

Committee Date	4 th March 2021		
Address	48 Prescott Avenue Petts Wood Orpington BR5 1AF		
Application Number	20/04103/TPO	Officer Chris Ryder	
Ward	Petts Wood and Knoll		
Proposal	T1 English Oak tree - 70% by vol canopy prune and consent to re prune to 2019 dimensions in 2021 and 2023. SUBJECT TO TPO 382 (12.12.1986)		
Applicant Mr Craig Thomas PRI Insurance 2 The Courtyards Phoenix Square Severalls Park Colchester CO4 9PE	Agent		
Reason for referral to committee	Subsidence related financial risk	Councillor call in	
RECOMMENDATION	Refusal		

KEY DESIGNATIONS

Tree Preservation Order (TPO) 382.

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 tree (T1) in connection with a subsidence investigation. The tree is positioned in the rear garden with partial visibility from the public domain. 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 split into two flats, located on the west side of the road. The above TPO covers an area of trees to the rear of properties 46-64 Prescott Avenue. Trees present in 1986 are protected.



Figure 2 - Site Location

3 RELEVANT PLANNING HISTORY

- 3.1 Application 15/04762/TPO permitted a reduction of the tree by 3 metres to rebalance and crown lift to give a clearance of no more than 5 metres above ground level.
- 3.2 Application 18/03041/TPO refused permission for a crown reduction by 3m. This was refused due to insufficient justification and being too soon after the past reduction.
- 3.3 The rear extension is not showing on the property history. This construction is therefore assumed to have taken place under permitted development rights. Aerial photos indicate that the extension was constructed between 2006 and 2010.

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 on behalf of the insured party at 48 Prescott Avenue. The proposed works have been recommended by the insurance company to enable the local soil conditions to rehydrate.
- 6.2 The damage observed is occurring in single storey extension to the rear of the house. The Engineer's Appraisal Report supplied in support of the application may be referred to for information on specific areas of damage. The degree of damage is categorised 2 (1-5mm) as listed in the Building Research Establishment; Digest 251.
- 6.3 Officers made a site visit in connection with application 18/03041/TPO. The information supplied in this application is being relied upon for any changes since these observations. The subject tree is confirmed to be within the zone of influence. The tree is approximately 11m 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:
- Engineer's Appraisal Report (04.06.20)
 - Arboricultural Assessment Report (11.06.19)
 - Level Monitoring (02.09.20)
 - Site Record Details (01.11.18)
 - Site Investigation Report (11.11.19)
- 6.5 The subject tree is confirmed to be within the zone of influence. The zone of influence is calculated to be 24m. 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 One trail pit (TP1) was excavated as part of the investigation. This revealed foundations to a depth of 800mm. Root identification in the borehole reveals oak roots are beneath the foundations of the dwelling.

