

5.1 - SE/16/01857/WTPO Date expired 9 August 2016

PROPOSAL: Removal of 2 Oak trees, T1 and T2 (TPO).

LOCATION: Pippin Cottage, The Green, Leigh TN11 8QJ

WARD(S): Leigh & Chiddingstone Causeway

ITEM FOR DECISION

This application has been referred to Development Control Committee at the discretion of the Chief Planning Officer, due to the potential for a claim against the Council and the public interest response to it.

RECOMMENDATION: That consent be GRANTED subject to the following condition:

- 1) That the trees are replaced with two new trees of a suitable species, variety and size and at a suitable location to be agreed.

Description of Proposal

- 1 Removal of two mature Oak trees, T1 and T2 of TPO 10 of 2003 from within the garden of Pippin Cottage, The Green, Leigh, TN11 8QJ.

Description of Site

- 2 Detached residential dwelling located on the north eastern edge of The Green at Leigh. The trees are located adjacent to the south western boundary of Pippin Cottage overlooking The Green.

Constraints

- 3 TPO 10 of 2003
- 4 Leigh Conservation Area
- 5 Areas of Archaeological Potential

Policies & Material Considerations

- 6 National Planning Policy Framework (NPPF)
- 7 National Planning Policy Guidance (NPPG).

Planning History

- 8 13/03720/WTPO application to fell T1 mature Oak tree and carry out a 30% reduction on T2 - granted.
- 9 An application (13/03720/WTPO) to fell T1 and reduce T2 by up to 30% was received and validated on the 12th of December 2013. The application was

reviewed and consent was granted for the applied for works dated the 31st of January 2014.

- 10 The reasoning for the grant response was that the applicant had demonstrated that the trees were implicated in the subsidence of the south western ground floor area of the house. Level monitoring had been carried out showing the seasonal changes in levels at the effected part of the dwelling. Soil samples showed shrinkable desiccated clay. Root samples were taken from the area of the affected foundations and tests showed Oak species to be present. T1 and T2 were the only Oaks within the area that could affect this south western corner of the house. There are other trees within the south western vicinity of Pippin Cottage but only Oak roots were found and identified.
- 11 The 2013 consent has now expired with the consented works not having been carried out.

Consultations

Leigh Parish Council

- 12 Leigh Parish Council strongly objects to the removal of the Oak trees, and would like to suggest that a crown reduction is carried out and root barriers installed instead.

Representations

- 13 A petition has been received from Mr Steare against the cutting down of the two Oak trees. This petition has 443 signatures upon it. The signatories have signed this petition as they want Sevenoaks District Council to save the two Oaks from being cut down.

Chief Planning Officers Appraisal

Background Information

- 14 In considering an application, the NPPG advises that the Local Planning Authority (LPA) should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it (NPPG TPO's paragraphs 89-100).
- 15 The NPPG provides guidance on how an LPA should consider applications for works to TPO trees, and this forms the basis of the assessment below.
- 16 In certain circumstances, compensation may be payable by the local planning authority for loss or damage which results from the authority refusing consent where protected tree roots are implicated. This is a material consideration when assessing whether to grant consent for the works proposed.
- 17 A new application for works to the TPO trees (16/01857/WTPO) was submitted dated 14th of June 2016. This application is the same as the 2013

application but with the difference that the applicant wishes to fell T2 as well as T1 instead of reducing its size.

Principal Issues

18 The principal issues, as set out in the NPPG, are:

- Assessment of amenity value and the likely impact on the amenity of the area.
- Whether the proposal is justified having regard to the reasons put forward to support it.
- Whether any loss or damage is likely to arise if consent is refused or granted with conditions.
- Whether there are any requirements in relation to protected species.
- Any other material considerations.

Assessment of amenity value and the likely impact on the amenity of the area

- 19 It is clear that these trees make an important contribution to the visual amenity within the Leigh Conservation Area.
- 20 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a requirement on a local planning authority in relation to land in a Conservation Area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
- 21 Interpretation of the 1990 Act in law has concluded that preserving the character of the Conservation Area can not only be accomplished through positive contribution but also through proposals that leave the character or appearance of the area unharmed.
- 22 The Oak trees form part of the canopy to the village green.
- 23 The TPO trees provide a valuable contribution to the amenity of the village and are an important part of the character of the Conservation Area, albeit limited to the area around The Green. Significant weight is given to the amenity value of the trees and it is acknowledged that there will be significant harm to the Conservation Area with the loss of those trees.

Whether the proposal is justified having regard to the reasons put forward to support it.

