

Application No: 20/0960/FH

Location of Site: 59/61 Earls Avenue, Folkestone

Proposal: Felling of a multi-stemmed Lime tree subject of Tree Preservation Order No. 4 of 1994

Applicant: Mrs Andrea Samson

Agent: Mr Keith Tait

Officer Contact: Jo Daniels

SUMMARY

This report considers whether consent should be granted for the felling of a multi-stemmed Lime tree situated at 59/61 Earls Avenue, Folkestone. The applicant explains that the tree is causing damage to the concrete flooring and structures of the adjoining garages.

This report recommends that consent is granted as the applicant has provided supporting evidence to confirm that the tree is the causal factor of the damage and that there are no viable alternative options to felling the tree.

RECOMMENDATION:

That consent be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. INTRODUCTION

1.1. The application is reported to Committee at the request of Cllr Laura Davison.

2. SITE AND SURROUNDINGS

2.1. The application site is 59-61 Earls Avenue, a semi-detached period property subdivided into flats and located on the west side of Earls Avenue and at the western end of Folkestone. At the rear of the building there is a hard standing area to the front of a block of 10 precast concrete garages. The large mature multi-stemmed Lime tree is located in the north western corner of the site, immediately adjacent to the northern boundary and the most northerly of the garages (Figure 1)

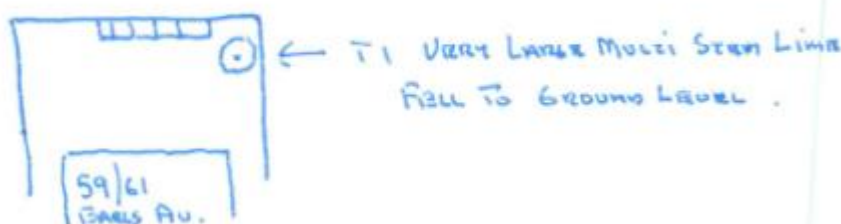


Figure 1

2.2. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

3.1 Consent is sought for the felling of a multi-stemmed Lime tree (Figure 2) on the grounds that it is causing damage to the floor and structure of the adjacent garages, in particular the most northerly structure. Accompanying reports demonstrate that the tree cannot be successfully pruned to address the damage and that if retained, the damage to the garages, the hardstanding and the adjacent retaining wall and fence will worsen.



Figure 2

3.2 The following reports were submitted by the applicant in support of the proposals:

Engineering report from KSI Ltd Consulting Engineers
Arboricultural report from Keith Tait Tree Surgery

3.3 The main points of the reports are summarised below:

Engineering Report

- The outside hardstanding and north side wall of the northernmost garage have been badly distorted, and the floor slab cracked.
- There is also distortion of the adjacent retaining wall and fence and numerous roots are visible at surface level
- Due to nature of the 'Folkestone beds' subsoil at the site, if a layer of 'chert' is encountered, the roots cannot penetrate such and so extend out at shallow depths
- Without invasive investigation, it is not possible to be absolutely certain but the damage is considered to be as a result of the adjacent Lime tree

Arboricultural Report

- Cannot see an alternative to complete removal of the tree to prevent further damage re-occurring
- Because tree is so close to the structure, root pruning is not an option as it would involve severing major roots within 1.5 metres of main stem which would have a severe impact on the stability and long term health of the tree

4. RELEVANT HISTORY

4.1 None

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: Felling of the tree may be necessary.

It is a fine tree which has been subject of criticism for decades but could demonstrate a serious problem.

Tree Officer will have to make a judgement but Committee would support retention if possible or replacement if complaints are justified.

Arboricultural Manager: Having read the reports on the tree and situation I can confirm that I have no objections to the removal of the Lime tree.

Full details of a replacement tree will need to be submitted and approved prior to the existing tree being felled.

Local Residents Comments

5.2 39 neighbours directly consulted. Two letters of objection, no letters of support received and no letters neither supporting nor objecting to the application.