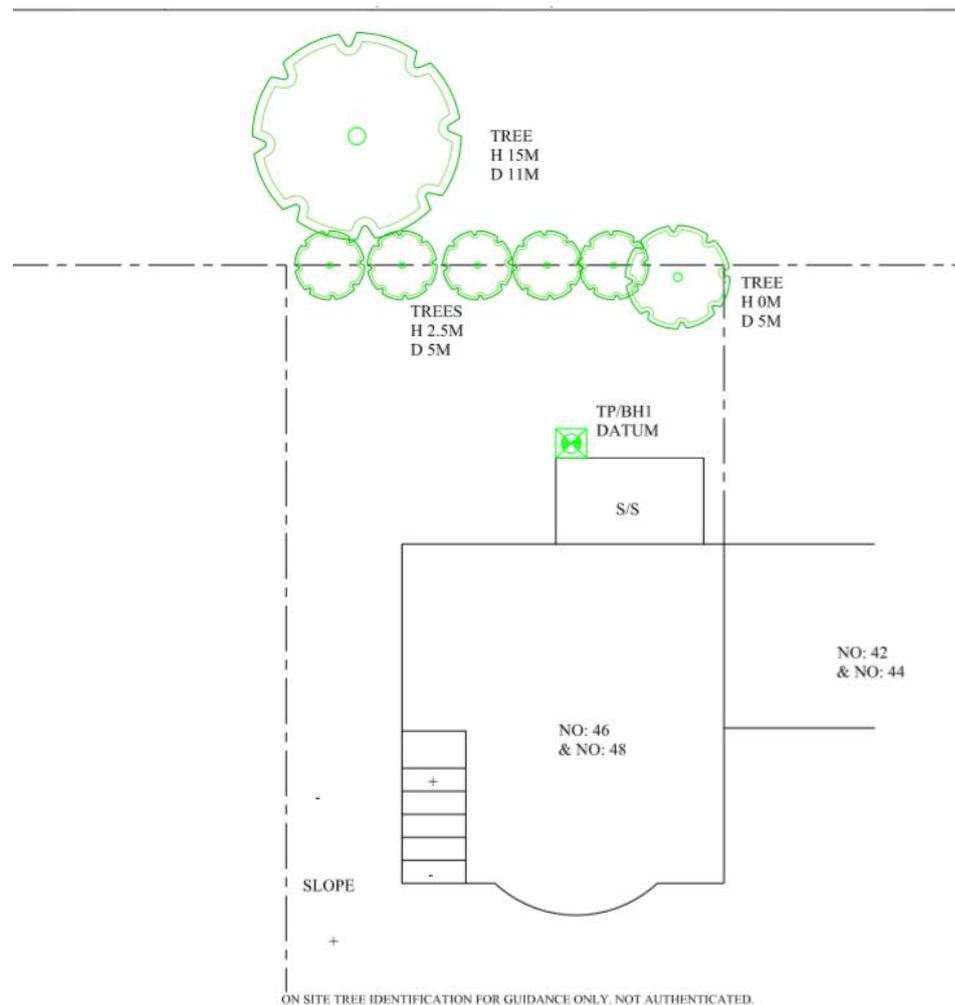


Figure 3 - Site Plan

- 6.7 Level monitoring show that seasonal movement is occurring and would suggest the balance of probability proves that root activity has caused moisture loss, leading to soil shrinkage.
- 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 42%.
- 6.9 The agent's Engineer has concluded that the subject tree is influencing local soil conditions. The Arboricultural Consultant has agreed that tree felling is required.
- 6.10 Drain failure has not been excluded as a causal factor.
- 6.11 A heave calculation has not been included in the supporting evidence.
- 6.12 The cost of repairs are estimated by the agent to be between £4000 and £30,000, depending on whether the tree is retained or removed.

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 2.2m. The trees would have been present at the time of construction in 1930 as significant features and should have been a consideration for foundation depth.
- 7.2 Level monitoring data has proven that seasonal movement is occurring and would indicate the roots found in TP1 are influencing soil moisture content. The claimant need only prove that the balance of probability is met.
- 7.3 Drainage defects have not been eliminated from the investigation as a causal factor.
- 7.4 Heave has not been addressed as a risk.
- 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. This should not be relied upon for a cost recovery method in this case.
- 7.6 The CAVAT valuation system is available for use in development control/management functions, including for trees subject to TPOs or in conservation areas. Ultimately, the key task of the system is to show the cost of the subject tree removal in the face of a particular scenario and demonstrate what level of mitigation would be required to satisfactorily replace an asset. In some circumstances, a mature tree could not be replaced by replanting initiatives.
- 7.7 The total value for the subject Oak trees is £63,452. This is generated based on the data submitted within the Arboricultural Report and observations from the public domain.
- 7.8 The construction of the extension appears to have been built in accordance with permitted development rights. The onus would therefore be on the owner to ensure that the structural design could tolerate the influence of mature oak trees. The construction should have adopted modern guidance and ensured foundation depths were sufficient depths, not to be at risk of subsidence. Alternative repairs must be considered to address this fault.
- 7.9 The estimated costs of repair are considered excessive to what underpinning of a small extension would cost. A breakdown of the estimate would allow the Council to fully consider the costs implications. The tree is considered a significant feature worthy of defence, as demonstrated in the above CAVAT assessment.
- 7.10 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

T1 English Oak tree - 70% by vol canopy prune and consent to re prune to 2019 dimensions in 2021 and 2023.
SUBJECT TO TPO 382 (12.12.1986)

Reason:

The application has failed to acknowledge the adequacy of the extension's foundations and the construction design. A reduction by 70% would be detrimental on the tree's natural function and form. 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).

INFORMATIVES

1. You are advised that formal consent is not required for the removal of deadwood, dangerous branches and ivy from protected trees.
2. An appraisal of a root barrier should be included in any further submission.
3. The cost of underpinning the extension must be included in any further submission.