

Parish:  
Fishbourne

Ward:  
Fishbourne

**FB/15/03629/TPA**

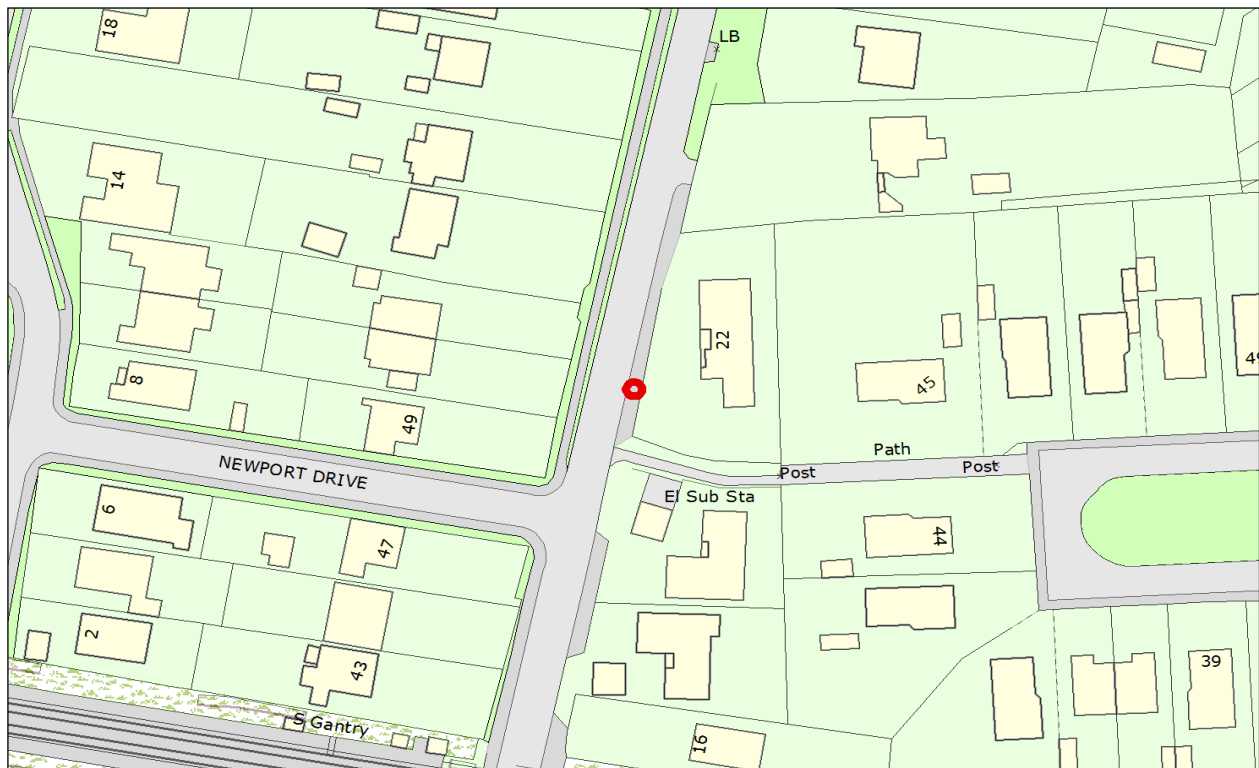
**Proposal** Fell to ground level 1 no. Oak tree (T1) subject to FB/79/00053/TPO.

**Site** Land West Of 22 Salthill Road Fishbourne West Sussex

**Map Ref** (E) 483602 (N) 105126

**Applicant** Miss Vicky Ironside

**RECOMMENDATION TO REFUSE**



**NOT TO  
SCALE**

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## 1.0 Reason for Committee Referral

### 1.1 Reason for Committee Referral

Other - Contentious application on which Officers consider decision should be by committee

## 2.0 The Site and Surroundings

2.1 The 1 no. Oak tree (T1) is situated within a small verge area between the eastern side of Salthill Road and the west boundary of Peppercorns, 22 Salthill Road. This property is a detached bungalow (with a small extension built in circa 1988), with a garden to the west and south of the property. The Oak tree is located adjacent to the western boundary adjacent to the south-west corner of property. A public footpath runs along the southern boundary of 22 Salthill Road.

## 3.0 The Proposal

3.1 The proposal is to fell 1 no. Oak tree (T1) subject to FB/98/00053/TPO. The proposed felling has been requested to reduce/alleviate damage to a small extension at 22 Salthill Road. It is claimed that the uptake of water by the Oak tree is resulting in seasonal contraction and expansion of the clay based soil, impacting on the foundations and wall construction of the existing extension.

