

Report of the Head of Planning, Trading Standards and Environmental Protection

Address: 9A LINKSWAY, NORTHWOOD

Proposal: TO FELL ONE OAK IN AREA A1 ON TREE PRESERVATION ORDER NUMBER 392

LBH Ref Nos: 7748/TRE/2011/35

Drawing Nos: Application form dated 18 March 2011 and accompanied by supporting evidence (reports & appendices); e-mail (amended reasons, and additional supporting information, including the engineering appraisal report dated 13 April 2011) dated 29 April 2011.

Date of Received: 18/03/2011 **Date of amendment(s):** 29/04/2011

Date Application Valid: 18/03/11

Although this report has not been available 5 working days prior to the meeting, the Chairman has agreed to consider this report as an urgent decision is required. This is due to the possibility of an associated compensation claim after the non-determination of the application within the (extended) statutory 8-weeks period (20 May 2011), following the receipt of a petition of 22 signatures.

1. SUMMARY

The application relates to a proposal to fell one Oak tree on Tree Preservation Order No. 392.

Public consultation regarding this application has resulted in the receipt of seven objections and a petition containing 22 signatures opposing the proposed tree felling.

Given the evidence that (i) the tree is causing structural damage to the chalet bungalow; (ii) the scale and cost of repair; (iii) the low amenity value of the tree; and (iv) the slight adverse impact of its loss on the amenity and character of the Copsewood Estate Area of Special Local Character, it is considered that the felling of the one Oak tree is justified. The effect of the felling will not be harmful to the visual amenity and character of the area.

It is recommended that consent be granted for the felling of the Oak tree.

2. RECOMMENDATION
APPROVAL, subject to the following conditions: -

1 TL9 Tree Works – Time Limit

The works hereby permitted shall be carried out within 2 years of the date of this consent.

REASON

To enable the Local Planning Authority to reconsider the appropriateness of the works in the light of any change in circumstances.

2 TL16 Tree Works – Replacement of Protected Trees (TPO) – Approval

The tree to be felled in pursuance of this consent shall be replaced by a Field Maple tree in accordance with the details set out in the application. The felled tree shall be replaced in the first planting season following the felling works hereby permitted and thereafter the replacement tree shall be maintained for a period of five years.

REASON

In order to comply with the requirements of Section 206 of the Town and Country Planning Act.

INFORMATIVES

1 I1 Consent of the Owner(s)

You are advised that the tree felling and tree planting should not be carried out without the specific written consent of the owner(s) of the land on which the tree is situated.

2 I2 Wildlife and Countryside Act

You are advised that, under the Wildlife and Countryside Act 1981, it is an offence to disturb roosting bats or nesting birds or other protected species.

3 I3 Risk of Heave

You are advised that a risk of damage to properties associated with ground heave may arise following from the felling/removal of trees, which in turn may cause structural damage to buildings, and that it is advisable for you and the owner(s) of the tree to have this matter fully investigated and to obtain the advice of experts prior to carrying out the removal of the tree. The London Borough of Hillingdon Council cannot and will not accept responsibility or liability for any damages associated with the implementation of this consent.

3. CONSIDERATIONS

3.1 Site and Locality, and the Tree.

The site is a private residential property on the eastern side of Linksway. The application relates to one Oak in area A1 on TPO 392 at 9A Linksway, Northwood.

There are several trees (one Oak and four Hornbeam coppice stools – 11 stems in total). The mature Oak, which is the subject of this case, is located in the front garden of 9A Linksway, about 11m from the road, 3m from the side (northern) boundary with 9 Linksway and about 2m from the edge of the carriage driveway. The tree stands 7.8m from the front corner of the chalet bungalow at 9A Linksway.

The stem of the Oak has a diameter of about 750mm. T13 is about 16m tall with a crown spread (radius) of 8-9m. The tree has a full crown, which has been lifted to 6-7m above the ground, and is vigorous. It has a long expected life span of 100 years plus.

