
Site Address: Trees East side of, Park Lane Bridleway, Waterlooville
Proposal: Fell 2No. Oaks subject to TPO 1150 within Group Order G3.
Application No: APP/16/00241 Expiry Date: 04/04/2016
Applicant: Subsidence Management Services
Agent: Innovation Group Case Officer: Jamie Gargett
Ward: Waterlooville

Reason for Committee Consideration: Head of Neighbourhood Support (HNS) Referral.

HNS Recommendation: **GRANT TPO CONSENT**

1 Site Description

- 1.1 No. 24 Ramblers Way is a detached two storey dwelling house located at the southernmost point of Ramblers Way. It is one of a row of detached houses built in 1984 which back on to the Park Lane Bridleway to the west.
- 1.2 The application proposes to fell two mature Oak trees (both circa 200 years old) which occupy a prominent position to the rear (T2) and side (T1) of the property within the Park Lane Bridleway. The trees are highly visible in the street-scene and Bridleway route, along with several other oaks which grow in other gardens in the vicinity. T1 is owned and maintained by Havant Borough Council and T2 is within private ownership.

2 Planning History

APP/10/01023 – Application submitted on behalf of 25 Ramblers Way to fell 1No. Oak tree and remove stump, subject to TPO1150 (Tree T2 of the current application). Appeal dismissed 11/04/2011 on grounds that the damage caused to the conservatory of the house alone was not of sufficient weight to justify the removal of the tree.

APP/11/01041 – To fell 2No. Oak trees subject to TPO 1224 lying to rear of 37 Starina Gardens (on the opposite side of the Bridleway to the trees the subject of the current application). This application was refused on 11/10/2011 – insufficient justification having been provided for their removal.

APP/13/00823 – Proposing a crown lift to the eastern sector of 1No. Oak at the rear of 10 and 11 Bracken Heath by 6m, within G2 of TPO 1150 (approximately 140m north along the Bridleway). Permission was given for this application on 14/10/2013.

3 Proposal

- 3.1 This report considers the application to remove two mature English Oak trees, which are subject of Tree Preservation Order (TPO) 1150 confirmed on 20/5/83. The trees T1 and T2 are linked to alleged subsidence damage at the adjacent property (24 Ramblers Way). It is proposed to remove the trees on the grounds that the trees are a contributory factor.

3.2 In support of the application the applicant has submitted an arboricultural report from Marishal Thompson, an engineer's report/assessment and a technical report from Geotechnical and Subsidence Management Services.

4 Policy Considerations

National Guidance

National Planning Policy Framework 2012
Tree Protection Orders: A Guide to the law and good practice 2009 and addendum 2009/2012.

Havant Borough Local Plan (Core Strategy) 2011
DM8 (Conservation, Protection and enhancement of Existing Natural Features)

5 Statutory and Non Statutory Consultations

Building Control Officer

Introduction

I have been asked to advise by the Planning Department on the technical aspects of this planning application to remove oak trees that are currently under a TPO. In providing this advice I have carried out a desk top review as well as a site visit.

Comments

Having carried out this review I make the following comments

- The trees' location and type has been verified as being in accordance with the details submitted and the evidence within the report points toward the tree root action being the reason for the seasonal movement of the property and the damage caused.
- The report appears to be technically accurate and I do not disagree with any of its conclusions.
- Where any tree is removed in clay subsoil there is a risk that the soil may increase in volume and cause additional damage through heave. Heave potential calculations have been carried out and the long term risk of heave has been identified as acceptable.

In conclusion, I find no reason to disagree with the report submitted.

Legal Officer

It appears from the report that the property has been monitored since January 2014 to date. We know that a lot of houses in Waterlooville, in this area, are susceptible to subsidence because of the clay, and we have dealt with several refusals up there.

The decision is, as always, balancing the cost exposure to the Council versus the amenity of the trees. Whilst I am not an arboricultural specialist, it does seem to me from the report that has been prepared, that the trees are indicated as being the cause of the subsidence. The Building Control Officer agrees.

