



THE LONDON BOROUGH
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DATE: 20 December 2013

To: Members of the
DEVELOPMENT CONTROL COMMITTEE

Councillor Peter Dean (Chairman)
Councillor Alexa Michael (Vice-Chairman)
Councillors Graham Arthur, Douglas Auld, Eric Bosshard, Katy Boughey,
Lydia Buttinger, Nicky Dykes, Simon Fawthrop, Peter Fookes, John Ince,
Russell Jackson, Charles Joel, Mrs Anne Manning, Russell Mellor, Tom Papworth
and Richard Scoates

A meeting of the Development Control Committee will be held at Bromley Civic
Centre on **TUESDAY 7 JANUARY 2014 AT 7.30 PM**

MARK BOWEN
Director of Corporate Services

Public speaking on planning application reports is a feature at meetings of the Development Control Committee and Plans Sub-Committees. It is also possible for the public to speak on Contravention Reports and Tree Preservation Orders at Plans Sub-Committees. Members of the public wishing to speak will need to have already written to the Council expressing their view on the particular matter and have indicated their wish to do so to Democratic Services **by no later than 10.00 a.m.** on the working day before the date of the meeting.

The inclusion of public contributions, and their conduct, will be at the discretion of the Chairman. Such contributions will normally be limited to two speakers per proposal, one for and one against, each with three minutes to put their point across.

For further details, please telephone **020 8313 4745**.

A G E N D A

- 1 **APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**
- 2 **DECLARATIONS OF INTEREST**
- 3 **CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 21 NOVEMBER 2013 (Pages 1-10)**

4 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

In accordance with the Council’s Constitution, questions to this Committee must be received in writing 4 working days before the date of the meeting. Therefore please ensure questions are received by the Democratic Services Team by 5pm on Tuesday 31 January 2013.

5 PLANNING REPORTS

ITEM NO.	APPLICATION NUMBER AND ADDRESS OF DEVELOPMENT	PAGE NO.	WARD
5.1	(12/03084/TPO) - 10 Crab Hill, Beckenham	11-42	Copers Cope

6 ARTICLE 4 DIRECTION - STATION SQUARE, PETTS WOOD (Pages 43-48)

7 LAND AT SNAG LANE, CUDHAM PROPOSED ARTICLE 4 DIRECTION (Pages 49-56)

8 DEVELOPING BROMLEY'S LOCAL PLAN - DRAFT POLICIES AND DESIGNATIONS FOR CONSULTATION

This report will also be considered by the Executive for decision at their meeting on 15 January 2014. Accordingly, the report is provided to Members under separate cover. Members are requested to bring their copy of the report with them if attending either the current Development Control meeting or the Executive meeting.

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DEVELOPMENT CONTROL COMMITTEE

Minutes of the meeting held at 7.30 pm on 21 November 2013

Present:

Councillor Peter Dean (Chairman)
Councillor Alexa Michael (Vice-Chairman)
Councillors Graham Arthur, Douglas Auld, Eric Bosshard,
Katy Boughey, Lydia Buttinger, Simon Fawthrop, Peter Fookes,
John Ince, Russell Jackson, Charles Joel, Mrs Anne Manning,
Russell Mellor and Tom Papworth

Also Present:

Councillors Michael Tickner

28 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

An apology for absence was received from Councillor Nicky Dykes.

29 DECLARATIONS OF INTEREST

Councillors Peter Fookes and John Ince declared a personal interest in Items 5.1, 5.2 and 5.3 as lapsed members of the Kent County Cricket Club (KCCC). Councillor Mrs Manning declared a personal interest in Items 5.1, 5.2 and 5.3 as her husband was a non-voting member of KCCC.

30 CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON 8 OCTOBER 2013

RESOLVED that the Minutes of the meeting held on 8 October 2013 be confirmed and signed as a correct record.

31 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions were received.

32 PLANNING REPORTS

Members considered the following three planning application reports collectively:-

Item No.	Ward	Description of Application
32.1 (page 11)	Copers Cope	(13/02555/DET) - Details of appearance, means of access, landscaping, layout and scale relating to the 48 detached houses pursuant to Condition 1 of outline permission ref. 11/02140/OUT (granted for 3 detached buildings for use as indoor cricket training centre/multi-function sports/leisure facility, health and fitness centre and conference centre. Spectator stand for 2000-3000 people. Car parking. All weather/floodlit pitches. 48 detached houses) AMENDED PLANS RECEIVED at Kent County Cricket Ground, Worsley Bridge Road, Beckenham.
32.2 (page 23)	Copers Cope	(13/02556/DET) - Details of appearance, means of access, landscaping, layout and scale relating to the cricket ground development pursuant to Condition 1 of outline permission ref. 11/02140/OUT (granted for 3 detached buildings for use as indoor cricket training centre/multi-function sports/leisure facility, health and fitness centre and conference centre. Spectator stand for 2000-3000 people. Car parking. All weather/floodlit pitches. 48 detached houses) at Kent County Cricket Ground, Worsley Bridge Road, Beckenham.
32.3 (page 33)	Copers Cope	(13/02711/DET) - Permanent spectator stand (capacity 2,048 seats) and associated landscaping including remodelling of earth mound at Kent County Cricket Ground, Worsley Bridge Road, Beckenham.

Oral representations in support of the applications were received from Mr Jamie Clifford, Chief Executive of Kent County Cricket Club (KCCC) and Mr Stuart Slatter (planning agent) as set out below:-.

Mr Clifford informed Members that he had been Chief Executive of KCCC for four years and had worked for the Club for nearly 12 years.

Worsley Bridge Road cricket ground had been vacant during the last year with only one member of staff to maintain the site. Despite great efforts, the

facilities currently offered had proved to be inadequate and this had prompted fears about the future viability of the site as a suitable home for Kent County Cricket Club. These fears were coupled with local concerns about site deterioration and vandalism.

The proposed development would vastly improve the current facilities and in light of the proposals, the Club had entered into a 20-year lease with The Leander Group to remain on site and enjoy first class cricket again from summer 2015.

The proposed development consisted of a range of sporting facilities that would be of huge advantage to the Borough.

The proposed indoor sports hall would accommodate a variety of different sports including netball, badminton and basketball as well as cricket. The outdoor multi-use games pitches would also permit tennis and football to be played. In addition, a sports medicine centre would be established to include physiotherapy and pilates. It was anticipated that a large number of local community groups and sports clubs would use all the facilities provided throughout the year.

In addition, the spectator stand would enable the Club to host regular high profile fixtures at the ground.

The facilities would be constructed to the highest specification and built using state of the art construction technologies to ensure they withstood increased demand.

Once operational it was anticipated that the site would employ up to approximately 20 full and part-time employees.

The enabling development at KCCC would breathe new life into the cricket ground and Beckenham as a whole. The new state-of-the-art sporting facilities would be available to the local community by late 2014 and would ensure that first class cricket returned to Beckenham.

Mr Slatter reported that the principle of development was established through the outline consent previously approved by the Committee. Since that time great efforts had been made with officers and immediate neighbours to bring forward a high quality and well considered development. Comments and concerns raised throughout the process had been responded to in a positive manner.

A metal mesh screen had been incorporated around the three new buildings as a climbing frame for plants and greenery adding interest and a soft green layer and texture to the façade. The mesh screen was designed to reflect the silhouette of Worsley Bridge Road, bridging the divide between the existing buildings and those proposed.

The residential proposals were brought forward by Linden Homes who were recently awarded Housebuilder and Sustainable Housebuilder of the Year Awards. The housing scheme comprised a traditional design and a palette of high quality materials. Best use of levels on site had been made to ensure that there was no detrimental impact on neighbours.

The proposals had prompted a significant amount of support. Copers Cope Area Residents Association and the Palgrave Estate fully supported the proposals and a total of 25 individual letters of support for the combined development had also been received.

In response to a question from Councillor Ince, Mr Clifford could not say specifically how much activity (other than cricket) would be generated if the development was granted permission. However, KCCC had signed a new 20 year lease to remain on the site and a concerted effort would be made to ensure regular provision of activities and fixtures. It was vitally important that members of the public used the facilities on a year round basis.

Councillor Bosshard questioned the strength of the applicant's business plan as he was concerned to note that since outline permission had been granted 18 months ago, staff at the Club had been reduced to just one person. Mr Clifford explained that as a developer could not be found, the decision had to be taken to reduce staff to the point where the Club was just functioning at a basic level. Following the reduction of staff, the Club's situation had suddenly improved when a viable project was found. It was anticipated that the new facilities such as the physiotherapy unit, would lead the Club to the point of viability and the profits would then underpin the remainder of the operation.

Mr Slatter confirmed that the 48 houses had been re-sited and the height of those backing onto Ashfield Close had been reduced.

Councillor Mellor referred to the proposed stand to accommodate 2-3,000 spectators and questioned the adequacy of car parking provision. Mr Clifford commented that over 200 spaces were available on site and that Beckenham also had the advantage of an excellent public transport system. The stand would be a permanent non-covered open construction comprising 14 rows.

The applicant had written to the Council in response to Sport England's objection to the spectator stand confirming that the application adhered to English Cricket Board standards. The relocation of the stand resulted in a reduction of footprint and brought it further from the boundary of the land area.

Councillor Manning referred to the change of layout for the housing scheme which resulted in a loss of open aspect for residents in Worsley Bridge Road. Mr Slatter reported that the south western corner had required detailed consideration. There were no residential properties immediately to the south but the eastern end of the scheme would leave an open aspect for neighbours living close by.

Although Ward Member for Copers Cope, Councillor Mellor said he accepted without question that the applications before Members were for consideration of details only, he did report that a further objection had been raised by a resident who was concerned that the overall land area had been reduced since outline permission had been granted.

Referring to application 5.1, Councillor Mellor could find no reason to refuse the application on planning merits. The standard of housing was good and the impact on metropolitan open land had been investigated and approved. He therefore moved that permission be granted as recommended with the addition of a further condition to ensure that the two trees removed from Worsley Bridge Road be replaced.

In relation to application 5.2, Councillor Mellor raised some concern in regard to car parking for 2-3000 people. Part of Worsley Bridge Road was situated in a controlled parking zone and a large influx of cars may cause conflict with residents and create disturbance. Trusting that the applicants would deal appropriately with car parking issues, Councillor Mellor moved that permission be granted.

Accepting assurances from the applicant that the stand was designed to reap profits for the good of the community and the Borough, Councillor Mellor moved that permission be granted for application 5.3.

Councillor Arthur commented on the importance of KCCC to the Borough. He did not consider car parking to be an issue as provision was available elsewhere and public transport was good. The applicant had listened to concerns of residents and responded positively to them. Councillor Arthur second the motions to grant permission on all three applications. Councillor Mrs Manning agreed with Councillor Arthur and wished the Club well. KCCC came under the auspices of the England Cricket Board and as a result of the development, she hoped more cricket matches would be directed to the ground.

The Chief Planner confirmed to Councillors Buttinger and Jackson that the net impact on the MOL (if indeed there was any), arising from the re-siting of the spectator stand, would be minimal.

Councillor Joel suggested that the recommendation for application 5.1 include a condition that certain windows in dwellings at plots 35 and 36 and the first floor window in the eastern elevation of the dwelling at plot 36 be obscure glazed and non-opening unless the parts that could be opened were more than 1.7 metres above internal floor level.

Councillor Ince requested that the landscaping scheme include shrubs and trees around the perimeter of the stand to reduce its impact on MOL.

Following individual votes for all three applications, Members made the following recommendations:-

Application 5.1

RESOLVED that PERMISSION BE GRANTED as recommended, subject to the conditions set out in the report with Condition 1 amended to read:-

'1 Before the development hereby permitted is first occupied, the proposed stairwell windows in the dwellings at plots 35 and 36 and the first floor window in the eastern elevation of the dwelling at plot 36 shall be obscure glazed and non-opening unless the parts that can be opened are more than 1.7 metres above internal floor level in accordance with details to be submitted to and approved in writing by the Local Planning Authority and shall subsequently be permanently retained as such. Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the amenities of the adjacent properties.'

A further condition was also added as follows:-

4 The two trees to Worsley Bridge Road that are to be felled in order to implement the development hereby permitted, shall be replaced by trees of a size and species to be agreed in writing by the Local Planning Authority and in such positions as shall be agreed by the Authority in the first planting season following completion of the development. Any trees which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.