- 24 An application has been made by an insurance company on behalf of the owner of Pippin Cottage to have two mature Oak trees removed.
- 25 The owner's insurance company have requested that to stop further damage to the building the two trees should be taken down. It has been demonstrated that structural cracking has already occurred to the building.

It has been demonstrated beyond reasonable doubt that the roots of the Oak trees are causing the desiccation of the soil located below the footings for this area of the house and therefore the cause of the subsidence.

Whether any loss or damage is likely to arise if consent is refused or granted with conditions.

- 26 There is case law that shows that a refusal of consent to take down protected trees where they are implicated in subsidence claims, with a preference for underpinning, could result in the Council having a claim for compensation for the difference in the costs, which in this instance could be considerable.
- 27 As part of the consideration of this application, the Council's Arboricultural and Landscape Officer has visited the site to assess the condition of the TPO trees and to assess the supporting information submitted. A review has also been carried out of historical information related to tree issues in this area and a review of Arboricultural issues related to subsidence issues in relation to trees.
- 28 If the trees are retained further progressive damage can reasonably be expected. It is clear that their roots are the main cause of the soil shrinkage at the location described within the application.
- 29 The owners insurance company could claim compensation from the Council which is likely (if successful) to be the difference in the cost of underpinning and taking the trees down plus legal costs. It is assumed that the felling works would cost in the region of £2000 (in the lack of evidence provided this is my own estimation of the tree works), whereas underpinning is estimated at £35000 (unconfirmed).
- 30 The Council is advised by the NPPG to consider the risks of compensation that may arise if consent is refused or granted and conditioned.
- 31 The risk of compensation from a conditional consent, which requires replacement trees is considered very limited as replacement species could be chosen that are more suited to the geology and location.
- 32 The risk of compensation following an application to the courts from a refusal of consent is assessed to be considerable, due to the costs involved in underpinning and as a strong and convincing case has been submitted that the TPO trees are responsible for the structural damage at the property.

Whether there are any requirements in relation to protected species.

- 33 In both the previous and current application, the proposals to carry out tree works have been driven by the need to halt the damage to the fabric of Pippin Cottage. The cause it would appear has been thoroughly researched. The findings have implicated the two mature Oak trees which are a valuable asset to the Leigh Conservation Area.
- 34 To retain the trees by way of a refusal to this application would it seems not only retain the current damage as it is, but ensure its continued deterioration. There does not appear to be any favourable option to retain

the trees and resolve the building damage. Should a refusal notice be issued, the only option then open to the insurance company is to fund the more expensive option of underpinning. This option may not guarantee in the long term that as the trees continue to grow there will not be further structural issues. It is also a strong possibility that a compensation claim could be made by the insurance company for the extra costs.

Any other material considerations

- 35 The concerns raised by the Parish and the other representations are noted and it is agreed that where at all possible, the Council would wish to see the Oak trees retained. However, when considering a proposal to fell these TPO trees, the Council must assess that proposal as per the guidance in the NPPG, as outlined above which takes into account issues in addition to the amenity value of the trees.

