OFFICER REPORT FOR COMMITTEE
DATE: 11/12/2024

P/24/1106/TO **TITCHFIELD WARD**
AGENT: Property Risk Inspection Ltd

FELL ONE OAK TREE PROTECTED BY TPO 629 – T5

27 HEATH LAWNS, FAREHAM

Report By
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1.0 Introduction

1.1 The application is presented to the Planning Committee for determination in light of the number of representations received and the significant public and media interest in recent proposals to remove six protected trees to the rear of 31 – 35 Heath Lawns.

2.0 Site Description

2.1 The oak tree is situated within the rear garden of 27 Heath Lawns, a detached property on the north side of this residential street.

2.2 The oak tree pre-dates the surrounding residential development and is protected by tree preservation order no 629 (Site plan at Appendix A).

3.0 Description of Proposal

3.1 The application is for the removal of a mature oak tree at 27 Heath Lawns, which has been implicated as a material cause of subsidence damage to the dwelling at 25 Heath Lawns – a detached property constructed in 1964.

3.2 The owner of 25 Heath Lawns purchased the property in 1987 and added a single storey extension to the rear in 1989. A second storey was then added in 2003. Mature trees are present in a number of gardens at the rear of the property, the closest is a mature oak tree situated in the garden of No 27 Heath Lawns.

3.3 During the summer of 2022, cracking appeared in the dining room, followed by further cracking around the exterior of the building. The householder became concerned about the damage and notified their insurers on 17 February 2023 – the cracking did not worsen over the winter months.

4.0 Relevant Planning History

4.1 The following planning history is relevant:

P/01/0588/TO	Oak – various remedial tree work.
Consent	15/05/2001
P/03/0925/TO	Oak – crown thin, balance and lift by 2 metres.
Consent	17/07/2003
P/07/0387/TO	Oak – shorten branches by 2 metres, crown lift to 5 metres and reshape crown.
Consent	17/05/2007
P/10/0654/TO	Oak – fell.
Refuse	17/ 09/2010
P/10/0998/TO	Oak – Reduce and reshape crown and lift to 7 metres.
Consent	09/12/2010
P/14/0005/TO	Oak - fell.
Refuse	27/02/2014
P/23/1490/TO	Oak – Reduce and reshape crown by 2 metres and lift to 8 metres.
Consent	13/12/2023

5.0 Representations

5.1 One objection to the felling of the oak tree has been received on the following grounds:

- The buildings foundations are insufficient and should be improved so the tree can remain.
- The oak tree is very old and was there before the houses were built.
- The oak tree has significant amenity value.
- The insurers are simply trying to save money by removing this tree.

5.2 Two letters of support have been received, including from the owner of the damaged property, on the following grounds:

- The oak tree causes constant concern in terms of the safety and use of our gardens.
- The movement of the tree in winter storms is very frightening.

- The tree is too big for a residential area.
- Consider the devastating impact the subsidence is having on the lives of the owners of no 25 Heath Lawns.

6.0 Damage to 25 Heath Lawns

6.1 The main area of damage is to the rear of the property and takes the form of cracking to the kitchen at the junction to the ceiling and wall with cracking noted below the coving. The cracking extends to the left-hand corner of the window and above the doorway to the garden. Further cracking is present to the lounge ceiling, at first floor level in the bathroom and landing. The cracking is reflected externally to the kitchen with stepped cracking to the right-hand side. The pattern of cracking indicates a mechanism of downwards rotational movement at the rear right corner and towards the neighbour's oak tree.

6.2 The timing of the damage, the existence of shrinkable clay beneath the foundations and the proximity of vegetation (trees) 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 any movement.

6.3 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. 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.

<u>Site investigations</u>

6.4 Level monitoring stations were set up at the property in March 2023 with readings taken through to May 2024.The necessary site investigations were carried out on 4 May 2023 to confirm the cause of the damage.

6.5 A trial pit was excavated at the rear right corner of the property. The excavation revealed a concrete foundation at a depth of 1150mm below ground level on to a stiff mid brown/orange, grey clay with roots observed to the underside of the foundation.

6.6 A borehole was augered through the bottom of the trial pit to a depth of 3.2 metres and roots were observed to a depth of 2 metres. Soil and root samples were retrieved from the borehole for laboratory testing and examination. The testing of the clay indicates the soil has a medium to high volume change potential when subject to changes in moisture content and samples were

found to have moderate to severe desiccation. The root samples retrieved from beneath the foundation was examined and confirmed as oak.

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 tree.

Are trees the cause of damage to the property?

7.2 Based on the site investigations the damage has occurred due to clay shrinkage subsidence caused by moisture extraction by roots altering the moisture content of the clay subsoil, resulting in volume changes, which in turn have affected the foundations.

