

DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO: **DC/26/1145: 30 Brushwood Road Horsham West Sussex RH12 4PE**

REPRESENTATION AND CONSULTATION RESPONSES:

North Horsham Parish Council has stated:

No objection to the felling of the Oak tree, subject to the comments of HDC's Tree Officer. The Committee requests that the felled tree be replaced with an Oak tree, in a suitable nearby location.

Two representations have been received in respect of this application. One from the owner/occupier of 8 Cottage Close who has stated:

This magnificent, mature oak tree with T2 preservation order has improved the visual appearance of the surrounding area for many years. It is the first tree to be seen when entering Horsham and provides invaluable habitat to many animals. It is reported that the roots could have contributed to subsidence of the property. But a major roof extension 10 years ago, could also be a contributing factor. Insurance companies will always try to minimize their costs by choosing the cheapest option to settle a claim, this being the removal of the tree. However, the installation of a root barrier along with canopy reduction could prevent the need to fell this healthy ancient oak.

The Horsham Society has also stated an objection to this application for the following reasons:

Mature native trees, like oaks, play a significant role in softening our predominantly urban streetscapes. As well as the positive impact on their immediate location, by virtue of their height they can be appreciated from a considerable distance. TPOs are intended to recognise the importance of individual trees and their landscape, ecological and social value and should only be overridden in the most exceptional cases. In our view there does not appear to be sufficient evidence at present to justify the removal of this mature oak.

ASSESSMENT:

1. The tree the subject of this application is a large, mature Oak (*Quercus* sp.) protected by Tree Preservation Order TPO/0036, served on 06/02/1976. The tree is situated within the curtilage of 30 Brushwood Road, Horsham, abutting Crawley Road. Owing to its size, prominence and visibility from the public highway, the tree makes a significant contribution to the character and appearance of the locality and is considered to have a very high level of public amenity value. The tree has an estimated CAVAT value of approximately £83,185, reflecting its substantial public benefit.
2. This application seeks consent to remove the tree due to its alleged involvement with, and contribution to, subsidence damage affecting the dwelling. The application is supported by an arboricultural assessment, engineering appraisal, site investigation report, root identification analysis, geotechnical testing and approximately two years of crack and level monitoring.
3. The site investigation identified shallow foundations founded within clay soils of medium to high shrinkability. Root samples recovered beneath the foundations were independently identified as live Oak (*Quercus*) roots. Laboratory testing also identified desiccation within the clay subsoil at rooting depth.
4. Engineering investigations concluded that the damage affecting the property is consistent with clay shrinkage subsidence. The observed damage principally comprises cracking and distortion to the front elevation of the dwelling and has been classified as Category 2 damage in accordance with BRE Digest 251.
5. Drainage defects were also identified during the initial investigations, including displaced joints, cracking and root ingress. Repair works were subsequently undertaken in order to address these defects.
6. Level monitoring undertaken between May 2024 and August 2026 demonstrates continuing cyclical movement within the dwelling. Whilst crack widths remained relatively stable, level monitoring confirmed measurable seasonal movement consistent with a vegetative influence upon shrinkable clay soils. The movement reportedly continued following both the drainage repairs and the removal of other implicated vegetation, namely a Laurel and Cypress.

7. The supporting arboricultural assessment identified the subject Oak as the principal remaining vegetation capable of influencing soil moisture levels beneath the foundations and recommended its removal. The Oak was the only protected tree identified as having implicated roots beneath the building foundations.

8. The level of evidence required to justify the removal of a protected tree in such circumstances is not determined within formal guidance. However, clarity was provided by the Upper Tribunal decision in *Wright & Aviva Insurance v Horsham District Council*, which confirmed that the appropriate evidential test is the balance of probabilities rather than the criminal standard of proof beyond reasonable doubt.

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

- The property is experiencing structural damage associated with subsidence
- The dwelling is founded upon shrinkable clay soils
- Live Oak roots are present beneath the foundations
- Soil desiccation has been identified within the underlying clay subsoil
- Level monitoring demonstrates cyclical movement consistent with a vegetative influence
- Other plausible causes have been investigated, and mitigation measures have been implemented.