3.2 The Proposal

The applicants have applied for consent to fell the Oak for five reasons (amended 29 April 2011), primarily as a remedy to the differential foundation movement (and subsidence-related damage) at 9A Linksway. The application is accompanied by the results of site investigations set out in reports submitted with the application. The reports include technical information about the damage to the property, the soils (sand below clay), (oak) tree roots and the results of level monitoring between April 2010 and February 2011, and a statement from an engineer that there is no risk of an adverse heave.

3.3 Relevant Planning and Tree Preservation History

Tree preservation order number 392 was made in 1985/6 to protect an area of woodland trees on land at 9-35 (odds) Linksway, Northwood. In 1991, the Council granted consent for the felling of one Silver Birch in area A1 at 9A Linksway, Northwood.

4. Planning Policies and Standards

In deciding Tree Preservation Order (TPO) applications, the Local Planning Authority (LPA) is not required to have regard to the development plan.

The recommendation is based on an appraisal of whether or not the proposal is justified, having regard to the reasons put forward in support of it, having assessed the amenity value of the tree(s) and the likely impact of the proposal on the visual amenity of the locality, and government advice that, in general terms, the higher the amenity value of the tree and the greater the impact of the application on the amenity of the area, the stronger the reasons needed

before consent is granted (ref: 'Tree Preservation Orders – A guide to the law and good practice', DCLG, 2000 – as amended in 2009). It is also made after consideration of the likelihood of any loss or damage if consent is refused or granted subject to conditions, and with regard to human rights.

5. Advertisement and Site Notice

Advertisement and Site Notice Expiry Dates: - Not applicable.

6. CONSULTATIONS:

External Consultees

5 neighbours were consulted. One individual response and a petition with 22 signatures against the proposal have been received, together with six objections from other local residents, that have made the following comments: -

1. The tree is a healthy, impressive, and majestic specimen, and it would be a shame to fell it.
2. The tree is an integral part of the attraction of Linksway as an avenue and of 9 Linksway as a residence, and if there no real necessity it should not be felled.
3. 9A Linksway is currently up for sale and it is not unlikely that a new owner may decide to rebuild. The evidence for a relationship between the tree and the damage in the current house is tenuous and may become superfluous in the case of rebuilding.
4. The Copsewood Estate derives its attractive character from the pleasant mix of architectural styles and the trees, and the oak, which is situated at the front of the property, contributes to this character, rather than forming just a backdrop to the house.
5. The removal of this relatively young, healthy tree would be prejudicial to the character of the property and the estate, but would also be an act of vandalism irreversible in the short term, as it will take decades to replace this beautiful tree.
6. There is no need to remove the tree.
7. The current owners are selling the property, which will most probably be sold to knock down the current house and rebuild a bespoke house, and the removal of the tree is related to the potential sale rather than the actual environmental reasons.
8. The property is up for sale and is advertised as being more suited for redevelopment. It is therefore not unlikely that a new owner may decide to redevelop the plot, in which case the arguments in the application pertaining to the current house loose their relevance. It might even be that a prospective buyer might prefer to keep the tree. Anyway it does not make sense to make a rushed decision about felling the tree now.
9. It can only be assumed that the tree is being removed to add value to the site, which has recently been put on the market as a development plot.
10. Removal of healthy trees must be resisted; an oak takes an age to grow, a day to cut down.

11. If permission is granted it will set a dangerous precedent for the Cospewood Estate, which will inevitably mean that more and more trees will be taken down.

Internal Consultees

Not applicable.

7. MAIN PLANNING (TREE PRESERVATION AND LANDSCAPE CONSERVATION) ISSUES

7.01 Appraisal

The damage is described in the engineering reports (dated April 2010 and April 2011) submitted by the applicants. The main area of damage, which was first noticed in November 2009, is to the interior walls in the vicinity of the stairs and takes the form of horizontal, vertical and diagonal cracking. There is also crack damage to the external walls, in particular near to the front bay window. The pattern of damage indicates a mechanism of downwards movement of the front part of the bungalow. With cracks up to 5mm wide, the damage is considered by the engineers to be moderate (Category 3 of BRE Digest 251).

