

PLANNING COMMITTEE
22nd. April 2021

DETERMINATION OF TREE WORK APPLICATION 20/00263/TRTPO

ITEM NO:

Application No.	Ward:	Date Registered:	Target Decision Date:
20/00263/TRTPO	Warfield	29th September 2020	9 th November 2020

Site Address: **Land adjacent to 18 Lyon Oaks**

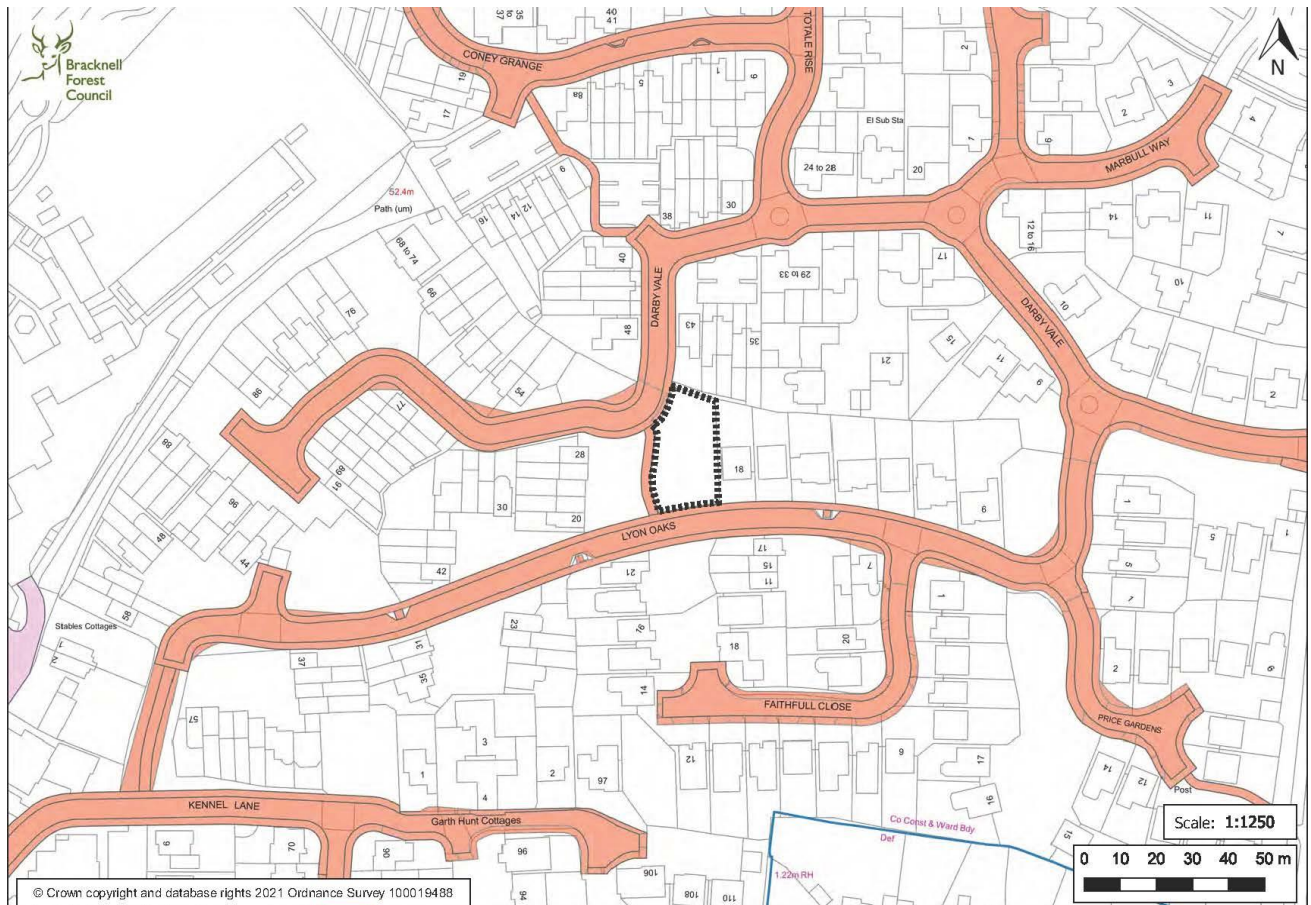
Proposal: **Fell four trees**

Applicant: Mr S Greener

Agent: IG Environmental Services

Case Officer: Jan Polnik, 01344 352000

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1. PURPOSE OF DECISION

1.1 This application is being heard by the Planning Committee at the request of the Head of Planning due to the potential liability for the Council if it is refused.

2. RECOMMENDATION

2.1. To approve the recommendation for refusal in Section 9 of this report.

3. BACKGROUND

- 3.1. When making a Tree Preservation Order, existing trees, that is individuals, groups, areas and woodlands are viewed and assessed for their amenity impact to evaluate the suitability of trees for a TPO. This evaluation is based on factors that assess: -
 - Their health & condition
 - Their remaining longevity
 - Their relative public visibility
 - Specialist considerations such as 'veteran' status, historical interest etc.
 - The known (or perceived) 'threat' to their health & condition or existence
 - The impact of the trees on the landscape
 - Special factors such as proximity and orientation to the nearest habitable structure.
- 3.2. How the Planning Authority should consider an application to prune or remove protected trees is set out in Government Guidance ([Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/tree-preservation-orders-and-trees-in-conservation-areas))
- 3.3. In determining the application, the LPA must consider: -
 - If the proposal is exempt from the need to obtain LPA consent
 - The amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area
 - In the light of the amenity assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it
 - Whether any loss or damage is likely to arise if consent is refused or granted subject to conditions
 - Whether any requirements apply in regard to protected species
 - Other material considerations, including development plan policies where relevant; and ensure that appropriate expertise informs its decision.
- 3.4. The subject of this report is a group of Oak trees forming G3 of TPO 89 which is titled 'Land East and West of Quelm Lane, Warfield, Bracknell'. The TPO was served on 06/06/1991 and confirmed on 11/09/1991 (Appendix 1 – 'Plan extract from TPO 89').