From a legal perspective, it is, as you know, impossible for me to give a cast iron guarantee, save to say that if we were to refuse permission to fell and underpinning is required, which appears to be the case, then we are responsible for the losses that flow from the refusal, and in this case this will be around the £85k mark.

Council Insurance Officer

The Council was first put on notice of potential tree root subsidence at 24 Ramblers Way in March 2014.

Marishal Thompson Group placed T1 Oak on their illustration in a pathway to the rear of 24 Ramblers and a land search put the ownership in the hands of David Wilson Homes. The HBC Arboricultural Officer undertook his own survey and placed T1 on the border of HBC land with the opinion that it had its origins on HBC land. Havant BC had certainly maintained the tree as if it was in their ownership. The tree we discovered was the subject of a TPO.

The evidence that the Council had inspected and maintained the tree up to the point of being notified of potential damage to property from the roots put the Council in an initial position to possibly limit liability for damage caused up to that point although an assessment would be made as to whether the damage was foreseeable. That judgement would be made taking into account the type, age and condition of the tree, its proximity to the property, and the construction of the property itself. The original claim is currently closed with no payment made by insurers.

From the point the Council were notified of the damage, and if the notification was adequately supported by technical reports, the Council was liable to act upon the information and put in place reasonable measures to prevent further damage to the affected property. Failure to act adequately or at all could result in the Council additionally liable for any future damage caused. Officers will confirm that mere pruning or pollarding of the particular tree affecting 24 Ramblers Way will not prevent continuing damage and therefore removal of the tree is the only option to reduce the long term cost of this event.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at Minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 8

Number of site notices: 1

Number of representations received: 0

7 Planning Considerations

7.1 The main planning considerations include:

- i. Amenity value and condition
- ii. The justification for proposed removal
- iii. Previous appeal decisions

The further consideration of risk of a compensation claim in the event of a refusal is also included below.

i. Amenity Value and Condition

7.2 The mature English Oaks are two of a number of similar-sized Oaks in the surrounding area. A number of Oaks along the Bridleway have previously been lost due to

subsidence related issues.

- 7.3 T1 and T2 have been pruned and maintained in the past, and currently present as very fine specimens with well formed, full and generally rounded canopies. They are highly visible from the street, public open space and Bridleway, growing well above nearby rooflines to a height exceeding 14m.
- 7.4 The Oak trees form a long-standing feature in the landscape, around which later development has been designed, and they contribute significantly to the amenity of the area.
- 7.5 The trees appear to be displaying a condition of normal health and vigour. In terms of amenity value and health, they are considered worthy of continued preservation.
- 7.6 In addition to this it is important to note the visibility of the trees in the context of the adjacent Bridleway and from the public open space to the south. The Oaks have an unrestricted view from these positions and offer high public amenity in what is a very well used area.

ii. The Justification for Proposed Removal

- 7.7 Felling is proposed due to the alleged connection between the trees and subsidence at No.24 Ramblers Way. The application has been submitted on behalf of the owner's insurer.
- 7.8 The house at 24 Ramblers Way was built circa 1984. The alleged damage takes the form of internal and external cracking at both ground and first floor levels of the original house. The damage, as classified by the British Research Establishment (BRE), is cited as Category 3 – Moderate. This classification is based on crack widths visible within the built structure.
- 7.9 Government advice in such cases is set out in: Tree Preservation Orders: A Guide to The Law and Good Practice 2009 (para. 6.40C). This considers the relevant evidence that should accompany an application for felling where subsidence is alleged. This evidence includes trial/bore holes to identify soil characteristics, foundation depth and DNA testing and identification of tree roots found. The applicant's assessment has provided the required level of information required for this application.

