

Committee Date	3 rd February 2022		
Address	59 Downs Hill Beckenham BR3 5ET		
Application Number	21/03208/TPO	Officer Chris Ryder	
Ward	Copers Cope		
Proposal	T2 Ash - Remove. T3 Norway Maple - Remove. T4 Oak - Remove. SUBJECT TO TPO 1387 (2.7.1997)		
Applicant Mrs Kim Fisher Innovation Group Environmental Services Unit 4 Linnet Court Cawledge Business park Alnwick NE66 2GD		Agent	
Reason for referral to committee	Subsidence related financial risk	Councillor call in	
RECOMMENDATION	Consent in part for: T2 Ash - Remove.		

KEY DESIGNATIONS

Tree Preservation Order (TPO) 1387
Downs Hill 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 an oak tree (T4), an ash tree (T2) and a maple tree (T3) in connection with a subsidence investigation at 59 Downs Hill. The trees are positioned in the front garden. The works are proposed to achieve building stabilisation in accordance with the professional recommendations.



Figure 1 - Oak (T4)

LOCATION

- The application site is comprised of a detached dwelling constructed circa 1945, located on the west side of the road, adjacent to the junction with The Avenue. Mature trees have been made the subject of the above listed Tree Preservation Order (TPO). The trees contribute to the local street scene. The conservation area status applies broad tree protection to trees in this area of Ravensbourne Valley.

3 RELEVANT PLANNING HISTORY

- [REMOVE 1 SYCAMORE 1 OAK AND 2 ASH TREES TREES IN CONSERVATION AREA - DOWNS HILL CONSERVATION AREA](#)

Ref. No: 97/01331/TFL | Status: Application Permitted

- [REMOVAL OF ONE ASH T3 SUBJECT TO TPO 1387](#)

Ref. No: 98/01678/TFL | Status: Application Permitted

- [Single storey side extension](#)

Ref. No: 04/01285/FULL6 | Status: Application Permitted

- [Single storey side and rear extension](#)

Ref. No: 04/02651/FULL6 | Status: Application Permitted

- [Intention to crown reduce by 20% and crown lift to give a clearance from the ground of 6 metres 2 Ash, 1 Sycamore and 1 Maple and reduce height by 30% 1 Leylandii in front garden and crown thin and crown reduce by 20% 1 Oak and cut overhanging branches back to the boundary line \(in neighbours garden\) 1 Ash in back garden. TREES IN CONSERVATION AREAS](#)

Ref. No: 05/02494/TREE | Status: Decision No objection

- [Intention to fell 1 Lawson cypress adjacent to the property. TREES IN CONSERVATION AREAS](#)

Ref. No: 10/01748/TREE | Status: Decision No objection

- [Fell one tree in grounds of 1-12 West Oak \(to rear of 59 Downs Hill\) SUBJECT TO TPO 1\(Be 1961\)](#)

Ref. No: 11/01127/TPO | Status: Consent (e.g.tree works, haz subs)

- [fell 1 Lawson Cypress on the left hand side of the rear garden, closest to the property](#)

Ref. No: 12/02851/TREE | Status: Decision No objection

- [T2 Ash - Remove. T3 Norway Maple - Remove. T4 Oak - Remove. SUBJECT TO TPO 1387 \(2.7.1997\)](#)

Ref. No: 21/03208/TPO | Status: Pending Consideration

- [T2 Ash - Remove. T3 Maple \(Norway\) - Remove. SUBJECT TO TPO 1387 \(2.7.1997\)](#)

Ref. No: 21/04238/TPO | Status: Application Withdrawn

- [Partial underpinning](#)

Ref. No: 99/00121/OTHBN6 | Status: Building Work Complete

- [Single storey rear extension](#)

Ref. No: 04/04890/DEXFP2 | Status: Building Work Complete

- 3.1 Underpinning of the property has taken place circa 1999 to the original footprint of the dwelling. This has not extended to the garage and conservatory.

