered important when designing road layouts in Hampstead Garden Suburb, such that Maxwell Fry, one of the pioneer modernists in British architecture, held that “Unwin more than any other single man, turned the soulless English byelaw street towards light, air, trees and flowers”.
- “Unwin’s expressed intention, which he achieved, was: ‘to lay out the ground that every tree may be kept, hedgerows duly considered, and the foreground of distant views preserved, if not for open fields, yet as a gardened district, the buildings kept in harmony with the surroundings.’”
- “Trees contribute fundamentally to the distinctive character and appearance of the Conservation Area in a number of different ways, including:

Creating a rural or semi-rural atmosphere Informing the layout of roads and houses with mature field boundary trees Providing links with pre-development landscape and remaining woodland. Creating glades, providing screening and shade, and marking boundaries. Framing views, forming focal points, defining spaces and providing a sense of scale.

Providing a productive, seasonal interest and creating wildlife habitats. In respect of this particular area of the Suburb, the Hampstead Garden Suburb Character Appraisal Statement sets out:

“The Artisans’ Quarter was designed as a new kind of community in which attractively designed housing for a wide range of income groups was set within a green environment. The provision of large gardens and open recreational spaces was central to the vision. Social accommodation for needy groups (widows, orphans and the elderly) was provided together with community facilities such as schools, a community centre and allotments.”

“The density of development is relatively high for the Suburb. However, houses were provided with generous gardens and there are areas of allotments, tennis courts and greens which provide generous open green spaces. Housing layouts were designed to retain existing mature trees.” “The retention of boundary oak trees from the pre-existing field boundaries, together with the street trees, hedges and generous gardens, make a lush green setting for the houses.”

Principal positive features are noted as including:

“mature oaks from earlier woodlands or field boundaries still thrive, particularly in allotments and back gardens or as focal points in the layout”, “trees and greenery rise above cottages in some

areas” “there are glimpsed views, between houses, of greenery”

The Oak is considered to be of special amenity value - in terms of its visual contribution to the streetscape; its environmental contribution to e.g. air quality and standing water uptake; to wildlife; its value for screening; and its historical significance in the layout of the Suburb. As noted by objectors, the Oak provides very significant public amenity in a number of different ways – historic (former field boundary tree influencing layout of streetscape); environmental (filtering pollution, noise, screening and privacy, wildlife habitat); and social (local landmark, iconic, marks passage of seasons). It contributes significantly to the character and appearance of the Hampstead Garden Suburb Conservation Area. The mature Oak is an original field boundary tree, if it was removed any replacement planting would take many years to attain a similar size and stature and its historic attributes would be lost - thus there would be considerable detriment to public amenity for decades and substantial harm to the character and appearance of the Conservation Area.

The subject oak tree stands within the rear garden of 12 Asmunds Hill NW11 6ET, the tree is publicly viewable from Asmunds Hill and properties surrounding the tree.

The subject tree has high public amenity being viewable from the public road and has cultural and historical merit. Oak trees were retained within the Hampstead Garden Suburb and the scheme was design around many of these mature specimens. The subject tree is a large mature specimen that predates the Hamstead Garden Suburb and will have been included within the designs. The Oak appears to be former field boundary tree that pre-dates the development of the Suburb. The tree was retained and is marked on an old Suburb map drawn by Parker and Unwin dated April 1911. The tree is an intrinsic part of the character and design of the garden suburb and conservation area.

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 have values. The committee should note these other factors listed above have considerable value which have not been included in the calculation below.

Factor	Points									
	0	0.5	1	2	3	4	5	6	7	8
Size	< 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>	150-200m <sup>2</sup>	+ 200m <sup>2</sup>
Duration	<2 years		2-5 yrs	5-40 yrs	40-100 yrs	100+ yrs				
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 6 x 4 x 1 x 3 x 2 x 1 making an amenity score of 384 x £42.97 provides an amenity of £16,500.48

The Council’s adopted valuation system Capital Asset Valuation of Amenity Trees (CAVAT) values the tree in the region of £53,524.00

The subject oak tree T1 (applicant's plan) is approximately 15m high and has a stem diameter of around 950mm and a crown spread of 20m (North/south). The tree is in good health with no obvious physiological or structural defects that would merit the felling of this tree. However, the tree was either reduced or the upper crown failed at 8m many years ago and a new upper crown has formed.

### **History:**

C11131B/05/TRE\_B Oak - Reduce Density by 20%

TCAI00069/14/F: Tree Preservation Order made to prevent felling of the oak tree (T1) was made in 2014. Following a petition, and many objections raised by residents to the section 211 notice of Intent to remove the tree as a solution to the subsidence issues at number 12 Asmunds Hill. The order was made and confirmed in 2014 to protect the tree of high amenity value, cultural and historical value to ensure full consideration is given to the tree. It is not possible to grant consent or refuse a s211 notice of intent.