iii. Previous Appeal Decisions

- 7.10 In appeal cases at 25 Ramblers Way in August 2011 and at 5a Wallis Gardens in April 2012, both in Waterlooville, Inspectors dismissed appeals against the Council's decisions not to allow felling of oak trees where subsidence was alleged.
- 7.11 The case at 25 Ramblers Way differed from the current case in that the subsidence affected a conservatory which had been added but built on inadequate foundations.
- 7.12 The case at 5a Wallis Gardens is similar to the current proposal in that the alleged impact was upon the original house rather than a later, less substantial addition. In that case the Inspector noted that an alternative to felling of the tree, was underpinning of the house. He referred to the Court decision: *Perrin v Northampton Borough Council 2007*, which found that when requests for the felling of protected trees are considered, "*it would seem counterintuitive to ignore..... steps that may be taken, other than to the tree itself and instead focus simply on the works to the tree.*"

- 7.13 In isolation, the Wallis Gardens case would support arguments in favour of retention of the trees. However, weight must also be attached to the fact that if permission is refused the applicant has indicated that they will seek financial compensation via the Lands Tribunal rather than lodging a planning appeal.

Summary of planning considerations

- 7.14 In summary, the trees are very good examples of their kind and offer high public amenity value to the local area. In pure arboricultural terms (vegetation related subsidence aside) there is no sound and justifiable reason for their removal.
- 7.15 However, a refusal of the current application would lead to the potential for the appellant to seek costs against the Council in the region of £84,358.61. This has been substantiated by both the Legal Officer and Insurance Officer.
- 7.16 In line with the Council's protocol for tree related subsidence the applicant has included and submitted all the required information to demonstrate that the trees are a contributing factor in the recorded subsidence at 23 Ramblers Way. It has been current Council practice to recommend permission on applications where trees are linked, on the balance of probability, to the cause of indirect damage (subsidence). The reasons for this are related to the risks associated with claims for compensation.

Risk of claim for compensation.

- 7.17 TPO legislation makes provision for the payment of compensation by Local Planning Authorities to an owner, for loss or damage caused or incurred as a result of the refusal of any consent for the felling of a tree protected under a TPO.
- 7.18 Prior to April 2012 it was possible for a Planning Authority to issue an 'Article 5 certificate' for TPOs made before 1999 providing the Authority was satisfied:

(1) that the decision is in the interests of good forestry, or

(2) that the trees, groups of trees or woodlands to which the certificate relates have an 'outstanding' or 'special' amenity value.

An effect of the certificate was to limit the risk of compensation against the Authority's refusal of any applications to trees protected by a pre-1999 TPO. However, the Town and Country Planning (Tree Preservation) (England) Regulations 2012 removed the power to issue Article 5 certificates.

- 7.19 Members are therefore advised that if a decision were made to refuse this application then there is the risk of a claim for compensation due to the TPO being made prior to August 1999 and the recent removal of the ability to serve an Article 5 Certificate.

- 7.20 The cost of repairs to the house if the trees are removed is £9358.61; with the cost of repairs quoted as £84,358.61 if repairs are made and the trees remain. The difference between these two figures (£75,000) therefore represents the extent of the Council's likely exposure to compensation in the event that the application is refused. On balance it is considered that the substantial economic implications that would be likely to arise from a refusal of the application are sufficient to outweigh the arboricultural merits associated with the trees' retention in this case. The application is therefore recommended for approval.

8 **Conclusion**

- 8.1 For the reasons discussed throughout this report and summarised in Section 7 above, it is recommended that the current application be permitted as the applicant has included and submitted in line with Council protocol, all the required information to demonstrate that the trees are contributing factor in the recorded subsidence at 23 Ramblers Way.

RECOMMENDATION:

That the Head of Neighbourhood Services be authorised to **GRANT CONSENT** for application APP/16/00241 subject to the following condition:

1. The tree felling for which consent is hereby granted shall not commence until a detailed scheme and specification for replacement tree planting on an adjacent part of the site has been submitted to and approved in writing by the Local Planning Authority; such specification shall include details of the species and size of such replacement planting.

Reason: To conserve and safeguard the visual amenities of the locality.

Appendices:

- (A) Site Location Plan
- (B) Photograph