

Application No: 18/01258/TPO

Ward: Shortlands

Address: 61 Wickham Way Beckenham
BR3 2AH

OS Grid Ref: E: 538286 N: 168028

Applicant: Mrs Walters

Objections: YES

Description of Development:

Fell two Oak trees in rear garden.
SUBJECT TO TPO 2222 (T1 & T2)

Proposal

The application has been made on behalf of the neighbouring property owner at 2 Styles Way. The neighbouring property is comprised of a detached bungalow located on the south side of Styles Way. The dwelling was constructed in 1904 and was reduced from two storeys to one in the mid-1950s. An infill and other additions were constructed in 1980. The property is situated in the local conservation area and is therefore subject to sensitive planning restrictions which include tree protection.

Location

The application site is comprised of a detached dwelling located on the east side of Wickham Way. The site is subject to the conservation area legislation and has two oak trees near the rear boundary subject to Tree Preservation Order (TPO) 2222.

Background

Further to the deferral of the application at the committee of 12th July 2018, a private investigation was instructed by the Council. The impartial assessment and review has been undertaken by Gristwood & Toms. The subsequent Arboricultural Report is appended to the case file and is now available for viewing via the Council website. In summary, the report concludes that the two oak trees subject of this application, on the balance of probabilities, have been the cause of building subsidence at No 2 Styles Way.

Two additional objections have been received and have been printed to file. The objections are summarised below, under the Consultation heading.

The application is now returning to committee to be determined.

Consultations

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- The oak trees do not appear to be near enough to the house in question to cause any problem with subsidence. Also these trees have been there for many,

many years and it would be a great and unnecessary loss to the environment to fell them.

- Tree removal will be detrimental to the green aspect of this area. A mature oak as part of this line was removed in 2015 on the submission of false information by the tree surgeon. This application must be scrutinized in detail not to allow this to occur again. From Styles Way, these trees seem to be at least 30m from the property indicating roots should have a negligible effect. There is an oak at No. 59 Wickham Way which is closer to the property than the above two. Considering the soil to be identical, there seems to be no issues with this tree. Tree Preservation Orders are meant to protect trees and there are not sufficient grounds to remove these two trees.
- The evidence of subsidence at No 2 Styles Way is no doubt correct, but I would like the Borough Council to carry out their own thorough investigation and be absolutely certain that the trees in question are the cause of the subsidence before any permission is given for their felling. As the engineering appraisal report from Cunningham Lindsey comments - "The foundations of the property have been built as a relatively shallow depth onto highly shrinkable clay subsoil." As I understand it, this was, unfortunately, common practice at the time the property was built. In the light of this, would the removal of the oaks solve the subsidence problem; or could it still persist due to the construction of the house with shallow foundations? As you are aware, the Park Langley Residents Association is opposed to any destruction of our ancient and green heritage in the estate without absolute certainty that this is necessary. I would ask the council to carry out its own survey to substantiate the current facts and assess the suggested solutions to the problem.
- The soil is susceptible to movement as a result of changes in volume of the clay with variations in moisture content. Analysis of the site investigation results indicates that the soil appears to have been affected by shrinkage following the dry summer of 2016. Investigating yearly rainfall data at Heathrow (closest station) from the Met Office Historical Data shows 2016 was normal for rainfall and not particularly dry.
- The additional information in the Gristwood Arboricultural Report does not prove beyond reasonable doubt that the subject oak trees are the primary cause of subsidence. Attention is drawn to the root samples taken from Borehole 2 and that they tested negative for starch content. There is no information on removed trees and this leads to question whether the removal of trees has already caused heave and is responsible for the damage. It is possible that the trees removed may have had a more direct impact on the building.
- The Gristwood Report does not comment on alternative causes for the subsidence. Section 4.3 shows a chart indicating case percentages based on distance to property. It would be reasonable to expect some investigation of alternative causes of damage. Section 3.3 refers to foundations constructed of 700mm brick footing and 500mm of concrete. The Cunningham Lindsey Engineering Appraisal Report identified the foundations as being built at a relatively shallow depth. OCA Ltd report found the foundations in Trial Pit 1 to be 900mm and Trial Pit 2 to be 1200mm (with evidence of underpinning of 300mm). OCA Ltd's warranty by LABC states that the required foundation depth should be 2.28m. This indicates the primary cause of subsidence is the inadequate foundation depth. A request is made for the Council to exercise its duty of care

by challenging the claims in this application and retain the trees subject of the TPO.

- The main focus of the reports associated with this application seems to build a case against the two oak trees without consideration of other factors. The reports are clearly not impartial. The closest impartial comments refer to the inadequacy of foundations. Leaking drains are highlighted as a reason for subsidence to take place. The position of drains could consider this a major influencing factor. The design of drainage pipes at the time of the dwelling being constructed is commented on. The design would be considered susceptible to failure. No details are presented to confirm the extent of any damage.
- The question is raised whether other properties in the area have suffered from settlement problems.
- It would be of material importance to consider the alterations carried out to the property and the adequacy of underpinning.

Considerations

Officers made a site visit to both the application site and the neighbouring property subject to the subsidence claim on 13th April 2018. The oak trees (T1/T2) subject to the application were surveyed. T1 is 15m from the neighbouring dwelling at 2 Styles Way and T2 is situated at a distance of 18.7m. T1 is 19m tall and T2 is 18m tall. Both trees are within the zone of influence of the neighbouring dwelling.