- 3.5. The group G3 is formed of four Oaks and is but one of a number within the housing development. The TPO was made prior to development of the area and encompasses an original total of six individual trees: one woodland (now known as 'Piggy Wood') and seven groups. Of those seven groups, apart from G3, there are three other groups (G5, G6 & G7) containing mature Oaks and which are incorporated into the housing development formed of the roads Lyon Oaks, Darby Vale and Price Gardens (Appendix 2 & 3 – 'G3 in context of existing development').
- 3.6. The trees are growing on an amenity space immediately to the west of the residential property that is 18 Lyon Oaks (Appendix 4 – 7 'Photos of G3'). This amenity space is privately owned and is the responsibility of the Great Oaks Management Company Ltd. This organisation is a collective of residential property owners within the housing development; all of which are shareholders in the company. There are understood to be 93 residential shareholders and the company is overseen by its board of directors. The company employ the services of a property management company to carry-out maintenance of the various amenity spaces within the development.
- 3.7. An application to fell all four Oaks was made, by the insurance company representing the resident of 18 Lyon Oaks, on the 29th September 2020 with a target determination date of 9th November 2020. The applicant agreed to an extension of that deadline to enable further detailed consideration of the technical aspects and to enable the report to be presented to the Committee.

- 3.8. The application is to fell all four Oaks within 'G3' and is made on the basis that they are the cause of subsidence damage to the structure of the house at 18 Lyon Oaks. The application is supported by a range of technical reports typically carried-out when a householder reports damage to their property and their insurance company subsequently carries out investigations. The objective being to identify the cause, the extent of the damage and a quantification of costs required to repair any damage.
- 3.9. The application form states, should the trees remain, the total cost of repairs will be the superstructural repairs plus alternative method of repairs totalling £126,834.00. No details or schedule of costs is provided setting out how this figure is arrived at. The application form further states that in the event of a refusal a compensation claim will be sought through Section 202(e).

