DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO: **DC/24/0837: 60 Smithbarn, Horsham RH13 6DU**

RELEVANT PLANNING HISTORY:

HU/415/03	Surgery to 2 Oak trees	Application permitted
HU/129/98	Surgery to 1 Oak tree	Application permitted
DC/09/1612	Surgery to 1 oak tree	Application permitted
DC/12/0645	Surgery to 1 oak tree	Application permitted
DC/19/1251	Surgery to 1 oak tree	Application permitted
DC/23/1532	Fell 1 Oak tree	Application permitted

TPO/0062 Confirmed 26th September 1960

REPRESENTATION AND CONSULTATION RESPONSES:
No representations have been received in regards to this application.

ASSESSMENT/CONSIDERATION:

1. The tree the subject of this application is a large mature oak tree situated on the highway verge to the front of the property 60 Smithbarn. It forms the Northern end of a belt of 8 oaks (Ref: Area 3 of TPO/0062) that line a 110m length of the verge on the East side of the Smithbarn thoroughfare.

2. The tree is approximately 20m high with a stem diameter in excess of 1m. Given its roadside position, the tree has high amenity value in visual terms. It is of fair form and condition for the species and makes a positive contribution to the character of the streetscene. The are other semi-mature trees and trees of lesser size and stature to the North of the tree on the roadside verges and a larger oak immediately to the South.

3. It has been submitted that the property in question is suffering from structural deformation throughout, although principally to the rear elevation. This has been classified under the **Building Research Establishment Digest 251** as 'Category 2 ('slight'). It is submitted that this deformation has been on-going since first being noticed in the summer of 2022.

4. Evidence has been submitted indicating the presence of oak roots in close proximity to the building, and that the sub-strate consists of heavy clay with a high shrinkage potential. Specialised soil analysis has indicated that the underlying clay strata is desiccated, there being an abnormal soil moisture content profile at a depth beyond which ambient soil drying can be influential. Level monitoring results have been submitted for a 12-month period showing a cyclical pattern of movement, indicating a vegetative cause.

5. The tree is sited approximately 9m from the closest corner of the building. It is classified as a species of 'High' water demand, and the house is accordingly within the tree's 'Zone of Influence' (ZOI) as defined under NHBC guidelines (**Chapter 4.2: Building near trees**). The presence of the tree at the distance in question, on clay soils of high plasticity, indicates, on the balance of probabilities, that the root actions of the tree are likely to be contributing to the ground movement causing the structural defect.

6. The level of evidence required to justify the removal of a protected tree in such cases is not directly determined within the formal Planning Practice Guidance (**Tree Preservation Orders and trees in conservation areas, 2014**). However, clarity was provided by the landmark judgement in the case of Mr & Mrs Wright and Aviva Insurance v Horsham District Council (*Upper Tribunal (Lands Chamber), 23 August 2011*). This demonstrated clearly that "*the test to be applied is the balance of probabilities*" (para. 74 of judgement). Evidence proving the tree's role in a subsidence event beyond reasonable doubt, the greater (and criminal) evidential test, is NOT required.

7. From the information submitted it is clear that:

- The dwelling in question has suffered from a degree of structural defect, causing it to be blighted;
- The defect is serious enough for action to be warranted in its abatement;
- The property lies within the Zone of Influence (ZOI) of the oak tree in question;
- The sub-strate is clay of a medium to high degree of plasticity;
- Evidence has been submitted demonstrating a high level of likelihood of the involvement of a vegetative contributory factor in the defect.
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It can accordingly be seen that, at least on the balance of probabilities, the nearest remaining oak tree of fair vitality – is likely to be a contributory factor in the structural defect at the property.

8. Additional advice within the Planning Practice Guidance advises Local Planning Authorities when dealing with such applications to bear in mind the general right of compensation under the TPO, set within Regulation 24 of the **Town & Country Planning (Tree Preservation) (England) Regulations** (*2012*). Most commonly in subsidence cases, there is a clear differential in the cost of repairing the damaged building either whilst retaining the tree, or subsequent to its removal. This is because greater expense is incurred in repairing the damage in such a way as to eliminate the possibility of further involvement of the tree. If retained, clearly the tree's root structures will continue to grow, almost no matter what above-ground surgery takes place, and hence account of this would need to be taken in prescribing restorative building works. Should consent be refused, the council would be liable for the increase in cost as a result of the tree requiring to be retained. Local Planning Authorities are advised that if they believe "*that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision*".

9. The key consideration in the case, therefore, is that there has been submitted a clear and satisfactory level of evidence which indicates, on the balance of probabilities, (the proper evidential test), that the structural defects recorded at the property are being contributed to by the actions of the oak tree. From the information submitted, it is clear that this is likely to be the case. The additional consideration as to whether consent should be granted to fell the tree rests on whether its landscape amenity value is sufficient to warrant refusal, taking regard of the very likely possibility (in this particular case,confirmed) that such a decision could trigger a compensation claim. In this case, quantum has been declared at **£95,000**. It is not possible for the Council to insure itself against such compensatory costs, which therefore must be realised from public funds.

10. The tree's amenity value in the landscape has been assessed and is notable. It is clear that the removal of this tree will have a deleterious effect upon the character and amenities of the locality. It is clearly undesirable to lose such a tree which contributes significantly to the character of the area, and for which any replacement would be, for several decades at least, slim recompense. However, it is hard to argue that the amenity worth of this particular specimen would warrant the likely expenditure of £**95,000** of public funds to support.

11. It is clear that sufficient evidence has been submitted indicating the involvement of the tree in the nuisance of the subsidence event at the property. Given the modern knowledge of the effects of pruning on the water demand of trees, it must be accepted that felling is the sole course of action which will abate this nuisance. Resisting the felling leaves the householder with a blighted property, an action which is seen as unreasonable. It also leaves the Council exposed to the likelihood of success in a claim for compensation under the TPO. I find that in regard to the required balanced judgement between the amenity value of the tree in the public interest, the nuisance it is contributing to and the scale of the costs likely to be forthcoming, the Council has little reasonable option other than to grant consent for its removal.

12. It is reasonable in the circumstances to secure the planting of a replacement tree, by condition; however, such a tree will not necessarily have to be one of the same species.

RECOMMENDATION:
Grant consent subject to the conditions below.

CONDITIONS TO BE APPLIED:
1. TR2 *Time limit, 2 years*
2. TR7 *Replanting*
TINF2 *Wildlife protection.*

Bespoke Informative – Ownership
The Council notes that the tree referred to is not within your property or ownership. Whereas the Council permits the works scheduled above, it should be stressed that the works may only be carried out with the consent of the tree's owner. This notice of consent in no way overrides the wishes of the tree owner, nor should any inference be taken as such.

DELEGATED

Site visit and report undertaken by ANCL – **Assistant Arboricultural Officer**

Authorising Officer sign……ANBU…….***Arboricultural Officer***

Date**……08 Aug 24**