

OFFICER REPORT FOR COMMITTEE

DATE: 11/12/2024

**P/24/0803/TO
360GLOBALNET**

TITCHFIELD WARD

FELL TWO OAK TREES PROTECTED BY TPO 629 – T11 & T12

35 HEATH LAWNS, FAREHAM

Report By

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1.0 Introduction

1.1 The application was previously presented to the Planning Committee on 11 September 2024 for determination in light of the number of representations received.

1.2 Members of the Planning Committee deferred the application to enable:

- an independent review of the submitted reports supporting the application and to establish whether defective drains are a contributory cause of damage to the property.
- to seek further clarification from the applicants as to how the insurers concluded that the trees subject to this application, along with the trees in two further properties at Heath Lawns subject to separate applications are also the cause of the damage to number 20 Southmead Road; and
- what the difference in the repair costs to 20 Southmead Road would be if the trees were removed or the trees were left in situ.

1.3 Two further applications (references P/24/0801/TO and P/24/0802/TO) are reported elsewhere on this agenda, which seek the felling of protected trees implicated in causing damage to 20 Southmead Road.

2.0 Site Description

2.1 The two oak trees are situated within the rear garden of number 35 Heath Lawns, a detached property on the north side of this residential street.

2.2 Immediately to the north of the application trees are properties served by Southmead Road.

2.3 The oak trees pre-date the surrounding residential development and are protected by tree preservation order no 629.

3.0 Description of Proposal

3.1 The application is for the removal of two mature oak trees at 35 Heath Lawns, which have been implicated as a material cause of subsidence damage to the dwelling at 20 Southmead Road – a detached 3-bedroom dormer bungalow constructed in the 1950s.

3.2 During the summer of 2022, cracking appeared in multiple parts of the building, both internally and externally. The householder submitted a claim for subsidence under their building's insurance. Subsequent investigations were undertaken by engineers and arboriculturists, which concluded seasonal foundation movement has caused the damage.

3.3 This application to fell the trees has been submitted alongside two further applications for the felling of trees, six in total, that are all claimed to be implicated in the damage that has been caused to 20 Southmead Road.

4.0 Relevant Planning History

4.1 The following planning history is relevant:

P/15/0951/TO	Oak – reduce lower branches back to boundary and one branch back to fork.
Consent	22/10/2015

5.0 Representations

5.1 Five representations have been received objecting to the felling of the oak and lime trees, including the tree owner, on the following grounds:

- The buildings foundations are insufficient and should be improved so the tree can remain.
- There are alternative solutions to removing these old, important trees.
- The foundations should be strengthened / underpinned.
- Oak trees support many species who rely on the tree as habitat.
- The trees provide many benefits and help to mitigate the impacts of climate change.
- The trees are very old and were there before the houses were built.
- The Council should be retaining mature trees and the TPO should provide the necessary protection.

6.0 Damage to 20 Southmead Road

- 6.1 Damage to the bungalow at 20 Southmead Road (cracking) was first observed in the Summer of 2022. The internal damage has occurred throughout the building on both floors, in the hallway, bedrooms, dining room, lounge, kitchen, landing and bathroom. External damage has affected the front, rear and both side elevations.
- 6.2 The timing of the damage, the existence of shrinkable clay beneath the foundations and the proximity of vegetation (trees) indicated 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 any movement.
- 6.3 No structural alterations to the building have been carried out which may have contributed to the current subsidence related damage and no previous underpinning has taken place.
- 6.4 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. It is normal for monitoring to be carried out for up to a 12-month period (over a winter and summer season) to establish the likely cause of the structural movement.

Site investigations at 20 Southmead Road

- 6.5 Following a claim made by the householder on their insurance, detailed site investigations were carried out in January 2023. The submitted report advises that:
- **Trial pit / borehole 1** was sunk to the front of the bay, to a depth of 4 metres, which confirmed the foundations to be 500 mm deep, sitting on a concrete footing. The soil descriptions were described as being initially soft/firm clay with rare medium gravel, turning to firm/stiff clay with rare medium gravel. Roots were discovered from nearby vegetation to a depth of 1 metre.
 - **Trial pit / borehole 2** was sunk to the rear left of main house, to a depth of 4 metres, which confirmed the foundations to be 800 mm deep, sitting on a concrete footing. The soil descriptions were described as being initially soft/firm clay with rare medium gravel and rootlets, turning to firm/stiff sandy clay with rare medium gravel. Roots were discovered from the nearby vegetation to a depth of 2.5 metres.