4. DETAILS OF RESIDENTS' OBJECTIONS

- 4.1. The application has generated 56 representations from the public and all but two, object to the removal of the trees. Of the objections, four were from outside of the Borough.
- 4.2. Summary of objections:
- Destruction of wildlife habitat and biodiversity
 - Loss of visual amenity and detriment to the quality of the landscape
 - Adverse effect on the existing privacy and screening that the trees afford between houses
 - Loss of historical context and value to the development and the landscape
 - Concerns that the decision is based on financial considerations rather than environmental impact
 - Too many trees have already been lost in the landscape
 - Potential for the loss of these trees to adversely affect the reputation of Bracknell Forest Council
 - The Council should seek an alternative solution to permitting tree removal
 - Loss of shelter & shade for users of the amenity space
 - Destruction of substantial and valuable carbon-sinks
 - The benefit of the trees outweighs the negative impact they are having on surrounding property
 - Prior to development, the planning considerations should have foreseen the possible effect of the trees on adjoining property.

5. SUPPORTING PLANNING INFORMATION

- 5.1. The subject trees were protected in 1991 by TPO 89 ahead of large-scale development applications in 1996 for 101 dwellings (Applications 621391 & 621880). In April of 1997 permission to develop the 101 dwellings was granted subject to the retention of a number of 'very important feature' trees identified in the Planning Authority's consideration of the development proposals. Within the 'very important feature' trees identified were the four Oaks identified as 'G3' of TPO 89 (Appendix 8 – 11 'Extracts of Planning Permission 621880').
- 5.2. The planning history of the affected property is as follows: -
- In 2020, Planning Enforcement investigated the erection of the outbuilding and concluded that it was Permitted Development as it is 2.5m high where the garden is at its highest.

- 13/00753/FUL - Conversion of garage to habitable accommodation and new pitched roof to front elevation – approved Oct 2013
- 13/00754/CLPUD - Application for a certificate of lawfulness for loft conversion with installation of 2no. rooflights to front elevation and 3no. rooflights to rear elevation – approved Oct 2013.

5.3. Relevant Planning Policies are: -

- Bracknell Forest Borough Local Plan ‘saved’ Policy EN1 – Protecting Tree and Hedgerow Cover

While this policy generally relates to the grant of planning permission it is a relevant statement of Council policy. It states that planning permission will not be granted for development which would result in the destruction of trees and hedgerows which are important to the retention, where applicable, of: inter alia:

- The character and appearance of the landscape or townscape; or
- Habitats for local wildlife

- The National Planning Policy Framework (NPPF)

The NPPF at paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by, inter alia:

- recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the of the best and most versatile agricultural land, and of trees and woodland
- minimising impacts on, and providing net gains for biodiversity,...

6. ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

6.1. Borough Solicitor

6.1.1. The law on Tree Preservation Orders (TPO’s) is in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012. Guidance on Tree Preservation Orders and their making, confirmation and management has been provided online at [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/123456/Tree_Preservation_Orders_and_trees_in_conservation_areas_-_GOV.UK.pdf).

6.1.2. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 introduced a single set of procedures for all trees covered by tree preservation orders. Consequently:

- Orders made before 6 April 2012 continue to protect the trees or woodlands, they cover
- the legal provisions listed in Orders made before 6 April 2012 have been automatically cancelled and replaced by the provisions in the new regulations. Only the information necessary to identify these Orders and identify the trees or woodlands they protect is retained
- there is no need for Orders made before 6 April 2012 to be remade, amended or reissued.