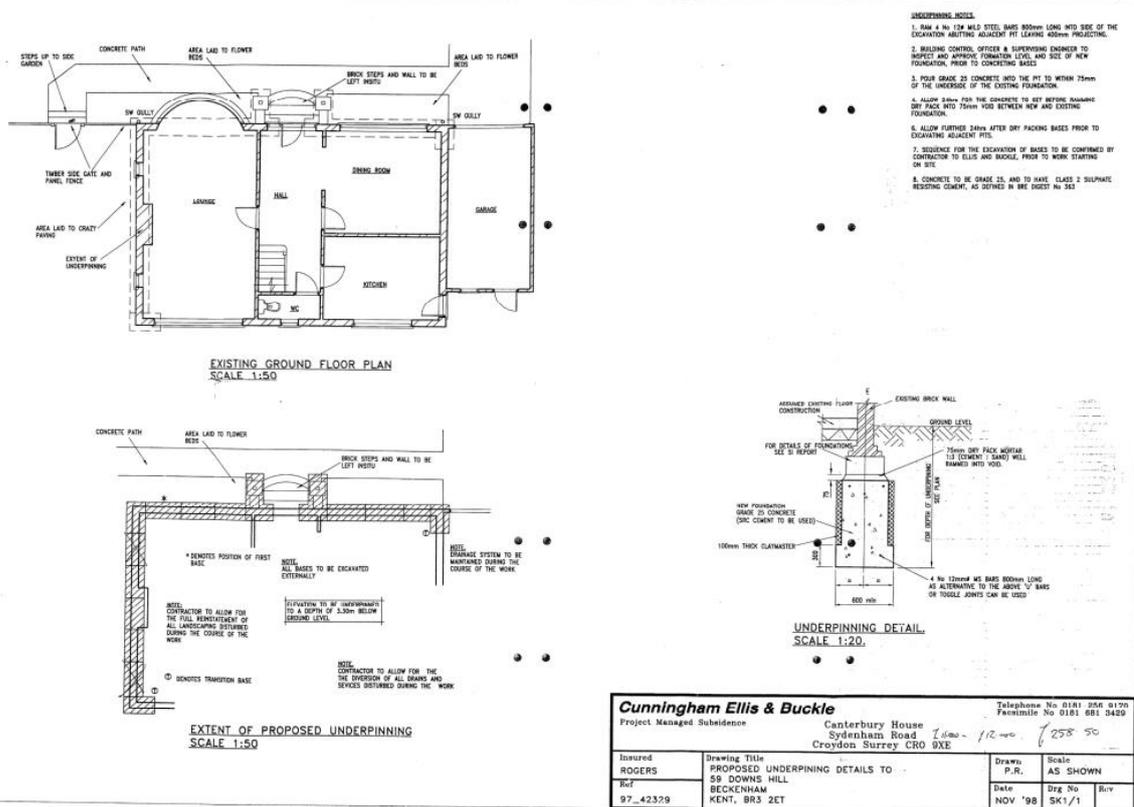


Figure 2 - 1999 Partial Underpinning

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 an agent of the insurance company, acting on behalf of the claimant and property owner. The proposed works have been recommended by the agent to enable the local soil conditions to rehydrate, by ensuring mature vegetation is eliminated as a subsidence causal factor.
- 6.2 The damage observed is occurring in the converted garage, which has been converted into a habitable bedroom within the last 20 years. The garage conversion is not listed within the planning history and is therefore deemed to be permitted development. The floor of the room is not level and minor cracking has formed around the wall edges. Cracking and significant distortions have also occurred in the rear conservatory. The 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 (up to 5mm) as listed in the Building Research Establishment; Digest 251. The evidence in this case refers to the garage with regard to damage and BH1 adjacent to the conservatory for soil based analysis.
- 6.3 Officers made a site visit on 8th October 2021 to review areas of damage both internally and externally. Damage was observed under the kitchen window, around the ceiling and hairline cracks in the hallway. Floor distortion was noted upon inspection. The subject trees are confirmed to be within the zone of influence of the dwelling. The nearest tree is approximately 10m from the insured dwelling. Tree survey data has been submitted as part of the application supporting documents and reference tree dimensions. The trees appear to be of normal vitality with no recent management evident, with the exception of the ash tree (T2). The oak tree is confirmed to be older than the impacted dwelling.
- 6.4 The following supporting documents have been appended to the application:
- Arboricultural Report (27.02.20)
 - Subsidence Engineer's Report (12.05.21)
 - Geotechnical Report (30.12.19)
 - Soil Analysis (23.03.20)
 - Level Monitoring (09.03.21)
 - Root Identification (17.12.19)
- 6.5 The subject trees are confirmed to be within the zone of influence. The zone of influence is calculated to be 18.75m for the most significant tree (T4). 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 Three trail pits (BH1-BH3) were excavated as part of the investigation. This revealed foundations to depths at 350mm in BH1 adjacent to the conservatory. Data for the remaining boreholes are yet to be received and are reported to have been difficult to obtain. Root identification in the BH1 reveals oak roots are beneath the foundations of the conservatory.

