

**Location** **Westwood House 46C The Bishops Avenue London N2 0BA**

**Reference:** **TPP/0616/23** Received: 20th September 2023

Accepted: 20th September 2023

Ward: Garden Suburb Expiry 15th November 2023

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

Applicant: Mr Mesforoush

Proposal: 2 x Oak (applicants ref. T1, T5) - Fell to near ground level. Standing in Group G27 of Tree Preservation Order.

2 x Hornbeam (applicants ref. T4, T6) - Fell to near ground level. Standing in Group G27 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 2 x Oak (applicants ref. T1, T5) - Fell to near ground level. Standing in Group G27 of Tree Preservation Order. 2 x Hornbeam (applicants ref. T4, T6) - Fell to near ground level. Standing in Group G27 of Tree Preservation Order**

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 x 4 replacement trees 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 trees standing within G27. 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 and hornbeam trees stand within the rear garden of Westwood House 46C The Bishops Avenue. The trees are mature and 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 subject trees are part of Group 27 which protects trees standing within the gardens of 8 & 9 Byron Avenue and Westwood House on The Bishops Avenue. The trees are clearly visible to The Bishops Avenue. The level of public amenity the trees have, justifies the tree preservation order when it was made in 1961. The property is also located within the Hampstead Garden Suburb Conservation Area.

The trees pre-date the development of the Suburb. These trees were retained and influenced the design and layout of this part of the Suburb – the trees are part of remnants of a 1070 acre hunting ground established by the Bishops of London.

The Character appraisal of the conservation area makes the following observations:-

Hampstead Garden Suburb is internationally renowned for the way in which mature landscape features have been incorporated into the built environment. This tree would have been part of the Bishops Wood and present at the time the Hampstead Garden Suburb was designed. The retention of trees such as these 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 Bishop's Avenue was constructed in c.1887 on land which had at one time been part of the Bishop of London's hunting park (The Bishop of London was Lord of the Manor of Finchley until the transfer of all episcopal land to the Ecclesiastical Commissioners in 1868). In a pleasingly meandering form it cut through the Bishops Wood to the south and across farm land to the north.

The Bishop's Avenue is a wide road which gently meanders along its length. The land rises to the south and west. These characteristics allow for an interesting variation in views along its length with many enticing deflected views and elevated positions. The sweep up to Hampstead Lane is particularly impressive which, when viewed from the south, becomes a strong elegant entrance. This is enhanced by the lines of trees which form a link between the treed bank within Kenwood and the Arcadian quality of the Avenue itself. Hampstead Lane forms a strong visual stop to enclose this end of the Avenue. Breaks between trees allow for glimpsed views of the buildings and grounds with the horizon filled with roof scapes and trees behind, further enclosing the Avenue. Occasional views up cul-de-sacs and along crossing roads relieve this introspection. With one or two modern exceptions there is a discernible building line and moderate building height.

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 and hornbeam are 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. These trees provide 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 and hornbeam are part of the original woodland, 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.

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.

Tree T1 oak located centrally within the front lawn.

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 2 x 1 x 2 x 2 making an amenity score of 256 x £46.92 provides an amenity of £12,011.52

The Council's adopted valuation system Capital Asset Valuation of Amenity Trees (CAVAT) values the tree in the region of £187,103

Tree T4, hornbeam located on the front boundary with a unified crown

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 6 x 4 x 1 x 1 x 2 x 2 making an amenity score of 96 x £46.92 provides an amenity of £ 4504.

The Council's adopted valuation system Capital Asset Valuation of Amenity Trees (CAVAT) values the tree in the region of £ 66,254

Trees T5 oak and T6 are significantly smaller than the T1 oak and T4 hornbeam. They have not been valued but add considerably to the verdant boundary along The Bishops Avenue.

### **Planning History:**

C03018K/01/TRE\_B

4x Oak, 1x Hornbeam - remove, all standing in group G27 of TPO. (refused)

C03018E/04/TRE\_B (section 211 notice)

2 x Cypress - Fell as Close to Ground Level as Possible (Six weeks notice allowed to expire)

TPF/00200/15

2 x Oak (applicant's ref T1 and T4) - Remove. Standing in group G27 of Tree Preservation Order (spilt decision removal of T1 refused and T4 allowed). No appeal was submitted.

*Note: that T1 is same tree in this application, TPP/0616/23.*

TCO/0384/16

Application to discharge condition 1 (species, size and siting of replacement trees) and condition 2 (notification of commencement of approved treatment) of TPF/00200/15 (Allowed)

18/5204/HSE

Partial demolition of boundary wall. Erection of substation building and bin store and associated works. Minor amendments to landscaping approved under planning permissions 18/1363/S73 and 18/3250/CON

### **Application:**

"As per Crawco Add Arb Report:

T1 Oak - Fell to near ground level

T5 Oak – Fell to near ground level

T4 Hornbeam – Fell to near ground level

T6 Hornbeam – Fell to near ground level

The applicants have made the application for the following reasons:

*"Clay shrinkage subsidence damage at subject property."*

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

MWA Arb Report 12.12.22

Crawco Add Arb Report 13.09.23

Crawco Add Tech Report 30.01.23

Fastrack SI Report 18.11.22

Knight Level Monitoring 17.10.22 - 26.07.23

## Findings

The engineer's reports states that damage was first notified to the insurers in August 2022.

