

Location **15 The Ridings Alverstone Avenue Barnet EN4 8DR**

Reference: **TPP/0494/22** Received: 5th September 2022
Accepted: 31st January 2023

Ward: East Barnet Expiry 28th March 2023

Case Officer: **Jonathan Mills**

Applicant: Miss Siani Barkway-Fox

Proposal: 1 x Oak (applicants ref. T2) - Fell and treat stump. Standing in T2 of Tree Preservation Oder.

OFFICER'S RECOMMENDATION

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 and treat stump. Standing in T2 of Tree Preservation Oder 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 of Tree Preservation Order TPO/CA/124 and to provide appropriate compensation in the event of any ground heave damage to surrounding properties.

OFFICERS ASSESSMENT

Consultations

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

Date of Site Notice: 31.01.2023

Consultees:

Neighbours consulted: 4

Replies: One

Reason for objection: loss of publicly visible tree amenity

MATERIAL CONSIDERATIONS

Relevant Recent Planning History:

N01182A | Two-storey side extension incorporating garage | 14 The Ridings Alverstone Avenue East Barnet Approved Fri 26 Jun 1981

N08029 | Single Storey rear extension | 14 The Ridings, Alverstone Avenue East Barnet Refused

Wed 21 Aug 1985

N08029A | Single-storey rear extension | 14 The Ridings Alverstone Avenue East Barnet EN4 8DR
Approved Wed 08 Jan 1986

TPP/0112/22:- 1 x Oak (applicants ref.T1) - Fell to near ground level and treat stump to inhibit regrowth. Standing in T2 of Tree Preservation Order. Refused and no appeal submitted.

As a result of this decision the tree owners agents have submitted a S202 notice for compensation to a value of £21,302.64 to install a root barrier between the tree and the affected rear extension. This claim for damages is currently being considered by the Council's appointed loss adjusters.

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 the 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 Ridings were protected in 1980 to secure their retention through the development of The Riddings in accordance with government guidance. Prior to the development the land seems to have been undeveloped, see historic maps (1898).

14 The Ridings was constructed between 1956 and 1969 slightly earlier than the 15 The Ridings where the oak tree is located.

As requested at previous planning committee meetings 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 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 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 Property Risk Inspection Limited (Insurance Services) was registered on the 31.01.2023. 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:

3 Our Ref: 193433

4 Statement of Reasons for Tree Preservation Order Application to fell and treat Oak tree (T2) at: 15 Alverstone Avenue, The Ridings, Barnet, EN4 8DR TPO Ref: 19 80

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 £14,000 and £160,000, 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 April 2021, clearly links the Oak tree (T2) 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.

The supporting documentation comprises:

193433 PRI TPO Statement of Reasons

193433 SI Report

193433 Recovery EAR

193433 Level and crack monitoring

193433 PRI Arboricultural Report

193433 Site plan

5 Findings

Damage at the property was first notified by the house holder to their insurers in 2020 who purchased the property in 2019. Subsequent site investigations were carried out during 2021 and 2022. Following the receipt of the application to fell the protected tree the council's structural engineer provided the following comments:-

- 1. There is an engineering appraisal dated 11/12/21, but it does lack full details of the damage with no photos or sketches of the crack patterns.*
- 2. The house was built in 1985, as such the foundations should have been in accordance with the NHBC guidelines for building near trees.*
- 3. The two storey side extension looks like it was a later addition, needs to be confirmed.*
- 4. No building control record for a side extension.*
- 5. The foundation to the side extension is 900mm deep, much less than the depth required with an oak tree 8m from the building.*
- 6. The foundation depth to the rear of the building in excess of 1.7m, actual depth not determined.*
- 7. Oak roots to 2.1m depth.*
- 8. Drains in a poor condition probably leaking.*
- 9. The level monitoring graph not easy to read with too many lines overlapping. Generally appear to be seasonal movement throughout the building, focal point of movement on the rear RHS corner of the side extension.*
- 10. Crack monitoring shows relatively small movements.*
- 11. Soil testing shows high moisture content at underside of foundation, probably due to leaking drains.*
- 12. No evidence of clay desiccation below 2m depth.*
- 13. Cracking occurred in summer 2020, consistent with tree related foundation movement, category 2*

On the basis of the above I suspect the side extension is a later addition built on a foundation which did not take into account the location of the oak tree and the clay soil. Please confirm the construction date of the side extension and confirm if it received building control approval.