TPF/00339/15 1 x Oak (applicant's ref. T2) - Fell. T1 of Tree Preservation Order committee decision to refuse application for the following reason: "The loss of the tree of special amenity value is not justified as a remedy for the alleged subsidence damage on the basis of the information provided."

No appeal was lodged against this decision.

TPP/0819/20 1 x Oak (applicant's ref. T1) - 70% Crown reduction by volume. T1 of Tree Preservation Order. (Withdrawn)

TPP/0310/21 1 x Oak - Reduce height and spread by 3 - 4m (approx 30% linear / 70% volume) and reshape. T1 of Tree Preservation Order. (Withdrawn)

### **The application**

This application TPP/0429/22 and TPP/0430/22 are to be considered in tandem, because the tree owner/applicant owns both 10 and 12 Asmunds Hill. The properties have been conjoined into a single dwelling. The properties of 10 and 12 Asmunds Hill are insured by different companies and each insurance company needs to reserve the right to claim compensation under section s202 of the act for any losses arising from the Councils decision.

This approach also allows the Council to consider the implications of each application simultaneously as the quantum for repair is substantial.

### **Reasons for application:**

The application submitted by PRI registered on the 29.07.2022. 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:

Statement of Reasons for Tree Preservation Order Application to: Fell and eco plug stump x1 Oak tree (T1) at: 12 Asmunds Hill, London NW11 6ET TPO Ref: TPO/CA/422/T1

*"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.*

*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 £60,000 and £205,513.80 depending upon whether the tree/s can be removed or must remain.*

*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.*

*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.*

*We are satisfied that the evidence obtained following completion of our Arboricultural Implication Assessment report completed 12/07/2019 (reviewed 26/07/2022) clearly links the T1 Oak tree as the cause of damage to the risk address.*

*Insurers understanding the requirement to offer replacement planting in the event consent to fell is granted.*

*Please read this as part of a dual submission alongside application for the same work to the same tree (T1 Oak) as submitted by Mr Simon Pryce, on behalf of 12 Asmuns Hill."*

## **The supporting documentation comprises:**

Cost breakdown 10+12 Asmuns Hill, NW11

Site Plan Not to Scale

GHG Subsidence Engineers Report ref L/2018/55473/5 dated 14<sup>th</sup> February 2019

Level monitoring 06/04/2019 to 10/02/2020

GHG Level Monitoring from 16/10/2020 to 08/06/2022

Site Investigation and drainage L/2018/55473/AMG dated 16/01/2019

Vertical wall survey

Statement of Reasons for Tree Preservation Order Application to fell and eco plug stump x1 Oak tree (T1) at: 12 Asmuns Hill, London NW11 6ET

Site plan

Photographs of property and sites of damage.

ARBORICULTURAL ASSESSMENT REPORT

## **Findings**

There is a long history of damage at the property dating to 2010 where movement was observed to the rear of the house. The results of the damage lead to the 2014 & 2015 applications to remove the oak tree as a remedy for the reported movement. The level of damage reported then was *"The damage consists of cracking to the rear elevation. Internal cracks up to 3mm wide. The damage is classified as category 2 in accordance with BRE Digest 251."*

The most recent damage at the property was first notified by the house holder to their insurers in 2018 and subsequent site investigations were carried out up until 2022.

Following the receipt of the application to fell the protected tree the Councils structural engineer provided the following comments:-

*"As requested I would comment on technical submissions for both applications as follows;*

- 1. The crack damage to both properties is consistent with subsidence of the foundations.*

2. *The foundations for both properties are reasonable for their age, being 1.2m to 1.0m deep.*
3. *Oak tree roots were identified below both foundations up to depths of 2.0m.*
4. *The soil testing undertaken at no.12 indicates desiccation of the clay soil to 2.0m depth.*
5. *The level monitoring shows enhanced seasonal movement to both properties, the most severe occurring at no. 12.*
6. *There is an oak tree located in the rear garden of no. 12 and an oak tree in the rear garden of no. 8. The oak tree in no. 8 is noted as being further from the properties.*

*On the basis of the above the oak tree in the rear garden of no. 12 is most likely implicated in the subsidence damage to no. 12 and no. 10. The oak tree in the rear garden of no. 8 could be a minor contributory factor in the subsidence damage to no. 10.*

*No assessment for the effects of ground heave following tree removal have been carried out.”*

The submitted level monitoring indicates that there is seasonal movement occurring which appears at the rear of the property. The level of movement has been measured at 15mm and is 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 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 4 damage as "Extensive damage which requires the 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 beams. Service pipes disrupted. Typical crack widths are 15mm to 25mm, but also depends on the 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 at the rear of both properties 10 and 12 Asmunds Hill. 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."*

Level monitoring up until August 2022 has been provided and shows downward movement of the foundations. The summer of 2022 was a notable year for high temperatures and very low rainfall.

The Council's appointed loss adjuster Ian Brett-Pitt Associates has made the following observations on the case and comments on the potential liability.