Reason: In order to comply with Policy nE8 of the Unitary Development Plan and to secure a visually satisfactory setting for the development.

Application 5.2

RESOLVED that PERMISSION BE GRANTED as recommended, subject to the conditions set out in the report.

Application 5.3

RESOLVED that PERMISSION BE GRANTED SUBJECT TO THE PRIOR COMPLETION OF A LEGAL AGREEMENT as recommended and subject to the conditions set out in the report with Condition 2 amended to read:-

'2 Details of a scheme of landscaping which shall include the materials of paved areas and other hard surfaces and the introduction of a planting screen to Copers Cope Road, shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development hereby permitted. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the

development, whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and to secure a visually satisfactory setting for the development.'

Members considered the following planning application report:-

Item No.	Ward	Description of Application
32.4 (page 41)	Copers Cope	(13/001973/FULL1) - Erection of five storey building comprising 74 residential units; A1 retail; A3 café/restaurant and a D1 creche in place of Block A03 forming part of the approved planning permission 09/01664 for the redevelopment of the Dylon site at Dylon International Ltd, Worsley Bridge Road, London SE26 5BE.

Oral representations in support of the application were received from Mr Chris Francis (agent) as follows:-

The redevelopment of the site with a residential led scheme was established as acceptable by the grant of permission on appeal.

The provision of 74 residential units would contribute to the identified housing need in the borough and across London in accordance with the minimum housing supply targets set by the Mayor. 20 flats would be covenanted to be held for a minimum period of 15 years as private sector rented initiative units, in line with the Government's drive to encourage more privately rented housing.

The report submitted with the current application showed that despite extensive marketing, no interest had been shown in the proposed office floor space.

The report also concluded that there was an oversupply of available office space within Bromley and Lewisham and no viable demand for such office accommodation in this part of the borough in terms of the reality of local and London wide contexts and that this was not going to change even with any general improvement in the economy.

In August 2013, officers advised that the applicant appeared to have met Policy EMP3 criteria however, this was not mentioned in the report. The provisions of the NPPF indicate that as the original permission had been implemented, favourable consideration should be given to the current application. The NPPF stated that where proven necessary, employment land should be protected. It also stated that planning policies should avoid the

long-term protection of sites allocated for employment use where there was no reasonable prospect of a site being used for that purpose.

The viability appraisal submitted with the application showed that if a normal accepted level of developer profit was sought, the scheme would not be viable. It concluded that the proposal could not provide any additional funding for affordable housing either on or off site. Although not within the precept of normally accepted viability, the applicant was prepared to make a financial contribution of £400,000 to meet the CIL requirement with the balance going towards local education provision.

The proposal was in full accordance with the objectives of the NPPF and the provisions of all relevant policies in the London Plan and Bromley's UDP.

In response to a question from Councillor Fookes, Mr Francis confirmed that the current market rent would be charged on the 20 covenanted flats.

Negotiations to contribute £80,000 towards the provision of off-site affordable housing had taken place.

Councillor Jackson asked Mr Francis if the applicant intended to carry out the extant permission to provide offices if the current application was refused. In response, Mr Francis said that negotiations were continuing in this respect and would depend upon viability.

Similarly, affordable housing could not be provided due to viability issues.

Councillor Fawthrop questioned why office accommodation had previously been offered but was now considered to be unviable. Mr Francis stated that the proposed office space had been based around good transport links and a satellite project with offices in Canary Wharf which had not materialised. The offices would have been funded from profits made on the residential accommodation.

Ward Member Councillor Mellor accepted that the previous application had been permitted on appeal but questioned the economics of the costings which did not add up. The Planning Inspector said there was no reason to suggest that offices would not be occupied which meant there would be a demand for office and industrial use. Mr Francis replied that the application was based on evidence at that time which suggested that there was a considerable oversupply of office space which differed greatly to the situation in 2008/9. Currently, there was no likelihood of any company coming forward to occupy the whole building.

Councillor Mellor informed Members that having considered the report which covered all aspects of the proposal, he had serious concerns about the application. For this reason, he moved that the appeal be contested.

Councillor Michael seconded the motion on the grounds set out in the report and suggested that ground number 2 be amended to reflect the loss of office

space. She requested that the words "unacceptable loss of employment land" be incorporated. As ground 2 was the most important reason for contesting the appeal, Councillor Michael asked that grounds 1 and 2 be transposed.

Councillor Bosshard emphasised the need to supply and retain employment land as the Government was putting more pressure on the Council to develop office space.

In response to Councillor Joel's query as to why the application was not determined within the normal 13 week period, the Chief Planner explained that consultations had been on-going to find common ground in relation to the financial contribution offered. This had not been finalised by the 13 week deadline at which point the applicant immediately submitted an appeal.

Councillor Fawthrop requested that the grounds for contesting the appeal be amended to reflect further the London Plan.

RESOLVED that THE APPEAL BE CONTESTED as recommended, on the following grounds:-

1 The site is located in a business area in the Unitary Development Plan and the proposal would result in an unacceptable loss of employment land and would be contrary to London Plan policies 4.1 and 4.4 and Policy EMP4 of the Unitary Development Plan as it does not provide Use Class B1, B2 or B8 floorspace and furthermore there is insufficient evidence to demonstrate that this cannot be provided.

2 The proposal would give rise to a requirement for affordable housing and a financial contribution towards education provision. inadequate evidence has been submitted to demonstrate that the development cannot support affordable housing provision and a sufficient healthcare and education infrastructure contribution contrary to Policies H2 and IMP1 of the Unitary Development Plan and Policy 8.2 of the London Plan.

33 BECKENHAM CONSERVATION AREAS

Report DRR13/142

At the request of the Beckenham and West Wickham Working Group, Members considered the possibility of conjoining all existing conservation areas in Beckenham to form one single Beckenham Conservation Area.

Although Councillor Mellor agreed in principle with the review, he could not support it on the basis that if extended, the conjoined conservation areas were likely to include certain sections which lacked sufficient architectural and historical interest which would seriously undermine the ethos of conservation areas. Councillor Mellor therefore moved not to support the recommendation. Councillor Michael agreed and seconded the motion.

Councillor Jackson took a contrary view and commented that conservation areas recognised the spatial standards of building lines and reflected the general feel of an area. The areas under consideration held uniformity and the relationship between them supported the grounds for merging together. For this reason, Councillor Jackson proposed that Members agree to the alterations to the Beckenham Conservation Areas.

Councillor Tickner, Ward Member and Chairman of the Beckenham and West Wickham Working Party, informed the Committee that as there were no legal constraints, it was entirely up to the Council to decide which parts of the Borough were designated as conservation areas. Currently, Beckenham consisted of disjointed conservation areas which could be merged to form one entire area including the High Street. If this was not done, it was possible that inappropriate developments could be constructed in the areas located between the individual conservation areas.

Whilst Councillor Fawthrop agreed with the recommendation, he requested that the words 'as a minimum' be added to the end of the sentence relating to the consultation on a smaller High Street conservation area.

RESOLVED that:-

- 1) Members did not support the proposed alterations to the Beckenham conservation areas; and**
- 2) consultation on a smaller High Street conservation area as a minimum be endorsed.**

The meeting ended at 8.55 pm

Chairman

Agenda Item 5a

Application No : 12/03084/TPO

Ward:
Copers Cope

Address : 10 Crab Hill Beckenham BR3 5HE

OS Grid Ref: E: 538574 N: 170150

Applicant : MWA Arboriculture

Objections : YES

Description of Development:

Fell one oak tree (T.1) in front garden SUBJECT TO TPO 2459

Key designations:

Conservation Area: Downs Hill
Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
London City Airport Safeguarding
London City Airport Safeguarding Birds
Tree Preservation Order

Proposal

Proposal - Felling of one oak tree (T.1)

Location - Front garden of 10 Crab Hill

Consultations

Comments from local residents - there have been a considerable number of comments from local residents and these can be summarised as follows:

the property where the trees are growing was underpinned in 1990 and there have been no further problems, the subsidence was not attributed to the trees

there are issues of subsidence in the area because the soil is a shrinkable clay

felling is unwarranted, it is proposed by insurance companies because they are risk averse

felling should be the last resort, not the first

the installation of a root barrier as an alternative should be explored

the cause of the problem has not been established without doubt and the exceptionally dry weather in 2010 and 2011 is a major factor

the trees are irreplaceable and society as a whole will be the loser

foundations on the clay soil are inadequate

the trees have enhanced the environment for generations and make Beckenham a pleasant place to live

concerns as to what may happen next if there is further subsidence after the felling

trees provide charm and character and the loss would have a negative effect

the trees are at the accepted limit of possible influence

Planning Considerations

Conclusions

This application was considered at the Plans Sub Committee meetings of 13th June and 5th September. The application concerns the proposed felling of one oak tree in the front garden of 10 Crab Hill that is implicated in subsidence at no.8. The two previous reports are attached - 13th June - Appendix A and 5th September Appendix B.

The making of a decision was deferred on 5th September to obtain an independent report. An arboricultural consultant was commissioned and his report is attached at Appendix C.

The main facts are as follows:

subsidence damage has occurred at no.8

the soil under this property is a shrinkable clay to a depth of 2 metres, overlaying a low/non shrinkable pebbly sandy soil

roots were found under the foundations and have been identified as oak. DNA testing showed that they were from the oak tree that is the subject of this application

the characteristics of the movement of no.8 are related to the influence of vegetation

other properties in the area have suffered subsidence in the past and have been underpinned

the oak tree is 15.85 metres from no.8 and is growing on the front boundary of no.10

the tree is 19 metres in height and it has been previously pollarded

the front drives of both properties are block paved and the sub-base is unlikely to impede root growth

the tree owners have a duty of care to abate any nuisance that their property may cause

Where it is proposed to fell a protected tree because it is implicated in subsidence case law the applicant only has to show that a tree is a cause of the damage and

not the cause, there is no requirement for it to be demonstrated beyond reasonable doubt. In this case the evidence does demonstrate that the movement of no. 8 is vegetation related and that this oak tree is the offending vegetation.

The decision on the method to be used to stabilise the house is that of the insurers. If consent were to be granted the insurers would need to seek the agreement of the tree owner for the felling to take place. The removal of the tree would obviate the need for expensive repairs, such as underpinning. This latter work was often a remedy for subsidence in the past but in more recent years insurers have sought tree removal, together with cheaper repairs. However if consent were to be refused the applicant has the right to claim compensation from the Council. As previously stated the applicant has indicated that this could be up to £76,000. There is no specific budget to cover this.

The consultants report concludes that the evidence provided by the applicants does demonstrate that there is subsidence damage to no.8, oak tree roots have been found under the building and these emanate from the tree that is the subject of this application. The oak tree is a contributory factor. In the opinion of the consultant consent should be granted for the removal of the tree.

RECOMMENDATION: CONSENT GRANTED FOR TREE WORKS

subject to the following conditions:

1ACB09	Tree consent - commencement
ACB09R	Reason B09
2ACB06	Replacement tree(s)
ACB06R	Reason B06

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Application for determination under Delegated Authority

Description of Development:

Fell one oak tree in front garden. SUBJECT TO TPO 2459

Considerations

This application has been made by an arboricultural consultant acting for insurers of the adjoining property, no.8 Crab Hill. Originally the application was to fell two oak trees in the front garden of no.10. It was alleged that the trees are implicated in subsidence of no.8. The two oak trees are growing on the front boundary of the front garden of no.10, they are both about 18 metres in height, have been previously pollarded and have regrown a full canopy. They are in a reasonably healthy condition, are highly visible in the street scene and are at the end of a line of oaks in several front gardens. The trees that are the subject of this application are numbered 1 and 2 in the reports accompanying the application; no.1 is that which is closest to the area of damage. The trees are 15 and 18 metres from no 8. This is a two storey detached house of traditional construction with rendered walls and hipped tiled roof built in the 1930s, it has two conservatories at the rear and an attached garage at the side closest to no.10. The damage to the property is to the front elevation and the front of the attached garage where there is downward movement.

Cracking was first noticed in September 2011 and became rapidly worse. The damage falls within category 3 which is described as moderate (the categories run from 1, very slight to 5 very severe). The pattern and nature of the cracks is indicative of subsidence. The drains and water main have been investigated and are not a contributory factor.

