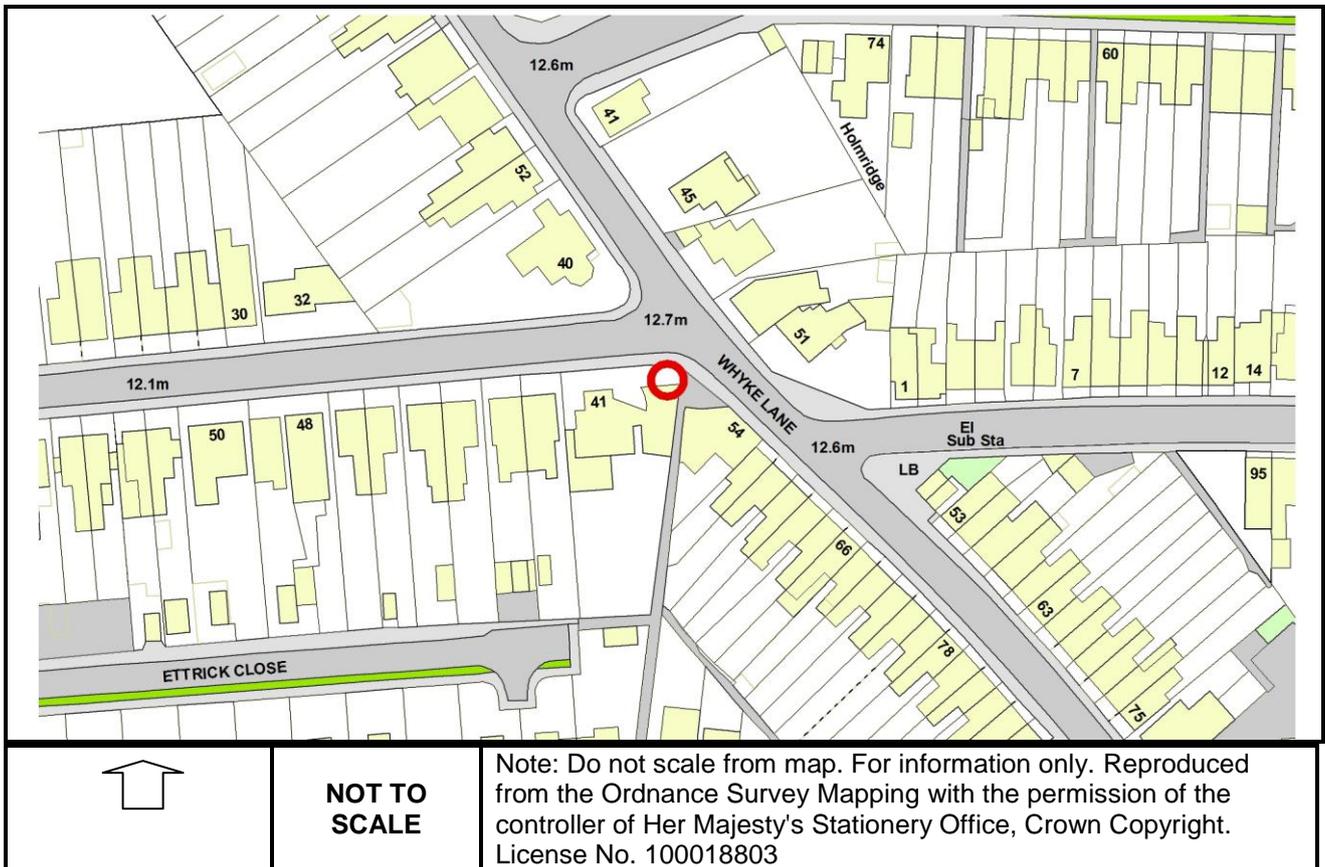


Parish: Chichester	Ward: Chichester South
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**CC/19/02109/TPA**