The Met Office makes the following observations about this year *"Last year was a dramatic one for the UK's climate. The year of 2022 will be remembered for the passing of two significant milestones – a daily maximum temperature of more than 40C and a national average temperature over the year of more than 10C. In this review, we unpack the UK's climate of 2022 and show that both these notable records were highly unlikely to have occurred without the influence of human-caused climate change. While 2022 was the UK's warmest year on record overall, it also included a prolonged spell of cold and snowy weather in December. This was one of the most significant cold snaps since December 2010."*

The property was constructed in 1900's and is part of the Hampstead Garden Suburb as discussed above.

The applicant's engineers make the following observations:- *"We have undertaken an internal and external inspection of the damage and can confirm recent large diagonal fractures have occurred across the rear/flank elevation LH corner. The cracks extend right from the rear bay window and around the rear corner of the property. The internal damage appears very recent with no signs of historic damage. Cracks have also started to appear around the rear bay window and the RHS side brick work. The property is very highly decorated internally with gold paint throughout. Cracking externally goes straight through the solid brick walls and will likely require re-stitching and helical bar repairs."*

*"The level of damage varies throughout the property from slight to severe, with cracking classified as level 3 moderate, in accordance with BRE Digest 251 – Assessment of damage in low-rise buildings."* Level 3 damage has been classified as:- *"3 - Crack widths of 5 to 15mm (or several of e.g. 3mm). Cracks that require some opening up and can be patched by a mason. Repointing of external brickwork and possibly a small amount of brickwork to be replaced. Doors and windows sticking. Service pipes may fracture. Weather-tightness often impaired."*

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

*"Would comment as follows;*

- *Level monitoring, have not used independent datum, only acceptable if front of house remote from tree influence.*
- *Only 6 months of readings, however trend is typical of enhanced seasonal movement.*
- *Soil does not appear to be desiccated.*
- *Roots samples dead or nearly dead.*
- *Control bore only 1m deep*
- *Damage to bay walls consistent with foundation subsidence.*

*On the basis of the results the Oak tree likely to be implicated in the damage, other trees likely contributory factor."*

The submitted level monitoring indicates that there is seasonal movement occurring which appears at the rear and side elevations of the property. The level of movement has been is category 3 Moderate. 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 movement occurring to the rear left hand side of the building and conservatory.

Within borehole 1 close to the location of main damage very small (1mm) diameter roots have been recovered, but these were mostly dead. No live hornbeam roots were identified. No DNA samples were provided to distinguish between oak T1 and oak T5 or hornbeam T4 and hornbeam T6.

The applicant’s structural engineers make the following observation with regard to the likely costs *“If the trees are removed, then I consider that works including structural crack repair and redecoration at an approximate cost of £50,000 will be appropriate in order to repair the damage in this case. If the tree remains then the only appropriate solution would be underpinning to stabilise foundations, the cost of which is currently estimated at £125,000*

The removal of T1 and T4 would have a significant impact on the publicly visible tree amenity in the area. The removal of T5 & T6 would be lesser as they are substantially smaller trees.

A root barrier was considered by the applicants to be appropriate but was discounted due to costs and potential harm to the trees. The installation of a root barrier would preserve the visual tree amenity in the area.

The oak T1 and hornbeam T4 trees predate 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 trees would have a considerable impact on public visual tree amenity and the character and appearance of The Bishops Avenue and Hampstead Garden Suburb Conservation Area.

## **1 Legislative background**

As the trees are 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.

Within the submitted engineers report it is stated: "RESERVES  
Superstructure repairs - £10,500

Estimated Engineering solutions and superstructure repairs (The corner of the property requires underpinning or partial rebuilding. Internal decor is of incredible high standard and specialist repairs are likely required for cornices and other unique pieces. ) - £125,000  
When considering this the higher figure should be use.

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 trees that may reduce the risk of alleged tree-related property damage. If it is considered that the amenity value of the trees 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 "*trees 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 and hornbeam trees 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 the repair works for 4 Meadway may be in excess of an extra £125,000 if the subject oak and hornbeam trees are retained.

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

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

No objections were submitted to this application.

However a letter from the property owner was submitted:-

"I just want the cutting of trees do ASAP. as its damaging my home wall and it is going worse. we are looking for doing that in 2 years."

Tree preservation orders are made to primarily to protect trees and the public visual tree amenity they provide.

## **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, MWA Arboriculture Ltd, proposes 2 x Oak (applicants ref. T1, T5) - Fell to near ground level. Standing in Group G27 of Tree Preservation Order. 2 x Hornbeam (applicants ref. T4, T6) - Fell to near ground level. Standing in Group G27 of Tree Preservation Order because of their alleged implication in subsidence damage to Westwood House 46C The Bishops Avenue.

The subject trees have high public amenity value and are visible from publicly accessible locations. The trees are a key component of the Hampstead Garden Suburb Conservation Area particularly T1 & T4. They are important for wildlife as well as in preserving the character of the area and softening the adjacent built form. The loss of these trees will reduce the sylvan character that is visible along The Bishops Avenue a street within a conservation of area of international importance.

The Council's Structural Engineers have assessed the supporting documentary evidence and have noted that the subject trees are implicated in the subsidence damage to the garage. However, no live roots were found beneath the foundations of the affected parts of the property and no hornbeam roots were identified. The subject trees 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 these trees.

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

If it is concluded on the balance of probabilities that these 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 46C The Bishops Avenue may be in excess of an extra £125,000 if the subject trees are 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.