The results of the site investigations indicate that the foundations comprise strip footings at a depth of 880mm belowground level and that they bear on highly shrinkable clay to a depth of about 4m, with signs of desiccation, below which there is sand. Oak roots were found to a depth of 2m in a borehole next to the outside wall of the front corner of the bungalow.

The levels monitoring shows the downward movement of parts (front) of the building during the late spring and summer and the lifting of the same parts of the building during the autumn and winter indicative of seasonal expansion of the underlying clay, which had shrunk and caused the downward movement of the foundations and expanded and caused the upward movement.

The applicant states that 'engineers have confirmed that other potential causes such as leaking or damaged drains have been discounted as a cause of the damage', and other scientific information (shear vane readings) is mentioned in support of this opinion. The site investigation and evidence implicate the Oak as the cause of seasonal movement and subsidence damage associated with the shrinkage of the clay.

The arboricultural consultant (applicant/agent) and the engineer recommend that the tree be removed to provide a long-term solution to the current subsidence damage.

In this case the duty of care in respect of heave is a (private) matter for the applicants, the owner(s) of the tree, and the building insurers and their professional advisors, and is not a material consideration in this case. The engineer does not consider that there is an adverse heave risk in this case. In

any event, it is recommended that this matter be addressed by way of an informative note.

The applicants have proposed, in the amended statement of reasons, the planting of a Silver Birch or Field Maple (10-12 cm stem diameter, container grown) at a location in the front garden of the property within 1m of the stump of the Oak. In this case, a Field Maple is preferable. This matter can be addressed by way of a condition.

The mature Oak has a large canopy but is not a conspicuous feature in the landscape, because it stands behind, and is seen as part of, a clump of mature Hornbeam coppice (four stools with 11 stems) closer to the road frontage and a roadside Oak at the front of 9 Linksway in the Copsewood Estate Area of Special Local Character (ASLC). There is another Oak in the front garden of 11 Linksway. Views from the road of the Oak are therefore limited, such that part of it are seen behind the Hornbeams and only the top 1-2m of the crown are seen above the Hornbeams. In this context, the group and the conspicuous Hornbeams have high amenity value, whereas the Oak has a low/moderate value. Furthermore, the Oak does not have any special or outstanding features, which would warrant an Article 5 certification.

The felling of the Oak is proposed to limit the extent of and need for expensive and disruptive engineering repair works at the property. The applicants have indicated that in this case, the estimated repair costs are likely to vary between £10,000 and £40,000 to £180,000, depending on whether the tree can be removed or not, and the final design of the repairs that may include traditional underpinning, partial piling, or a complete piled raft. In the supplementary Engineering Report dated 13 April 2011, the engineer describes the repair proposals and costs in more detail. He indicates that superstructure repairs and redecoration will in any event cost about £10,000 and that, if the tree remains, underpinning to the exterior walls of the front part of the bungalow into the layer of sand would add £40,000 to the cost. However, he explains that this method of repair would not address the damage to the interior walls, and that an alternative repair scheme would involve the installation of a piled raft under the front part of the bungalow (and associated alternative accommodation) would cost in the region of £180,000.

Potential alternatives to felling include pruning and the insertion of a root barrier, but these options have been ruled out for good reasons by the applicant.

Different tests apply to the consideration and determination of planning applications, and TPO applications. In deciding planning applications, the LPA are required to have regard to the development plan. In deciding this case, the LPA are required to assess the amenity value of the tree and the likely impact of its loss on the amenity of the area, and in the light of that assessment, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

The removal of the Oak will have a slight negative impact on the amenity and wooded character of the Copsewood Estate ASLC, because it has a relatively low value and the clump mature Hornbeam coppice is retained closer to the road frontage. The landscape and visual impact will be reduced in the future by the planting and establishment of a Field Maple close to the location of T1 (Oak) in replacement of it.

7.02 Comments on Public Consultations.

Seven objections and a petition (with 22 signatures) have been received to the proposed felling of the Oak. The points raised, many of which raise the principal of felling and the consequent environmental impact, are covered in the main report, and where appropriate addressed below. The key findings are that, in the local context, the felling of the Oak will not be harmful to the amenity or character of the ASLC, and that felling is the only appropriate course of action in this case.

