DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO: **DC/24/1800: 4 Lansdown Close, Horsham**
DC/24/1802: 5 Lansdown Close, Horsham

REPRESENTATION AND CONSULTATION RESPONSES:
North Horsham Parish Council has stated that they wish to defer to the considerations of the HDC Arboricultural Officer.
2 x representations of objection have been received in respect of this application, the objections are based on loss of amenity, and the environmental and wildlife benefits that the trees provided to the area.
3 x representations of support have been received in respect of this application.

ASSESSMENT:

1. The trees the subject of these applications are four mature oaks, T1, T2 and T3 are contained within a small, raised area of unsurfaced ground to the north of 4 Lansdown Close, and T4 is located a few metres to the east of 5 Lansdown Close, adjacent to the main vehicle parking area for the property.

2. The constraint is TPO/0036, an area order served on the 06/02/1973 before the area was developed for residential use. Area orders differ from individual, group and woodland orders whereby they only protect any trees that were present within the designated area on the date the TPO was served. As such, the trees in question are considered to be of a size and age to have been present in the area, when the order was served, and they are protected by default of their location.

3. The trees are located on the southwest side of Lansdown Close, at the front of Number 4 & 5, within a built-up residential area, accessed from the east on Whitehorse Road. The principal views of the trees from within the public domain, are from the east at the junction with Whitehorse Road, and from several viewpoints, within Lansdown Close. It is acknowledged that the group of trees have a high level of visual public amenity value, when viewed from these aspects. However, due to the positioning of the dwellings in the area, coupled with the tree's location and historical management, views from outside of Lansdowne Close are limited. Therefore, the visual amenity of the group, when viewed within the local landscape context, is very localised. Nevertheless, due to the absence of any significant roadside trees in the Close, it is recognised that these trees are the principal arboreal feature in the locality.

4. All four trees have in the past been subject to robust surgery works to manage their size and form due to their close proximity to the dwellings in the area; these works have resulted in the trees having a short squat form and they have the appearance of a single green feature rather than what would generally be considered a group of individual trees. In addition, the repeated surgery works have diminished the overall quality of the trees when assessed as individual specimens. This is due to the way in which the works have been completed and the vast number of large old pruning wounds and truncated branches. None of the trees are veterans or ancient, nor are they specimens of outstanding, particular or especial merit in their own right.

5. The applicants seek consent to fell all four trees following a subsidence event at 4 Lansdown Close. Following the submission of the application by no. 4, the Council requested the applicant to provide more information, to support the claim that the trees in question where the cause of or a contributing factor to the structural defects at the property, which has been provided and made public.

6. It is noted that there are a number of discrepancies between the documents provided and the current situation at the property. The discrepancy appears caused by the time lapse between records and submitting this application. Whereby a letter from the applicants' home insurance provider dated 07/10/22 advised that ***The offending vegetation has now been removed and this will prevent ongoing movement.*** From a site visit, it is clear that this is not the case, and the 4 oak trees instigated in the subsidence event at the property are still in situ, and the issues with seasonal ground movement affecting the applicant's property appear to be ongoing, with regular repairs to the property being made up until late 2024.

7. The trees are located at a distance approximately ranging between 7.6m and 9m from the northern corner of the house and area of damage. The foundation depth of the main structure has been recorded as being 800mm. A CCTV survey of the drainage system found no defects leading to an escape of water which could be causing the subsidence problem.

8. Evidence has been submitted indicating the presence of oak roots in close proximity to the building, and that the substrate consists of sandy clay with a medium to high shrinkage potential. The building lies within the 'Zone of Influence' of the oak tree as defined under NHBC guidelines. Level monitoring results have been submitted showing a pattern of movement, indicating a likely vegetative cause. The presence of the mature oak trees in the area, on clay soils of relatively high plasticity, indicates, on the balance of probability, that the root actions of the oak trees have been contributing to the historical and ongoing movement causing the structural defect at no.4.

9. The level of evidence required to justify the removal of a protected tree in such cases is not determined within the formal guidance. 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 and unambiguously that "**the test to be applied is the balance of probabilities"** (para. 74 of judgement). Evidence proving the tree's role in the subsidence event beyond reasonable doubt, the greater evidential test, is NOT required. Therefore, from the information submitted, it is clear that:

- The dwelling in question has suffered from a degree of structural defect;
- The defect was 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 underling soil substrate below the property is clay of a medium to high plasticity;
- Evidence has been submitted demonstrating a vegetative contributory factor in the defect.

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

10. The key consideration in this case is that a satisfactory level of evidence has been submitted which indicates, on the balance of probabilities (the proper evidential test), that the structural defects recorded at the property have been contributed to by the root actions of the nearby oak trees. From the information submitted, and from that observed on site, it is apparent that this is likely to be the case. The additional consideration in whether consent should be granted to fell the trees (whether subject to replacement or otherwise) rests on whether their landscape amenity value is sufficient to warrant refusal.

11. The amenity value of the group of trees in the landscape has been noted, and it is considered that their removal would result in a loss of amenity to the immediate area. Although their loss would be noticeable from within Lansdown Close, from outside of the close within the wider public domain this harm would be lessened. It is also undesirable to lose such trees which contribute to the character of the area and for which any replacement would be, for a number of years at least, slim recompense.

12. In this instance, sufficient evidence has been submitted indicating the involvement of the trees in the nuisance of the subsidence event at the applicant's property. Given the modern knowledge of the effects of pruning on the water demand of trees, coupled with the historical cyclical management of these trees, it must be recognised that felling is the sole course of action which will fully abate this nuisance. Resisting the felling leaves the householder with a blighted property, an action which is seen as unreasonable. Therefore, in regard to the balanced judgement between the amenity value of the trees in the public interest, and the nuisance they are contributing to, the Council has little reasonable option other than to grant consent for their removal.

13. It is considered that the removal of the tree will have a negative impact on the character and amenities of the locality due to its species, position and size. However, on a balanced judgment it is considered that the reasons put forward for the removal of the tree are reasonable and justified. To help mitigate for the loss of the tree, replacement trees (recommend Hornbeam or Field maple) 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 *Replacement (More than one tree)*

Following the removal of the trees to be felled under this consent, the specified heavy standard nursery stock (minimally 12-14cm in girth and 3 – 3.5m in height) 2 x replacements 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 either of these trees should die following planting, they shall be replaced with a similar tree in a similar position within six months of their death.
Reason; in the interests of amenity and policy 33 of the HDPF

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

DELEGATED

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

Date…….17 Mar 25……