6.1.3. The guidance advises that three factors in particular are of relevance, namely: -

- Visibility - the extent to which the tree can be seen by the public
- Individual impact -the Local Planning Authority (LPA) should assess a tree's particular importance by reference to its size and form, it's future potential as an amenity considering any special factors
- Wider impact - the significance of the tree in its local surrounding should be assessed

The law relating to TPOs provides an applicant with a right to make a claim for compensation for loss or damage arising from a LPAs, conditional consent, or refusal. Government Guidance states no claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

- 6.1.4. The application form states, should the trees remain the total cost of repairs will be the superstructural repairs plus alternative method of repairs totalling £126,834.00. No details or schedule of costs is provided setting out how this figure is arrived at. Furthermore, no account seems to have been taken of Government Guidance which states no claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.
- 6.1.5. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 state no compensation shall be payable to a person:
- Reg 24 (4) (c) for loss or damage reasonably foreseeable by that person and attributable to that person's failure to take reasonable steps to avert the loss or damage or to mitigate its extent
 - The application provides no information as to whether the applicant has considered the engineering solution available and if the applicant has considered the engineering solution available and rejected it, the reasons for this.
- 6.1.6. In determining applications, foreseeable loss or damage is a material consideration, alongside other material considerations, such as the amenity value of the tree, the justification for the proposed works, and whether there may be engineering solutions for structural damage to buildings. All these should be weighed before reaching a final decision.

6.2. Borough Treasurer

- 6.2.1. The Borough Treasurer has noted the report. Should the Planning Committee refuse the application, as recommended within the report, the Council will be liable for a material financial cost, the value of which it is not possible to ascertain at this point. There is no specific budget to support the costs which may arise from this obligation.

6.3. Equalities Impact Assessment

- 6.3.1. Not applicable

6.4. Strategic Risk Management Issues

- 6.4.1. Under Regulation 24 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 a person is entitled to compensation if they can establish that loss or damage (in excess of £500) has been caused or incurred in consequence of a refusal by the local planning authority to grant consent to fell a protected tree. This liability to pay compensation can encompass the reasonable cost of carrying out underpinning or other requisite remedial/preventative works to the affected property where, at the time of refusal, the material available to the local planning authority was sufficient to show, on the balance of probabilities, that there was a real risk of further subsidence.
- 6.4.2. If the Council were to refuse permission for the subject trees to be removed, then it is possible that a claim for compensation from the applicant would follow. However, the Council is only liable for damage caused to the property after the application was made for the removal of the trees. Any damage to the property caused prior to the

refusal of the planning application cannot be claimed against the Local Authority. It is for the residents of 18 Lyon Oaks to establish that such loss or damage was caused or incurred and that it was caused or incurred in consequence of the refusal of consent.

- 6.4.3. The Council is protected by its liability insurers against such claims but there would be a £200,000 excess applicable. Any claim agreed by insurers has the impact to affect future insurance premium charges for continuing insurance coverage.

6.5. Biodiversity Officer

- 6.5.1. The four oaks at this site are important in an ecological context as a 'green island' in the urban environment. This provides a steppingstone through the area for a wide range of species that would be lost if the trees are felled.

- 6.5.2. The English Oak (*Quercus robur*) is particularly valuable for biodiversity due to its ability to support a wide range of species and documented as supporting up to 400 species of invertebrates alone. At this site, the presence of four large trees is likely to provide habitat for a wealth of insects which in turn provide foraging for bats, feeding, shelter and nesting for birds. For example, the first photo of the trees in the Appendix, by chance shows a flock of Starlings in the canopy, a red-listed Bird of Conservation Concern. Large trees also provide a variety of ecosystem services such as urban cooling and carbon sequestration. The presence of these features is also likely to support the well-being of local residents by providing a natural greenspace as demonstrated by the number of objections to their removal.

- 6.5.3. The removal of these trees would eliminate all the ecological benefits they provide, and it is doubtful whether any new planting would achieve the same even after many decades.

