

## OFFICER REPORT FOR COMMITTEE

DATE: 10 APRIL 2024

P/24/0151/TO  
Mr THOMAS

TITCHFIELD WARD  
AGENT: MWA ARBORICULTURE

FELL ONE OAK PROTECTED BY TPO 450

3 HILLCROFT, SEGENSWORTH, FAREHAM, PO15 5ES

### **Report By**

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#### **1.0 Introduction**

1.1 The application is presented to the planning committee due to the receipt of seven representations objecting to the proposal.

#### **2.0 Site Description**

2.1 The property is a detached residential dwelling situated on the south side of Hillcroft, Titchfield, which is within the designated urban area. The property was built during the mid-1980s. The two-storey detached house is of traditional construction with brick and tile hanging walls surmounted by a pitched tiled roof. The tree pre-dates the surrounding residential development and is protected by a tree preservation order. No previous subsidence claims have been reported or noted.

#### **3.0 Description of Proposal**

3.1 The application is for the removal of one mature oak tree, which has been implicated as a material cause of subsidence damage to the dwelling. During the summer of 2022, cracking was noted to the interior and exterior of the building. The insured instructed a survey report which concluded that seasonal foundation movement had caused the damage.

#### **4.0 Policies/Regulations**

4.1 The following policies from the Fareham Local Plan 2037 apply to this application:

- NE6: Trees, Woodland and Hedgerows

4.2 In addition, The Town and Country Planning (Tree Preservation) (England) Regulation 2012 (as amended) is relevant, and set out the provisions for the creation of Tree Preservation Orders, and implications such as applications to lop, top or fell such trees.

## **5.0 Relevant Planning History**

5.1 The following planning history is relevant:

**P/17/0922/TO**                      Crown reduce and crown lift 4 oak trees  
**Consent**                              25/09/2017

**P/03/1039/TO**                      Crown reduce and crown thin 4 oak trees  
**Consent**                              07/072003

## **6.0 Representations**

6.1 Seven representations have been received objecting to the felling of the oak tree on the following grounds:

- The oak is an important tree with high amenity value.
- The oak tree has not been maintained properly.
- The Office of National Statistics, the tree owner, should fight to keep it.
- A CAVAT assessment of the tree's combined benefits far exceeds the cost of the claim or potential compensation.
- No evidence has been submitted to suggest the tree is unsound or unhealthy.
- The tree supports bats and other species as habitat and foraging.
- The Council should negotiate with the insurance company to identify alternative solutions to felling.
- No consideration has been given to the impact of climate change and the loss of mature trees to subsidence.
- A protected tree should only be felled in exceptional circumstances.
- The Council should refuse this application on environmental impact grounds.

## **7.0 Consultations**

7.1 None undertaken.

## **8.0 Planning Considerations**

8.1 Policy NE9 (Trees, Woodland and Hedgerows) sets out that the removal of protected trees...will only be permitted in exceptional circumstances.

Damage to the property (cracking) was first noted in the Summer of 2022.

The pattern and nature of the cracking is indicative of an episode of subsidence. The cause of movement is consistent with clay soil shrinkage.

8.2 The timing of the event, the presence of shrinkable clay beneath the foundations and the proximity of vegetation where there is damage indicates the shrinkage to be root induced – moisture abstraction at depth. The cause of the problem, soil dehydration, is reversible. Clay soils will rehydrate during

the winter months, causing the clay to swell and the cracks to close. Provided the cause of movement is dealt with there should not be a recurrence of movement.

8.3 No structural changes to the building have been carried out which have contributed to the current subsidence related damage and no previous underpinning has taken place. Generally the necessary subsidence site investigations involve trial pits to determine the depth and type of foundations, boreholes to determine the nature of the subsoil, the influence of any roots and monitoring to establish the rate and pattern of movement. The monitoring data provided must be sufficient to show a pattern of movement consistent with the influence of the vegetation and therefore it may be necessary to carry out the monitoring for up to a 12-month period over a winter and summer season.

8.4 Summary of the key points in this case:

- Engineering opinion is that the damage is related to clay soil shrinkage - subsidence.
- There is significant vegetation present with the potential to influence soil moisture and volumes below foundation level.
- Roots have been observed to the underside of the foundations and identified samples correspond to vegetation identified on site as oak.
- Laboratory tests indicate the soil has a high plasticity and hence will shrink and swell with changes in moisture content.
- Moisture content confirms desiccation within bore hole 1 and 2.
- Level monitoring indicates that there was significant downward movement to the building during the summer 2023 which is attributed to the drying action of the clay caused by the nearby oak trees.
- The arboricultural report confirms that the oak (T3) has been identified as the cause of the damage to the property and removal of the offending tree is recommended to help prevent any further foundation movement.

8.5 Part 6 of the Regulations sets out when compensation is payable (Reg 24 of the 2012 Trees Regulations (as amended)), and states:

1. If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—
  - a) the refusal of any consent required under these Regulations;
  - b) the grant of any such consent subject to conditions; or
  - c) the refusal of any consent, agreement or approval required under such a condition,that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

8.6 The Council can only make a decision whether or not to grant the consent under the TPO, there is no mechanism available for negotiation. In the event that the Council refuses this application, someone seeking to claim for compensation only needs to show that they have incurred loss or damage as a result of the Council's refusal. Officers are not aware of circumstances where someone could save money by keeping the tree and investing in other measures, as removing the tree is always going to be the cheapest solution and removes the cause.

8.7 There are precedents in law for subsidence cases involving protected trees, where local authorities have resisted the removal of a tree implicated in a subsidence event where site investigations demonstrate that on the balance of probabilities the tree is a material cause. Officers are satisfied that sufficient investigations have been undertaken to demonstrate the influence the Oak tree is having on the building and therefore it is the probable cause. Having carefully reviewed all the submitted information Officers conclude that regrettably consent should be given to remove the Oak tree to avoid potential financial claims against the Council, which would run into tens of thousands of pounds.

8.8 Should Members approve the recommendation to fell the tree, it would be appropriate to impose a condition securing a replacement tree. In light of the space constraints and the scale of the existing Oak tree, Officers believe any replacement should be subject to discussions with the applicant.

## **9.0 Recommendation**

9.1 **GRANT CONSENT**, subject to the following Conditions:

**Replacement tree** – size and species to be agreed.

## **10.0 Background Papers**

10.1 Application documents and all consultation responses and representations received as listed on the Council's website under the application reference number, together with all relevant national and local policies, guidance and standards and relevant legislation.

# FAREHAM

BOROUGH COUNCIL



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