

Committee Date	4 th February 2021		
Address	Balgonie Cottage Hazel Grove Orpington BR6 8LU		
Application Number	20/02749/TPO	Officer Chris Ryder	
Ward	Farnborough and Crofton		
Proposal	T4 Oak - Reduce in height by approx. 6m and lateral spread by approx. 3m. T5 Ivy-covered Oak in rear left corner - Section fell to as close to ground level as practicable and treat stump with eco plugs to prevent regrowth.		
Applicant Mr Kim Reynolds Balgonie Cottage Hazel Grove Orpington BR6 8LU	Agent Richard Arnold Tree Craft Ltd. 16 Hillside Farm Rushmore Hill Knockholt TN14 7NL		
Reason for referral to committee	Subsidence related financial risk	Councillor call in	
RECOMMENDATION	Refusal		

KEY DESIGNATIONS

Tree Preservation Order (TPO) 2661
Tree Preservation Order (TPO) 1698
Farnborough Park Conservation Area

Representation summary	
Total number of responses	0
Number in support	0
Number of objections	0

SUMMARY OF KEY REASONS FOR RECOMMENDATION

- Members must decide whether to consent or refuse the proposed tree removal, based on the evidence submitted and the officer's assessment.

PROPOSAL

1. This application has been made in respect of oak trees (T1/T2) in connection with a subsidence investigation at 39 Burlington Close. The trees are positioned in the rear garden of Balgonie Cottage, Hazel Grove. The works are proposed to achieve building stabilisation in accordance with the professional recommendations.



Figure 1 - Oak (T5)

LOCATION

2. The application site is comprised of a detached dwelling located on the south side of the road. Mature trees have been made the subject of TPOs following an earlier threat. The trees contribute to the greater landscape of Farnborough Park. The conservation area status applies broad tree protection to the Farnborough Park Estate. The site is bordered by housing along Nutfield Way and Burlington Close.



Figure 2 - Site Location

3 RELEVANT PLANNING HISTORY

- 3.1 Application 19/00335/TREE consisted of a conservation area notice of the intention to fell 3 oak trees in the rear garden. TPO 2661 was subsequently served to prevent the works from being carried out. Further to receiving objections to the TPO, a committee held on 4th July 2019 confirmed that the TPO remain.

4 CONSULTATION SUMMARY

- 4.1 A site notice was sent to the applicant to be displayed in the public domain and no representations were received.

5 POLICIES AND GUIDANCE

5.1 National Policy Framework 2019

15. Conserving and enhancing the natural environment

5.2 The London Plan

7.21 Trees and Woodlands

5.3 Draft London Plan

G1 Green Infrastructure and Natural Environment
G7 Trees and Woodlands

5.4 Bromley Local Plan 2019

42 Conservation Areas

73 Development and Trees

74 Conservation and Management of Trees and Woodlands

5.5 The London Borough of Bromley Tree Management Strategy 2016-2020

Section 18

5.6 National Planning Guidance - Tree Preservation Orders and trees in conservation areas (Ministry of Housing, Communities and Local Government)

Paragraph 020 – 057

6 CONSIDERATIONS

- 6.1 This application has been made by the tree owner in response to the subsidence case associated with 39 Burlington Close. The proposed works have been recommended by the insurance company to enable the local soil conditions to rehydrate. Other reasoning supplied indicates that the works are required to address light loss and encroachment into neighbouring properties.
- 6.2 The damage observed is occurring in the walls to the dining room and kitchen at the rear of the house, and to the first floor bedroom above the dining room. Cracking and significant distortions have also occurred in the rear conservatory. The Subsidence Engineer's Report supplied in support of the application may be referred to for information on specific areas of damage. The degree of damage is categorised between 2 and 4 (1-25mm) as listed in the Building Research Establishment; Digest 251.
- 6.3 Officers made a site visit in connection with application 19/00335/TREE. This opportunity was used to assess the extent of the damage referred to prior to the submission of the evidence bundles. The subject trees are confirmed to be within the zone of influence. The nearest tree is approximately 8m from the insured dwelling. Tree survey data has been submitted as part of the application supporting documents and reference tree dimensions. The tree appears to be of normal vitality with no recent management evident. The trees are confirmed to be older than the impacted dwelling.
- 6.4 The following supporting documents have been appended to the application:
- Arboricultural Report (16.04.20)
 - Subsidence Engineer's Report (14.12.18)
 - Geotechnical Report (February 2019)
 - Analysis of Site Investigation Data (16.04.19)
 - Crack Monitoring (04.12.18 – 15.07.20)
- 6.5 The subject trees are confirmed to be within the zone of influence. The zone of influence is calculated to be 26m. Tree survey data has been submitted as part of the application supporting documents and reference tree dimensions. No defects have been noted by the tree surveyor.
- 6.6 Two trail pits (TP1/TP2) were excavated as part of the investigation. This revealed foundations to depths between 650mm and 1000mm. Root identification in the borehole reveals oak roots are beneath the foundations of the dwelling.