5.3 I have read all of the letters received. The key issues are summarised below:

Relevant objections

- Would not like to see tree felled without considering all options
- Beautiful tree is integral part of landscape in the conservation area
- I and many others oppose this proposal
- Please do not fell this tree
- Trees have recently been felled in this area
- We should endeavour to save as many trees as possible, they are our breathing lungs, they absorb carbon dioxide and other toxic fumes – may worsen by Covid-19
- Tree is a veritable home to wildlife
- Tree appears healthy with one or two roots causing minimal damage to garage floor
- Damage could be repaired and root culprits removed
- Question of whether this is a mere vanity project or something absolutely essential must be considered

5.4 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Shepway Core Strategy Local Plan (2013) and the new Places and Policies Local Plan 2020.

6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019, as such its policies should be afforded weight where there are not significant unresolved objections.

6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan (2020)

NE3 – Protecting the District's Landscapes and Countryside

Shepway Local Plan Core Strategy (2013)

DSD – Delivering Sustainable Development

6.4 The following are also material considerations to the determination of this application.

National Planning Policy Framework (NPPF) 2019

Section 15: Conserving and enhancing the natural environment

National Planning Policy Guidance (NPPG)

Natural Environment

Town & Country Planning Act 1990 and Town Country Planning (Tree Preservation) (England) Regulations 2012.

7. APPRAISAL

7.1 When considering an application for the removal of a protected tree, the Local Planning Authority (LPA) is advised to:

- assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;
- consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
- consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
- ensure that appropriate expertise informs its decision.

LPA's should bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. However, if the LPA believes 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.

In addition, when considering an application, the 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.

Applicants must provide reasons for the proposed work. They should demonstrate that the proposal is a proportionate solution to their concerns and meets the requirements of sound arboriculture. In addition, Applicants should support claims that trees are damaging structures and surfaces by providing technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.

7.2 In light of the above the main issues for consideration are:

- The effects of the proposed loss of a tree, which is protected by a Tree Preservation Order (TPO), and its impact on the character and appearance of the conservation area.
- Whether the felling of the tree, which is protected by a TPO, is justified

Other considerations to be taken into account are:

- The perception of the tree by local residents
- The environmental benefits of the tree

- 7.2 It is always regrettable when mature trees are felled and it is acknowledged that a number have been felled in this location over the last few years to make way for development. Proposed works to trees that are protected by a Tree Preservation Order or by virtue of their location within a Conservation Area are assessed in accordance with the relevant policies and BS standards and recommendations to establish whether the proposed work is appropriate and necessary and whether it is in the interests of the long term health and visual amenity of the trees and the surrounding area. This process is followed regardless of the circumstances and where trees are to be felled, sufficient justification must be supplied before the proposals are considered.

Whilst the large multi-stemmed Lime appears healthy and shows good form, it is the damage to the adjoining garages, which are understood to be under separate ownership, which has prompted the request to remove the tree so that the damage can be repaired.

As mentioned above, the tree is located to the rear of 59-61 Earls Avenue, approximately 50 metres from the nearest highway, therefore, views to it from a public place are limited to those between buildings. As such, its public amenity value is considered to be rather low in comparison to the mature street trees that line Earls Avenue and the surrounding streets. Whilst it is acknowledged that the negative effects of the felling of the tree on those living in close proximity to it would be more profound, it is the effect of the felling on the public domain that the Council is required to consider in this case.

Having considered the impact that the felling of the Lime would have on the character and appearance of the Conservation and Special Character Areas, it is judged that the impact would be minimal as the tree possesses fairly low public amenity value and there are sufficient large trees and shrubs within the surrounding area to help mitigate the effects of the proposal. Policy NE3 of the PPLP, which considers development within the District's Landscapes and Countryside, including Areas of Special Character, states that proposals should demonstrate that their siting and design are compatible with the pattern of natural and man-made features of the LCA. Planning permission for development will not be granted if it will harm the existing character of the area by reason of a loss of existing vegetation, especially in relation to important skylines. However the justification for felling the tree outweighs the need to preserve the special character of the area, as such its felling is judged to be acceptable.

- 7.3 The Applicant has submitted two separate reports from appropriate experts to support the proposals.