The applicants have confirmed that there are no Building Control approval records for the extensions built in the 1980's

However, the structural engineers conclude that:

"From a Structural engineering point of view the building is being affected by tree related subsidence, the oak tree is implicated as the main cause. The options are; remove the tree, reduce the tree and monitor for stability and regularly maintain tree at reduced size if reduction work successful, underpin foundations."

The side extension constructed in 1981 and the rear extension 1986 both after the construction of the main house and the foundations should have been constructed to emerging guidance at the time, which became NHBC chapter 4.2 building near trees.

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 2 Slight. During the site visit minor cracks were visible internally and externally on both extensions.

It is common practice to categorise the structural significance of the damage in this instance, the damage falls into 2 – Slight damage, cracks 5mm.

BRE Digest 251 Assessment of damage in low-rise buildings includes a 'Classification of visible damage to walls with particular reference to ease of repair of plaster and brickwork or masonry'. It describes category 2 damage as "*Cracks easily filled. Recurrent cracks can be masked by suitable linings. Cracks not necessarily visible externally; some external repointing may be required to ensure weather-tightness. Doors and windows may stick slightly and require easing and adjusting. Typical crack widths are up to 5.*"

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 and side extensions. The trial bore holes BH 1 located at rear extension find high plastic soils to a depth of 5m deep where the trial pits ends. Tree roots were found to be below the 2.1m deep foundations and identified as (Quercus) oak. The structural engineer notes that a foundation depth of 350mm to 900mm on the rear and side extensions is very shallow so close to an oak tree 8m from building.

The Tree Preservation Order that includes the oak tree (T1) was made in 1980 which pre-dates the construction of the rear & side extensions (1981 & 1986) which were constructed under planning consents N01182A and N08029A. Given the trees' size and position, as well as the contemporaneous NHBC guidance regarding foundation depth, the construction of the extensions in the early 1980s should have had due regard to the presence of the oak tree and its potential for future growth.

The reported leaking drains have been repaired and these works were completed in April 2022.

The applicants have stated that it is not possible to install a root barrier to prevent tree roots growing towards 14 The Ridings, Alverstone Avenue within the property boundary. This is because the building footprint is up against the boundary and the public footpath. Therefore, regular tree pruning would be the only other alternative to underpinning. However, the tree is not under the control of the applicant being situated within the garden 15 The Ridings, Alverstone Avenue.

A recent application at 15 The Ridings, Alverstone Avenue to remove the oak was considered by

planning committee B on 14th December 2022. The committee refused consent for the removal of the subject oak tree 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.*"

A section 202 claim for compensation has submitted to a value of £21,302.64 to install a root barrier between the tree and the affected rear extension. This claim for damages is currently being considered by the Council's appointed loss adjusters.

Due to this recent decision this case should be placed before the same planning committee (B) so the application can be considered again in the light of this new information.

The oak tree predates the construction of the house and extension at 14 The Ridings, 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.

6 Legislative background

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

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

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

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 *Statement of Reasons for Tree Preservation Order Application to fell and treat Oak tree (T2) at: 15 Alverstone Avenue, The Ridings, Barnet, EN4 8DR TPO Ref: 19 80*

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 £14,000 and £160,000, 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 April 2021, clearly links the Oak tree (T2) 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 **£160,000** 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 this instance the Council's engineers have concluded that the trees are a factor in the reported movement.

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 Ridings the repair works for may be in excess of an extra £150,000 if the subject oak tree is retained.

2 COMMENTS ON THE GROUNDS OF OBJECTION

East Barnet Residents' Association Secretary who objected to the loss of public amenity.

There will be a substantial loss of publicly visible tree amenity in the local area. Replacement tree planting would offset this loss in the very long term.

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, Property Risk Inspection Limited (Insurance Services), proposes to fell an oak tree standing within the grounds of 15 The Ridings, Alverstone Avenue Barnet EN4 8DR because of its alleged implication in subsidence damage to the rear and side extensions of the 14 Ridings Alverstone Avenue, Barnet, EN4 8D.