The Copsewood Estate derives its attractive wooded character from the former woodland trees that were retained when the houses were built, and the mature, healthy and impressive tree contributes to the visual amenity and wooded character of the ASLC. However, due to the presence of other trees closer to the road frontage, public views of the oak are limited and its amenity value is low-moderate.

The removal of the tree will have a slight adverse landscape and visual impact, but this is mitigated to a large degree by the presence of several protected Hornbeam and Oak trees forming a group at the front of the site, which is more visible and has a higher amenity value, by the presence of other protected trees in the locality, and by the planting of a new tree in replacement of the Oak, such that in this context it will not harm the amenity and character of the ASLC.

Whilst, it is accepted that it is a shame to unnecessarily lose such a tree, which has taken about 100 years to grow, for the reasons discussed above the evidence shows that the removal of the Oak is necessary to remedy the differential foundation movement at the property and to stabilise the building, so that it can be repaired.

9A Linksway is currently up for sale, however there is no planning permission, or application, for the development of the property, and there is no way of knowing whether the property will sell, or what any new owner(s) would decide to do regarding the building and/or the tree. Furthermore, the Council is not allowed to make assumptions concerning the future use of the land, and consideration of this application, relates to the reasons stated, all of which relate to the implication of the tree as the cause of subsidence-related damage to the existing building, and the amenity value of the tree and the environmental impact of its loss.

This application has been considered on its facts and merits, which are discussed in the main report and above. Therefore, if consent is granted to fell

the Oak, no precedent will be set, and any applications relating to other trees or development would have to be considered on their own merits and in accordance with the appropriate tests.

7.03 Other Issues

Members are advised to consider whether any loss or damage is likely to arise if consent is refused, or granted subject to conditions. In TPO cases where consent is refused (or granted subject to conditions), the LPA are liable to pay compensation for any loss or damage as a consequence of their decision, unless they certify that the tree has an outstanding or special amenity value (so-called Article 5 certification), if a claim is made within 12 months of the date of the decision.

In subsidence-related cases such as this, an alternative solution to the problem is often underpinning of the house or parts of it. In this case, works will provide a solution to the problem (at an estimated additional cost of at least £40,000 and more likely of the order of £180,000) if the tree is not felled. Therefore, given that the tree does not warrant an Article 5 certification (see above) the Council would be open to and may well be faced with a claim for compensation up to, or possibly in excess of, £180,000, if consent is not granted for the felling of the Oak.

8. Observations of the Borough Solicitor

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application. In addition Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

9. Observations of the Director of Finance

10. CONCLUSION

The evidence shows that the tree is causing subsidence-related damage, and that the felling of the tree is the only appropriate course of action. The rest of the group of protected trees is not affected by this proposal, and a new tree can be planted. Overall, and having regard to all of the relevant information and the points raised against the application, the proposed felling of the Oak is justified, given the substantiated reasons and the fact that its removal will not have a harmful effect on the wooded character and amenity of the ASLC. In this case, the strong and inter-related reasons, including the exceptional costs of works required to prevent recurrence of the damage if the tree remains, outweigh the relatively low amenity value of the tree and the slight adverse effect of the loss of the tree from the local landscape.