- **Trial pit / borehole 3** was sunk to the rear left of the conservatory, to a depth of 4 metres, which confirmed the foundations to be 750 mm deep, sitting on a concrete footing. The soil descriptions were described as being initially soft/firm clay with rare medium gravel and rootlets, turning to firm/stiff slightly sandy clay with rare medium gravel. Roots were discovered from the nearby vegetation to a depth of 2.5 metres.

6.6 The clay soil was confirmed to be desiccated and within a high plasticity soil. The engineering report advised that the influence of the nearby vegetation was the cause of movement to the property. Level and crack monitoring is in progress and the readings to date show seasonal movement on monitoring points 5, 6, 7, 8 & 9 (these are points of reference that are located at various points around the dwelling and their positions are shown within the submitted monitoring report).

6.7 The arboricultural report claims the oak trees subject of this report, along with 4 further trees subject of separate applications based on location, have been identified as the cause of the damage to the property and removal of the offending trees is recommended to help prevent any further foundation movement.

Engineering case review

6.8 The Area Team Manager of the Building Control Partnership was asked to review and comment on the findings of the site investigations and submitted supporting information, including the applicant's addendum report for 20 Southmead Road. They concluded that based on the information provided the evidence suggests that the moisture extraction in the clay sub-soil is the cause of the movement. Live tree roots were located within the trial holes, and the species and proximity would suggest that they would have an impact within the zone the dwelling is sited.

6.9 The application recommendation is for localised repair works to restabilise the building, following the removal of trees in the localised area. The Area Team Manager agrees with the Insurance Company that unless the property is underpinned, the retention of the trees is likely to recreate movement issues in future. Also, that there remains a risk that the trees could impact on other adjacent properties, although there is no certainty in this.

7.0 *Planning Considerations*

7.1 The following paragraphs of this report consider the technical circumstances, alongside the planning balance, that necessitated the applicant to seek the removal of the trees.

Are trees the cause of damage to the property?

- 7.2 The property is served by a domestic drainage system – some defects were discovered during the investigations, primarily relating to the storm water system / roof connections and down pipes and have subsequently been repaired. However, the investigations and level monitoring undertaken by the Insurance Company's Engineer has found that the damage is caused by seasonal movement within the clay soil and not the drainage system.
- 7.3 Crack and level monitoring has been undertaken since February 2023, the latest being dated 6 September 2024.
- 7.4 A clear pattern of seasonal movement has been confirmed, affecting the majority of the property. Downward movement of almost 8mm occurred in the summer of 2023, with the main movement occurring on the rear right corner of the original bungalow. This was followed by upward movement of a similar magnitude over the winter and spring of 2023 / 2024. An even greater downward movement occurred over the summer of 2024, with over 16mm of movement to the rear of the building. The Engineer appointed by the Insurers states within their Site Investigation Validation report that they expect this to increase further over the rest of the autumn period.
- 7.5 The cause of damage is confirmed by the timing of the damage (during an extremely dry summer - 2022), the presence of live tree roots below the foundations, the desiccation of the clay soil and by the recovery of the foundations as the clay soil rehydrated. This pattern of movement can only be caused by seasonal movement of the clay soil and the foundations are at a depth where seasonal movement due to normal climatic conditions is highly unlikely.
- 7.6 Despite 2023 and 2024 being relatively wet summers, significant movement has still occurred at 20 Southmead Road. It is considered inevitable that an increased level of movement will occur following the next dry summer. The submitted reports considers that it is essential that the moisture demand of the adjacent vegetation is reduced substantially. Pruning will only provide a short-term solution and would have to be so severe that it would significantly reduce the aesthetics of the trees and will require ongoing, regular management of any regrowth. The applicant's submission concludes that the trees subject of this application and of the further two applications should be removed.
- 7.7 The recommendation of the submitted Arboricultural Assessment undertaken in February 2024 is that the following vegetation is removed to ensure the long-term stability of the property:

T1 – Oak: 23 metres tall - 16.1 metres away

T2 – Oak: 17 metres tall - 14.2 metres away

The trees are situated in the rear garden of 35 Heath Lawns.

- 7.8 The distance between trees causing damage and a damaged property and the frequency of involvement of trees commonly implicated in building subsidence, is based on research by D F Cutler and I B K Richardson – Tree Roots and Buildings (second edition) 1989.

Oak – *Quercus* species

Maximum tree to damage distance recorded: 30 metres. In 90% of cases the tree was closer than 18 metres.

Normal maximum height on shrinkable clay in urban areas: 16 – 23 metres.

- 7.9 Based on the above data, the two oak trees implicated in the damage to 20 Southmead Road are within the range where 90% of cases occur involving this species. Roots of oak trees were identified from the trial pit/ boreholes. The oak trees have been identified as a material cause of the damage based on positive root identification and that, on the balance of probabilities, these trees are exerting a collective drying force on the soil beneath the building.