Trial holes have been dug at the front of the property and the foundations are 750mm under the front bay and 800mm beside the front corner of the house adjacent to the garage. The soil in both was found to be desiccated highly shrinkable clay. Roots were also found in both trial holes and have been identified as oak.

Level monitoring has been carried out and this indicates seasonal movement, with upward movement as the clay swells during the wetter winter weather and downward as the clay shrinks in the drier summer months.

As there were two oak trees implicated DNA tests were requested. Twig samples were taken from both trees and were compared to root samples taken from both trial holes. These results show that the roots from T.1 (closest to no.8) were those found in the trial hole. There was no correlation with T.2. On the basis of this the application has been amended to the felling of one oak tree only, the tree proposed to be felled is T>1, the tree closest to no.8.

Concerns have been raised that a root barrier could be installed rather than felling the tree. The agent has confirmed that a root barrier will only be considered if the Council refuse consent. However root barriers are expensive and disruptive to install and are not always successful.

There have been a considerable number of objections to this application, including the owners of the trees. They have advised that their property was underpinned in 1990 and several other properties in the road have also been underpinned. During the 1990s

and earlier it was not necessary to fell trees and insurance companies carried out underpinning. However recent cases involving trees and subsidence almost always seek felling if implicated trees. If implicated trees are felled properties are repaired and no underpinning is done. However where trees are retained properties are almost always underpinned and if the tree is covered by TPO and the Council has refused consent compensation for the additional costs of underpinning are sought from the Council.

Concerns have been raised that the level monitoring used a temporary benchmark on the side of no.8. The fact that this is part of the house which is moving rather than using a stable fixed point was queried with the agent and he has replied that the test results show a clear pattern of movement and there is no sign that the readings are inaccurate because of the temporary benchmark. This datum point was chosen by specialist monitoring contractors as appropriate. The movement relative to the datum point is measured rather than movement to a fixed point.

The clay soil in this area has the ability to swell and shrink during wet and dry periods of weather and this movement can be exacerbated by the presence of trees. The evidence in this case shows that there is movement to number 8 and this is related to shrinkage of the clay under the foundations. The evidence also shows that roots from T.1 have been found under the foundations of no.8 and are implicated in the movement. Whilst other roots (the source is unidentified) have been found there is undisputable evidence that roots from T.1 have been found in both bore holes beside the house and the tree is an influencing factor in the movement of the property.

As indicated above, under the terms of the legislation protecting trees, an owner can claim compensation where consent to work on a protected tree is either refused or given subject to conditions. Compensation is only payable if it can be demonstrated that any loss or damage is as a result of the Council's decision. Where a tree is implicated in subsidence compensation payments are based on the additional costs of repairing the building, this is usually underpinning. In this case the comparative costs of repairs have been estimated at £12,000 if the tree was to be removed and £88,000 if the tree was retained. Therefore if consent were to be refused a compensation claim could be in the region of £76,000 that is the costs of underpinning and other associated costs. Also if consent was refused the Council could not insist on the installation of a root barrier.

Conclusion

There is clear evidence showing that no.8 has suffered subsidence and there is also clear evidence linking this damage to T.1. However the DNA evidence does not show a link to T.2 and this tree has been removed from the application.

DECISION CONSENT CONDITIONS

B09 - Tree Commencement
B06 – Replacement Planting

Description of Development:

Fell one oak tree in front garden. SUBJECT TO TPO 2459

Considerations

This application was considered at the Plans Sub Committee meeting of 13th June and the making of a decision was deferred to seek the views of the applicant in respect of a root barrier. This information has been provided.

The previous report is repeated:

"The application has been made by an arboricultural consultant acting for insurers of the adjoining property, no.8 Crab Hill. Originally the application was to fell two oak trees in the front garden of no.10. It was alleged that the trees are implicated in subsidence of no.8. The two oak trees are growing on the front boundary of the front garden of no.10, they are both about 18 metres in height, have been previously pollarded and have regrown a full canopy. They are in a reasonably healthy condition, are highly visible in the street scene and are at the end of a line of oaks in several front gardens. The trees that are the subject of this application are numbered 1 and 2 in the reports accompanying the application; no.1 is that which is closest to the area of damage. The trees are 15 and 18 metres from no 8. This is a two storey detached house of traditional construction with rendered walls and hipped tiled roof built in the 1930s, it has two conservatories at the rear and an attached garage at the side closest to no.10. The damage to the property is to the front elevation and the front of the attached garage where there is downward movement.

Cracking was first noticed in September 2011 and became rapidly worse. The damage falls within category 3 which is described as moderate (the categories run from 1, very slight to 5 very severe). The pattern and nature of the cracks is indicative of subsidence. The drains and water main have been investigated and are not a contributory factor.

Trial holes have been dug at the front of the property and the foundations are 750mm under the front bay and 800mm beside the front corner of the house adjacent to the garage. The soil in both was found to be desiccated highly shrinkable clay. Roots were also found in both trial holes and have been identified as oak.

Level monitoring has been carried out and this indicates seasonal movement, with upward movement as the clay swells during the wetter winter weather and downward as the clay shrinks in the drier summer months.

As there were two oak trees implicated DNA tests were requested. Twig samples were taken from both trees and were compared to root samples taken from both trial holes. These results show that the roots from T.1 (closest to no.8) were those found in the trial hole. There was no correlation with T.2. On the basis of this the application has been amended to the felling of one oak tree only, the tree proposed to be felled is T.1, the tree closest to no.8.

Concerns have been raised that a root barrier could be installed rather than felling the tree. The agent has confirmed that a root barrier will only be considered if the Council

refuse consent. However root barriers are expensive and disruptive to install and are not always successful.

There have been a considerable number of objections to this application, including the owners of the trees. They have advised that their property was underpinned in 1990 and several other properties in the road have also been underpinned. During the 1990s and earlier it was not considered necessary to fell trees and insurance companies carried out underpinning. However recent cases involving trees and subsidence almost always seek felling of implicated trees. If implicated trees are felled properties are repaired and no underpinning is done. However where trees are retained properties are almost always underpinned and if the tree is covered by TPO and the Council has refused consent compensation for the additional costs of underpinning are sought from the Council.

Concerns have been raised that the level monitoring used a temporary benchmark on the side of no.8. The fact that this is part of the house which is moving rather than using a stable fixed point was queried with the agent and he has replied that the test results show a clear pattern of movement and there is no sign that the readings are inaccurate because of the temporary benchmark. This datum point was chosen by specialist monitoring contractors as appropriate. The movement relative to the datum point is measured rather than movement to a fixed point.

The clay soil in this area has the ability to swell and shrink during wet and dry periods of weather and this movement can be exacerbated by the presence of trees. The evidence in this case shows that there is movement to number 8 and this is related to shrinkage of the clay under the foundations. The evidence also shows that roots from T.1 have been found under the foundations of no.8 and are implicated in the movement. Whilst other roots (the source is unidentified) have been found there is undisputable evidence that roots from T.1 have been found in both bore holes beside the house and the tree is an influencing factor in the movement of the property.

As indicated above, under the terms of the legislation protecting trees, an owner can claim compensation where consent to work on a protected tree is either refused or given subject to conditions. Compensation is only payable if it can be demonstrated that any loss or damage is as a result of the Council's decision. Where a tree is implicated in subsidence compensation payments are based on the additional costs of repairing the building, this is usually underpinning. In this case the comparative costs of repairs have been estimated at £12,000 if the tree was to be removed and £88,000 if the tree was retained. Therefore if consent were to be refused a compensation claim could be in the region of £76,000 that is the costs of underpinning and other associated costs. Also if consent was refused the Council could not insist on the installation of a root barrier."

Comments on the above report have been made on behalf of the owners of the tree as follows:

1. The figures about the depth of foundations are misleading and it is pointed out that the foundations are typical of properties of this age, making the buildings vulnerable to movement in dry periods. Many of the properties in Downs Hill have been underpinned.

In response the figures are those provided as part of a number of technical reports accompanying the application. It is agreed that the construction is typical for properties built in the 1930s and that the houses in the area do suffer movement. However this is not in dispute, the application has been made because the reports obtained on behalf of the insurers of no.8 clearly demonstrate that the oak tree at the front of no.10 is a contributory factor in the movement.

2. The distances of the trees from the building is disputed and it is alleged that the tree is outside the zone of influence of this type of tree.

In response the tree that is the subject of this application is 18 metres from the garage at no 8. The maximum recorded tree to damage distance recorded is 30 metres. However site specific evidence takes precedence over theoretical zones and in this case the evidence clearly shows that roots from the oak tree have been found under the building. They will therefore have taken water from the clay soil under the foundations.

3. Concern is expressed that the damage to the building is also at the rear of the house, not only the front.

In response the agent who has submitted the application is an arboricultural consultant and the evidence submitted has clearly demonstrated that the oak tree has influenced the movement at the front of the property. Any damage to the rear of the property is a matter for the insurers.

4. This point relates to the finding of roots in the trial holes and the DNA evidence.

In response the agent has clearly demonstrated that the oak tree has influenced the movement at the front of the property.

5. Root barriers, this is dealt with below.

6. The final point is repeats concerns about the measurement of the movement and this has been addressed earlier in the report. The measurements have been taken by a specialist company and the insurers do not consider that they are inaccurate.

The comments conclude that the minimum work would be the underpinning of the front bay and possibly the underpinning of the front of the garage.

In response it should be pointed out that the insurers need to stabilise the building in the most cost effective way. In the past underpinning was often carried out as a matter of course but currently underpinning is seen as a last resort. Where subsidence is shown to have occurred and vegetation is a contributory factor insurers will always seek removal of the offending vegetation. Where this is done it is then usually not necessary to carry out expensive and disruptive underpinning.

In respect of a root barrier the agent has confirmed that this would be possible if the tree were retained. He has indicated that the root barrier would be across the front gardens of both numbers 8 and 10 (subject to the agreement of the property owners). It would be to a depth of 4 metres and special works would be needed in respect of sealing around underground services. The work would take up to 10 days to complete and would disrupt both front gardens. The excavation work would be within the root protection area of both oak trees at no.10 and a separate consent under the TPO may be needed in respect of cutting roots. The costs for this work are estimated to be £22,000.

The owner of 10 Crab Hill has been advised of the root barrier proposals and has stated that they do not need a root barrier at their property as they have been underpinned to a depth of 2 metres, the root barrier would be too close to their trees and could destabilise them, the root barrier would need only be to the depth of the Blackheath Beds and not 4 metres. Installing a shorter length of root barrier to a lesser depth would be cheaper and they have received a quote of £5000.

The agent has commented that they do not install root barriers if this would threaten the stability of a tree, the barrier would be to a depth necessary to protect the property, costs would vary according to the works actually undertaken and the tree owners may install a barrier although they and their contractors would be liable for its efficacy.

To assist Members an assessment to establish a value for the tree has been carried out. This assessment has been carried out in accordance with the Heliwell system and was devised as a means of achieving logical decisions in the planning and management of trees and woodlands by assessing their relative contribution to the visual quality of the landscape. Various factors are taken into account – size of tree, expected life span of tree, importance of the position of the tree in the landscape, presence of other trees, relation to setting and form of the tree. The factors are multiplied together and assigned a monetary value. It is accepted that some of the values are subjective and in this case the value of the tree varies between a minimum value of £2818 and maximum of £5166.

Conclusion

There is clear evidence showing that no.8 has suffered subsidence and there is also clear evidence linking this damage to one oak tree in the front garden of 10 Crab Hill. The application originally related to both trees. However the DNA evidence did not show a link to the oak tree furthest from no.8 and it has been removed from the application.

If consent were to be refused it would be open to the insurers to claim compensation for loss or damage due to the additional costs of either installing a root barrier or underpinning no.8. Solicitors acting for the insurers have clearly indicated that they will be making a claim for compensation if consent for the felling is refused.

If the tree is felled the property could be repaired at a cost of £12,000 and there would be no need to either underpin or provide a root barrier. Both of these options would be costly and disruptive. It should be pointed out that if consent were to be refused the Council has no powers to insist which method the insurers use to safeguard the property. In light of the uncertainty in respect of the agents preferred location of root barrier it is likely that the insurers would seek to underpin no.8 if consent were to be refused.

The maximum value of the tree to the community is £5166 and this should be weighed against the cost to the Council of a compensation claim of between £10,000 and £76,000.