7. TREE SERVICE CONSIDERATIONS

- 7.1. The application is for the removal of the four Oak trees as listed by the applicant as T3, T4, T5 & T6 (Appendix 12 – 'Location & distance of trees to property') on the basis that their continued presence and growth would subject the foundations of 18 Lyon Oaks to continuous movement resulting in damage to the foundations and superstructure of the house.

- 7.2. Tree induced subsidence occurs due to a variety of local and environmental factors. The principal ones are: -

- Lack of rainfall combined with the presence of a shrinkable soil (specific clay soils)
- Proximity of the vegetation to the foundations
- Depth of foundations and/or
- Species characteristics of the tree, such as its ultimate size and whether or not it is highly water dependant (i.e. 'thirsty').

If all those factors are present then, there is the possibility that more water is extracted from the clay-soil (that supports the foundations of the structure), than is replaced by rainfall etc. If such a soil 'shrinks', any foundation sitting on it or within it, also moves. The result is cracks in the brickwork, plastered rooms etc.

- 7.3. There is no British Standard that can be referenced in deciding the basis of such a claim of subsidence. Similarly, there is no (arboricultural or insurance) industry predictive model or calculation that can be applied to determine the likelihood that a tree (or trees) will, or are, causing subsidence damage to a nearby structure. It is a matter of

- investigation and evidence to determine the likelihood that a tree is the primary cause (or in the main) and is the reason the damage is occurring.
- 7.4. The industry standard technique to determine if a foundation is moving, by how much and when, is called 'level-monitoring'. This involves points around the base of the house structure being located and then any movement (up or down) is measured against a 'datum point' (typically a steel rod sunk into the ground). The measurements are typically taken at regular intervals over a period of time through a full cycle of winter and summer (being the dormant period and growth period of trees) to show if the trees are having an influence on the movement of a structure through the growing season of the tree.
 - 7.5. The applicant has submitted a range of technical reports and correspondence to support their application. They include: -
 - Letter - Summary of the claim and issues (Innovation Group)
 - Drainage Investigation
 - Tree Root identification
 - Soil analysis
 - Arboricultural Report
 - Geotechnical data
 - Site Visit correspondence (Innovation Property)
 - Engineers Addendum
 - Level Monitoring
 - 7.6. The range of reports is standard data typically associated with a subsidence-damage claim, which is the basis of this TPO application as the owner of 18 Lyon Oaks has made a claim on their building insurance. In considering data in such a claim, the objective is to determine if vegetation is implicated in the cause of the subsidence and ideally, which vegetation, so as to determine a course of action to abate that nuisance.
 - 7.7. The presence of live Oak roots in the trial/bore-hole closest to the four trees, 'TH/BH 1', is evidenced (Appendix 13 – 'Soil investigation plan') as is the maximum depth of Oak roots found at 2.3 metres. The soil-type at foundation level is shown to be of a shrinkable clay with the potential for 'movement' that is typically implicated in vegetation-induced subsidence damage. The results of the drainage report disallow the argument that underground water leakage/movement is compromising the structural integrity of the clay-soil and enabling the soil to move.
 - 7.8. The applicant provided level-monitoring results that appear to clearly evidence the seasonal, vegetation induced movement of the soil that is supporting the foundations (Appendix 14 & 15– 'Level monitoring data').
 - 7.9. When all the submitted technical reports were duly considered by the Council, the concluding assessment, on balance of probability, indicates that the species Oak is causing subsidence to the property at 18 Lyon Oaks. Based on the applicant's submissions, there is no evidence to suggest that there is any other causal reason for the subsidence. The term 'balance of probability' means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.
 - 7.10. The application to remove the four Oaks is a typical final, emphatic solution frequently employed by the insurance industry, to subsidence being caused by vegetation. The premise being that once the trees are removed, then no more soil-moisture will be extracted from the soil supporting the house foundations. The soil around the foundations would therefore stop moving and eventually stabilise so that superficial repairs could be carried-out to the damaged part of the house; without the need for more

expensive structural repairs (e.g. underpinning the foundations). It is the role of an insurance company to not only act in the interests of its clients, but also to keep the costs of a claim to a minimum. On that basis it is the experience of the Tree Service, in dealing with subsidence damage claims against the Council, that it is often the applicant's preferred solution to remove all the vegetation that might be associated with the subsidence, because it is cheaper than the cost of underpinning or any other engineering solution.