Whilst the engineering report has identified the Lime as the probable causal factor of the damage, without further investigations this cannot be confirmed. However, all indications are that the tree is the likely cause. One objector suggests that the damage could be repaired by cementing the cracks and pruning the offending roots, however, having read the Arboricultural report and spoken to the writer who has explored all options, because the tree is so close to the garages, it would not be possible to sever the roots as this would mean cutting into major roots within 1.2 metres of the base of the tree. This is likely not only to severely compromise its stability but also provide an access point for decay into the heart of the tree.

The tree owner is responsible for their tree stock and for any damage they cause. As mentioned above, the garages are under separate ownership and as such it is likely

that garage owners' insurance company has made a claim in respect of the damage, and the tree owner is liable for this.

Whilst it is regrettable to lose a tree of this health and stature, it is considered that the tree owner has demonstrated that there are no other options available and as such the felling of the Lime is considered acceptable.

7.4 With regard to the other points raised via objection to this proposal and, unless addressed above, these matters are set out below.

7.5 With regard to the detrimental effect of the proposal on the local residents, wildlife and the environment, it is acknowledged that trees play an important role in enhancing our quality of life and this is acknowledged in the Government's Sustainable Development Strategy. Not only do trees have a visual quality, but they also enhance the environment by improving air quality, and reducing the 'Greenhouse' effect by removing carbon dioxide from the air and releasing oxygen. Each year a mature tree produces enough oxygen for ten people. Trees are also an effective sound barrier, can limit noise pollution and recent research shows that they also help reduce the stress of modern life. In addition trees benefit the environment and the landscape, and are an integral part of the ecosystem providing benefits to wildlife and biodiversity.

It is acknowledged that the felling of the Lime will have some impact on the environment, and wherever possible the Council will endeavour to resist the felling of trees unnecessarily, however as set out above, there appears little alternative in this case. Nevertheless, there are other large trees within the surrounding area and it is likely that these will help to soften the negative effects of the proposal and accommodate the local wildlife. There is also a requirement for the applicant to replant a new tree of an appropriate size and this will be dealt with by condition.

8. Human Rights

8.1 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

9. Public Sector Equality Duty

9.1 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

10. Working with the applicant

10.1 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

11. CONCLUSION

11.1 In conclusion, whilst it is disappointing to lose the Lime tree, it is more than likely that its roots are the cause of the damage to the garages and that alternative options such as pruning of the roots and canopy will result in the severing of major roots, meaning that the long term health and stability of the tree will suffer. In addition, given the close proximity of the tree to the garages, even if this option provides a short term solution, and in the event that the tree recovers, it is likely that the problem will reoccur as it continues to increase in size. It is important to note, however, that should consent be granted for the felling of the tree, it is imperative that the roots are ground out prior to the repair of the garages to ensure that the damage does not arise again in the future. An informative can be added to the decision notice to ensure that this is complied with.

11.2 In terms of securing the visual amenity of the street scene and the character and appearance of the conservation area, it is important to secure a replacement of an appropriate species to be suitably sited in relation to the garages and of such a size that its visual amenity will in time equal that of the Lime.

12. BACKGROUND DOCUMENTS

12.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

13 RECOMMENDATIONS

That consent be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

Conditions:

1. The work hereby permitted shall be begun before the expiration of two years from the date of this consent.

Reason:

To enable the Council to consider the position again should the work not be carried out within the prescribed period.

2. A replacement tree, preferably of a native species, with a minimum girth of 14/16 centimetres shall be planted in the next planting season following the removal of

the Lime tree hereby approved. Details of planting, including size, species, time and location of planting together with a 5 year management plan to demonstrate how the tree will be cared for through to establishment) shall have been submitted to and approved by, in writing, the Local Planning Authority prior to the felling of the Lime, or in accordance with any variation for which the Local Planning Authority have given their written agreement. If within a period of five years from the date of planting, the tree (or any other tree planted in replacement for it) is removed, uprooted, destroyed, or dies or becomes (in the opinion of the Local Planning Authority) seriously damaged or defective, another tree of the same size and species shall be planted in the same place as soon as reasonably practicable.

Reason:

In order to protect and enhance the appearance and visual amenity of the area.

Informative:

1. Following the felling of the tree, it is recommended that the roots are ground out to allow the repair of the garage and to prevent further damage occurring.

Appendix 1 – Site Location Plan