## 4.0 History

05/03097/TPA	PER	Removal of 2 no. lower branches on an Oak tree (T1), subject to TPO/12/BO.
06/05182/TPA	PER	Crown raise up to 6m on 1 no. Oak tree (T1) subject to TPO/12/BO.
08/01891/DOM	PER	Construction of fence 2.05m in height (retrospective)

## 5.0 Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	NO
AONB	NO
Strategic Gap	NO
Tree Preservation Order	YES
EA Flood Zone	NO
Historic Parks and Gardens	NO

## **6.0 Representations and Consultations**

6.1 Parish Council - No comments received.

6.2 Council Appointed Structural Engineer

Following our study of investigation reports and our visual inspection we advise that we concur with the conclusions reached regarding the extension movement problems i.e. that the cause is subsidence associated with shrinkage of the underlying shrinkable clay sub soils caused by the moisture demands of the above trees. What is so far not defined is the contribution to damage caused by the grouping of trees to the east which you are not responsible for. There needs to be further assessment of this matter which might well lead to an apportionment of liability. Whilst the date of onset of damage is not known it is clear that the depth of foundations for the extension is insufficient to place formations in moisture stable soils having regard to the presence of trees. Whilst removal of trees should eventually lead to recovery of soil moisture levels and restoration of foundation stability this process is far from being fully predictable and the mechanism of recovery and associated ground heave would need careful monitoring over a long period of time. The costs indicated for this solution are not in our opinion reliable as they do not appear to make provision for the necessary period of monitoring and damage which might ensue. The foundations and ground floor slab for a new replacement construction can be designed so as to make due allowance for all existing trees to remain and this will afford the more reliable solution for the extension. The cost indicated is subject of confirmation by tender but would appear to be of the correct order for the approximate 4m x 4m size of extension (Based on small scale plans available). There should be an opportunity for you to see and comment on detailed rebuild specifications and to scrutinize an elemental priced tender.

From our visual inspection we can advise that the original bungalow has not suffered from any significant foundation or ground floor movement problems to date despite the fact that it is in closer proximity to the Oak and similarly distanced from the other trees noted above. We can postulate that the foundations for this construction were designed to take account of the trees but we cannot advise you on the risk that this may not prove to be the case. Accordingly to better define risk further investigations should be carried out to determine the construction and confirm suitability for the location. We advise that you would need to seek legal advice as to your ongoing liability in this matter. There are cracks affecting the original bungalow particularly rear wall which in our opinion do not appear to be associated with foundation inadequacy. Minor movements are also apparent with regard to the ground floor but not such as to indicate a significant performance issue. In order to further advise on this topic and to be able to offer opinion as to future performance we would need the facility of further investigation referred to above. These would be matters aside from the owners insurance claim.

6.3 One third party letter of objection has been received concerning the following matters;

- (a) The tree is hundreds of years old and must not be subject to whim of a property owner; and
- (b) The Oak tree is a symbol of 'England' and must stand for all time.

## 6.4 Applicant's supporting information

1. The above tree works are proposed as a remedy to the differential foundation movement at the insured property and to ensure the long-term stability of the building.
2. The above tree works are proposed to limit the extent and need for expensive and disruptive engineering repair works at the insured property. In this instance the estimated repair costs are likely to vary between £2,000.00 and £34,000.00 depending upon whether the tree can be removed or have to remain. (The greater cost is due to the need to pile instead of underpinning the extension due to the depth of Oak roots was found to 3 metres and as such underpinning could not be carried out at this depth)
3. The above tree works are proposed to limit the duration of any claim period and therefore allow the landowner their right to the peaceful enjoyment of their property.
4. It is the case that an alternative to felling such as pruning or significant 'pollarding' of the tree would not provide a reliable to sustainable remedy to the subsidence in this case. We do not consider that any other potential means of mitigation, including root barriers, would be effective or appropriate in the circumstances.
5. We are satisfied that the evidence obtained following completion of our Arboricultural Implication Assessment report completed February 2015, clearly links the Oak tree T1 as the cause of damage to the risk address.

## 7.0 Planning Policy

- 7.1 As applications for works to trees covered by a TPO are not applications for development, their determination does not have regard to development plan policies, this includes the Fishbourne Neighbourhood Plan. Regard must be had to the National Planning Practice Guidance (NPPG).
- 7.2 When considering applications to undertake works to protected trees an assessment should be made of 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 Para 089).
- 7.3 The following Objectives in the Sustainable Community Strategy 2009-2026 are relevant:

B1 - Environment - Managing a changing environment.

## 8.0 Planning Comments

- 8.1 The main issues arising from this proposal are:
  - i) Impact of the loss of the tree on the visual amenities of the locality
  - ii) Potential for compensation as a result of any refusal to grant permission for the removal of the tree

i) Impact of the loss of the tree on the visual amenities of the locality

8.2 The Oak tree the subject of this application is one of two trees subject to FB/79/00053/TPO (the other being an Ash tree (T2) located in the frontage of The Croft, 20 Salthill Road, confirmed 25 January 1980. It is a mature specimen of its kind, the trunk is 12 metres from south-west corner of the bungalow and 15 metres from the nearest point of the extension and is in adequately sound and healthy condition. The tree has been pruned in the past, can be seen from various public vantage points and is a prominent and significant feature within the street scene and makes an important environmental contribution to the visual amenities within the locality.