10. It can accordingly be seen that, on the balance of probabilities, the subject Oak tree is materially contributing to the subsidence damage affecting the property. Whilst some uncertainty inevitably remains in all subsidence investigations, the available evidence is considered sufficient to establish a causal relationship between the tree and the damage complained of.

11. Additional advice within the Planning Practice Guidance advises Local Planning Authorities, when determining such applications, to have regard to the compensation provisions contained within the Tree Preservation Regulations. In this case, the engineering appraisal estimates repair costs of approximately £23,000 plus VAT if the tree is removed, compared with underpinning works in the region of £100,000 plus VAT should the tree be retained.

12. The tree's amenity value within the landscape has been carefully considered. The tree is a prominent and valuable, mature Oak which makes a significant contribution to local character and visual amenity. Its estimated CAVAT (Capital Asset Value for Amenity Trees) value of approximately £83,185 further demonstrates the public benefit derived from its retention. The removal of the tree would inevitably result in a noticeable loss of amenity to the locality.

13. An objection has been received from the Horsham Society, who correctly highlight the important contribution that mature native Oaks make to the character of the urban environment and the role of Tree Preservation Orders in safeguarding trees of recognised landscape, ecological and social value. Significant weight has therefore been afforded to the public benefits provided by the tree.

14. However, whilst Tree Preservation Orders are intended to protect trees of public amenity value, they do not preclude consent being granted where sufficient evidence demonstrates that a protected tree is causing actionable harm. In this instance, the application is supported by site investigation findings, independent root identification, geotechnical testing, engineering assessment and an extensive period of crack and level monitoring.

15. Collectively, this evidence confirms the presence of live Oak roots beneath the foundations, desiccation within the shrinkable clay subsoil and continuing cyclical movement consistent with vegetation-related subsidence. From the information submitted, and from that gleaned through the supporting investigations, it is considered that the evidence demonstrates, on the balance of probabilities, that the tree is materially contributing to the subsidence damage affecting the dwelling.

16. Furthermore, during the officer site visit, internal damage associated with the reported subsidence was observed within several rooms of the dwelling. Whilst the extent and significance of the defects are matters for the relevant technical specialists, the cracking and distortion observed on site appeared consistent with the findings of the supporting reports and the conclusion that the property is experiencing movement associated with shrinkage-related subsidence. This site-based assessment provides further support to the conclusions reached within the submitted arboricultural, engineering and geotechnical evidence.

17. The key consideration therefore is whether the amenity value afforded by the tree is sufficient to justify refusal, having regard to the likelihood of a compensation claim arising. The engineering appraisal estimates repair costs of approximately £23,000 plus VAT if the tree is removed, compared with underpinning works in the region of £100,000 plus VAT should the tree be retained. Whilst the tree is acknowledged to provide a notable public amenity benefit, the cost of underpinning is understood to exceed its assessed value under the CAVAT system. In these circumstances and noting that any successful compensation claim would ultimately be met from public funds, it is considered that refusal could expose the Council to a significant compensation liability.

18. The tree's amenity value has been noted, and it is recognised that its removal will result in the loss of a prominent mature Oak which contributes positively to the character and appearance of the locality. However, sufficient evidence has been submitted indicating, on the balance of probabilities, the involvement of the tree in the subsidence event affecting the property.

19. Having carefully weighed the significant amenity value of the tree against the evidence of nuisance, the ongoing impact upon the property owner and the foreseeable compensation liability arising from refusal, it is considered that there is no reasonable basis upon which a refusal could be robustly defended. On balance, the reasons put forward for the removal of the tree are considered reasonable and justified.

RECOMMENDATION:

Grant consent subject to the conditions below.

CONDITIONS TO BE APPLIED:

- | | |
|--------|----------------------------------|
| 1. TR2 | <i>Time limit, 2 years</i> |
| 2. TR7 | <i>Replacement (Single tree)</i> |
| TINF1 | <i>Note to applicant.</i> |
| TINF2 | <i>Wildlife protection.</i> |

DELEGATED

Authorising Officer sign.....ANBU.....**Arboricultural Officer (Development).**

Date.....07 Sep 26.....