DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO: **DC/24/1649: Land East of 1 Willow Drive, Billingshurst.**

REPRESENTATION AND CONSULTATION RESPONSES:
Billingshurst Parish Council the tree owner has stated an objection to this proposal.
1 x comment of Objection has been received in respect of this application.
1 x
ASSESSMENT:
1. The tree the subject of this application is one of two mature specimens Oaks (T2), located on a parcel of land to the south of 8 St Gabriels Road, consent was given to fell the second mature Oak indicated on the supporting site plan as T3, under application DC/23/2306 Due to its involvement with the subsidence event at 8 St Gabriels Road.

2. Historically the tree would have denoted the extent of an old field boundary in the area before this part of the village was developed. After which both trees found themselves on an isolated parcel of amenity land set within built-up residential area. Due to its location the tree is readily visible within the local street scene and as such it is considered to have a high level of amenity worth when viewed within the local landscape context.

3. The above ground features of the tree have been maintained, by way of repeated surgery work over the last 20 years. It appears to be in good condition, neither exhibiting the basal fruiting bodies of any pathogenic decay fungus, often seen on trees of this species and size.

4. This application seeks consent to remove the western most of the two mature oak trees in the area (T2) due to its alleged involvement with, and contribution to, a structural defect at the adjacent property to the north 8 St Gabriels Road. The application has been supported by detailed evidence indicating the presence of oak roots under the building and that the sub-strate consists of clay with a high shrinkage potential. Specialised soil analysis has shown that the underlying clay strata is desiccated, and there is an abnormal soil moisture content profile at a depth beyond which ambient soil drying can be influential. Crack and level monitoring have both indicated a cyclical, seasonal pattern of sub-strate movement, such that it can only realistically have been cause by the adjacent vegetation. It is well known that this can be a result of the abstraction of moisture from clay sub-strate caused by the roots of trees on clay soils.

5. Oak is classified as a species of ‘High’ water demand, and the house is accordingly within the tree’s ‘Zone of Influence’ (ZOI), both of these terms as defined under NHBC guidelines (Chapter 4.2: Building near trees). The presence of the trees to the property and the underlying soil type, clay soils of medium to high plasticity, would imply that, on the balance of probabilities, the root actions of the tree are likely to be contributing to the ground movement causing the structural defect at 8 St Gabriels Road.

6. 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.

7. From the information submitted to support this application 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 is 9m from the tree and lies within the Zone of Influence (ZOI) of the tree an oak,
- which is a species of high-water demand.
- The sub-strata is clay of a medium to high degree of plasticity.
- Level monitoring for the period between September 2021 to September 2024 shows a pattern of
- seasonal movement strongly indicative of the action of vegetation with this demonstrating a high level of likelihood of the involvement of a vegetative contributory factor in the defect.
- Tree roots of oak have been identified in the test holes next to the foundations of the property to a depth of over 2.0 metres.

It can accordingly be seen that, at least on the balance of probabilities, the nearby oak tree 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 differential in the cost of repairing the damaged building either while retaining the tree/trees, or subsequent to their 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/trees. 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 because 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 and the justification for the proposed works before reaching its final decision.

9. The key consideration in this 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, and from that gleaned on site, it is clear that this is likely to be the case.

10. Notwithstanding, it is worth noting that the reason provided to support and justify the felling of the tree on CO2e emissions grounds as set out in paragraph 3 of the Statement of Reasons. Whereby, the insurance company (Property Risk Inspection Limited) has claimed – "***the felling of the tree would limit the extent and need for costly CO2e emissions relating to alternative engineering repair works at the insured property."*** This reason does not carry any weight in the determination of this application, and it is not considered to be an appropriate reason to justify the removal of a protected tree.

11. 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, taking regard of the very likely possibility that such a decision could trigger a compensation claim. In this case, given the extent of the damage to the property the insurance company has set a reserve of between £20,000 to £60,000, in the event that tree works are refused, and artificial stabilisation is required. It is not possible for the Council to insure itself against such compensatory costs, which must be raised from public funds.

12. The amenity value of the tree in the landscape has been noted, and it is considered that it's removal will result in a loss of amenity to the locality. It is also undesirable to lose such tree's which contributes to the character of the area and for which any replacement would be, for a number of years at least, slim recompense. However, the amenity worth of this particular specimen would not warrant the likely expenditure of a figure upwards of £20,000 to £60,000 of public funds to support it's retention.

13. Sufficient evidence has been submitted indicating, on the balance of probabilities, 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 only course of action that will abate this nuisance. Resisting the felling leaves the householder with a blighted property, an action that 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 their removal.

14. It is always regrettable to lose trees of maturity that do add to the character and amenities of an area. This also being an action which conflicts with the current environmental goals of the Council. However, as the Local Planning Authority, the Council can only determine such applications within the remit of the current legislation, which is set at a national level, even if this may not necessarily be in line with the Council's current environmental, ecological and climate change statements and policies.

16. It is considered that the removal of the tree will have a negative impact on the character and amenities of the locality due to it's 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 trees a replacement tree (recommend, Hornbeam, Norway maple, or Midland Hawthorn) shall be secured by condition.

RECOMMENDATION:
Grant consent subject to the conditions below -

RECOMMENDATION:
Grant consent subject to the conditions below.

CONDITIONS TO BE APPLIED:

1. TR2	*Time limit, 2 years*
2. TR3	*Treeworks limit (standard)*
3. TR7	*Replacement (Single tree)*
TINF1	*Note to applicant.*
TINF2	*Wildlife protection.*

DELEGATED

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

Date……25 Apr 18……