

Committee Date	27 th May 2021	
Address	45 Broadoaks Way Bromley BR2 0UA	
Application Number	21/00125/TPO	Officer Chris Ryder
Ward	Shortlands	
Proposal	T1 Oak - Remove	
Applicant Gowher Shah Crawford and Company Cartwright House Nottingham	Agent Vicki Harrision MWA Arboriculture Bloxham Mill Business Centre Barford Road Bloxham Banbury OX15 4FF	
Reason for referral to committee	Subsidence related financial risk	Councillor call in
RECOMMENDATION	Refusal	

KEY DESIGNATIONS

The Broadoaks Estate Conservation Area
Tree Preservation Order (TPO) 2319

Representation summary	A number of objections were received from neighbours.	
Total number of responses	12	
Number in support	0	
Number of objections	12	

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 at 8 Penshurst Green, Bromley, BR2 9DG. The tree is positioned in the rear garden of 45 Broadoaks Way. The felling of the tree is proposed to achieve building stabilisation in accordance with the professional recommendations.



Figure 1 - Oak (T1)

LOCATION

2. The application site is comprised of a detached dwelling located on the east side of the road. TPO 2319 was made following an earlier notice of the intention to fell the tree. The property dates back to 1968.

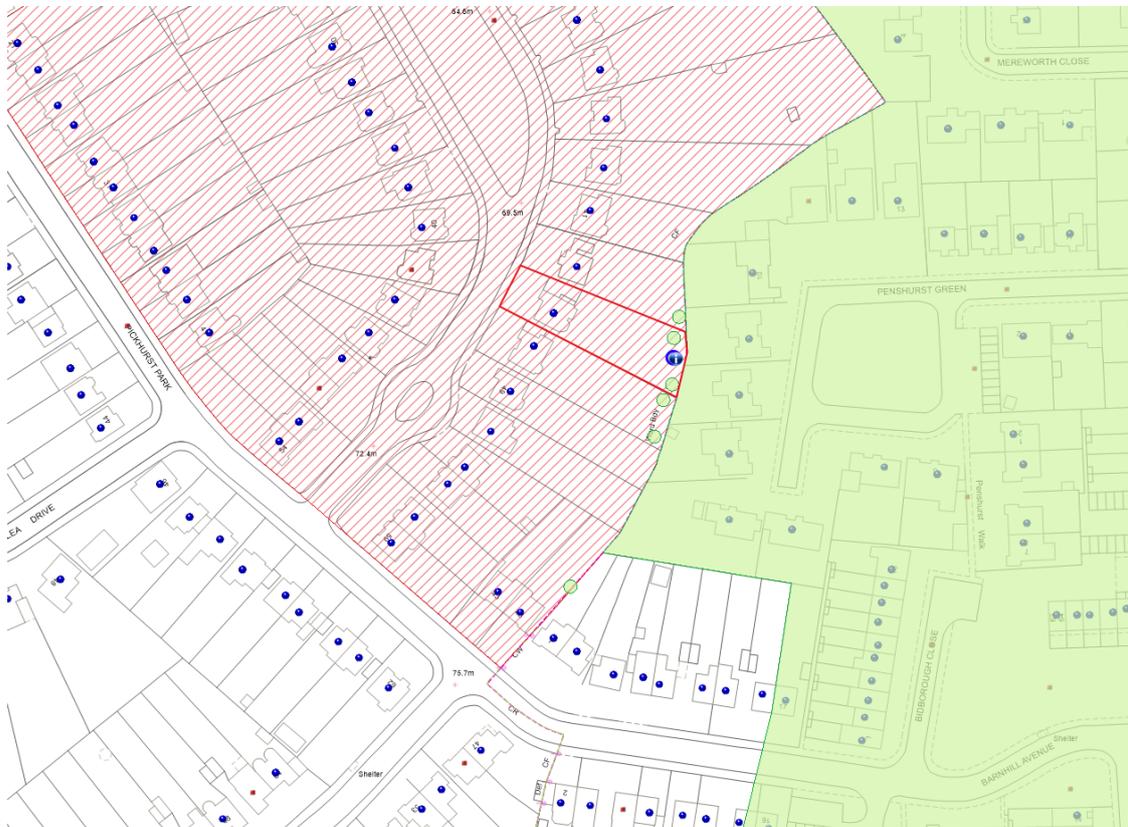


Figure 2 - Site Location

3 RELEVANT PLANNING HISTORY

- 3.1 Extensions at 8 Penshurst Green appear to have been constructed under permitted development rights.
- 3.2 Application 10/03270/TPO implicated the same tree in an earlier subsidence case. This application was refused. This was later appealed and dismissed under appeal reference 11/00045/TPO. Consent in part was granted under reference 10/03270/TPSPLD for crown thinning by up to 25%.
- 3.3 Application 18/02488/TPO permitted general maintenance pruning to the three oak trees subject to the TPO.
- 3.4 Underpinning of the conservatory associated with 8 Penshurst Green was carried out under Building Control reference 12/00597/UPNBN.

