8(3) Application Number: APP/15/00349 Ward: Emsworth

Site Address: 31 Hollybank Lane Emsworth PO10 7UE
Applicant: Mrs Watson Team: 2
Agent: Lloyds General Insurance Case Officer: Mr J Gargett
8 Week Date: 27/05/2015

Reason for Committee Consideration: Councillor Red Card.

Proposal: Fell 1No. Oak within A2 of TPO 0088

EHPE Recommendations: **GRANT TPO CONSENT**

---

1 Site Description

1.1 No.31 is a detached chalet dwelling house located in Hollybank Lane. It is one of a street of detached dwellings built circa 1950s

1.2 The application proposes to fell a mature Oak tree (Circa 100 years old) which occupies a prominent position in the front garden of No.31 Hollybank Lane. The tree is highly visible in the street-scene, along with several other Oaks which grow in other gardens in the vicinity.

The tree subject to this application is linked to subsidence at the property (31 Hollybank Lane.)

2 Planning History

App/15/00063 – Withdrawn after HBC officer request for further information.

3 Proposal

3.1 The report considers the application to remove the mature English Oak tree, which is subject of a Tree Preservation Order (TPO) confirmed in 1957. The tree is located in the front garden adjacent to the highway and is linked to alleged subsidence damage at the property (31 Hollybank Lane). It is proposed to remove the tree on the grounds that the tree is a contributory factor.

The applicant has submitted an engineer's report/assessment and a technical report from Geotechnical for Lloyds bank Group.

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

On the basis of a desk-based review the Council's Building Surveyor states that the application relates to the felling of 1 Oak Tree which it is claimed is causing damage to the adjacent property. The comments relate only to the technical evidence presented and its accuracy and correctness.

Having carried out this review I make the following comments

- The trees location and type have been verified on site and are highly likely to be major contributory factors to the movement of the house identified in the report.

- The borehole information presented shows the existing property at 31 to have very shallow foundations. TP1 shows the concrete foundation being 0.475m deep and TP3 0.875 m deep. Based on current guidance for foundations such as NHBC Practice Note 4.2 and Approved Document A of the Building Regulations the foundations, particularly where 0.475m deep, would still be at some risk of future movement even if the trees are removed. If and once the trees are removed a further period of monitoring of movement will be need to carried out by the insurance company and if further movement is noted then additional work, which ultimately could include underpinning may need to be carried out. The need for further monitoring has been identified within the arboricultural report and therefore I am satisfied with the approach as being technically sound (subject to comment below)

- 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. The arboricultural report recommends that before the trees are removed a heave assessment is carried out to determine the risk of this occurring. There is no information with the application enabling me to assess if this has been carried out or not.

- Whilst not mentioned in the information submitted it was noted whilst on site that there is some cracking apparent in the external side elevation of number 33. Whilst the proposals are concerned with alleviating on-going damage to number 31, number 33 may also benefit from the removal of the trees, a full investigation into this property would need to be carried out to verify this.

Conclusion

In my opinion the oak trees that this application relates to are a major contributory factor to the damage to number 31 Hollybank Lane and the technical evidence presented is accurate.

However, the removal of the trees on its own cannot guarantee that there will be no further movement. For this reason it is essential that the on-going monitoring stated in the details submitted is carried out and that a heave assessment is completed.

Legal Advisor

The Town and Country Planning (Tree Preservation)(England) Regulations 2012 applies to these applications. There is an exception at section 14(1) which states that permission may be granted to fell TPO'd trees.

Exceptions

14.—(1) Nothing in regulation 13 shall prevent—

(a) the cutting down, topping, lopping or uprooting of a tree— .

(i) which is dead; .

(ii) in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;

Arguably, trees that cause subsidence to properties could be classed as a private nuisance, therefore, would constitute a reason to permit the felling of the implicated tree.

In all likelihood, therefore, were the Committee minded to refuse the application to fell the tree, they would have to satisfy themselves that the implicated tree is not causing the subsidence (ie the nuisance) per section 14(1)(a)(ii) of the Regulations.

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: 7

Number of site notices: 1

Number of representations received: 1

Summary: It seems that the trees are not a concern arboriculturally but the decision

whether the application to fell these trees should be rejected or allowed needs to be decided at a public DMC committee meeting and not just by HBC officer's delegated powers. We have lost many trees on Hollybank Lane over the last few years and this would yet again set a precedent for further felling not just in Emsworth but all over the Borough.

Comment: Noted and the case has been brought to Development Management Committee by Cllr Gibb-Gray.

7 Planning Considerations

7.1 The main planning considerations include:

i. Amenity value and condition
ii. The basis for proposed removal
iii. Other Appeal Decisions.

The further consideration of risk of a compensation claim is also included below.

i. Amenity Value and Condition

7.2 The mature English Oak is one of a number of similar-sized Oaks in Hollybank Lane, which have been successfully retained. It appears to have been pruned and maintained in the past, and presents as a fine specimen. It is highly visible from the street, and forms a long-standing feature in the landscape, and contributes significantly to the amenity of the area. It appears to be in a condition of normal health and vigour. In terms of amenity value and health, it is considered worthy of continued preservation.

ii. The Basis for Proposed Removal

7.3 Felling is proposed due to the alleged connection between the tree and subsidence at No.31 Hollybank Lane. The application has been submitted on behalf of the owner's insurer.

7.4 The house was built circa 1950s. The damage takes the form of internal and external cracking at both ground and first floor levels of the original house, predominantly located along the northern aspect of the building. Other cracking has been recorded to an extension to the rear of the property. No British Research Establishment (BRE) level of damage has been cited.

The Council's building surveyor confirms that the foundation depth for the built structure is very shallow given the ground conditions, which comprise shrinkable clay, and the proximity of the Oak tree. This is likely to be a significant factor in the resulting movement of the property.

7.5 The opinion of the Council's surveyor is that there is still a chance of further movement after the trees have been removed due to the very shallow depths of some of the foundations.

7.6 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 that 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.

Other Appeal Decisions

7.7 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. 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. 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,* 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.

Summary

7.8 In summary, the possibility of other reasonable works, such as underpinning which are likely to allow for the co-existence of the tree and a built structure is a matter of weight which has led to the dismissal of previous appeals, albeit the Ramblers Way case referred to a conservatory rather than the house,.

Risk of claim for compensation.

7.9 TPO legislation makes provision for the payment of compensation by 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.

7.10 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, which took effect in early April, removed the power to issue Article 5 certificates.

7.11 Members are advised that if a decision were made to refuse this application then it is likely that there will be a claim for compensation for works, such as underpinning etc required due to retention of the tree. This claim will be in the region of £24-£30,000

8 Conclusion

8.1 For the reasons summarised in Section 7 and the legal consultation above, it is recommended that the current application be permitted, subject to a condition to require the planting of a replacement tree. Members should note that as the TPO predates August 1999 a decision to refuse would also carry a consequent risk of a claim for compensation.

RECOMMENDATIONS:

That the Executive Head – Planning and Economy be authorised to: **GRANT CONSENT** for application APP/15/00349 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