

PLANNING COMMITTEE MEETING – 1st November 2023

Amendment/De-brief Sheet

TREE APPLICATIONS

Circulation: First Item: 5

Reference Number: 23/0119/TTPO

Address: St Matthews Centre

Determination Date: 27 March 2023

Additional representation received from Richard Buxton Solicitors 30/10/2023. Points made and officers response (in italics) are included below.

First there is at least one major gap in the officer information, namely whether the potential compensation figures are remotely accurate. There is nothing in the information provided confirming the damage to the house and/or the costs of repairs allegedly required, or the costs of the root barrier, or the costs of underpinning. Substantial (and escalating) figures have been given by the house-owner's insurers. It would be extraordinary (and we would say as a matter of law irrational) for Councillors to take the irrevocable step of permitting the trees to be felled without getting detailed professional advice on the figures involved so they can make a properly informed decision.

To Note:

The costs provided by the applicant are estimates that are similar in range to other cases and therefore do not appear to be excessive. The standard tree work application form requires 'proposals and estimated cost of options to repair the damage'. The council may request additional information including detailed costs but has no power to require information beyond that specified in the standard application form.

Even if the root barrier or underpinning costs are about right, one notes that the costs of repairs are on any view quite small. The issue of clay shrinkage involving the trees may be a continuing one, there is no evidence that it is new, other than a statement about when it was first noticed. So, the costs of repairs may be apportioned between those proved to have occurred in the past six years (which are potentially recoverable) and earlier damage, which is not. There is no information on that

either. And it will be for the house owner to prove. Similarly, although the Council's external expert has said that the trees are likely involved with the damage to the house, we have seen nothing to show what contribution they have had along with other factors such as expected seasonal shrinkage. The Council would not be liable for all the damages if there are other factors. Overall, any "bill" is likely to be quite small: far, far smaller than the figures you are faced with in the report.

The greatest financial implication for the council is associated with mitigating against additional movement if the trees are retained. The bulk of the estimated costs are for stabilising the foundations, to prevent on-going damage to the superstructure and continuing repair. Irrespective of when damage was first noted/reported evidence supports continuing movement of the foundations. The foundations are well in excess of what is required to resist seasonal soil movement in the absence of vegetation. It only has to be demonstrated that trees are an effective cause of the damage to incur a liability.

It also seems assumed that the claim would be for preventative measures, such as root barrier or underpinning, not just the costs of repairs. If the matter were to come to Court, I do not believe that would be ordered at this stage anyway. There would have to be a lot more evidence about movement and effects of it inevitably continuing. Without that, what would amount to a mandatory order for a root barrier or underpinning would not be appropriate.

The evidence already shows that movement has been continuing over two seasons. As the evidential test for compensation is based on the balance of probabilities, additional evidence proving that further damage will occur without either tree works or engineered solutions is not required.

The Committee should also appreciate that this is potentially a compensation claim against the Council for not granting the landowner consent to fell. So far as we know the landowner has not sought consent, nor has the house-owner sought it from the landowner and (in effect) the landowner passed it on to the Council. The landowner might take the line that whether or not the Council gives consent, it is not going to permit felling because it responsibly regards the trees of importance for its property. The Council should only be involved when it is the only obstacle to felling and a fully justified claim for compensation is made to the landowner and passed onto the Council by the landowner.

Anyone can make an application to carry out works to trees, one does not need to have legal interest in the land on which the trees stand. The Council is obliged to consider any application

as it is presented. It is correct that should the council grant consent the tree owner may refuse to allow the removal of their trees.

A different point relates to the law of nuisance. It is not clear yet, and needs testing in the Courts, but from a case of ours which went all the way to the Supreme Court it is at least possible and we would say likely that these days the Courts will rule that a tree is not liable in nuisance if the house was built after it was planted and/or reached maturity. That is clearly the case here. The house-owner should have appreciated the risks posed by being in the vicinity of a tree and built foundations and so forth accordingly.

While a tree might not be considered liable in nuisance if foundations are inadequate, the foundations of 193 Sturton Street were built in accordance with Building Control regulations when considering soil type and proximity to trees.

Overall, we do urge the Committee to look at this application very sceptically indeed. The possible claim (which has not even been made yet) appears inflated. The Council is on any view entitled not to grant consent, but simply to offer to pay a proportion of the reasonable costs of repair works which even the house-owner says are small. The rational and entirely legitimate course for the Committee here would be to refuse consent and see if a claim is in fact made by or through the landowner, and, if it is, to go very hard on getting precise costings, probably just of repair works, and then working out what proportion of those it is actually liable for taking into account other factors causing damage and the six-year rule for claiming. It is not going to lose anything by taking that course now, whereas granting consent would have the irrevocable and serious consequences which officers rightly highlight.

