DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO: **DC/24/0584: 41 Smithbarn, Horsham.**

REPRESENTATION AND CONSULTATION RESPONSES:
Two representations of support have been received in respect of this application.

ASSESSMENT:
1. The trees the subject of this application are three mature Oaks located on part of the adopted highway verge under the ownership / management of WSCC Highways Authority east of the property 41 Smithbarn. It (Ref: Area 5 of TPO/0062).

2. It is considered that the proposed surgery works to T6 and T11 are reasonable and justified and will not cause harm to the character and amenities of the locality.

3. T7 the tree indicated for removal, is roughly 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 street scene.

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 14m 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 claimant 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 public funds to support its retention.

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. TR3	*Treeworks limit (standard)*
3. TR4	*Surgery standards*
4. TR7	*Replacement (Single Tree)*
TINF1	*Note to applicant.*
TINF2	*Wildlife protection.*

DELEGATED

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

Date……01 Jul 24…