DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO: **DC/25/0949: Land to the Northwest of 6 Princess Margaret Road Rudgwick.**

REPRESENTATION AND CONSULTATION RESPONSES:
Rudgwick Parish Council has expressed support the Root Barrier Scheme proposal shown in the application to solve the issue rather than felling the trees with TPOs.
Two representations of support have been submitted by residents of nearby properties regarding this proposal.

ASSESSMENT:
1. The oak trees that are the subject of this application comprise three mature oak trees located on land to the northwest of No. 6 Princess Margaret Road, Rudgwick, locally known as Peggie's Path, to the south of the residential cul-de-sac The Marts. The trees are of moderate to good form and maturity and are situated within a residential context where they make a positive contribution to the local landscape character of the area.

2. The trees are subject to statutory protection by virtue of a Tree Preservation Order (TPO) ref. TPO/1244/04. The application has been submitted in connection with substantiated subsidence damage affecting an adjacent residential property at No. 20 The Marts, where the trees are alleged to be a contributory factor influencing the recorded structural defects at the property.

3. The oak trees are highly visible within the local landscape. They have uninterrupted views from the west along Church Road, and from the north their upper crowns are visible above the roofs of Nos. 20 and 21 The Marts, where they form a skyline landscape feature. From the east within Princess Margaret Road, the trees are visible and positively contribute to the character and amenities of the area. The trees are considered to have a good level of visual amenity value due to their species, size, age, and prominent position within a built-up residential area.

4. Tree T1 is a slender specimen with a pronounced crown and stem bias to the east, likely resulting from competition with the more mature and better-established T2. Tree T2 is of fair form and appears to be in good health. It has previously been subject to arboricultural works in the form of a full crown reduction, from which it appears to have recovered well.

5. Tree T3 is a mature specimen exhibiting a stem diameter in excess of 1.2 m at 1.5 m above ground level (AGL). At the base of T3, on the northern, eastern, and western sides, heavily degraded remains of three fungal fruiting bodies (FFBs) of Ganoderma spp. (a decay fungus) were observed. Due to the advanced degradation of the fruiting bodies, further identification to species level was not possible. As with T2, T3 has been historically reduced and is displaying good vigour despite fungal colonisation at its base.

6. The applicant is acting as an agent on behalf of the building insurers (The Davies Group) for the neighbouring property immediately to the north. The application seeks consent to fell all three of the trees on the grounds that they are implicated in structural damage to No. 20 The Marts.

7. The trees are located at an approximate distance of 16–17 metres from the southern flank wall of the affected property and the closest areas of damage to the structure. The foundation depth of the dwelling comprises a concrete foundation approximately 1,150 mm thick, with a maximum depth of 1,250 mm below ground level.

8. Evidence has been submitted indicating that the property is suffering from ongoing structural deformation resulting from downward movement and re-settlement of the main structure following soil re-wetting. A predominantly vertical crack is visible within the brickwork on the southern elevation of the dwelling. In addition, an on-site inspection has confirmed that several internal walls, primarily within the principal front bedroom, the hall and stairwell, and an additional rear bedroom, display visible cracking consistent with structural movement.

9. Further evidence confirms the presence of oak roots beneath the foundations of the property. The underlying soil substrate is described as very stiff, fragmented, greyish-brown, highly silty clay with a high shrinkage potential, and was at the time of the survey found to be desiccated. The building lies within the 'zone of influence' of the oak trees as defined under NHBC guidance. Level monitoring data shows a pattern of cyclical movement consistent with a vegetative cause. The presence of mature oak trees on high-shrinkage clay soils indicates, on the balance of probability, that the root activity of the nearby oak trees is contributing to the movement of the dwelling and the resulting structural defects.

10. The level of evidence required to justify the removal of a protected tree in such circumstances is not explicitly defined in formal guidance. However, clarity was provided by the landmark judgment in Mr & Mrs Wright and Aviva Insurance v Horsham District Council (Upper Tribunal (Lands Chamber), 23 August 2011), which confirmed that “the test to be applied is the balance of probabilities” (paragraph 74 of the judgment). Evidence beyond reasonable doubt is not required.

From the information submitted, it is clear that:

- The dwelling in question has suffered from a degree of structural defect;
- The defect is serious enough for action to be warranted in its abatement;
- The property is within the zone of influence of the oak trees in question;
- The sub-strate is clay of a high plasticity;
- Evidence has been submitted demonstrating a vegetative contributory factor in the defect.

Accordingly, it can be concluded that, on the balance of probabilities, the nearby oak trees are more than likely to be a contributory factor in the structural damage at the property.

11. 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 differential in the cost of repairing the damaged building either while 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 trees’ retention. 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 or trees and the justification for the proposed works before reaching its final decision".

12. Consideration has been given to alternative arboricultural solutions, including crown reduction or cyclical pruning. However, current arboricultural understanding indicates that such measures would not provide a reliable or long-term solution, as root growth and associated soil moisture demand would continue.

13. The supporting information also considers the installation of a root barrier as an alternative mitigation measure. Officers acknowledge that, in technical terms, a root barrier could represent a viable option. However, the applicant’s insurers have formally advised that, should consent for felling be refused and a root barrier subsequently required, they would pursue recovery of the full installation costs by way of a compensation claim, stated to exceed £40,000 at the time of submission.

14. The key consideration in this case is that clear and satisfactory evidence has been submitted demonstrating, on the balance of probabilities, that the structural defects are being contributed to by the oak trees. Further consideration relates to whether the trees’ amenity value justifies refusal, given the strong likelihood of a compensation claim. Although the exact quantum has not been declared, a reserve of £70,000+ has reportedly been held should consent be refused and artificial stabilisation of the property or alternative engineering solutions be required. The Council cannot insure itself against such compensatory liabilities for third party trees, which would ultimately be raised from public funds.

15. The trees’ amenity value is acknowledged, and it is accepted that their removal would result in a notable loss to the character and visual amenities of the locality. The loss of mature trees is undesirable, and any replacement planting would take many years to provide equivalent benefit. However, the amenity value of these particular trees is not considered sufficient to justify potential public expenditure in the range of £40,000–£70,000.

16. It is therefore concluded that sufficient evidence exists to demonstrate the involvement of the trees in the subsidence affecting the applicant’s property. 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. Therefore, in regard to the 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 their removal.

17. While the removal of the trees will have a negative impact on the character and amenities of the locality due to their species, size, and position, the reason stated for their removal is considered to be reasonable and justified given the damage to the property. To mitigate this loss, the planting of a replacement tree (recommended species: Hornbeam (Carpinus betulus) or Field Maple (Acer campestre)) shall be secured by condition.

RECOMMENDATION:
Grant consent subject to the conditions below.

CONDITIONS TO BE APPLIED:
1. TR2 *Time limit, 2 years*
2. TR8 *Replanting (More than one tree i.e. three)*

Following the removal of the trees to be felled under this consent, the specified standard nursery stock (minimally 8-10cm in girth and 2 – 2.5m in height) replacement of the following species: Hornbeam (Carpinus betulus) or Field Maple (Acer campestre); shall be planted in the specified position within 6 months of the date of this consent. In the event that this tree should die following planting, it shall be replaced with a similar tree in a similar position within six months of its death.

Rason; in the interests of amenity.

TINF1 *Note to applicant.*
TINF2 *Wildlife protection.*

DELEGATED

Site visit and report undertaken by the Authorising Officer sign……ANBU…….. ***Arboricultural Officer (Strategic Planning).***

Date…29 December 25…