*"In this case, the Councils exposure relates to the reasonable costs of stabilising the property (and not the current damage) in the event of retention of the implicated TPO tree and pollarding is not considered to be desirable/viable – i.e. costs which flow as a consequence of the councils refusal. In this case, if consent is refused and you don't consider a Hortlink compliant reduction of the TPO tree to be a feasible compromise, then I think it can be argued a root barrier could be installed in this case which would cost in the region of say £40k+. If so, this would negate the need for any underpinning and related temporary accommodation costs if considered to be necessary."*

Excluding tree roots from beneath the foundations of the property with the use of a root barrier should induce stability at the property. Due to the loss of rooting area an initial crown reduction would also be advisable.

A Hortlink compliant reduction which is being referred to, relates to this research CONTROLLING WATER USE OF TREES TO ALLEVIATE SUBSIDENCE RISK Horticulture LINK project 212 Final report – May 2004. The implementation of this recommendation would require a significant reduction in the overall height and spread of the tree. The recommendations are:-

*“For practical soil moisture conservation, severe crown-reduction 70-90% of crown volume would have to be applied. Reduction of up to 50% crown volume is not consistently effective for decreasing soil drying. ·*

*To ensure a continued decrease in canopy leaf area and maximise the period of soil moisture conservation, crown reductions should be repeated on a regular managed cycle with an interval based on monitoring re-growth. · Crown-thinning is not an effective method to control soil drying by trees.”*

A reduction on this scale would reduce the effective publicly visible tree amenity considerably. A root barrier combined with a lesser reduction in height would preserve the public amenity and manage the risk to the property but would likely result in a burden on the public purse.

The oak tree predates the construction of the house 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 Hampstead Garden Suburb Conservation Area.

## **Representations**

79 neighbours were consulted on this application and 67 responses were received objecting to the application.

67 representations were received all of which objected to the application. 23 were received from residents of the The Orchards Housing complex

The key reasons are summarised as follows:-

Loss of visual tree amenity

Loss of an historic boundary tree retained during the design and layout of the Hampstead Garden Suburb.

Loss of habitat for wildlife

Loss of eco-system services

Loss of screening between The Orchards Housing development and Asmunds Hill.

Iconic tree and part of the distinctive green infrastructure not just of this conversation area but also of The Orchard itself

The insurance company should install a root barrier

### **1 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 10 and 12 Asmunds Hill and the key points are as follows:

*"Oak in the rear garden of no.12, T1 in this report and the TPO - fell to address subsidence damage to no.12 and at no.10, which is part of the same building and property and is the subject of a parallel application.*

#### *Reasons*

*1. Evidence from investigation and monitoring commissioned by the insurers show conclusively that the oak in the back garden of no.12 has caused the subsidence that have been affecting the building back to at least 2010.*

*2. Pruning has been considered, but has not proven effective or reliable to date and there would be complications with this in future, particularly the need to obtain consent from Barnet Council and Hampstead Garden Suburb Trust for each operation and the strong probability of climate change making the operation less reliable.*

*3. A root barrier was considered, but there would be problems installing it across no.14, a third party property and there is insufficient space to install it without harming the tree or destabilising the house, or both.*

*4. Therefore the only viable arboricultural option is to fell the oak.*

*5. Underpinning the building would remedy the current problems and address future subsidence risks.*

*6. If the oak was removed the cost of superstructure repairs would be **£120,000 incl. VAT.***

*If it is retained the additional cost of underpinning and associated works would increase the total repair cost to £411,500 incl. VAT.*

#### *Any new planting to be agreed*

If refused the applicant's have the right to pursue for compensation costs as a result of the Council's decision. When considering this, the higher figure of £411,500 (split over the two properties) should be used.

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 12 Asmunds Hill the repair works for may be in excess of an extra £201,000 if the subject oak tree is retained.

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

If the protected oak tree was removed there would be a substantial loss of visual tree amenity, habitat for wildlife, eco-system services, irretrievable loss of a historic tree of special importance.

The applicants have stated that installing a root barrier is no possible, however this aspect has not been fully explored.

## **3 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.

## **4 CONCLUSION**

The agent, PRI, proposes to fell an oak tree standing within the grounds of 12 Asmunds Hill, London, NW11 6ET because of it's alleged implication in subsidence damage to 10 and 12 Asmunds Hill.

The subject oak tree has high amenity value and is visible from publicly accessible locations. This tree is important for wildlife, has historic relevance and is an integral part of the Hampstead Garden Suburb Conservation Area. It plays an important role in character of the area and softening the adjacent built form. The loss of this oak tree will reduce the sylvan nature of land.

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 12 Asmunds Hill London, NW11 6ET may be in excess of an extra £411,500 (split over the two properties) 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.

If the committee deem the impact of the loss of this tree too great. Consideration to allowing the installation of a root barrier and meaningful crown reduction as suggested by the Loss Adjusters should be given. If the applicants had certainty that this would be allowed the Council the property owner could achieve stability of their home and retain the oak tree.

The impact of a crown reduction of this nature would decrease the visual amenity values but increase habitat niches for wildlife.

