

**Location** 109 Hampstead Way London NW11 7LR

**Reference:** TPP/0410/23 Receive: 4th July 2023  
Accepte: 4th July 2023

Ward: Garden Suburb Expiry 29th August 2023

**Case Officer:** Jonathan Mills

Applicant: Miss Jana Audoor

Proposal: 1 x Oak (applicants ref. T1) - Fell. Standing in T12 of Tree Preservation Order.

### **OFFICER'S RECOMMENDATION**

AND the Committee grants delegated authority to the Director of 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.

### **Informative(s):**

#### 1 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 T12. Included in a Tree Preservation Order TRE/FI/33 and to provide appropriate compensation in the event of any ground heave damage to surrounding properties.

#### 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." To ensure the replacement trees meet bio-security standards they should be purchased from a DEFRA accredited supplier that can be found here:- [www.planthealthy.org.uk](http://www.planthealthy.org.uk)

#### 3 Retention of wood for habitat

While trees are alive they provide many benefits for wildlife including food and shelter. When a tree dies or needs to be removed these habitat niches are lost. However, where it is safe and appropriate to do so, the retention of large diameter logs and/or standing dead trees (conventionally at a reduced height) is encouraged, as the natural decay process provides equally important habitats for wildlife. To help maintain and improve wildlife habitats and diversity within Barnet, the retention of logs and/or standing timber on site is encouraged. Logs can be arranged in many different ways - guidance can be found here: [www.rhs.org.uk/wildlife/dead-wood-compost-heap-habitats](http://www.rhs.org.uk/wildlife/dead-wood-compost-heap-habitats) or [www.wildlifetrusts.org/actions/how-make-log-shelter](http://www.wildlifetrusts.org/actions/how-make-log-shelter). Further information on the importance of deadwood habitats, published by The World Wide Fund for Nature, can be found here: [www.forestlife.gr/en/publication-afterlife-tree/](http://www.forestlife.gr/en/publication-afterlife-tree/)

#### 4 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.

## **OFFICER'S ASSESSMENT**

### **Amenity:**

The subject oak stands within the rear garden of 109 Hampstead Way close to the boundary of 4 Meadway. The oak is a mature tree some 17 metres in height, and is in good condition, having no obvious features that could be considered a concern for the health or safety of the tree and users of the land,

The oak is very clearly visible in the gaps between 109 Hampstead Way and 4 Meadway. The tree is most prominent to the Meadway between no. 2 and 4 where the full tree can be view. The tree can also be viewed over the rooftops of 107 and 109 Hampstead Way. The level of public amenity this tree has justifies the tree preservation order when it was made.

This oak is one of the original trees that pre-date the development of the Suburb. These trees 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.

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, Meadway and the Great Wall – Area 4 the Hampstead Garden Suburb Character Appraisal Statement sets out:

## Landscape and trees

- the proximity and visual impact of the Heath Extension is an important part of the character of this area
- there are several greens within closes, and courts, as well as the open public space at Sunshine Corner; Backlands are used for play areas and tennis courts
- grass verges on most roads
- there are abundant and varied street trees which are complemented by the many trees in gardens
- several streets are planted with single colour blossoms
- hedges frame houses and link spaces

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 109 Hampstead Way NW11, the tree is publicly viewable from Meadway and Hampstead Way 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.

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
<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>	150-200m <sup>2</sup>	+ 200m <sup>2</sup>
<b>Duration</b>	<2 years		2-5 yrs	5-40 yrs	40-100 yrs	100+ yrs				
<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 **2023**. Individual Trees: £46.92. This tree scores 8 x 4 x 1 x 3 x 2 x 2 making an amenity score of 384 x £46.92 provides an amenity of £18,017.28

The Council's adopted valuation system Capital Asset Valuation of Amenity Trees (CAVAT) values the tree in the region of £31,519.00

The subject oak tree T1 (applicant's plan) is approximately 17m high and has a stem diameter of around 800mm and a full crown spread. The tree is in good health with no obvious physiological or structural defects that would merit the felling of this tree.

### Planning History:

109 Hampstead Way NW11

C04439K/03/TRE\_B Oak - Crown reduce remainder of crown to balance, prune out epicormic growth. T12 of TPO. (Approved subject to conditions)

C04439L/06/TRE\_B 1 x Oak - Lift to 4m, thin by 30% T12 of Tree Preservation Order (Approved subject to conditions)

TPP/0886/17 1 x Oak - Crown thin 20% and rebalance as specified. T12 of Tree Preservation Order (Approved subject to conditions)

TPP/0726/22 1 x Mature Oak Tree (applicant's ref. T1) - Crown thin by 25%. Remove dead wood over 2" in diameter. Raise the crown without removing any major scaffold limbs by approx 2m and reduce back lightly from building if required by no more than 1m. Standing in T12 of Tree Preservation Order. (Approved subject to conditions)

(Note that the decision notice refers to T7 however this is an error, the applied for tree is T12 of the order.)