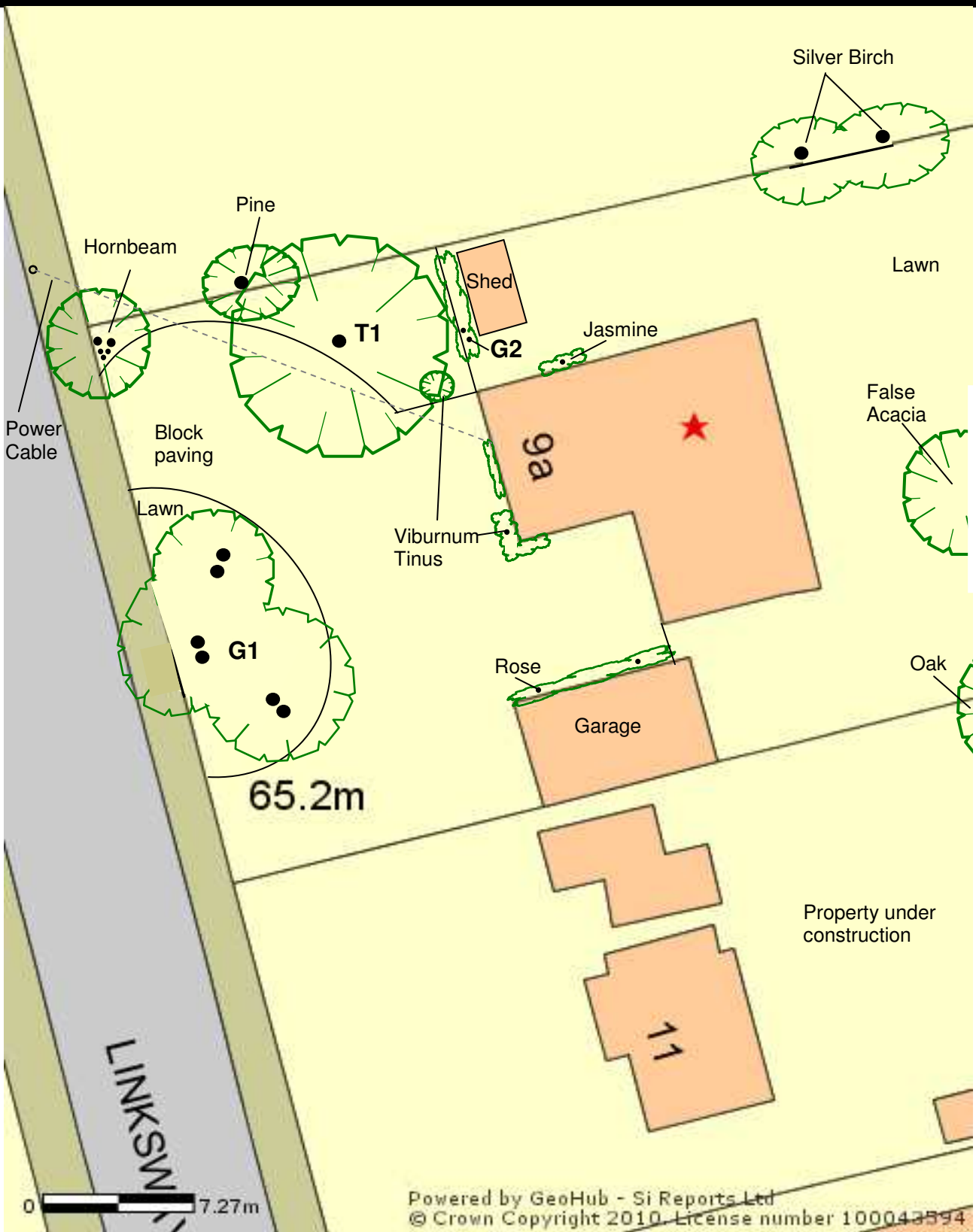
On balance, after consideration of the evidence and the facts, it is recommended that this application be approved and consent be granted for the felling of the protected oak tree.

11. Reference Documents

Tree Preservation Order No. 392
A Guide to the Law and Good Practice – Tree Preservation Orders – DETR (2000)
Addendum to the Guide to the Law and Good Practice – Tree Preservation Orders (2009)
One petition containing 22 signatures
One letter and eight e-mails from residents

Contact Officer: John Lawson

Telephone No: 01895 250230



(NB: This plan may not be a comprehensive record of site features)

Title: 9a, Linksway, Northwood,
Middx, HA6 2XA

Client: Oriel

Scale: N T S

Drawn Date: 07.05.10


Job Ref: 43948



Consulting Arboriculturists



Notes

 Site boundary

For identification purposes only.

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Site Address	
9A Linksway Northwood	
Planning Application Ref:	Scale
7748/TRE/2011/35	1:1,250
Planning Committee	Date
North	May 2011

**LONDON BOROUGH
OF HILLINGDON**
Planning,
Environment, Education
& Community Services
Civic Centre, Uxbridge, Middx. UB8 1UW
Telephone No.: Uxbridge 250111



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