7.3 The soil desiccation beneath the foundation corresponds with the roots recovered from the borehole beneath the foundations. Faulty drains have been ruled out as the cause on the basis the borehole was dry with no evidence of any moisture - desiccation was found in the soil samples.

7.4 The tree removal is proposed as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building.

Involvement of implicated trees

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 considered unlikely.

7.6 The tree removal is proposed to limit the duration of any claim period and therefore allow the owner of 25 Heath Lawns their right to the peaceful enjoyment of their property.

7.7 An alternative to felling such as pruning or significant ‘pollarding’ of the tree would not provide a reliable or sustainable remedy to the subsidence in the case of this tree. The Arboricultural Implication Assessment report identifies the oak at 27 Heath Lawns as a cause of damage to 25 Heath Lawns. The removal of the offending tree is recommended to prevent any further foundation movement.

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.

The application oak is situated 8.8 metres away from the damaged building.

Applicant's Environmental Statement

7.9 The submitted Environmental Statement advises that trees are not recommended for removal without a clear understanding of all these impacts and increasingly of the importance of due consideration relating to the climate crisis, of global climate change and of potential negative impacts.

7.10 The submitted Statement concludes that the subsidence event must be remedied to secure the property, its energy efficiency and weather tightness, to maintain its saleability and suitability for mortgage or re-mortgage finance if sold and as a requirement of the insurers commitment under the terms of the policy.

7.11 Further, the submitted Environmental Statement advises the following:

- In considering a vegetation remedy the insurer, their advisors and arboricultural specialists are seeking to minimise impacts to the policyholder, to remedy the cause of movement quickly and effectively, and allow subsequent repairs to commence without risk of recurrence of damage. To simply leave the property exposed to intermittent periods of repair based on dry periods would also be hugely disruptive to homeowners and costly in repeat super-structural repairs, vehicle movements, materials and other claim costs in CO2e production and would not comply with a Net Zero agenda.

- If vegetation management is not possible or was unsuccessful other remedies that might be attempted whether property underpinning, extensive root barriers or other soil and ground stabilisation have their own issues and impacts. Not least of these is the cost to the environment in

CO2e generation from creation of cement and cement substitutes, of steel and other metals production, from costs in plastics and then the material transport, insertion, and excavation effort with heavy machinery.

- A single tree removal on a site has a relatively modest annual impact on the CO2e budget loss for a site subject to subsidence of around 25kg CO2e per tree per annum. The cost in total of materials and fuel in tree removal are significantly less than 100kg CO2e.

- Heavy engineering and ground stabilisation solutions can range in impacts from around 3,000kg CO2e to 10,000kg CO2e in carbon cost and are often difficult to effectively mitigate relative to tree management.

Loss of public amenity benefit

7.12 The application tree is a large mature specimen; it is visible from adjacent public vantage points and accordingly has substantial amenity value.

7.13 This loss of the amenity benefit must be balanced against the damage being caused to 25 Heath Lawns 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 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.

8.2 It is the Insurance Company's view that if the oak tree is retained the only way insurers will have of ensuring the long-term stability of the property will be to underpin the building. The cost of such underpinning work is likely to exceed £100,000 and will be extremely disruptive to the householder. The Insurance Company further considers that the underpinning costs should be fully recoverable from the Local Authority if the application to remove the tree is declined.

8.5 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 tree. The advice of their Insurance Company, following site investigation is that removing the tree and crown reducing a second tree would remove the cause.

8.6 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 £100,000.

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 tree would prevent ongoing damage to 25 Heath Lawns and would avoid expensive and disruptive repair works.

9.3 Officers recognise the substantial amenity value of this oak tree and the contribution it makes to the surrounding area. Whilst Officers acknowledge the amenity value of the application tree, refusing to agree to its 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 25 Heath Lawns 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 25 Heath Lawns and to avoid a substantial compensation claim against the Council, outweighs the amenity benefit of the oak tree, and recommends that consent is granted for the felling.

9.6 Should Members approve the recommendation to fell the tree, it would be appropriate to impose a condition securing a replacement tree. 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

10.1 **GRANT CONSENT** - subject to the following condition:

1. Within one month of the felling of the oak tree hereby approved, details of the species of one replacement tree (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

TOWN & COUNTRY PLANNING ACT 1990 **FAREHAM BOROUGH COUNCIL TREE PRESERVATION ORDER NUMBER 629** 27 HEATH LAWNS - PLANNING APPLICATION P/24/1108/TO	FAREHAM BOROUGH COUNCIL	Title: FTPO 629	Ref: 1	© Crown copyright and database rights 2024 OS AC0000814042. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.
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