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 Ridings 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 extensions. However, the subject tree is not the only causative factor in the alleged subsidence damage, the primary reason is the deficient foundations. It is also uncertain if there is a risk of heave damage as a consequence of felling this oak tree which can cause similar damage.

Additionally there are very limited mitigation measures/options that the applicants can take to reduce the subject oak tree's influence on their property.

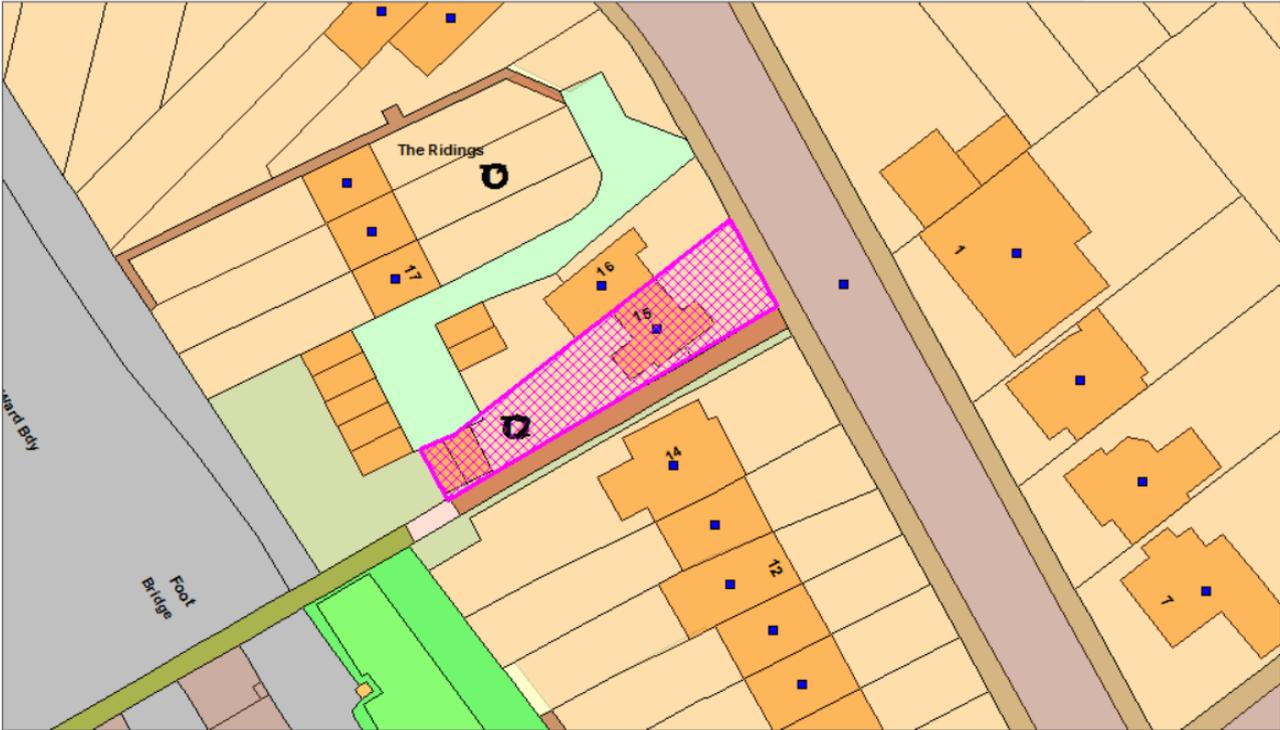
The financial implications for the public purse, and public amenity value/benefits of the subject oak tree need to be weighed.

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 if consent for the proposed tree felling is refused. Within the application submissions it has been indicated that the repair works for 14 The Ridings, Alverstone Avenue may be in excess of an extra £150,000 if the subject oak tree is retained. It is this value that is likely to sort by applicants and their agents for compensation under s202 of the Town and Country Planning Act 1990.

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.



Location of affected property 14 The Ridings Alverstone Avenue, Barnet, EN4 8DR



Location of subject oak tree T2 of tree preservation order TPO/CA/124 15 The Ridings Alverstone Avenue, Barnet, EN4 8DR