

Application No : 18/04591/TPO

Ward:
Copers Cope

Address : 19 West Oak
Beckenham BR3 5EZ

OS Grid Ref: E: 538592 N: 169747

Applicant : Subsidence Management
Services

Objections: YES

Description of Development:

**Oak (T3 on Arb Report) - Fell.
SUBJECT TO TPO Be 1 1961 (A1)**

Proposal

The application has been made on behalf of the property owner by the agents of the insurance company. The oak tree subject to the above Tree Preservation Order (TPO) has been implicated in the subsidence claim. The felling of the oak tree is proposed to achieve building stabilisation.

Background

This application is returning to committee further to being deferred at the Plans Sub-Committee 2, held on Thursday 31st January 2019. Alternative repair solutions were questioned with a focus on resin injection.

The application has been supported with an additional Engineers Addendum Report dated 21st March 2019. The tree remains an outlined causal factor in the subsidence claim.

Location

The application site is comprised of a semi-detached dwelling located on the south side of West Oak. The ground has a slight downward gradient falling from the frontage towards the railway embankment to the south.

Consultations

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

- "I strongly object to the proposed application to remove a tree near to house number 19. Firstly, the claimant doesn't have proof positive that the tree is the cause of subsidence.
- Secondly, none of the residents want a healthy tree to be removed (including the owner of house number 19).

- Thirdly, removing the tree will cause heave, which will cause damage to surrounding houses, and result in further claims. The insurance company makes specific mention of the clay soil on the estate, surely they realise that removing a healthy tree will cause its roots to suck moisture from the ground, which will cause heave?
- Fourthly, the insurers previously asked for two other healthy trees to be removed and this made no difference to the house, if anything it's made matters worse.
- Fifthly, the aesthetic value of the tree can't be underestimated
- Sixthly, the fact that the estate is situated on hill very close to a railway embankment could just as easily explain the subsidence.”

Considerations

Application 05/01171/TPO relates to the felling of 6 oak trees to the rear of both Nos. 19 and 20 West Oak. Consent was granted for the felling of the trees, primarily on the basis of poor tree condition.

The neighbouring property has been underpinned in relation to the following Building Control notice references:

87/91069/DP
 98/22518/BN
 06/01256/OTHBN6
 09/15942/OTHBN6
 10/16548/UPNBN

The officer made a site visit to the application site on 12th December 2018. The oak tree (T3) subject of the application was surveyed. T3 is 7m from the dwelling. The tree is within the zone of influence.

The tree has developed with a one sided canopy form to the south and overhangs the footpath. No defects were observed and the tree displays normal vitality.

The following supporting documents have been appended to the application:

- Geotechnical Report
- Arboricultural Report
- Level Monitoring
- Root Identification
- Soil analysis
- Site Visit Report

A borehole was excavated adjacent to the front projection of the dwelling. Borehole 1 revealed foundations to a depth of 0.6m. Roots discovered within the borehole have been identified as oak/sweet chestnut. Both are similar upon examination. The starch content noted would indicate roots are alive.

Level monitoring results indicate movement associated with seasonal soil moisture loss.

The estimated costs of repair range from £50,000 to £69, 604 depending on whether the tree remains. The addendum report indicates costs in the region of £40, 000.

A heave assessment has not been included in this investigation but has been ruled out as an issue.

Conclusion

The officer witnessed widespread internal cracking and displacement in all the rooms. The subsidence is clearly impacting internal doors 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 2.5m with consideration to a full structural foundation design. The estimated age of the property has not been disclosed, however, it can be presumed that the oak trees in the centre of the development were an existing feature. Underpinning to the same extent of the neighbouring property is likely to be necessary to eliminate the risk of further movement.

A monetary value has been applied to the tree 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.

The value of the subject oak tree is £18, 970.

In response to the objections received; the tree is within the zone of influence. Damage is widespread, 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.

Root identification proves the oak tree is implicated in the subsidence case. The balance of probability surpasses 50%. Sufficient evidence has been supplied to demonstrate that the subject tree is contributing to subsidence.

The risk of heave to third party properties is a civil matter. The Engineer's Addendum Report has indicated that heave risk is not present.

The appraisal of resin injection has been requested by members and is yet to be addressed by the applicant.

Due to the value of the tree being less than the estimated cost of repairs, it would be unreasonable for the Council to defend the retention of the tree. A replacement tree will be conditioned and will take into future influence on the soil and distance to property. In time, this would contribute positively to the local amenities.

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.

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

RECOMMENDATION: CONSENT

Subject to the following conditions:

1. TL14 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. AG04 Replacement Planting

A replacement Hawthorn tree (*Crataegus Spp.*) of standard size, will be planted within 2m of oak tree (T3), 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, it 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

INFORMATIVES

1. You are advised that formal consent is not required for the removal of deadwood, dangerous branches and Ivy from protected trees.
2. The agreement of the tree owner is necessary in addition to any consent granted by the Council.