DECISION CONSENT CONDITIONS

B09 - Tree Commencement
B06 – Replacement Planting

Arboricultural and Woodland Consultants



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EXPERT OPINION

by

Jim Quaife

Dip.Arb.(RFS), F.Arbor.A, CEnv.
 AA Registered Consultant, Chartered Environmentalist

as to whether the London Borough of Bromley should grant consent for the removal of a Turkey oak at 10 Crab Hill, Beckenham, BR3 5HE

Instructed by Mrs Gibson, Principal Tree Officer of the London Borough of Bromley

Date Written: 28th November, 2013

Quaife Woodlands Ref: AR/3085/jq

London Borough of Bromley Ref: DC/03084/TPO

Mrs C. Gibson Ref: CG/12/03084

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QWC Photographs

QWD DNA Analysis Result

QWE Extracts from Marishal Thompson Report – LS/1604121213/JB



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28th November, 2013

Our Ref: AR/3085/jq

Your Ref: CG/12/03084/TPO

Mrs C. Gibson,
Principal Tree Officer,
Town Planning,
London Borough of Bromley,
Civic Centre,
Stockwell Close,
Bromley,
Kent. BR13 UH

Application to fell one Turkey oak tree at 10 Crab Hill, Beckenham, BR3 5HE

Dear Mrs Gibson,

Thank you for your instructions issued by letter dated the 25th September, 2013, to review the file you sent to me containing the various documents relating to this case. The matter concerns the application to fell one oak tree in the front garden of No.10 Crab Hill implicated in subsidence damage to the house at No.8.

I am to provide an opinion about the possible causes of the damage to No.8 and whether your Council should grant consent under the Tree Preservation Order 2459 for the removal of the single oak tree. You have also asked that I give consideration to the installation of a root barrier. You instructed me to visit the site and to work from the information contained within the file.

I visited the site on the 16th October by written appointment. I called at No.8 first and met Mr Williams, and then to No.10 where I met Mr and Mrs Wiltshire. I explained to all three parties that I was present to evaluate the site for myself and that I would not engage in any discussion about the merits of the case. My visit started at 13.55 and I left No.10 at 14.25.

As a preliminary matter Mrs Wiltshire reminded me that she had contacted me previously by telephone to ask if I could review the available technical data and to comment upon the feasibility of installing a root barrier. I wrote to Mrs Wiltshire on the 18th October with a fee proposal (my reference QW1355) but did not receive instructions. I did not have sight of any documents and did not visit the site, and our telephone conversation was necessarily one of generalities. I am content that this contact is not a prejudicial interest and my objectivity has not been compromised. This case is not a matter of litigation, but I have discharged my instructions in accordance with Civil Procedure Rules Part 35 and the Practice Direction as a safeguard to the involved parties, the Council, and myself.

The details of the case are well enough known by Members and Officers and I have included at Appendix QWA the four-page summary (undated) written by yourself, which sets out the background to the case. I have omitted your Conclusion.

The current application is to fell the northern specimen of the two Turkey oaks in the front garden of No.10. I have attached my site plan at Appendix QWB derived from the site plan by Auger Solutions (ref. 28072.2 of 22/6/12) with added detail from my own measurements on site. The subject tree is annotated as T1.

1. Uncontested Facts.

- 1.1 Subsidence damage attributed to the influence of tree roots has been sustained at No.8. This is at the front of the property, although there is other damage recorded to the rear which is not the subject of my review.
- 1.2 The soil is shrinkable clay of about 2 metres in depth overlying Blackheath Beds which are generally sandy with pebbles and of very low or non-shrinkability.
- 1.3 Roots of the genus *Quercus* (oak) were identified by Richardson's Botanical Identifications (July 2012) having been removed from trial pit/borehole TP/BH1 at a depth of 1.7 metres, and from TP/BH2 at depths of 0.6, 1.1 and 1.6 metres.
- 1.4 Roots from other species were discovered, but the subject oak is the substantive consideration in respect of the TPO Work Application.
- 1.5 There is some dispute over the means by which measurements were taken to establish the degree of movement of No.8. The details are outside my professional field but on the basis of my familiarity with tree-related subsidence notwithstanding these disagreements I am satisfied that the characteristics of the movement are related to the influence of vegetation.
- 1.5 The original application (DC/03084/TPO of the 25th September 2012) was to remove both oaks (T1 and T2 in Appendices QWB and QWC, photographs 1 and 2) from the front garden of No.10 Crab Hill, based on the conclusions drawn by structural and arboricultural surveyors. However, a subsequent DNA analysis of root samples in comparison to twig samples was carried out which only matched root samples to the northern most oak, T1. I have included the letter setting out the analysis results at Appendix QWD.
- 1.6 I have had some experience with DNA analysis results produced by a sequencing method, but the BioProfiles Ltd use fragment samples, which I understand to be a more accurate analysis method. (I am obliged to Mr Mahon of MWA Arboriculture, the recipient of the BioProfiles letter, for explaining the rudiments of this method to me as I was unfamiliar with it).
- 1.7 The same application (DC/03084/TPO of the 25th September 2012) was commuted to apply for the removal of just the oak T1 on the basis of the DNA analysis results (Appendix QWC, photographs 1, 2 and 3).

- 1.8 I note that there is a history of subsidence damage to other nearby properties and that they were underpinned. I have seen no evidence which suggests that this has been unsuccessful. The insurers covering this claim are entitled to proceed in the manner that they judge to be appropriate and this is not a matter for me to comment upon.
- 1.9 Turkey oak T1 is covered by the Tree Preservation Order 2459 and the Council is due to determine the application to remove the tree. The application is to remove the oak T1 on the basis that it is a cause of subsidence damage to No.8.
- 1.10 The only reason for the removal of the oak T1 is in the initial details of the application when trees T1 and T2 were the subjects of removal. At section 7 of the application form the stated reason is:

"Trees are implicated in clay shrinkage subsidence damage"

The application refers at the end of that section to six technical reports (with seven dates listed), one of which is the Arboricultural Report by Marishal Thompson, reference LS/1604121213/JB.

- 1.11 There is a commentary on page 3 of the report and a Schedule of Recommendations on page 4, both of which I have reproduced at Appendix QWE.
- 1.12 The commentary on page 3 identifies two oaks on neighbouring property No.12 (Appendix QWC photograph 1) which might also be implicated and suggests that following the removal of the subject oaks T1 and T2 further monitoring should be carried out to ensure that the vegetative influence on No. 8 has ceased.
- 1.13 The Schedule of Recommendations on page 4 includes two tables: Table 1 entitled "Current Claim Requirements" and Table 2 entitled "Future Risk Recommendations". The only comment I would make is that whereas in Table 2 the Action column describes the reason for work recommended in the Requirement column, in Table 1 both these columns indicate the recommended work with no reason given. I must assume that in conjunction with the commentary on page 3, the reason is to remove the vegetative influence.

2. The Site and Subject Tree

- 2.1 The juxtaposition of the two houses No.8 and No.10 are shown in plan at Appendix QWB and in Appendix QWC in photographs 4 and 5. The plan is not to scale because the drawings of the structural and arboricultural surveyors from which the building footprints are derived are not to scale, but I have attempted to portray a reasonably proportionate layout.
- 2.2 The measurements annotated in blue at Appendix QWB have been measured by me with a laser rangefinder, but the actual point of measurement at the corner of the garage at No.8 was unsighted, so I used the rainwater downpipe (Appendix QWC, photograph 7) on the garage of No.10. The distances to the two trees are from my estimation of the geometric centres and a repeat measurement may vary.

- 2.3 The addition of the distance between the outer edge of the rainwater drainpipe and the corner of No.8 is 0.65 metre, which added to the laser measurements means that the distance of T1 to No.8 is about 15.85 metres, and of T2 to No.8 is about 19.95 metres. This correlates quite well with the estimations (method not stated) of these distances on page 4 of the Marishal Thompson report (Appendix QWE, page 2).
- 2.4 Turkey oaks T1 and T2 are about 19 metres in height, and the stem diameters measured at 1.5 metres above ground level are 58 and 51 centimetres respectively. Both trees are mature and both have been previously pollarded at between 4 and 6 metres above ground level (Appendix QWC, photograph 2).
- 2.5 Their crowns are combined and their approximate radii to the east are shown at Appendix QWB, with a perpendicular separation from the front elevation of No.10 of approximately 4.5 metres.
- 2.6 The boundary wall (Appendix QWC, photograph 8) is rendered with a blockwork pattern and is about 163 millimetres high on No.8's side. On No.10's side the wall is bare brick and about 128 millimetres high – just visible in photograph 6 at Appendix QWC.
- 2.7 The damage to No.8 is detailed in the structural surveyors' reports but I have included two photographs at page 3 of Appendix QWC showing the external cracks in the southern front elevation of the house (photograph 9) and the front elevation of the garage (photograph 10).

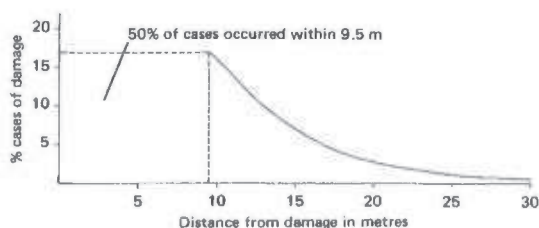
3. The Influence of Turkey Oak T1

3.1 The distance of T1 from the corner of the garage at No.8 is about 15.85 metres. The only published data available which sets out recorded distances of trees of various species to incidents of subsidence damage is in *Tree Roots and Buildings*, Cutler and Richardson, 1989. I have reproduced (scanned) the pertinent data in the entry for Oak below.

- 3. Proportion of cases of damage occurring within certain bands of distance from the tree species on shrinkable clay soils:

Cases of damage (%)	Distance from damage (m)
0	Over 30
10	18-30
15	13-18
25	9.5-13
25	6-9.5
25	1.3-6

- 4. Figure 3.12 is a graph showing the reduction in percentage of cases of damage recorded as the distance of trees from buildings increases (for shrinkable clay soils).



- 3.2 There is a clear indication that the oak T1 is well within potential range of influence, and these data are derived from 293 sample cards and 1253 additional identifications. Generally one may assume similar root morphology for Turkey oak as for English oak, but the data must be taken into context.
- 3.3 The survey cards used to conduct the survey contain a range of details, but the individual tree entries in the book only show the number of trees implicated in damage and the distance from that damage. There are no indications of anything about the trees themselves in terms of their condition, vigour, size, pruning history, age or proximity to other trees; no details of the damage caused in terms of severity, extent, or pattern; no description of the buildings or structures involved in terms of size, orientation, location of damage, age, whether original or an extension; and no records of site circumstances in terms of topography, hydrology, other site features, underground impediments, surfacing, exposure or even the soil type, depth, or characteristics.
- 3.4 In the Arboricultural Journal (Gasson PE & Cutler DF 1998, "Can we live with trees in our towns and cities?", [in] Arboricultural Journal 22(1) pp1-9) the authors make the summary:
- "There is increasing concern that data on tree root spread in 'Tree Roots and Buildings' (Cutler and Richardson, 1989) are open to misinterpretation by insurers, home owners and arboriculturists. Insurers have tended to use maximum root spread figures, which we believe to be statistically and biologically unsound. This paper briefly examines the evidence and interprets this to show that with sensible use of the available data, there should be little conflict between trees and buildings in urban areas"*
- Their conclusion suggests that very different figures are appropriate as "safe planting distances", but this notion is of itself flawed and the revised figures are purely based on the root spread data in the book. The revised "safe" distance for oak is 18 metres.
- 3.5 I would be disinclined to adopt this figure as anything other than a general indication and in any event trees do not necessarily accord with tables and calculated geometry. In the specific site circumstances at Nos. 8 and 10, the western side to the trees is a public highway, and although the compacted nature of the soil underneath may limit root growth by virtue of having too high a bulk density for root penetration, I would be surprised if there were no roots at all underneath. However I would expect the root distribution of T1 (and T2) to be eccentric and asymmetrically disposed to the east.
- 3.6 As can be seen in the photographs 5 and 6 at Appendix C, the front drives of the two properties are of block paving and the sub-base to this is unlikely to impede root growth. T1 (and T2) are on a raised bed along the road frontage to No.10, retained with a low brick wall (Appendix C photograph 5). Roots tend to be more concentrated in the upper soil horizons because that is the zone where there is likely to be good aeration, good drainage and a higher humus content, and they follow ground level gradients. The discovery of roots at 1.7 metres below the foundations of No.8 is evidence that roots grow deeper than the near-surface horizons. Therefore the level differential between the raised bed and the drive would not impede the growth of the oak's roots.