- 7.11. Although Oak roots were found in the trial-pit dug as part of the investigations, it is conceivable that not all the four Oaks are implicated in the subsidence. There is indeed a DNA test that could be applied to possibly determine which Oak's roots were found in the trial-pit. This would imply that all four Oaks need not be removed; but there are potential problems with that approach because if the four Oaks are of the same (or very similar) genetic provenance then the DNA test is unlikely to differentiate between the four trees. Also, should the investigation have dug a number of trial-pits along the length of the flank wall of 18 Lyon Oaks, it would have likely as not, found a number of roots from any or all of the four Oaks. This is because roots of different trees can share the same soil environment and oak is quite capable of growing roots in excess of the distance between the trees and the flank wall of the house (measured at a maximum of 11.5 metres in the case of T4).
- 7.12. A grant of permission to remove the four Oaks would be conditional on the planting of new trees that would grow and eventually provide a landscape formed of mature trees. However, it is likely that given the history of subsidence and the likelihood that the damaged property will not have any substantial structural improvements to strengthen the foundations, that the Council would have to consider reducing the number and changing the species of trees to be planted. This would be to reduce the risk of the same situation occurring again in the future.
- 7.13. Apart from removing the trees, there are two other potential solutions to manage the effects of vegetation-induced subsidence, that are recognised by the insurance industry:
 1. An 'arboricultural' solution involving the pruning of the tree to remove a significant amount of foliage which would reduce the amount of water extracted from the soil around the foundations.
 2. An 'engineering' solution and involves the installation of a root-barrier between the area of damage and the trees, which stops the extraction of soil-water from the soil around the foundations.

Arboricultural Solution

- 7.14. The arboricultural solution is based on research carried-out under the auspices of the Building Research Establishment and titled as 'Horticulture LINK project 212'. That research tested the premise that reducing the size of a tree ('crown-reduction') would control the extent of soil-water extraction by the transpiration of the tree (in other words, make the tree smaller and it will need less water). In summary, the outcome of the research (HortLink May 2004) determined that pruning to reduce the effect of vegetation drying-out soils, was not necessarily a robust and appropriate solution. The principal points raised that are germane to the management of trees subject to a Tree Preservation Order (TPO) are: -
 - For meaningful soil moisture conservation, a severe crown-reduction of 70-90% of crown volume would have to be applied. Even a reduction of up to 50% of crown volume is not consistently effective for decreasing soil drying effect.

- To ensure a continued decrease in canopy leaf area and maximise the period of soil moisture conservation, crown reductions should be repeated on a regular managed cycle with an interval based on monitoring re-growth.

7.15. The primary purpose of a TPO is to protect trees because they provide public amenity by virtue of their inherent and intrinsic visual characteristics. If to manage the incidence of subsidence a protected tree has to be routinely and significantly reduced in size, then the purpose and value of that TPO and the sustainability of that pruning process is put into doubt. Not only would the pruning alter and diminish the appearance and amenity value of the group, but it would also significantly raise the risk of weakening the health and condition of the individual trees by creating a multitude of pruning cuts thereby risking infection by pathogens that cause decay; thereby shortening the potential lifespan of the tree. Repeated significant pruning would also reduce the ability of the trees to create and store energy (photosynthesis) required for the subsequent growth in the following growing seasons.

Engineering Solution

7.16. The engineering alternative would be to install a root-barrier which is a physical, impenetrable barrier preventing roots from growing into the soil around the foundations of a structure and functioning (i.e. transpiring and extracting moisture from within the soil). This entails excavating a trench and lining it with an impenetrable material. Early root-barriers consisted of concrete, whilst the current preferred system is the installation of a specialist, durable textile that is inserted along the length of the trench and to a depth at or below the depth of the foundations of the structure to be protected.