TCP/0306/23 1 x Plum (applicant's ref. T1) - Fell to combat subsidence damage to 109 Hampstead Way, London, NW11 7LR. (Six weeks notice expired)

## Planning History:

4 Meadway is a listed building

X 3 Earlier similar applications have been made and approved subject to conditions for the conversion of the garage.

19/2453/HSE & 18/6910/LBC Conversion of garage to habitable room including infilling of garage doors. Formation of single storey infill extension between existing house and existing garage including 2no rooflights set into the roof. Alterations to fenestration. Internal alterations to all floors. Approved subject to conditions

TCP/0006/22 1 x Ashleaf Maple (applicants ref. T2) - Fell and treat stump with eco plugs as trees implicated as contributing to the subsidence damage occurring at 4 Meadway, London, NW11 7JX. 1 x Maple (applicants ref. T3) - Fell and treat stump with eco plugs as trees implicated as contributing to the subsidence damage occurring at 4 Meadway, London, NW11 7JX. Six weeks notice of intent expired.

## Application:

The applicants and agents acting for the owners of 4 Meadway have made the application for the following reasons:

*“Statement of Reasons for Tree Preservation Order Application to fell and treat Oak tree (T1) at: 109 Hampstead Way, London, NW11 7LR*

*TPO Ref: TRE/FI/33 - 109 Hampstead Way, London, NW11 7LR*

- 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 £30,000 and £75,000, depending upon whether the tree/s can be removed or must remain.*
- 3. The above tree works are proposed to limit the extent and need for costly CO<sub>2</sub>e emissions relating to alternative engineering repair works at the insured property. A typical underpinning scheme can include a carbon cost of more than 6000 kg CO<sub>2</sub>e and soil stabilisation or root barriers more than 4000 kg CO<sub>2</sub>e. A typical tree might capture between 15-40kg CO<sub>2</sub>e per annum and would therefore take centuries to mitigate the cost in CO<sub>2</sub>e on any alternative. We also confirm that the applicant has included this scheme and application in its tree planting and carbon capture off-set scheme for trees causing subsidence to low rise buildings which has already seen some 11,000 trees planted and additionally 220 tonnes of carbon captured.*
- 4. 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.*
- 5. 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.*

6. *We are satisfied that the evidence obtained following completion of our Arboricultural Implication Assessment report completed 20/04/2021, clearly links the Oak tree, T1, as the cause of damage to the risk address.*
7. *Insurers understanding the requirement to offer replacement planting in the event consent to fell is granted.*
8. *Following the completion of the Arboricultural Implication Assessment report and the subsequent permissions being acquired, SG1, T2, and T3 were removed*

### **The supporting documentation comprises:**

Sketch plan  
Engineering appraisal report  
Foundation level monitoring 05/01/2021 to 27/06/2023  
Soil analysis  
Tree root identification  
Arboricultural assessment.  
Building Control Certificate  
Photographs of damage

### **Findings**

The engineers reports states that damage was first reported in 2020, the Met Office makes the following observations about this year *“Not only will 2020 be one of the top five hottest on record for the UK, but also it will be one of the top ten wettest and the top ten sunniest years”*.

The property constructed in 1920's and is part of the Hampstead Garden Suburb discussed above.

The applicant's engineers make the following observations:- *“The property has recently undergone a refurbishment project within the past 18 months, which involved building a link into the detached garage which has now been converted into a ground floor bedroom and en suite.”*

*“The level of damage varies throughout the property from slight to severe, with cracking classified between category 2 and 4 in accordance with BRE Digest 251 – Assessment of damage in low-rise buildings.”*

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

*“Oak roots below foundation were dead.*

*The site investigation data would implicate the Oak tree T1 in the damage to the rear LHS of the building. This appears to be garage which has been converted to a bedroom with a link building recently.*



*I cannot find a building control approval for the garage conversion and the garage is on very shallow foundations which should have need assessed as part of the conversion.*

*Suggest we enquire if building control approval for the garage conversion and link building was sought and obtained.*

*Also, I think we should ask for full details of the damage including photos and sketches.”*

Building Control certificates, photos and sketches were requested from the applicants on 29/12/2023.

*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 left hand side of the property. The level of movement has been measured at 20mm and is category 4 Moderate. 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 slight movement occurring to the rear right hand side of the building, closest to the subject tree.

Within trail pit 1 close to the location of main damage live oak tree roots were found up to 35mm in diameter. Within the bore hole below the property foundations no live oak roots were found.

Details of the building control records were submitted on the 16/01/2024 and have approved the development at No. 4 Meadway implemented under planning approval 19/2453/HSE and 18/6910/LBC.

The Council’s Structural engineer made the following comments on this information.