3.7 Oak is a species which tends to root more deeply than other trees (where soil conditions allow), but in any event roots identified as being from oak have been discovered under the foundations of No.8 and there are no other oaks growing in the vicinity which could have roots reaching the front of No.8.

3.8 I am surprised that none of the root samples tested came from oak T2 because root systems intermingle and the distance of T2 from No.8 at 20 metres is well within the tree's range of influence given the likely asymmetry of its root system. However T2 is not the subject tree.

4. A Root Barrier

4.1 The principle of installing an impenetrable barrier to roots is quite straightforward, but in practice there are numerous factors which have to be taken into account. I think it fair to say that root barriers do not have a particularly good reputation for efficacy, but this is primarily because they are often used where they are inappropriate and also because those installing them do not always have a sufficient understanding of root morphology.

4.2 I have little doubt that if installed properly a root barrier could be effective; and by this I imply no doubts upon Mr Swinburne's (of WMA Arboriculture in his letter to Crawford and Company of the 4th July 2013) ability. Mr Swinburne suggests that the barrier should be installed to a depth of 4 metres. This seems reasonable to me for the following reasons:

- i) The clay may only be two metres or so deep, but the well-drained characteristics of the underlying Blackheath Beds means that roots would certainly grow into that soil and thus below a depth of two metres.
- ii) The very means of installing a root barrier in an excavated trench or cut slot can lead to a reduction in the bulk density of the adjacent soil and infill, which can encourage roots to grow deeper in the immediate vicinity. It is therefore necessary to allow for a greater depth of installation than the deepest discovered roots.

4.3 The position of the root barrier is a matter that requires full consideration.

4.4 **I must stress that I am not a lawyer and law is outside my professional field, and my comments relating to law are made as from a lay person, and I am not offering any legal advice or recommendations.**

4.5 Mr and Mrs Wiltshire have a duty of care under the Occupiers Liability Act 1957 and 1984 to abate any nuisance that their property may cause. This also includes the taking of reasonable measures to reduce risk to an acceptable level to persons on their property as well as those off their property within range of influence. However, the term nuisance relates to a matter which is actionable and affects others (on the simple premise that one cannot sue oneself). There is an argument, but I am not making it one way or the other, that the containment of tree roots should be effected within the property boundaries of where the tree is situated.

- 4.6 A suggested position of a root barrier (by WMA Arboriculture) is extending across the boundary between No.8 and No.10.
- 4.7 Wherever a root barrier may be positioned, and on the assumption that it is installed with due care and attention in respect of fulfilling the objectives, there is no reason to my mind to doubt that it could be an effective solution.

5. Underpinning

- 5.1 If underpinning were to be considered it would need to bear onto the underlying Blackheath Beds at a depth and to a specification determined by an engineer.
- 5.2 To that end with a correct specification it could provide a permanent solution.

6. The Consequences of Removing of Turkey oak T1

- 6.1 The perceived risk associated with removing trees on shrinkable soil relates to heave, but there are some fundamental principles which apply which I have set out below.

i) *The risk of tree-related heave only occurs when a structure bears onto a shrinkable soil which has a persistent moisture deficit caused by a tree, and then that tree is removed. Shrinkable soils change volume with changes in moisture content, and although climatic factors alone can cause this albeit to a limited depth, it is exacerbated by the influence of vegetation, and specifically in this instance, trees.*

ii) *Trees become active in the spring and their growth takes up soil moisture and transpires it into the atmosphere. By the end of summer, the combination of high temperatures, low rainfall, evaporation and transpiration means that soil is at its driest (ignoring any abnormal climatic and hydrological factors).*

iii) *Trees then enter dormancy and transpiration ceases, rainfall increases, temperatures fall and evaporation diminishes significantly. Usually by the new year the soil will re-wet to field capacity, which is saturation such that excess rainfall runs off. (This does not necessarily mean that there is lying surface water as drainage is another factor).*

iv) *At field capacity the soil is at its maximum volume.*

v) *A persistent moisture deficiency happens where year on year full re-wetting does not occur within the zone of influence of a tree's root system.*

vi) *When the tree is removed the soil will gradually (over 2-15 years) achieve field capacity as the persistent moisture deficiency dissipates.*

vii) *It follows therefore that for even the risk of heave to be present, requires a structure to have been built onto soil with a persistent moisture deficit of sufficient volume to have the potential to adversely affect the structure.*

- 6.2 In this instance, the applied-for removal of T1 is to remove its influence in the causation of subsidence damage to No.8. It follows therefore that the objective is a reversal of the soil shrinkage, and there is no evidence to show that the property was built onto soil with a persistent moisture deficit. Consequently the risk of heave damage is remote.
- 6.3 No.10 was underpinned and there have been no tree-related subsidence problems since. As the removal of the influence of tree roots is evidently successful in removing the effect of soil subsidence, the same would apply to that influence in respect of heave.

7 The Council's Decision

- 7.1 The fundamental criterion that justifies a TPO is that a tree, trees or woodland has sufficient public amenity value such that its removal would be detrimental to the character and appearance of the area (my paraphrase).
- 7.2 The decision to determine the TPO work application to remove the Turkey oak T1 is a matter of weighing the balance between the public amenity value of the tree with the compromises it causes to the private enjoyment of those affected by it.
- 7.3 Where a TPO tree causes a nuisance in law [**I refer to paragraph 4.4 above**] I have reproduced (scanned) Section 14 (1)(a)(ii) below from The Town and Country Planning (Tree Preservation)(England) Regulations 2012

Exceptions

14.—(1) Nothing in regulation 13 shall prevent—

(a) the cutting down, topping, lopping or uprooting of a tree—

(i) which is dead;

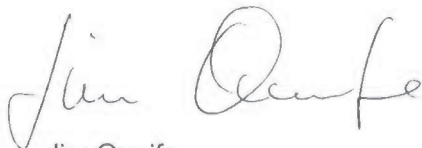
(ii) in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;

- 7.4 The application is to be determined without the matter of nuisance having been raised.
- 7.5 The Council is therefore to decide whether the merits of the application justify granting consent for the felling of the oak T1 based on the supplied information.
- 7.6 I regard the following matters to be pertinent in respect of the Council's responsibilities:
- i) the oak T1 is protected by the TPO
 - ii) the evidence shows that the soil is shrinkable
 - iii) the evidence shows that the damage to No.8 is associated with the influence of roots below the foundations
 - iv) the evidence shows that the root found under No.8 in Trial Hole 2 (BH2) was subjected to DNA testing and is from the oak T1
 - v) the oak T1 is a substantive cause of the damage to No.8
 - vi) the removal of the oak T1 would not cause heave damage to No.10

- 7.7 If the Council were to grant consent, that is all it is. It is not a directive to fell the tree and it remains for the involved parties to determine whether or not they wish to act upon that consent.
- 7.8 The Council has the power to make conditions attached to a consent, which may include the planting of a replacement tree. If such a condition were to be considered I would advise that the choice of species should be carefully chosen so as to not have a potential to replicate the current problem.

8. My Opinion

- 8.1 The evidence provided can be summarised as showing that following the discovery of crack damage, the foundations of No.8 bear onto shrinkable clay and that oak roots were found underneath. The nearest source of oak roots is from the trees at No.10 and DNA testing has identified the subject Turkey oak T1 positively.
- 8.2 There has been considerable conjecture about the nature of the crack damage and what to do about it, prompted initially because previous subsidence damage to other nearby properties has been rectified by underpinning, whereas the insurers in this case are reluctant to do so. This is a matter for the insurers to resolve.
- 8.3 Aside from underpinning, the other two options are to install a root barrier to prevent oak roots from reaching No.8 thereby removing the influence of roots, or to remove the tree whose roots are causing the problem.
- 8.4 The Council must be satisfied that the justifications for removing the subject Turkey oak that is protected by the TPO are sound. This is the single tree that is the subject of the application.
- 8.5 It is only necessary to demonstrate that this tree is a cause of the damage and not the cause [*Patterson v Humberside CC (1966) 12 Const. L.J.64*]. Furthermore, the evidence must show on the balance of probability that the subject tree is a cause of the damage, and there is no requirement to prove it beyond reasonable doubt. In practical terms this means that the exploration of evidence need only go as far as is necessary to substantiate the opinion.
- 8.6 In my opinion the Council should grant consent for the removal of the subject Turkey oak T1.



Jim Quaife

Dip.Arb.(RFS), F.Arbor.A, CEnv.

AA Registered Consultant

Chartered Environmentalist

Case Background Summary by Mrs Gibson



Application for determination under Delegated Authority

Description of Development:

Fell one oak tree in front garden. SUBJECT TO TPO 2459

Considerations

This application was considered at the Plans Sub Committee meeting of 13th June and the making of a decision was deferred to seek the views of the applicant in respect of a root barrier. This information has been provided.

The previous report is repeated:

"The application has been made by an arboricultural consultant acting for insurers of the adjoining property, no.8 Crab Hill. Originally the application was to fell two oak trees in the front garden of no.10. It was alleged that the trees are implicated in subsidence of no.8. The two oak trees are growing on the front boundary of the front garden of no.10, they are both about 18 metres in height, have been previously pollarded and have regrown a full canopy. They are in a reasonably healthy condition, are highly visible in the street scene and are at the end of a line of oaks in several front gardens. The trees that are the subject of this application are numbered 1 and 2 in the reports accompanying the application; no.1 is that which is closest to the area of damage. The trees are 15 and 18 metres from no 8. This is a two storey detached house of traditional construction with rendered walls and hipped tiled roof built in the 1930s, it has two conservatories at the rear and an attached garage at the side closest to no.10. The damage to the property is to the front elevation and the front of the attached garage where there is downward movement.

Cracking was first noticed in September 2011 and became rapidly worse. The damage falls within category 3 which is described as moderate (the categories run from 1, very slight to 5 very severe). The pattern and nature of the cracks is indicative of subsidence. The drains and water main have been investigated and are not a contributory factor.

Trial holes have been dug at the front of the property and the foundations are 750mm under the front bay and 800mm beside the front corner of the house adjacent to the garage. The soil in both was found to be desiccated highly shrinkable clay. Roots were also found in both trial holes and have been identified as oak.

Level monitoring has been carried out and this indicates seasonal movement, with upward movement as the clay swells during the wetter winter weather and downward as the clay shrinks in the drier summer months.

As there were two oak trees implicated DNA tests were requested. Twig samples were taken from both trees and were compared to root samples taken from both trial holes. These results show that the roots from T.1 (closest to no.8) were those found in the trial hole. There was no correlation with T.2. On the basis of this the application has been amended to the felling of one oak tree only, the tree proposed to be felled is T.1, the tree closest to no.8.

Concerns have been raised that a root barrier could be installed rather than felling the tree. The agent has confirmed that a root barrier will only be considered if the Council

Case Background Summary by Mrs Gibson

refuse consent. However root barriers are expensive and disruptive to install and are not always successful.

There have been a considerable number of objections to this application, including the owners of the trees. They have advised that their property was underpinned in 1990 and several other properties in the road have also been underpinned. During the 1990s and earlier it was not considered necessary to fell trees and insurance companies carried out underpinning. However recent cases involving trees and subsidence almost always seek felling of implicated trees. If implicated trees are felled properties are repaired and no underpinning is done. However where trees are retained properties are almost always underpinned and if the tree is covered by TPO and the Council has refused consent compensation for the additional costs of underpinning are sought from the Council.

Concerns have been raised that the level monitoring used a temporary benchmark on the side of no.8. The fact that this is part of the house which is moving rather than using a stable fixed point was queried with the agent and he has replied that the test results show a clear pattern of movement and there is no sign that the readings are inaccurate because of the temporary benchmark. This datum point was chosen by specialist monitoring contractors as appropriate. The movement relative to the datum point is measured rather than movement to a fixed point.