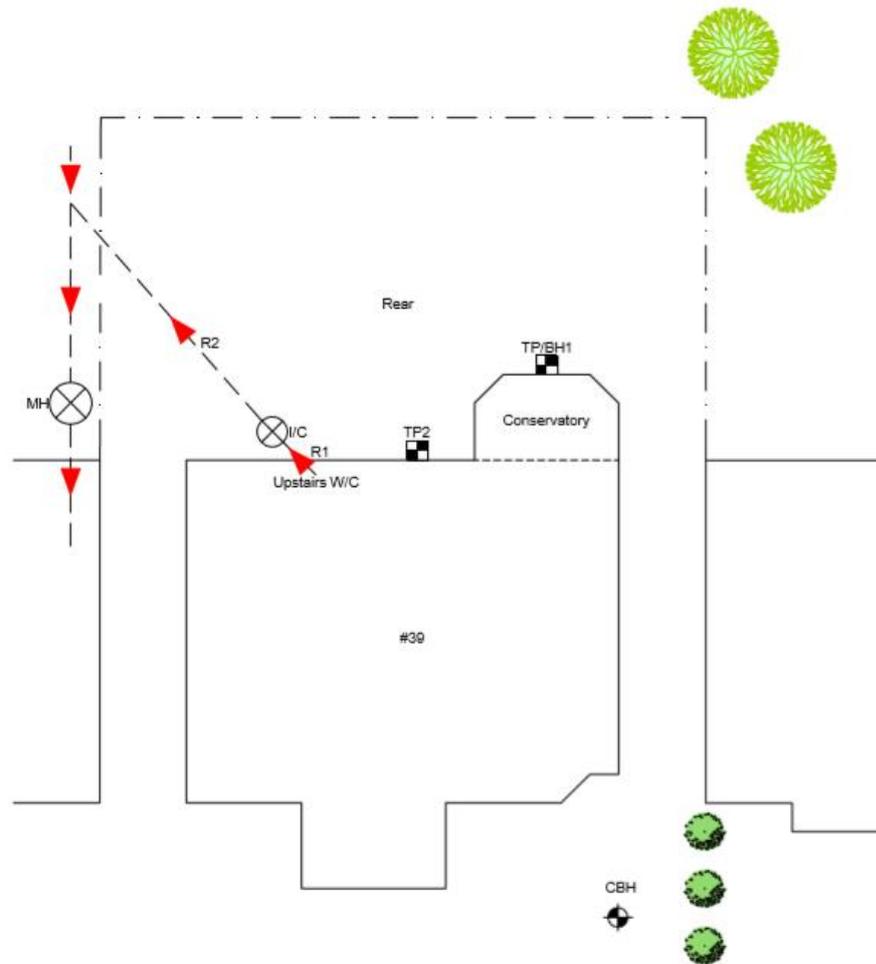


Figure 3 - Site Plan

- 6.7 Level monitoring is absent from the investigation. Where absent, a statement is required to explain why crack monitoring is being relied upon to demonstrate movement.
- 6.8 Soil analysis has proven that the plasticity index is high, indicating an increased potential for volume change. The highest reading recorded indicates a plasticity index of 57%, however, this result was taken at 3m below ground level. Crack monitoring data indicates seasonal movement.
- 6.9 The agent's Engineer has recommended the trees be felled to remove the influence on the local soil conditions. The Arboricultural Consultant has agreed that tree felling is required.
- 6.10 A drainage survey concludes that no defects exist.
- 6.11 A heave calculation has been carried out and is set out within the Geotechnical Survey Report
- 6.12 The cost of repairs are yet to be disclosed.

7 CONCLUSION

- 7.1 The foundations are not considered deep enough to withstand the influence of the subject tree within the zone of influence. The required foundation depth has been calculated to be in excess of 2.5m and requiring a full structural design. The trees would have been present at the time of construction in 1977 as significant features and should have been a consideration for foundation depth.
- 7.2 Level monitoring data is a required assessment document to demonstrate the probability of the implicated trees being a causal factor. Level monitoring allows a demonstration of building movement over a sufficient period (circa 12 months). This is absent from the required document list, as noted in the application guidance note.
- 7.3 Drainage defects have been eliminated from the investigation as a causal factor.
- 7.4 Heave has been addressed as a tolerable consequence of tree removal.
- 7.5 A monetary value has been applied to the oak 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, with various case examples available.
- 7.6 The total value for the subject Oak trees is £98,588. This is generated based on the data submitted within the Arboricultural Report and observations from the public domain.
- 7.7 Since key information is yet to be received, Members are recommended to refuse the application for the reasons set out. Alternative repairs have not been explored or demonstrated. Potential faults in the building's design are not yet proven to be a potential cause.

8 Financial Implications

- 8.1 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.
- 8.2 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.
- 8.3 The Council must be prepared to defend against a compensation claim should the application be refused. Based on the latest case example where a subsidence case was refused and the Council had to defend a compensation claim, the costs of repair in view of tree retention and legal costs were considerations. Where costs of repair were estimated at £76000, the total costs of defending the case were circa £90000. Members should therefore anticipate at least a 25% increase in costs. This may relate to and is not limited to legal, investigation, expert costs and actual repairs.

8.4 The Council are currently on notice for 5 subsidence cases where decision have been refused. No further action has been taken at this stage, but Members must be aware of the potential implications involved in a legal challenge.

RECOMMENDATION: REFUSAL

T4 Oak - Reduce in height by approx. 6m and lateral spread by approx. 3m.
T5 Ivy-covered Oak in rear left corner - Section fell to as close to ground level as practicable and treat stump with eco plugs to prevent regrowth.

Reason:

The application has failed to acknowledge the adequacy of the dwelling's foundations and the construction design. Level monitoring has not been supplied. Costs of repair have not been included in the application. The proposals would negate the objectives of the TPO and therefore conflict with Policies 73, 74 of The Bromley Local Plan (adopted January 2019), Policy 7.21 of The London Plan (adopted March 2016) and The London Borough of Bromley Tree Management Strategy (2016-2020).

INFORMATIVE

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