4 CONSULTATION SUMMARY

- 4.1 Two site notices were displayed and 12 representations were received, which are summarised as follows:
 - a) "When the original application to remove the tree was submitted in 2007 one of the options that was recommended was the insertion of a root barrier which would have eliminated the problem. The insurers at the time opted for the

cheaper option and underpinned the conservatory which was experiencing the subsidence. It is unreasonable to remove an oak tree that is a feature of the area because of a financial decision made by the insurers at the time.”

- b) “The poor build quality of the extension and conservatory appear to one of the primary reasons for the subsidence.”
- c) “The tree is in Broadoaks Way, a conservation area named after the historic oak trees that were once a feature of the area. In the immediate vicinity of this property two other significant oak trees have been removed in recent years and promised replacements never planted. The loss of yet another historic tree is nothing short of environmental vandalism.”
- d) “The tree is one of the last remaining oaks at this end of Broadoaks Way and is a home for much wildlife. The destruction of two other oaks in the the gardens of adjacent properties have reduced the natural habitat for this wildlife which (based on previous tree removal) will not be replaced. As such it is felt that all other options to remedy these issues should be explored before yet another tree is destroyed”.
- e) Trees were there before the dwellings were built on Penshurst Green.
- f) “We have never had any objection to any necessary pruning that is required strictly and exclusively in relation to trimming back of dead wood for safety considerations and to ensure that the trees remain in good health. Beyond this previously granted planning permission allowing for the felling of trees behind 7 and 8 Penshurst Green has already seemingly created a dangerous precedent and we are now concerned that this latest application is just another example of planning by stealth. A way to seemingly seek to eliminate each tree one by one. The tree in question has a preservation order on it and because of this fact we are aware that the planning application is required to take account of the legislative responsibilities that such protection dictates. We were surprised given the seriousness of the protection orders the previous applications were approved and are now very concerned about this new application.”
- g) “The balance of probability would have been that if the proximate cause of the damage was the tree, then just underpinning the area of subsidence would only be a short-term solution. Without the root barrier being put in place it must have been fairly obvious that there would be a high chance of a reoccurrence.”
- h) Loss of a high amenity feature.
- i) Negative ecological impact.
- j) “Any Houses or garden outbuildings including greenhouses have been constructed at a time when the Oak Trees were already well established. If there are issues now, then is this not due to inferior building extension construction that did not take account of the nature of the soil and impact of existing mature trees?”
- k) “Removal of the tree would be an experimental gamble. In fact, there is a very real risk that felling the tree could cause 'heave' to occur when the clay takes up moisture that the tree would otherwise have taken, which can result in upward movement of foundations, potentially causing more damage than the original subsidence.”

- l) Alternative solutions have not been sufficiently investigated.
- m) There is no change in the arguments made since the previous appeal.
- n) Site Notices were displayed late. The consultation period should therefore be extended.
- o) Historic importance of the oak trees in the locality.

4.2 Building Control are not insured to provide consultation feedback on tree related subsidence cases. Should professional advice be required, an external Structural Engineer will need to be employed.

5 POLICIES AND GUIDANCE

5.1 National Policy Framework 2019

15. Conserving and enhancing the natural environment

5.2 The London Plan

G1 Green Infrastructure and Natural Environment
G7 Trees and Woodlands

5.3 Bromley Local Plan 2019

42 Conservation Areas
73 Development and Trees
74 Conservation and Management of Trees and Woodlands

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

Section 18

5.5 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 Damage is occurring to the rear extension of the dwelling. The Technical Report supplied in support of the application may be referred to for information on specific areas of damage. The degree of damage is category 3 (5-15mm) as listed in the Building Research Establishment; Digest 251.
- 6.2 Officers made a site visit on 12th April 2021 to assess the extent of the external damage referred to in the Technical Report. The subject tree is confirmed to be within the zone of influence. The tree has been measured at 13.8m from the rear projection of the policy holder's 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 tree is confirmed older than the surrounding dwellings.

6.3 The following supporting documents have been appended to the application:

- Addendum Appraisal Report (04.12.20)
- Statement of reasons for works
- Site investigation report (14.05.20)
- Addendum Technical Report (11.01.21)
- Level Monitoring (26.04.19 – 04.02.21)
- Technical Report (16.11.18)

6.4 The subject tree is confirmed to be within the zone of influence. The zone of influence is calculated to be 22.5m. 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.

6.5 Two boreholes (TP1/TP2) were excavated as part of the investigation. This revealed foundations to depths of 850mm in TP1 adjacent to the single storey rear extension and 400mm in TP2 adjacent to the conservatory. Past underpinning appears to have been installed under the conservatory. Root identification in the borehole reveals oak roots are beneath the foundations of the dwelling. Underpinning does not appear to have been extended beneath the rear extension.