The clay soil in this area has the ability to swell and shrink during wet and dry periods of weather and this movement can be exacerbated by the presence of trees. The evidence in this case shows that there is movement to number 8 and this is related to shrinkage of the clay under the foundations. The evidence also shows that roots from T.1 have been found under the foundations of no.8 and are implicated in the movement. Whilst other roots (the source is unidentified) have been found there is undisputable evidence that roots from T.1 have been found in both bore holes beside the house and the tree is an influencing factor in the movement of the property.

As indicated above, under the terms of the legislation protecting trees, an owner can claim compensation where consent to work on a protected tree is either refused or given subject to conditions. Compensation is only payable if it can be demonstrated that any loss or damage is as a result of the Council's decision. Where a tree is implicated in subsidence compensation payments are based on the additional costs of repairing the building, this is usually underpinning. In this case the comparative costs of repairs have been estimated at £12,000 if the tree was to be removed and £88,000 if the tree was retained. Therefore if consent were to be refused a compensation claim could be in the region of £76,000 that is the costs of underpinning and other associated costs. Also if consent was refused the Council could not insist on the installation of a root barrier."

Comments on the above report have been made on behalf of the owners of the tree as follows:

1. The figures about the depth of foundations are misleading and it is pointed out that the foundations are typical of properties of this age, making the buildings vulnerable to movement in dry periods. Many of the properties in Downs Hill have been underpinned.

In response the figures are those provided as part of a number of technical reports accompanying the application. It is agreed that the construction is typical for properties built in the 1930s and that the houses in the area do suffer movement. However this is not in dispute, the application has been made because the reports obtained on behalf of the insurers of no.8 clearly demonstrate that the oak tree at the front of no.10 is a contributory factor in the movement.

Case Background Summary by Mrs Gibson

2. The distances of the trees from the building is disputed and it is alleged that the tree is outside the zone of influence of this type of tree.

In response the tree that is the subject of this application is 18 metres from the garage at no 8. The maximum recorded tree to damage distance recorded is 30 metres. However site specific evidence takes precedence over theoretical zones and in this case the evidence clearly shows that roots from the oak tree have been found under the building. They will therefore have taken water from the clay soil under the foundations.

3. Concern is expressed that the damage to the building is also at the rear of the house, not only the front.

In response the agent who has submitted the application is an arboricultural consultant and the evidence submitted has clearly demonstrated that the oak tree has influenced the movement at the front of the property. Any damage to the rear of the property is a matter for the insurers.

4. This point relates to the finding of roots in the trial holes and the DNA evidence.

In response the agent has clearly demonstrated that the oak tree has influenced the movement at the front of the property.

5. Root barriers, this is dealt with below.

6. The final point is repeats concerns about the measurement of the movement and this has been addressed earlier in the report. The measurements have been taken by a specialist company and the insurers do not consider that they are inaccurate.

The comments conclude that the minimum work would be the underpinning of the front bay and possibly the underpinning of the front of the garage.

In response it should be pointed out that the insurers need to stabilise the building in the most cost effective way. In the past underpinning was often carried out as a matter of course but currently underpinning is seen as a last resort. Where subsidence is shown to have occurred and vegetation is a contributory factor insurers will always seek removal of the offending vegetation. Where this is done it is then usually not necessary to carry out expensive and disruptive underpinning.

In respect of a root barrier the agent has confirmed that this would be possible if the tree were retained. He has indicated that the root barrier would be across the front gardens of both numbers 8 and 10 (subject to the agreement of the property owners). It would be to a depth of 4 metres and special works would be needed in respect of sealing around underground services. The work would take up to 10 days to complete and would disrupt both front gardens. The excavation work would be within the root protection area of both oak trees at no.10 and a separate consent under the TPO may be needed in respect of cutting roots. The costs for this work are estimated to be £22,000.

The owner of 10 Crab Hill has been advised of the root barrier proposals and has stated that they do not need a root barrier at their property as they have been underpinned to a depth of 2 metres, the root barrier would be too close to their trees and could destabilise them, the root barrier would need only be to the depth of the Blackheath Beds and not 4 metres. Installing a shorter length of root barrier to a lesser depth would be cheaper and they have received a quote of £5000.

Case Background Summary by Mrs Gibson

The agent has commented that they do not install root barriers if this would threaten the stability of a tree, the barrier would be to a depth necessary to protect the property, costs would vary according to the works actually undertaken and the tree owners may install a barrier although they and their contractors would be liable for its efficacy.

To assist Members an assessment to establish a value for the tree has been carried out. This assessment has been carried out in accordance with the Heliwell system and was devised as a means of achieving logical decisions in the planning and management of trees and woodlands by assessing their relative contribution to the visual quality of the landscape. Various factors are taken into account – size of tree, expected life span of tree, importance of the position of the tree in the landscape, presence of other trees, relation to setting and form of the tree. The factors are multiplied together and assigned a monetary value. It is accepted that some of the values are subjective and in this case the value of the tree varies between a minimum value of £2818 and maximum of £5166.

Conclusion

CONCLUSION OMITTED

Appendix QWB

Quaife Woodlands Arboricultural Survey AR/3085/jq

10 Crab Hill, Beckenham, Kent. BR3 5HE

Site Plan - Positions of the Subject Trees Relative to No.8

Scale 1:200 very approximately @ A3 16th October 2013

DO NOT SCALE FROM DRAWING OTHER THAN IN THE CIRCLE

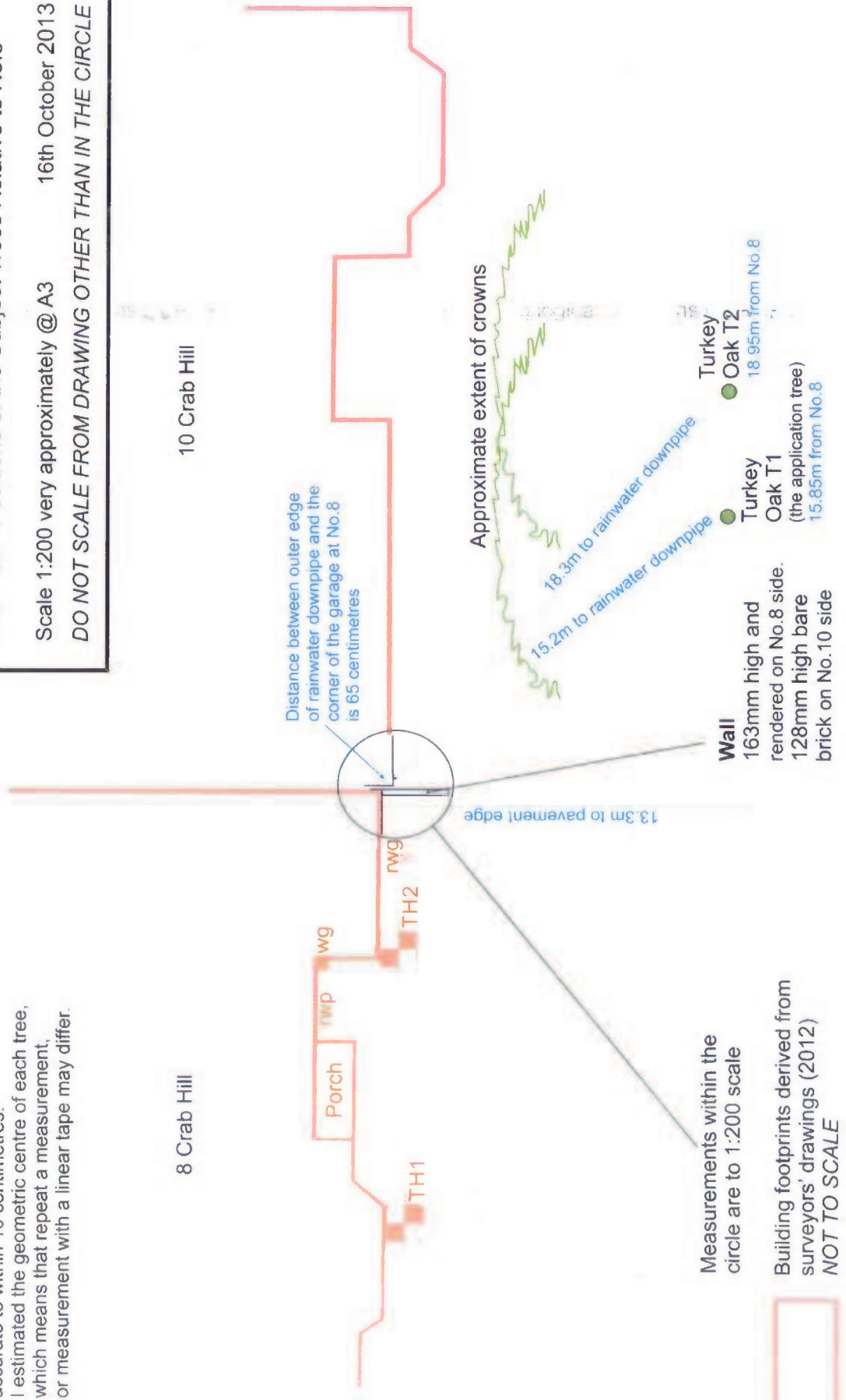


NOTE

The laser measurements (in blue) are accurate to within 10 centimetres. I estimated the geometric centre of each tree, which means that repeat a measurement, or measurement with a linear tape may differ.

8 Crab Hill

10 Crab Hill



Measurements within the circle are to 1:200 scale

Building footprints derived from surveyors' drawings (2012) NOT TO SCALE



Photographs taken on the 16th October 2013

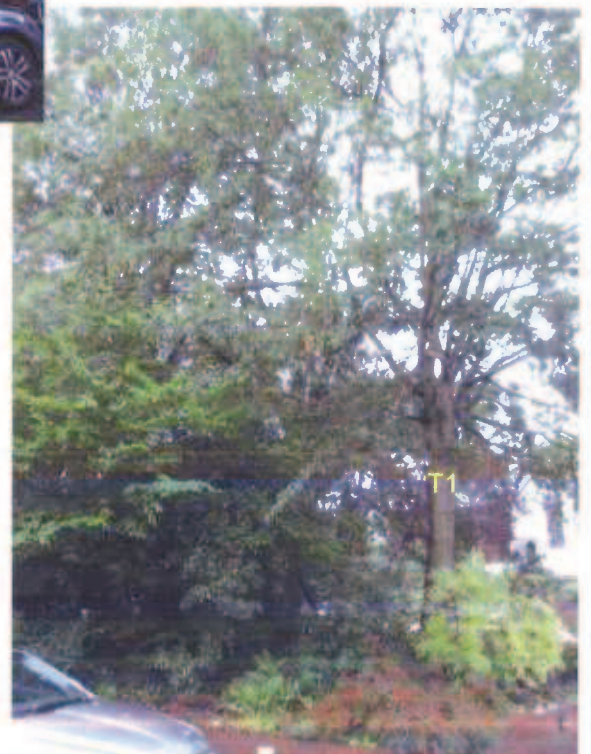


Photograph 1.
View of the two subject Turkey oaks in the front garden of No.10 looking to the south-east, and the oaks in the front garden of No.12 (arrowed).



Photograph 2.
Closer view of the two subject Turkey oaks in the front garden of No.10 looking to the south-east, showing the previous pollarding.

Photograph 3.
View of the subject Turkey oak T1 in the front garden of No.10 looking to the south-west.



Photographs taken on the 16th October 2013



Photograph 4.
View of the two houses looking up the drive of No.8.



Photograph 5.
View of the two houses looking up both drives.



Photograph 6.
View looking to the north across the front of No.12 showing the block paved drive.

Photographs taken on the 16th October 2013



Photograph 7.

View of the of the garage at No.10 showing the rainwater downpipe to which the distances from the two subject trees were measured.



Photograph 8.

View of the boundary wall showing the rendered side at No.8.

Photograph 9.

View looking No.8's garage wall to the right of the vehicular door.



Photograph 10.

View looking No.8's wall between the garage and the porch.

DNA Analysis Result



Bioprofiles Ltd
1 Ryelea
Longhoughton, Northumberland
NE66 3DE UK
Company number: 4300828
www.bioprofiles.co.uk
phone: 0191 222 5626
email: information@bioprofiles.co.uk

March 12, 2013

MWA ARBORICULTURE
Bloxham Mill Business Centre
Barford Road
Bloxham
Banbury
Oxfordshire OX15 4FF

Your Ref: BR190912.01DM 8 Crab Hill, Beckenham BR3 5HE

Report on Case 123A:

DNA analysis

Material:

3 Root samples and 2 twigs were used in the analysis, the two twigs were from Case 123, previously analysed.

Result of analysis of roots and twigs:

Using DNA fragment analysis we determined that the root from Borehole BH2 is identical to twig T1.