*“We not have the original site layout drawings, however, it does appear the infill works carried out in 2018 consisted of connecting a previously detached garage to the house and converting it to a habitable room. Note the garage is on a very shallow foundation of 350mm and the house is on a much deeper foundation of 1.2m based on SI results*

*Therefore. the most likely cause of the cracking is differential movement between garage*

*and the house which are now connected with the infill extension.*

*The building control approval was signed off by an Approved Inspector, Celtech, based in Wales. I think it is surprising the potential for differential movement was not considered by the designer or the Approved Inspector, particularly given the very shallow garage foundations and the proximity of the oak tree.*

*The Garage is closest to the Oak tree and given the shallow foundation this would explain the much greater amount of movement recorded in the level monitoring to the garage.”*

This basically means that the Council's engineers are concerned that the differential movement reported between the main property, the link building and the converted garage should have been foreseen by the project engineers and design team. That an intervention should have been considered to reduce the risk.

The applicants structural engineers make the following observation with regard to the likely costs *“If the Oak tree is removed, then I consider that works including structural crack repair and redecoration at an approximate cost of £30,000 will be appropriate in order to repair the damage in this case.*

*If the Oak tree is not removed then it may be necessary to consider underpinning of the foundations of the property in the area of damage, in addition to structural crack repair and redecoration needed to repair the damage. The total cost of this option is estimated at £75,000.”*

Alternative solutions:-

The applicant's have not provided any alternative solutions to remedy the repair of the buildings. However, it is likely that solutions like root barriers in this instance are ineffective due to the positioning of the tree in relation to the structures. A significant crown reduction on scale required (70%) would effectively remove publicly visible tree amenity.

The oak tree predates the construction of the house so there may be a risk of further damage caused by soil heave. The applicant's engineers have considered this and have confirmed the risk of heave is acceptable. However 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.

## **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.

In section 5 of the submitted application form it is stated: *"Estimated costs of repair to the building are £30,000 if the influence of the tree(s) remain and £75,000 if the proposed tree works are allowed to proceed. Granting permission will limit these costs. In the event of a refusal we, or our clients, will seek to secure compensation for the additional costs incurred through Section 202(e).*

When considering this, the higher figure 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 poplar tree that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the poplar 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 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). Thus, the cost of rectifying any damage that occurs before the date of the decision, or rectifying damage which is not attributable to the subject trees, would not be subject of a compensation payment.

If it is concluded on the balance of probabilities that the roots of the oak tree is the 'effective and substantial' cause of damage or alternatively whether they 'materially contributed to the damage' and that the damage would be addressed by the felling of these trees, there may be a compensation liability if consent for the proposed felling is refused – in the application submissions it is indicated that the repair works for 4 Meadway may be in excess of an extra £75,000 if the subject oak tree is retained.

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

16 neighbour consultations were made as part of the application process.

85 objections were submitted to the application and 3 submissions were in support of the application.

Summary of the comments objecting to the application.

The main reasons given to the objection:-

Loss of visual amenity

Loss of ancient/historic tree that was part of the landscape prior to the development of the Hampstead Garden Suburb.

Healthy tree

Loss of wildlife habitat

Loss of ecosystem services including carbon sequestration and flood alleviation for example.

Alternative engineering solutions would stabilise the property.

Any replacement tree would take many decades to grow to a similar size.

Cause of subsidence is related to global warming.

An integral part of the Hampstead Garden Suburb Conservation Area.

Tree preservation orders are made to primarily to protect public visual tree amenity and to a lesser degree wildlife and conservation values.

### **Comments in support from the tree owner of 109 Hampstead Way**

The said tree is located in my garden and is suspected of causing subsidence to my property as well as to 4 Meadway. LB Barnet will, in due course receive a further application for removal of the TPO from my insurers together with supporting documents. In the meantime I fully support the application from 4 Meadway.

The location of the tree means that it is only partially viewable from either Meadway or Hampstead Way and its loss would have minimal impact on sight lines and its amenity value to the neighbourhood is therefore marginal. No-one welcomes the removal of mature trees but in this case it is clearly the cause of damage to 4 Meadway, and probably to my property. Personally, I have no objection to funding the planting of replacement trees in a more suitable location and am willing to discuss this with council officials.

## **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.

## **CONCLUSION**

The agent, Property Risk Inspection, proposes to fell one oak tree standing in the rear garden of 109 Hampstead Way because of its alleged implication in subsidence damage to a converted garage, link room of 4 Meadway.

The subject oak tree has high public amenity value and is visible from publicly accessible locations. The oak tree is a key component of the Hampstead Garden Suburb Conservation Area. It 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 that is visible over the top of the houses between no. 107 Hampstead Way and 2 to 4 Meadway.

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 garage. However, no live roots were found beneath the foundations of the affected parts of the main property. But roots were found below the foundations of the converted garage which has insufficient foundation. 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 4 Meadway may be in excess of an extra £75,000 if the subject oak tree is retained and consent not granted).

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.

