

## DELEGATED APPLICATIONS

### ASSESSMENT SHEET

APPLICATION NO: **DC/26/0397: 12 Cape Copse Rudgwick.**

#### PLANNING HISTORY:

|                                                                            |                                                             |
|----------------------------------------------------------------------------|-------------------------------------------------------------|
| DC/05/2107 - Surgery to 2 oak trees and 2 hornbeams (11 and 12 Cape Copse) | Application permitted                                       |
| DC/20/0065 - Fell 1 x Group of Hornbeam and Surgery to 4 x Oak Trees       | Application permitted                                       |
| DC/24/0039 - Fell x2 Oak                                                   | Application permitted                                       |
| TPO/0222                                                                   | Confirmed 15 <sup>th</sup> April 1975 ( <i>Area Order</i> ) |

#### REPRESENTATION AND CONSULTATION RESPONSES:

Rudgwick Parish Council has stated an objection to this proposal, subject to appropriate replacement planning being secured in line with as per RNP17.2 for replacement on or off site.

Rudgwick Preservation Society Committee have no objection to this application provided that any decision that is made is in consultation with the Arboricultural Officer.

No additional representations have been received in regard to this application

#### ASSESSMENT/CONSIDERATION:

1. The tree that is the subject of this application is a moderately sized oak with a slender, compact form, located on the western rear boundary of property 12 Cape Copse. The tree forms part of a historic line of oaks which marked the original edge of the large woodland previously situated to the south of the old railway line. The majority of the trees within the area covered by the order, and within the woodland as a whole, were removed prior to the residential development in the mid-1970s.

2. The principal view of the tree in question is from the west along Princess Anne Road, where it is readily visible and is considered to contribute positively to the character and amenities of the locality; it is of high public amenity value when viewed within the local landscape from this aspect. Views from the east are restricted due to the position of surrounding properties; however, the tree can still be seen through breaks in the building line. Despite this, it is not inherently a specimen of outstanding or particular merit in terms of its form, given its historical context as part of a wider tree belt. Historically, the tree has been managed for size and form by way of repeated surgery, from which it has recovered well, and it is currently displaying good vigour. Overall, it appears to be in fair health and condition.

3. This application follows an earlier application relating to a tree referred to as T3 Oak, situated at the same property, which was removed in April 2024. The new application seeks consent to remove the oak tree identified as T4 on the supporting site plan due to its involvement in, and contribution to, a structural defect at the adjacent property, 22 Princess Anne Road. The application is supported by evidence that the substrate consists of medium to heavy clay with a high shrinkage potential. Oak roots have been found beneath the dwelling foundations to depths of 1600 mm to the front right and 2600 mm to the front left. Soil suction is also elevated in the zones of desiccation. Crack and level monitoring both indicate a cyclical, seasonal pattern of substrate movement, suggesting that it is most likely caused by adjacent vegetation. It is well established that this can result from the abstraction of moisture from clay substrates by tree roots.

4. Oak is classified as a species of 'high' water demand, and the house is accordingly within the tree's 'Zone of Influence' (ZOI), both terms as defined under NHBC guidelines (Chapter 4.2: *Building near trees*). The presence of the tree in proximity to the property, together with the underlying soil type (Wealden clay soils of medium to high plasticity), would suggest, on the balance of probabilities, that root activity is contributing to the ground movement causing the structural defect at 22 Princess Anne Road.

5. In considering cases of this nature, it is necessary to have regard to the relevant legal position. While national guidance does not set out a fixed evidential threshold for subsidence cases, the courts have provided helpful clarification. In *Mr & Mrs Wright and Aviva Insurance v Horsham District Council* (Upper Tribunal, Lands Chamber, 23 August 2011), it was established that the appropriate test is the "balance of probabilities." In practical terms, this means it is not necessary to prove beyond all doubt that a tree is responsible for damage; rather, the question is whether the available evidence indicates it is more likely than not that the tree is a contributing factor.

6. It is accepted that this may represent a relatively low threshold, particularly where valued trees are concerned. However, this reflects the inherent complexity of subsidence cases, where absolute certainty is rarely achievable and conclusions must be based on the most reasonable interpretation of the available evidence.

7. From the information submitted in support of this application, it is clear that:

- The dwelling in question has suffered structural defects, causing it to be blighted.
- The defect is sufficiently serious to warrant remedial action.
- A previous application (ref. DC/24/0039) to fell two oak trees was permitted in April 2024 for the same reason.
- The property lies within the Zone of Influence (ZOI) of the tree, an oak, which is a species of high water demand.
- The sub-strata comprises Wealden clay of medium to high plasticity.
- Level monitoring shows a pattern of seasonal movement strongly indicative of vegetation-related activity, demonstrating a high likelihood of vegetative contribution to the defect.
- Oak roots have been found beneath the foundations to a depth of 2.6 metres, with oak roots being the most prevalent.

8. It can therefore be concluded that, on the balance of probabilities, the nearby oak tree is likely to be a contributory factor in the structural defect at the property.

9. Additional guidance within the Planning Practice Guidance advises Local Planning Authorities to bear in mind the general right to compensation under a TPO, as set out in Regulation 24 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. In subsidence cases, there is often a differential in the cost of repairing a damaged building depending on whether the tree is retained or removed. Greater expense is typically incurred if the tree is retained, as remedial works must eliminate the risk of future damage. Tree roots will continue to grow regardless of above-ground pruning, and this must be accounted for in any repair specification. Should consent be refused, the Council may be liable for the increased costs arising from retention. Authorities are advised that where loss or damage is foreseeable, this should be weighed alongside other key considerations, such as amenity value, before reaching a decision.

10. The key consideration in this case is that sufficient evidence has been submitted to demonstrate, on the balance of probabilities, that the oak tree is contributing to the structural defects observed. The decision therefore rests on whether its amenity value justifies refusal, taking into account the likelihood of a compensation claim; the applicants (IG Environmental Services) have confirmed that in the event of a refusal we, or our clients, will seek to secure compensation for the additional costs incurred. In this case, a reserve of £105,600 has been set if tree works are refused and stabilisation is required, compared to £51,774 if the proposed works proceed. The Council cannot insure against such compensatory costs for privately owned trees, and any liability would fall upon public funds.

11. The tree's amenity value has been acknowledged, and its removal will result in some loss to the locality. However, this loss does not justify the potential expenditure of over £105,600 in public funds.

12. Sufficient evidence demonstrates that the tree is contributing to subsidence-related damage. Given current understanding of tree water demand, felling is the only effective means of abating the issue. Refusal would leave the property owner with a blighted asset and expose the Council to a likely compensation claim. Balancing amenity value against nuisance and financial risk, there is little reasonable alternative but to grant consent for removal.

13. While the removal of the tree will have a negative impact on the character and amenities of the locality, the reasons for its removal are considered reasonable and justified. In this case it is considered necessary and appropriate to secure a replacement tree by condition.

#### RECOMMENDATION:

**Grant consent** subject to the conditions below.

#### CONDITIONS TO BE APPLIED:

- |        |                                 |
|--------|---------------------------------|
| 1. TR2 | <i>Time limit, 2 years</i>      |
| 2. TR7 | <i>Replanting (Single tree)</i> |
| TINF2  | <i>Wildlife protection.</i>     |

#### DELEGATED

Authorising Officer sign.....ANBU.....**Arboricultural Officer (Strategic Planning).**

Date.....15 May 26