The roots from Borehole BH1 are not identical to either twig T1 or twig T2.

Please contact me if you have any further questions:

Phone 0191 222 5626, Fax 0191 222 5229, email kirsten.wolff@ncl.ac.uk

Extracts from Marishal Thompson Report - LS/1604121213/JB

Page 3

Based on our site inspection, site investigations undertaken by engineers, and taking account of vegetation location, relative to the focal area of movement / damage, it is our opinion that T1 will be exerting the principal vegetative influence to the property. It is also our opinion that T2 has the potential to be a contributory factoring the damage.

Two further Oak were also recorded within a potential zone of influence and as yet their role in the damage considered less likely. Assuming the removal of T1 and T2 is permitted we would suggest further monitoring to ascertain if the remaining Oak trees are also a factor.

Engineers have identified to us that both Oak trees are the subject of TPO which likely includes those adjacent also. Should this be confirmed the remaining site investigations will be required before the Local Authority will validate the TPO application. This information must include, as well as this report:

1. Further measurement of the extent and distribution of vertical movement using level monitoring. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s) over a sustained period (6-12 months).
2. Proposals and estimated costs of options to repair the damage (TPOs a guide to the law and good practice Section 6.40C).

It should be noted that DNA analysis may also be requested.

A programme of vegetation management is deemed appropriate. Please refer to Section 6.0 for full details of management prescriptions and third party ownership details.

Vegetation management in the form of removal will help to promote the restoration of long-term stability to the insured property; pruning should not be considered as representing an effective or reliable long-term alternative solution.

Monitoring should continue to establish the efficacy of the prescribed works. However, a review of recommendations may be required on receipt of further site investigations, ongoing monitoring data or if stability is not satisfactorily restored.

Replacement planting is considered appropriate however due consideration must be given to the ultimate size of the replacement, known species characteristics and future management. Species selection should be appropriate for the chosen site and ultimate tree height should not exceed 75% of the available distance to built structures.

Is vegetation likely to be a contributory factor in the current damage?	Yes
Is vegetation management likely to contribute to the future stability of the property?	Yes
Is replacement planting considered appropriate?	See Above
Would DNA profiling be of assistance in this case?	See Above

Extracts from Marishal Thompson Report - LS/1604121213/JB

Page 4

6.0 Recommendations

6.1 Table 1 - Current Claim Requirements

These recommendations may be subject to review following additional site investigations

T1	Oak	1	17	15*	A - Third Party 10 Crab Hill Beckenham Kent BR3 5HE	Remove	Remove.
T2	Oak	1	18	18*	A - Third Party 10 Crab Hill Beckenham Kent BR3 5HE	Remove	Remove.

6.2 Table 2 - Future Risk Recommendations

H1	Laurel (Bay)	1	2.3	2.5	C - Insured	Action to avoid future risk	Do not allow to exceed current dimensions.
H2	Mixed Species Hedge (M) Laurel (Cherry). Laurel (Portuguese).	1	2	2	A - Third Party 6 Crab Hill Beckenham Kent BR3 5HE	Action to avoid future risk	Do not allow to exceed current dimensions.
T3	Oak	1	24	22*	A - Third Party 12 Crab Hill Beckenham Kent BR3 5HE	Action to avoid future risk	Reduce by 8m in height maintaining regrowth at a maximum height of 17m on a biennial frequency.
T4	Oak	1	22	25*	A - Third Party 12 Crab Hill Beckenham Kent BR3 5HE	Action to avoid future risk	Reduce by 6m in height maintaining regrowth at a maximum height of 17m on a biennial frequency.
T5	Plum (Purple leafed)	1	5.5	9.5	C - Insured	Action to avoid future risk	Restrict to 6.5m in height.
T6	Laurel (Bay)	1	2.3	2.5	C - Insured	Action to avoid future risk	Do not allow to exceed current dimensions.

* Estimated

Third party property addresses should be treated as indicative only, should precise detail be required then Marishal Thompson can undertake Land Registry Searches

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Agenda Item 6

Report No.
DRR14/005

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Tuesday 7 January 2014

Decision Type: Non-Urgent Non-Executive Non-Key

Title: ARTICLE 4 DIRECTION - STATION SQUARE, PETTS WOOD

Contact Officer: Tim Horsman, Deputy Development Control Manager (East)
Tel: 020 8313 4956 E-mail: Tim.Horsman@bromley.gov.uk

Chief Officer: Chief Planner

Ward: Petts Wood and Knoll;

1. Reason for report

Members are asked to consider whether to agree an Article 4 Direction to restrict specific permitted development rights for commercial frontages and forecourts in Station Square, Petts Wood in order to preserve the character of the Station Square conservation area by allowing the Council to consider each proposal on its merits. If an Article 4 Direction is served, the Council may be liable to pay compensation to applicants in certain circumstances – this needs to be balanced against the potential harm to the conservation area caused by a possible proliferation of proposals.

2. **RECOMMENDATION(S)**

Members are invited to consider whether the portfolio holder should be requested to confirm a non-immediate (12 month) Article 4 Direction withdrawing permitted development rights in Station Square, Petts Wood, Conservation Area in respect of the following Parts of the Town and Country Planning (General Permitted Development) Order 1995 (as amended):

Part 2, Class A: The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Part 4, Class B: Temporary uses and moveable structures associated with such uses

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment:
-

Financial

1. Cost of proposal: Estimated Cost: Cannot be quantified at this moment in time
 2. Ongoing costs: Recurring Cost: N/A
 3. Budget head/performance centre: Planning and Renewal
 4. Total current budget for this head: £2.689m
 5. Source of funding: Existing revenue budget 2013/14
-

Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: 4
-

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Support making Article 4 Direction as proposed

3. COMMENTARY

- 3.1 The Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the GPDO] provides permitted development rights to carry out development without the need for planning permission in a variety of circumstances.
- 3.2 In the case of shops and other commercial premises in Station Square, the rights currently granted by Part 2 of the GPDO set out above would allow boundary enclosures potentially up to 2 metres in height (up to 1 metre adjacent to a highway). The rights granted by Part 4 would allow temporary uses and moveable structures in connection with such uses. It should be noted that Part 4 does not apply to land within the curtilage of a building, so in practice could not be widely used within the area concerned, as shop forecourts would not normally benefit from this Part. Some permitted development allowed under these Classes could have an adverse impact on the character and appearance of Station Square.
- 3.3 Article 4 of the GDPO allows for the making of a direction that can withdraw specified permitted development rights. This does not completely prevent the development to which it applies but instead requires that planning permission is first obtained from the Local Planning Authority for that development.
- 3.4 Guidance issued by DCLG in November 2010 advises that local planning authorities should consider making Article 4 Directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity. In deciding whether an Article 4 would be appropriate, LPAs should ... “identify clearly the potential harm that the direction is intended to address” and may want consider whether the exercise (by property owners) of permitted development rights would “...undermine the visual amenity of the area or damage the historic environment”.
- 3.5 In procedural terms there are two main types of article 4:
- non-immediate direction (permitted development rights are only withdrawn, normally after 12 months, upon confirmation of the direction by the local authority following local consultation); and
 - immediate directions (where permitted rights are withdrawn with immediate effect, but must be confirmed by the LPA following local consultation within 6 months, or else the direction will lapse).
- 3.6 Article 4 Directions cannot be applied retrospectively to development undertaken before a direction comes into force and any planning application required as a consequence of an Article 4 Direction is exempt from the usual planning application fee.
- 3.7 In this instance it is suggested that Members consider a non-immediate Direction for which compensation is not payable to those affected. This would take effect after 12 months
- 3.8 If Members do instead wish to consider an immediate Direction, there are circumstances where LPAs may be liable to pay compensation in relation to immediate Directions, although the potential liability is limited in many cases by the time limits that apply. Compensation may be payable to those whose permitted development rights have been withdrawn if the Local Planning Authority:
- refuse planning permission for development which would have been permitted development if it were not for an article 4 direction; or
 - grant planning permission subject to more limiting conditions than the GDPO would normally allow as a result of article 4 direction being in place.

- 3.9 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. Under section 107 of the TCPA 1990 this could include ‘...any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it...’ It could also include any loss of value although this can be difficult to calculate.
- 3.10 In Bromley Borough, Article 4 Directions have been in place in conservation areas such as Alexandra Cottages since 2004, Chancery Lane since 1984, and Barnmead Road since 1992. These cover a wide range of possible alterations to the fronts of residential properties, including the installation of roof lights (specifically in Alexandra Cottages). The intention of each direction has been to safeguard the character of the conservation area. Whilst the detail of regulations and procedure have changed over the years it should be noted that no compensation claims were made in respect of any of these article 4 directions – nor did they lead to a proliferation of requests for directions in other conservation areas. There has been some increase in workload arising from applications for proposals (such as window replacements) that did not previously require planning permission.
- 3.11 Members should also be aware that in respect of the placing of moveable structures (such as chairs, tables, umbrellas and potentially gazebos and marquees), if these were used in connection with the existing lawful use of the premises, depending on their permanence, they would not be development requiring planning permission and would fall outside of planning control, including an Article 4 Direction. With the exception of boundary enclosures (which an Article 4 Direction could cover), other permanent development to the front of buildings in the Square would normally require planning permission irrespective of whether an Article 4 Direction is in place.
- 3.12 An Article 4 Direction could have the benefit of preventing insensitive use of permitted development rights to the frontage of properties that could harm the special character and appearance of the Station Square Conservation Area and Members are therefore asked to consider whether to agree an Article 4 Direction for the limited Parts of the GPDO that apply to forecourts and frontages of commercial premises in Station Square as set out above.

4. FINANCIAL IMPLICATIONS

- 4.1 As referred to above, the withdrawal of permitted rights for certain classes of development as a result of issuing an immediate Article 4 Direction may give rise to claims for compensation by landowners in certain circumstances.

5. 4.2 By issuing a 12 month non-immediate Direction under Article 4, it is unlikely that any compensation claims will be payable. LEGAL IMPLICATIONS

- 5.1 Article 4 of the GPDO 1995 (as amended) allows LPAs to withdraw specified permitted development rights for specified sites within their areas.

6. PERSONNEL IMPLICATIONS

- 6.1 There is a possible minor increase in workload arising from Article 4 directions with no increase in fee income.

Non-Applicable Sections:	Policy Implications
Background Documents: (Access via Contact Officer)	Station Square, Petts Wood Conservation Area Supplementary Planning Guidance; Town and Country Planning (General Permitted Development) Order 1995 (as amended)

**Relevant Extracts from the Town and Country Planning (General Permitted Development)
Order 1995 (as amended)**

**Part 2 – Minor Operations
Class A**

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1. Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—
(i) for a school, two metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than one metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, one metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in subparagraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater;
or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

**Part 4 – Temporary Buildings and Uses
Class B**

Permitted development

B. The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B.2, and the provision on the land of any moveable structure for the purposes of the permitted use.

Development not permitted

B.1. Development is not permitted by Class B if—

(a) the land in question is a building or is within the curtilage of a building,

(b) the use of the land is for a caravan site,

(c) the land is, or is within, a site of special scientific interest and the use of the land is for—

(i) a purpose referred to in paragraph B.2(b) or other motor sports;

(ii) clay pigeon shooting; or

(iii) any war game,

Or (d) the use of the land is for the display of an advertisement.

Interpretation of Class B

B.2. The purposes mentioned in Class B above are—

(a) the holding of a market;

(b) motor car and motorcycle racing including trials of speed, and practising for these activities.