Compensation will potentially be sought with regard to the costs of future proofing the house against further movement/damage if the trees are retained in addition to superstructure repairs. Therefore, the significant amenity value of the trees needs to be balanced against the costs of underpinning or installing a root barrier and not simply the existing repair costs.

Amendments to
Text:
Pre-Committee
Amendments to
Recommendation:

If members are minded to refuse consent (option 3), officers recommend the following reason for refusal:

The proposal requires the felling of three trees of outstanding and special value that contribute significantly and positively to public amenity, the urban forest and to the character and appearance of the Mill Road Conservation Area, particularly St Matthew's Piece, where special attention must be given to the desirability of preserving or enhancing its character and appearance. The damage associated with the retention of the trees is not considered to outweigh their amenity value (including but not limited to their visual, atmospheric, climate, biodiversity, historic and cultural benefits). A material loss of public amenity value including harm to the Conservation Area and the urban forest, would arise from their proposed removal. The proposal would therefore be contrary to Cambridge Local Plan policy 61, NPPF 2023 paras.131 and 174, NPPG guidance para. 090 Reference ID: 36-090-20140306 and para. 093 Reference ID: 36-093-20140306, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and other legislation, policies and guidance that seek safeguard the environment.

Decision:

MAJOR PLANNING APPLICATIONS

Circulation: First Item: 7
Reference Number: 23/02071/S73
Address: 104 - 112 Hills Road Cambridge
Determination Date: 30.11.2023
To Note:

Amendments to Text:

1. Text amendments to paras. 8.34 (pg.70), 8.58 and 8.59 (pg.73) to substitute references made to Development Management and Compliance Manager (East Team) with 'Officers' as per recommendation in para.10.1 (pg78).
- 2.Text at para.9.3 (No.3) (pg.77) refers erroneously to a planning obligation that refers to the requirement for a business plan to be submitted and agreed by the LPA. This was in fact removed by the Planning Inspector and therefore does not apply.
3. Update to 'Recommendation' at para.10.1 (pg.78) removing request to delegate powers to officers in respect of condition 6 (Hydrological/Hydrogeological matters). The LLFA has confirmed in letter dated 30/10/23 that it is now satisfied with the additional clarifications provided by the

Applicant's consultant and accordingly recommends full discharge of condition 6. Condition 6 (including reason) on pg. 82 should be included on any permission that may be given and read as follows:

"The development shall be carried out in accordance with the hereby approved hydrogeological report, reference 2022.014.001_v01. All mitigation shall be carried out in accordance with approved report and its subsequent addendum advice.

Reason: To ensure that the proposed development can be adequately drained and to ensure that there is no increased groundwater flood risk on or off site resulting from the proposed development in accordance with policy 32 of the Cambridge Local Plan 2018.

4. A late 3rd party representation and request to speak at committee has been received despite not making a written representation within the statutory timescales. The objections being raised are summarised as follows:

- Application should be withdrawn and re-submitted because the amendment of conditions is a distinct process from discharge of conditions and some of which still apply to the extant permission.
- Any permitted discharge or variation of conditions by committee should not be transferred to the extant planning permission.
- Application must be considered in its own right without regard to the extant planning permission.
- Cllrs can refuse the application on the same reasons that committee rejected 20/03429/FUL originally.
- The creation of an additional commercial storey is not a minor material amendment.
- The EIA submitted is out of date with particular emphasis / reference being made to water resources impacts/effects of development.
- Congestion and pollution will be increased by this speculative scheme and cumulatively with other schemes in the area.
- Flood risk assessment does not take account of new developments in the vicinity.

Officers note the representation made however do not consider the officer recommendation needs altering.

5. Following publication of the report the Applicant has provided a circular for Members attention that summarises the proposed changes and their associated benefits.

Pre-Committee
Amendments to
Recommendation: New condition 6 as stated above.

Decision:

MINOR PLANNING APPLICATIONS

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| Circulation: | First | Item: |
| Reference Number: | 23/02094/FUL | |
| Address: | 5 Hinton Avenue Cambridge | |
| Determination Date: | 9 August 2023 | |
| To Note: | - | |
| Amendments to Text: | - | |
| Pre-Committee Amendments to | - | |

Recommendation:

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Decision:

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