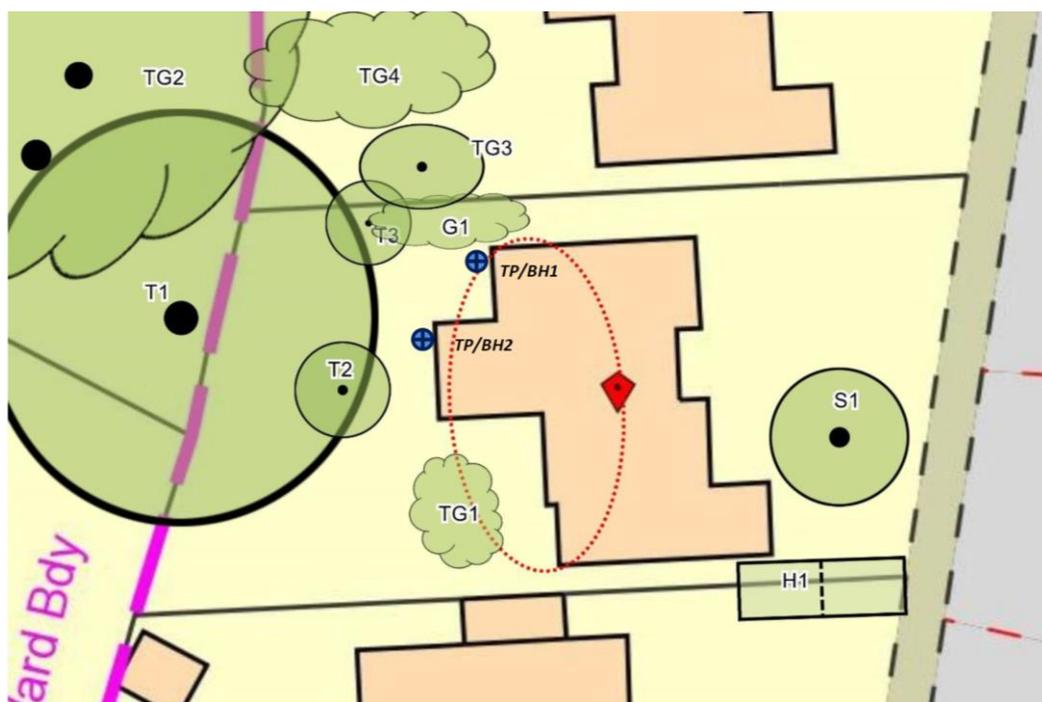


Figure 3 - Site Plan

6.6 Level monitoring results indicate movement associated with seasonal soil moisture loss. Movement is most severe at monitoring stations 6-8 positioned along the rear elevation of the conservatory.

6.7 Soil analysis has proven that the plasticity index is borderline medium - high, indicating an increased potential for volume change. The highest reading recorded indicates a plasticity index of 41%. Level monitoring results indicate movement associated with seasonal soil moisture loss.

- 6.8 The 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.
- 6.9 The Engineer has pointed out that the defects noted in the Drainage Report would not have been a causal factor of the movement noted within the soil analysis.
- 6.10 The estimated cost of underpinning and repair is from £75,000 with tree retention and £3000, should the influence of the tree be 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 a minimum of 2.17m based on the highest actual plasticity index record.
- 7.2 The age of the property dates back to 1968 and the tree is therefore confirmed to have been an existing feature at the time of construction.
- 7.3 The reports submitted in support of the application have concluded that the subject tree is influencing the dwelling and causing seasonal movement.
- 7.4 Level monitoring data supplied, indicates the building has sunk and then risen. The reports submitted in support of the application have concluded that seasonal movement is occurring.
- 7.5 A heave assessment has not been included in the investigation.
- 7.6 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.
- 7.7 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.
- 7.8 The total value for the subject Oak tree is £64,854. At least two other oak trees are estimated to be within the zone of influence. The implicated tree has only been valued for the purposes of this assessment.
- 7.9 A discrepancy is being raised in respect of the inconsistent underpinning. Both the conservatory and rear extension have been built too shallow with a mature oak tree known to exist within the zone of influence. The planning history suggests that the proposals were not approved by the Council and may have been completed under permitted development rights. The Council would need the applicant to demonstrate the adequacy of the underpinning carried out and an appraisal of further

underpinning. Damage has not been recorded on the original dwelling, so at this stage the repairs only need be carried out to the extension.

- 7.10 The conclusion of the appeal heard on 5th July 2011 is still relevant in this decision; the works proposed do not justify the harmful impact on local visual amenities. Alternative repairs were invited and would still form an important consideration in this case.
- 7.11 In response to the objections received; the tree is understandably a notable feature, cohesive with other trees in the vicinity. All the points made in the objections are acknowledged and have been taken into account in forming this recommendation.

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 Oak - Refusal.

Reason:

The application has failed to acknowledge the adequacy of the extension's foundations and the construction design. The tree felling would be harmful to the character of the area. 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 G7 of The London Plan (adopted March 2021).

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.
4. A heave assessment must be included in any further submission.