8.3 The character of this very straight road is principally that of a linear frontage development with development beyond to the east and west, framed by significant elements of natural landscaping, which offers Salthill Road a verdant quality to what is an urban area. The several mature trees that lie immediately to the east and west of Salthill Road are a key component of this character. The Oak tree subject of this application is one of the largest found along this road and appears to be in good health. The loss of this tree would significantly impact upon the verdant qualities of the area, allowing for a greater dominance of the urban form and result in a change to the established attractive character.

8.4 The contribution of this tree to the character of the area is significant and its loss should only be considered where there is no alternative way of alleviating any causal impact on surrounding properties, subject to the consideration of the resultant financial liability that may arise.

ii) Potential for compensation as a result of any refusal to grant permission for the removal of the tree

8.5 The applicant has commissioned an engineer's report to identify the cause of the subsidence to the extension at 22 Salthill Road, in support of their application to fell the Oak tree. Whilst there are no building control records of the proposed extension held by the Council, it is understood from the applicant's submitted information that the depth of foundation for the extension is 850mm below ground level. There is seasonal movement which has been demonstrated by the level monitoring. The worst amount/area of movement is on the unions of the original building and extension foundations. The Oak tree (T1) which is a high water demanding species is 12 metres from the south-west corner of the bungalow and 15 metres from the nearest point of the extension.

8.6 Whilst the Oak tree is of significant size and a high water demanding species, it is likely that other trees within the Group, G1 (Including Pear, Apple and Cherry trees) to the east of the site may also be influencing movement of the extension due to moisture extraction causing similar seasonal movement. This potential contributor to movement has not been quantified by the applicant.

8.7 The submitted monitoring investigations indicate that the roots of adjacent vegetation (Oak Pear, Apple and Cherry trees roots) were found in the trial pit/bore hole adjacent to the extension and that these would all be contributing to the take-up of water. This is agreed by both specialists acting on behalf of the applicant and that independently appointed by the Council that the removal of Oak tree T1 will reduce the amount of

moisture abstraction affecting the extension to 22 Salthill Road. However the independent surveyor appointed by the Council has also commented that the trees to the east of the site in Group G1 will also contribute to this uptake of water and will likely be a contributing factor. As this impact has not been fully assessed by the applicant, it is not possible at this time to estimate to what degree the removal of these trees alone would reduce the seasonal rise and fall in the surrounding clay soil. It is not considered that the installing of a root barrier or major pruning will be sufficient to alleviate the continuing concerns.

- 8.8 The Council must deal with the application to fell the Oak tree before it on its own merits, having regard to the information submitted with the application, the third party comments and the high amenity value of the tree and its contribution within the locality. The Council has commissioned an independent surveyor to assess the property, the full findings of which are included at para. 6.2 of this report. This advice confirms that the tree is likely to be having an impact on the swell and drainage of the surrounding soils but that it is not clear that it would be the only contributing factor. The assessment also concludes that any structural issues affecting the remainder of the building (22 Salthill Road) are unlikely to be as a direct result of the Oak tree.
- 8.9 The applicant may claim compensation for any loss or damage which they can show is caused or incurred in consequence of any refusal of the application to fell the tree. The claim would be made initially to the Council and, if declined by it, the applicant would have recourse to the Land Tribunal. If a case is proven, this may extend for example to the necessary costs of underpinning the extension to remedy the damage caused by the tree roots, and costs may be awarded by the Tribunal in respect of any proceedings brought which in this case is estimated as high as £34,000. The potential claim for compensation is a material planning consideration but is not overriding. The likelihood of a claim being successful and the value of that claim must be balanced against the benefits of retaining the tree.

#### Conclusion

- 8.10 The contribution the Oak tree makes to the Fishbourne area is significant. The application to fell the tree on the basis of the potential impact on the extension to the neighbouring property, 22 Salthill Road does not outweigh the importance in retaining this aesthetically valuable tree. The extension to the neighbouring property may be secured through underpinning of its foundations, which would allow for the retention of the tree. Whilst the potential for a claim for compensation of up to £34,000 is a material planning consideration to be weighed in the balance, it does not justify the loss of this important tree. It is recommended that the application be refused.
- 8.11 The refusal of the application to fell the tree on this basis does not demonstrate an acceptance of liability for any works necessary to 22 Salthill Road, which would be the subject of a separate process.

#### Human Rights

- 8.12 In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account when reaching this recommendation and it is concluded that the recommendation to permit is justified and proportionate.

**RECOMMENDATION  
REFUSE**

1 V99441 - Refusal to Fell Individual Tree

**INFORMATIVES**

- 1 W44F Application Approved Without Amendment
- 2 V99444 - Location of the tree

For further information on this application please contact Henry Whitby