Conclusion

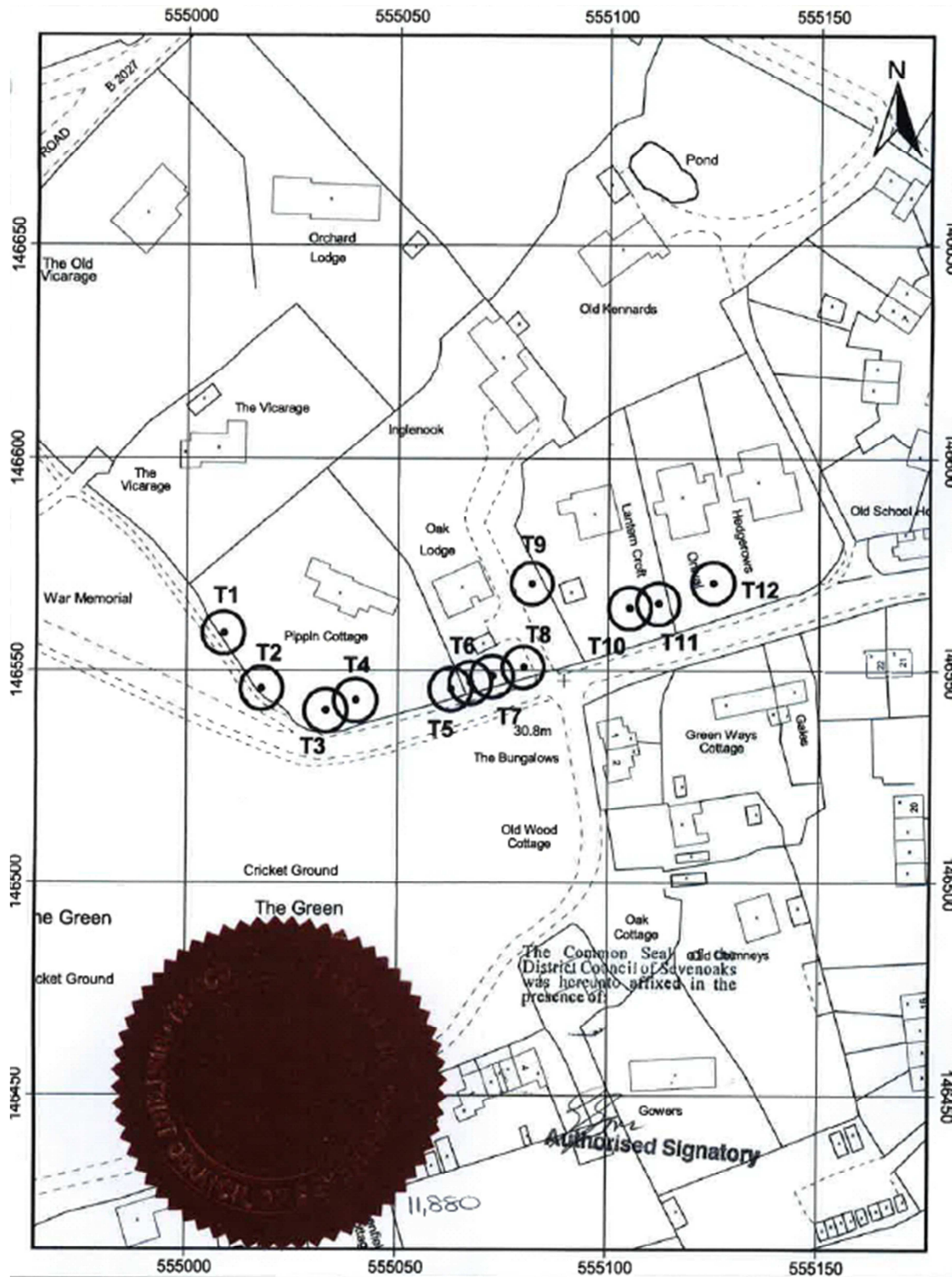
- 36 In assessing the proposal to remove two TPO trees, significant weight is given to the amenity value of the trees, that is an important part of the character of the Conservation Area. There will be moderate harm to the wider Conservation Area with the loss of those trees.
- 37 A convincing case has been submitted that the TPO trees are causing structural damage, which is similar to the 2013 consent given to remove one of the Oaks located adjacent to the dwelling and that removal of the two Oaks is the only option to protect the dwelling for future damage. This must also be given significant weight.
- 38 In addition, the Council must consider the risks of compensation that may arise if consent is refused or granted and conditioned. The risk of compensation from a refusal of consent is assessed to be considerable and this is given significant weight.
- 39 Taking all these factors into account, and the weight attached to the different issues to be considered, whilst the loss of TPO trees is regrettable, due to their considerable amenity value and contribution to the Conservation Area, the recommendation is for this application to be allowed and that consent be granted with a condition to replant with a suitable species.

Background Papers

TPO plan with Schedule 1

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Richard Morris
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Tree Preservation Order

TPO 10 (2003)

Scale 1:1250

Date 10/04/2003

Pippins Cottage, The Green, Leigh and Inglenook, Oak Lodge, Lantern Croft and Onival, Powder Mill Lane, Leigh.

SCHEDULE 1
SPECIFICATION OF TREES
Trees specified individually
(encircled in black on the map)

Article 4

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
T1	Oak	TQ 555009-146559
T2	Oak	TQ 555018-146546
T3	Oak	TQ555033-146541
T4	Oak	TQ555040-146543
T5	Oak	TQ555062-146546
T6	Oak	TQ555067-146547
T7	Oak	TQ555072-146549
T8	Oak	TQ555080-146551
T9	Oak	TQ555082-146571
T10	Oak	TQ555105-146565
T11	Oak	TQ555112-165566
T12	Oak	TQ555125-146571

Trees specified by reference to an area
(within a dotted black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
	None	

Groups of Trees
(within a broken black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
	None	

Woodlands
(within a continuous black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
	None	

* complete if necessary to specify more precisely the position of the trees.