Both trees exhibit good canopy form and normal vitality. A wound was noted along the main stem of T1 at 1m from the ground, measuring approximately 1m across. The occlusion of the wound indicates a healthy response to the cavity. A bracket fungus identified as *Ganoderma spp* was noted at the base of T2 on the western aspect. The nature of the fungus causes selective delignification of the internal structure. The process can take a number of years to reach a point where the structural integrity is too weak for safe retention.

The proposed felling of the subject trees has been recommended by the insurance company and consulting arboriculturist acting on behalf of the owner of 2 Styles Way. The following supporting documents have been appended to the application:

- Engineering Appraisal Report
- Arboricultural Assessment Report
- Level Monitoring
- Root Identification
- Site Investigation Report, including soil analysis and foundation detail

Two trial pits were excavated adjacent to the rear projection of the dwelling. Trial Pit 1 revealed foundations to a depth of 1.2m with possible signs of past underpinning. Trial Pit 2 revealed foundations to a depth of 0.9m. Roots discovered within the pit have been identified as oak.

The estimated costs of repair range from £45,000 to £200,000 depending on whether the trees remain. A heave assessment indicates no risk of further subsidence should the trees be removed.

Conclusion

The external damage to 2 Styles Way was not as visible as the internal damage. Officers witnessed internal cracking and displacement in all but one of the downstairs rooms and all but one of the upstairs rooms. The subsidence is clearly impacting internal door and window frames and the stair case in the centre of the dwelling.

The foundations are considerably shallower than what is required to withstand the influence of oak trees within the zone of influence. The required foundation depth has been calculated to be a minimum of 2m. Given the age of the property, the trees cannot be confirmed older than the property. The foundations may therefore not have taken surrounding vegetation into account as a design principle.

A monetary value has been applied to the trees adopting the CAVAT (Capital Asset Value for Amenity Trees) system. CAVAT provides a method for managing trees as public assets rather than liabilities. It is designed not only to be a strategic tool and aid to decision-making in relation to the tree stock as a whole, but also to be applicable to individual cases, where the value of a single tree needs to be expressed in monetary terms. CAVAT is recognised in the English court system, with various case examples available.

Trees T1 and T2 have been calculated a combined value of £58, 317.

In response to the objections received, the trees are both within the zone of influence. Damage is limited to the rear projection of the dwelling, extending inwards to the centre of the dwelling. Whilst the TPO is a constraint to the repairs, a balance must be drawn between preserving the natural environment and the land owners right to peaceful enjoyment of their property.

The soil analysis has been carried out by a reputable company and the results of which are sufficient to support the application. The Council have assessed the results of the investigation and visually inspected the areas of reference and surveyed both addresses.

Due to the value of the trees being less than the estimated cost of repairs, it would be unreasonable for the Council to further defend the retention of both subject trees. A replacement tree will be conditioned and will take into account the soil type and water demand.

The conclusions of the Arboricultural Report dated 22nd November 2018 echo the officer's initial recommendation and support permitting the proposed felling as a reasonable solution.

The additional points made in the objections received refer to other possible causes of subsidence taking place. The information supplied in support of the application is sufficient to conclude cyclical movement caused by seasonal soil shrinkage. This implicates the trees in the subsidence claim and the above conclusion would justify planning permission on balance.

Financial Implications

Attention is drawn to section 202E of the Town and Country Planning Act 1990. This allows the applicant to make a compensation claim in respect of a refused decision.

Members are informed that no budget has been allocated to the defence of a compensation claim, should the application be refused. A claim may include and is not restricted to any further damage from the date of the decision, costs incurred in respect further repairs, costs incurred in further monitoring and legal costs. The applicant's loss adjuster has indicated repair costs alone up to £200,000. This is expected to increase, depending on the scale of repairs required as the claim progresses.

Members are also informed of the officer costs involved in defending against a compensation claim.

RECOMMENDATION:

CONSENT:

Fell two Oak trees in rear garden.

CONDITIONS

1. B09 Tree consent – commencement

The tree works hereby granted consent shall be carried out within 2 years of the date of this decision.

REASON: In order to comply with Policy NE8 of the Unitary Development Plan and in the interest of good arboricultural practice and the visual amenities of the area.

2. B06 Replacement Planting

Two replacement Tulip Trees (*Liriodendron tulipifera*) of standard size, will be planted within 2m of oak tree (T1 and T2 respectively), in the planting season following the felling of the tree. If the replacement tree dies, is removed or becomes seriously damaged or diseased within 5 years of the date of this consent shall be replaced in the next planting season with another of similar size and species to that originally planted. The planting season is typically October to March.

REASON: In order to comply with Policy NE8 of the Unitary Development Plan and in the interest of the visual amenities of the area

3. B07 Tree surgery

The work to the tree(s) hereby granted consent shall be carried out in accordance with British Standard 3998:2010 (Recommendations for Tree Work)

REASON: In order to comply with Policy NE8 of the Unitary Development Plan and in the interest of good arboricultural practice and the visual amenities of the area.

INFORMATIVES

1. You are advised that formal consent is not required for the removal of deadwood, dangerous branches and Ivy from protected trees.