7.17. It is the opinion of the Tree Service that the environment and size of the grass area in which the four Oaks are growing does allow practicable consideration for the installation of a root-barrier. The grass area would allow for the ready excavation of a trench (some 28 metres along the side boundary of 18 Lyon Oak) on land where there are unlikely to be many underground services that might impede the excavation of the trench and installation of the barrier. In the event that services are encountered the membrane can be installed around the services and any holes sealed with specialist tape to prevent the ingress of roots.

7.18. It is evident from the insurance company investigations that there are roots along the boundary of 18 Lyon Oaks and that due to the proximity of the trees to the trench there would inevitably be damage to the trees' roots by severance as a result of the excavation. However, the impact of root severance on the health of the trees could be mitigated and minimised as long as the ground between the trench and the trees' stems is protected during the installation of the barrier to prevent soil compaction on the remaining live roots. With an appropriately specified root-barrier and associated method statement, under careful arboricultural supervision, the trees' chance of survival and their future viability after the installation, is significant. An application to the Council on that basis would not be unreasonably refused.

7.19. The Tree Service assessment of G3 is that it is a significant visual amenity for which TPO 89 is justified and that due consideration be given for the continued protection of the four oak that form the group. To give context to that assessment, two nationally recognised, arboricultural industry assessments have been made on the trees to provide a monetary value. The systems are the 'Helliwell System' and 'CAVAT' (Capital Asset Value for Amenity Trees). Both are methods of placing a monetary value on the visual amenity provided by individual trees and/or woodland.

7.20. The Helliwell System (developed in 1967) provided a value of £251,900 whilst the CAVAT method (developed in 2003) produced a value of £249,500. Both systems have been cited in numerous court cases and are an accepted methodology for valuing trees.

8. CONCLUSION

- 8.1. The four Oaks have been found to be in good health and condition and are showing normal vigour by virtue of observed shoot-extension growth of branch-ends and overall coverage throughout the canopy. No evidence was found of any pathogen or significant structural defects in any of the trees. The Oak, by virtue of inherent species characteristics is capable of achieving considerable age and in the right environment and with appropriate arboricultural management can still be growing after several centuries.
- 8.2. The four trees form the highly significant landscape feature that is G3 of TPO 89 which is but one of a number of groups of Oak trees that present a unique and significant landscape character within the housing development and provide substantial visual amenity.
- 8.3. In principle, a grant of permission to remove the oaks would be conditional on replacement trees being planted; but the number and choice of species would be affected by the Council's knowledge of the extant incidence of subsidence and therefore the foreseeability of a reoccurrence of subsidence. The implications of that consideration are that the number of trees to be planted would be reduced and the species chosen would not grow as sizeable as the current Oaks. This in turn, would change the character of the original tree-cover and quality of landscape that was previously identified as significant and was retained and protected (by TPO 89) as part of the Lyon Oaks housing development.
- 8.4. Removal of the four protected Oak trees is not the only practicable solution to the problem of subsidence. The installation of a root-barrier would provide a solution to the problem caused by the growth of roots near the foundations of 18 Lyon Oaks.
- 8.5. By choosing the alternative engineering solution of a root-barrier, the trees would be retained and the character of the landscape, and the high quality of visual amenity afforded to the public at large by the retention of the four Oaks would be protected.

9. RECOMMENDATION

- 9.1. Refuse the application for the following reason: -
The removal of the four Oak trees that form G3 would be detrimental to the landscape character of the area; it would cause significant harm to the public visual amenity and townscape character and would result in the loss of wildlife and bio-diversity assets. The alternative engineering solution of a root-barrier would provide a solution to the problem of subsidence to 18 Lyon Oaks without the need to remove the four protected Oak trees.

APPENDIX