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Report No.
DRR/14/003

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: 7th January 2014

Decision Type: Non-urgent Non-Executive Non-Key

Title: LAND AT SNAG LANE, CUDHAM PROPOSED ARTICLE 4 DIRECTION

Contact Officer: Tim Bloomfield, Development Control Manager
Tel: 020 8313 4687 E-mail: tim.bloomfield@bromley.gov.uk

Chief Officer: Chief Planner

Ward: Darwin

1. Reason for report

- 1.1 An area of land to the east of Cudham Lane North and bounded to the east by Snag Lane has recently been purchased by a development company based in Bahrain who have made enquiries regarding the long term possibility of releasing the land for residential development.
- 1.2 The land comprises approx. 25 acres of agricultural land which has in recent years been used as pasture for grazing. The land is within the Green Belt where there is a presumption against inappropriate development unrelated to agriculture or other uses appropriate to the Green Belt. Although the land is considered to have no development potential in the foreseeable future there is concern that it may be fragmented and sold in the form of small 'leisure plots'. In this way its open, rural character could be eroded by uncontrolled development which would normally not require planning permission.
- 1.3 It is therefore considered expedient to make an Article 4 Direction to remove certain classes of 'permitted development' as there is concern that sub-division of the land into small plots could undermine the open character and visual amenities of the area due to indiscriminate development including fencing, structures, temporary uses of land, and stationing of caravans.

2. **RECOMMENDATION(S)**

- 2.1 To the Portfolio Holder that an Article 4 Direction be made on land Between Cudham Lane North and Snag Lane as indicated on the attached plan (Appendix 1) to remove permitted development rights for the following classes of development:

- (i) erection or construction of gates, fences, walls or other means of enclosure (Class A of Part 2);
- (ii) formation, laying out and construction of means of access ... (Class B of Part 2);
- (iii) provision of temporary buildings, etc. (Class A of Part 4);
- (iv) temporary uses of land for any purpose for not more than 28 days per year (Class B of Part 4);
- (v) use of land as a caravan site (Class A of Part 5)

Corporate Policy

1. Existing Policy
 2. BBB Priority: Quality Environment
-

Financial

1. Cost of proposal: Cannot be quantified at this moment in time
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Planning and Renewal
 4. Total current budget for this head: £2.618m
 5. Source of funding: existing revenue budget 2013/14
-

Staff

1. Number of staff (current and additional): 64 ftes
 2. If from existing staff resources, number of staff hours: 5
-

Legal

1. Non-Statutory - Government Guidance
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): approx..500
householders in surrounding area
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? The Report follows concerns raised by the Ward Member
2. Summary of Ward Councillors comments: n/a

3. COMMENTARY

- 3.1 The land at Snag Lane comprises 25 acres of pasture on the east side of Cudham Lane North as indicated on the attached plan (Appendix 1). The land is within the Green Belt and retains its open, rural character. The small residential enclave around Hazelwood lies to the west of Cudham Lane but the character of the surrounding area is otherwise open countryside predominantly in agricultural use.
- 3.2 In early 2013 part of the land was offered for sale and purchased by a development holding company based in Bahrain. It acquired the land as a long term property investment and enquired about the possibility of residential development. Given the location within the Green belt and the general presumption against inappropriate development the company were advised that there was very little prospect of the land being released for development in the medium to long term.
- 3.3 As the land has very limited potential for new development there are local concerns that a development company may decide to sell the land as small 'leisure plots' for a variety of inappropriate uses or forms of development which do not require planning permission. In other parts of the Borough where similar threats have arisen – such as Shire lane and Keston Fruit Farm - Directions have been made under Article 4 of the GPDO to remove permitted development rights for certain classes of development which would otherwise not require permission but could erode the rural character and openness of the countryside. Article 4 Directions have also been in place at Walden's Farm and Layhams Road for many years and have had some positive impact in preventing the erosion of amenity.
- 3.4 The land at Snag Lane forms part of an extensive area of open countryside within the Green Belt, which serves an important Green Belt function in maintaining its open character and preventing the coalescence of adjoining settlements. It has considerable landscape value and is at present largely devoid of urban intrusion, other than several isolated dwellings and farm buildings. The land has in the past been used for grazing and generally retains its open character.
- 3.5 Sub-division into small plots threatens to undermine the character and appearance of the landscape by the erection of fencing, structures, temporary uses of land and other forms of development which would otherwise be permitted development under the General Permitted Development Order, over which the Council would otherwise have no control.
- 3.6 The land is visible from the wide surrounding area including Cudham Lane North and Snag Lane. It makes a significant contribution to the openness of the Green Belt and its appearance and character could be materially harmed by unrestricted development which would normally fall beyond the scope of planning control. Although some uses such as grazing or allotments may not involve development and would be appropriate in the Green Belt, any form of residential development on the land would be contrary to the policies of the adopted UDP. There are no proposals to release this Green Belt land for development.
- 3.7 The specified classes of permitted development for which it would be appropriate to bring within planning control at Snag Lane are considered to be:
- (i) Erection or construction of gates, fences walls or other means of enclosure (Class A of Part 2);
 - (ii) Formation, laying out and construction of a means of access ... (Class B of Part 2);
 - (iii) Provision of temporary buildings, etc. (Class A of Part 4);
 - (iv) Use of land for any purpose for not more than 28 days per year (Class B of Part 4);

(v) Use of land as a caravan site ... (Class A of Part 5).

3.8 Development which would normally be permitted under Part 6 (“agricultural permitted development”) may also potentially threaten the protection of the land. This would include the erection of agricultural buildings, engineering operations, excavations and provision of hard surfaces for the purposes of agriculture. However, as the lawful use of the land remains agriculture which is an appropriate Green Belt use, it is considered that the provisions for prior notification for agricultural buildings and related development provide sufficient control.

4. COMPENSATION

4.1 Local Planning authorities are liable to pay compensation to landowners who would have been able to develop under the PD rights that an Article 4 Direction withdraws, if they:

- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction; or
- Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 Direction being in place.

4.2 Compensation may be claimed for *abortive expenditure* or other loss or damage *directly* attributable to the withdrawal of PD rights.

4.3 ‘Abortive expenditure’ includes works out under the PD rights before they were removed, as well as the preparation of plans for the purposes of any work. The amounts involved under this may be modest but could accumulate over time and become burdensome

4.4 Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.

4.5 In this case, the immediate withdrawal of permitted development rights could attract claims. The risk of numerous claims is not assessed as high, based on the minimal amount of development to date. The Direction with immediate effect is recommended so as to prevent damage to the landscape and Green Belt objectives, in response to a specific incident. It is difficult to be precise about the scale of possible compensation but it is in proportion to the type of Permitted Development rights that are withdrawn. In this instance, these are the rights set out in paragraph 3.10 above, which we can indicate are relatively low in value when compared with other forms of development. This risk should also be considered against the possible damage to the planning objectives for the landscape and Green Belt.

5. POLICY IMPLICATIONS

5.1 The strategic objectives of the UDP, adopted in July 2006, include: “To protect, promote, enhance and actively manage the natural environment, landscape and biodiversity of the Borough. Also: “To protect the Green Belt, ... from inappropriate development ...”. The making of an Article 4(1) direction is consistent with those objectives.

6. FINANCIAL IMPLICATIONS

- 6.1 As referred to above, the withdrawal of permitted development rights for certain classes of development as a result of issuing an immediate Article 4 Direction, may give rise to claims for compensation by land owners in certain circumstances, for example in the event of planning permission being refused for development which would otherwise not require permission. To attract a claim for compensation the application for permission must be made before the end of 12 months beginning with the date on which the Direction takes effect.
- 6.2 At this moment in time, it is not possible to quantify the number or value of claims that may be submitted for compensation, however planning officers consider there to be a low risk of numerous claims being submitted based on the minimal amount of development to date.
- 6.3 It is possible to avoid a claim for compensation by giving the prescribed notice of not less than 12 months of the withdrawal of the permitted development rights.

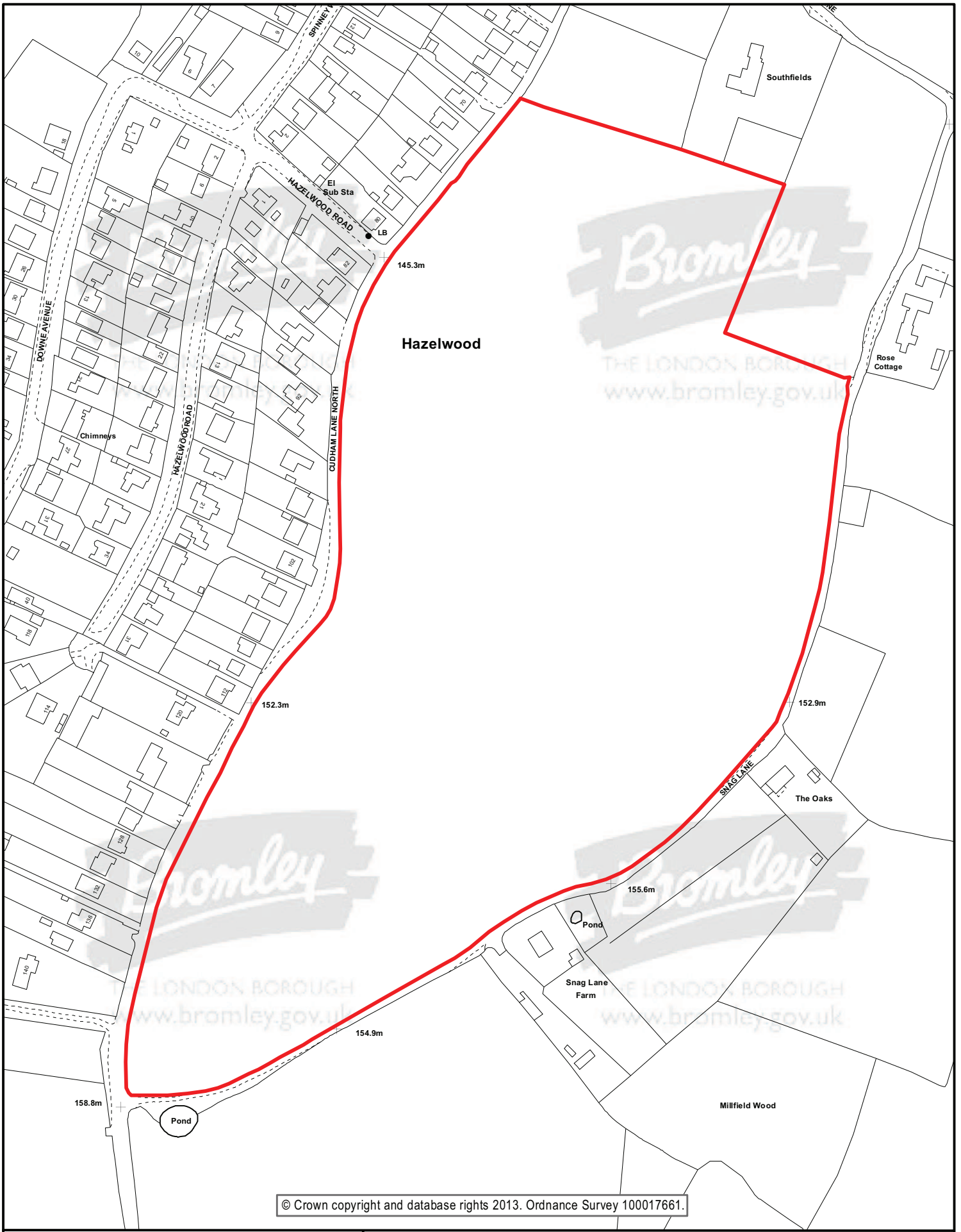
7. LEGAL IMPLICATIONS

- 7.1 There are two categories of Article 4 directions which are relevant in this case.
- 7.2 The first category is for directions which are able to take effect from the time they are made by the local planning authority but which lapse after six months if not confirmed by the Council. This category extends to directions relating only to development permitted by any of Parts 1 to 4 or Part 31 of Schedule 2, if the local planning authority consider the development would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area. Therefore this direction only relates to para 3.7 (i) – (iv).
- 7.3 The second relevant Article 4 category is for directions which can only take effect after notice has been given of the making of the direction and the Council has considered any representations received.. This direction relates to para 3.7 (v)

8. PERSONNEL IMPLICATIONS

- 8.1 Making an Article 4 Direction is likely to give rise to the submission of additional planning applications and appeals, having regard to the potential number of plots and the way in which they are marketed. The workload implications are difficult to predict but it is anticipated that the additional work involved may amount to 2-3 additional applications and 1-2 appeals per year which could be accommodated within existing staffing levels.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	



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TOWN PLANNING

**ARTICLE 4 DIRECTION
CONCERNING
LAND AT SNAG LANE,
CUDHAM.**



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