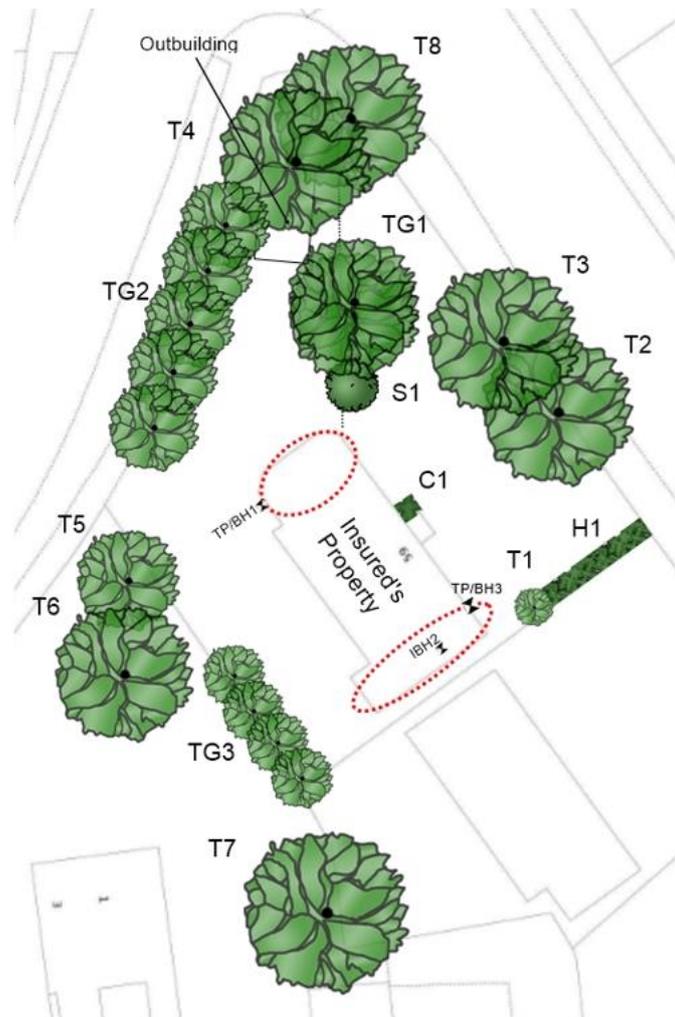


Figure 3 - Site Plan

- 6.7 Level monitoring of only 3 months have been supplied in the investigation.
- 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 50%.
- 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. This has not been submitted as a supporting document. Drainpipes are not reported to be present adjacent to the area of concern.
- 6.11 The Engineers report indicates no heave risk, should tree removal take place.
- 6.12 The cost of repairs are estimated by the agent to be £5000 with tree removal and £40,000 should repairs have to take into account retained tree influence.

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 2m. The oak tree would have been present at the time of construction in 1945 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 insufficient, as noted in the application guidance note.
- 7.3 Past underpinning has only been partially carried out. Differential settlement may be occurring due to partial underpinning. The conservatory and garage are clearly of shallow foundations.
- 7.4 Drainage defects have been eliminated from the investigation as a causal factor.
- 7.5 Heave has been addressed as a tolerable consequence of tree removal.
- 7.6 The investigation has focused on the damage associated with the garage conversion. The soil information is associated with the borehole situated furthest from the point of impact. The oak tree influence to the area of concern is therefore questionable. A number of trees have been recommended for felling around the dwelling. The ash tree is displaying signs of natural decline and has been reduced before. It is therefore considered pragmatic to fell the tree for this reason and as a step to address potential influence on the southern aspect of the dwelling.
- 7.7 The Engineers Report has stated that oak tree (T4) is outside the zone of influence and does not require removal. It would therefore appear to be a precautionary step to propose its loss.
- 7.8 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.
- 7.9 The total value for the subject Oak tree is £30,004. The other protected trees implicated in this case are calculated to be £22,450 and £6917. The combined value is therefore totalling £59,371.
- 7.10 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 6 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: CONSENT IN PART FOR

T2 Ash - Remove.

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 73 of the Bromley Local Plan and in the interest of good arboricultural practice and the visual amenities of the area.

2. A replacement Sweet Gum (*Liquidamber styraciflua*) standard size, rootballed or container grown, shall be planted within 1m of the tree felled. Planting will take place within 12 months of the removal of the tree(s). Any replacement tree which 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.

Reason: In order to comply with Policies 37, 73 and 74 of the Bromley Local Plan and in the interest of the visual amenities of the area.

REFUSAL FOR

T3 Norway Maple - Remove.

T4 Oak - Remove.

SUBJECT TO TPO 1387 (2.7.1997)

Reason:

- 1. The application has failed to acknowledge the adequacy of the dwelling's foundations and the construction design. 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).**
- 2. Insufficient level monitoring has not been supplied. 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).**
- 3. The implicated trees are yet to be confirmed as a causal factor for subsidence damaged evidenced at boreholes BH1 and BH2. 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.**