Loss of public amenity benefit

- 7.10 The application trees are large mature specimens; they are visible from adjacent public vantage points and accordingly that have substantial amenity value.
- 7.11 This loss of the amenity benefit must be balanced against the damage being caused to 20 Southmead Road and the evidence submitted in respect of both trees that the cause of the damage is attributed to.

8.0 Compensation Implications and Repair Costs

- 8.1 It is the Insurance Company's view that if the trees are retained the only way insurers will have of ensuring the long-term stability of the property will be to underpin the full footprint of the building. The cost of such underpinning work is likely to exceed £125,000 and will require the residents to be relocated for a minimum six-month period of time. The Insurance Company further considers that the underpinning costs should be fully recoverable from the Local Authority if the application to remove the trees is declined.

- 8.2 The submitted reports consider that a root barrier is not feasible, unless it was to extend across the rear gardens of multiple neighbouring properties. The Council can only make a decision whether or not to grant the consent under the tree preservation order. There is no mechanism available for the Council to negotiate alternative solutions.
- 8.3 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. In this case the applicant has submitted the application to remove the trees. The advice of their Insurance Company, following site investigation is that removing the trees would remove the cause.
- 8.4 In the event that the Council refuses the application, the compensation that can be claimed by a person 'for loss or damage' that has been 'caused or incurred in consequence of the refusal of any consent' is going to be the actual sums spent in respect of that loss/damage. Therefore, the Council could be liable to pay compensation for anything that was reasonably foreseeable by the Council at the time it refused consent. This could include the cost of carrying out repairs to the cracks in the property and the cost of implementing an engineering solution (such as underpinning) to prevent further cracking from the trees if they remain. As highlighted above this figure could exceed £125,000.

9.0 Conclusion

- 9.1 There are precedents in law for subsidence cases involving protected trees, where local authorities have resisted the removal of a trees implicated in a subsidence event where site investigations demonstrate that, on the balance of probabilities, the trees are a material cause. There have been significant claims for damages on the basis the local authority was made aware of the damage and failed to take the necessary action to abate the nuisance or grant consent under the TPO.
- 9.2 Officers consider that there is sufficient supporting evidence submitted to demonstrate that the removal of the trees would prevent ongoing damage to 20 Southmead Road and would avoid expensive and disruptive repair works. The Building Control Partnership's Area Team Leader has reviewed the evidence submitted and concurs with the conclusions that trees are the most likely cause of the structural damage to this property.
- 9.3 Officers recognise the substantial amenity value of this group of trees and the contribution they make to the surrounding area. Officers also recognise that this is a difficult case where the structural damage being caused to 20 Southmead Road is likely to result from the root systems of a number of

different trees. Whilst Officers acknowledge the amenity value of the trees, refusing to agree to their felling is likely to lead to a substantial compensation claim against the Council which is a material consideration in deciding this application. Officers are also mindful of the fact that 20 Southmead Road is someone's home, which is suffering structurally through no fault of that homeowner.

- 9.4 It is frustrating that when faced with applications of this type, the only options open to the Council are to either grant consent or refuse consent. The Council cannot require other engineering solutions to be carried out or explored. Completely independently from this application, this Council has been lobbying the Government to make changes to the legislation around tree preservation orders, so that felling trees implicated in subsidence cases should be considered as a last resort rather than one of the first options. To date the Government has indicated it does not intend to review the existing legislation around tree preservation orders.
- 9.5 Based on the legislation as it currently exists, and having carefully reviewed all the submitted information, Officers conclude that the need to prevent ongoing damage to 20 Southmead Road and to avoid a substantial compensation claim against the Council, outweighs the amenity benefit of these trees, and recommends that consent is granted for their felling.
- 9.6 Should Members approve the recommendation to fell the trees, it would be appropriate to impose a condition securing replacement trees. Considering the space constraints and the scale of the existing trees, officers believe the size of any replacement should be subject to discussions with the applicant.

10.0 Recommendation

1.1 GRANT CONSENT - subject to the following condition:

1. Within one month of the felling of the oak trees hereby approved, details of the species of two replacement trees (advanced nursery stock) of at least 18-20cm girth, shall be submitted to and approved by the Local Planning Authority in writing. The approved replacement trees shall be planted within the first planting season (October to March) following the felling of the trees and shall be retained thereafter.

REASON: In the interests of maintaining the amenity value of the area.

11.0 Background Papers

- 11.1 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.

12.0 Reference Papers

12.1 Cutler and Richardson – Tree Roots and Buildings (second edition)

Appendix A – Site plan