<b>Proposal</b>	Fell 1 no. Holm Oak tree (T3) subject to CC/93/00284/TPO.		
<b>Site</b>	41 Lyndhurst Road Chichester West Sussex PO19 7PE		
<b>Map Ref</b>	(E) 486702 (N) 104417		
<b>Applicant</b>	Mr And Mrs Henn	<b>Agent</b>	

**RECOMMENDATION TO PERMIT**



**NOT TO  
SCALE**

Note: Do not scale from map. For information only. Reproduced from the Ordnance Survey Mapping with the permission of the controller of Her Majesty's Stationery Office, Crown Copyright. License No. 100018803

## **1.0 Reason for Committee Referral**

- 1.1 B - Red Card issued by Cllr. Sarah Sharp because there is an exceptional level of public interest

## **2.0 The Site and Surroundings**

- 2.1 The 1 no. Holm Oak tree (T3) is situated on the frontage, in slightly raised ground, within the north-east corner of 41 Lyndhurst Road, Chichester. The property is a detached house, with outbuildings to the rear and a connecting extension/garage to the east of the main building. The tree the subject of the application is a mature Holm Oak tree which is prominent in the street scene, located approximately 3m from the garage. It is protected by virtue of a Tree Preservation Order (TPO) which was made in 1993.
- 2.2 There are public footpaths to east, north and south of the property and the property itself is located in the southern part of the city and within Chichester Conservation Area. The site lies in a predominantly residential area, albeit beyond the public footpath to the east there is a local convenience store.

## **3.0 The Proposal**

- 3.1 The proposal is to fell 1 no. Holm Oak tree (T3) subject to CC/93/00284/TPO.
- 3.2 The proposed felling has been requested due to the amount of damage being caused by the tree's rooting system (on the northern and eastern sectors) which has caused cracking/lifting of the adjacent footpaths and at the boundary, which consists of brick pillars and a small brick wall with railings (on top) which show evidence of cracking and distortion. The proposed removal of the tree and the removal of large roots (within 300-400mm of the surface) are proposed to alleviate damage to adjacent public footpaths and open space to the north of an adjacent local shop, which lies to the east of the property.

## **4.0 History**

02/02661/TPO	PER	Raising of crown and general crown reduction by 20-30% of 1 no. Holm Oak tree (T3).
93/01945/TCA	YESTPO	Lopping and topping of six various trees.
93/02240/TPO	PER	Removal of any crossed and damaged branches and general shaping works to I-Maindenhair tree, I-Plane tree and I-Holm Oak tree.
99/01942/DOM	PER	Reinstatement of s.w. conservatory to original design. Refurbishment of greenhouse. Removal of single storey utility room and construction of new to side.

99/01946/CAC	PER	Removal of single storey utility room.
10/04660/TPA	PER	Crown raise up to 4m (above ground level) and crown reduce by 30% on 1 no. Holm Oak tree (T3), crown reduce by 10 - 20% on 1 no. Maidenhair tree (T1) and 1 no. London Plane tree (T2). All three trees are subject to CC/93/00284/TPO.
10/04664/TCA	NOTPO	Notification of intention to fell 1 no. Magnolia tree.
16/02982/TPA	PER	Crown reduce by up to 30% and crown raise by up to 4m above ground level on 1 no. Holm Oak tree (T3) subject to CC/93/00284/TPO.
19/02108/TPA	PER	Crown reduce by up to 20%, crown lift by up to 4-5m (above ground level) (removing small diameter epicormic growth/branches) and crown thin by 10% (to remove crossed and damaged branches) on 1 no. Maidenhair tree (T1) and 1 no. London Plane tree (T2). Both trees subject to CC/93/00284/TPO.

## 5.0 **Constraints**

Listed Building	NO
Conservation Area	CC
Rural Area	NO
AONB	NO
Tree Preservation Order	YES
EA Flood Zone	
- Flood Zone 2	YES
- Flood Zone 3	YES
Historic Parks and Gardens	NO

## 6.0 **Representations and Consultations**

### 6.1 **Chichester City Council**

None received.

### 6.2 **CCAAC**

The CCAAC objects - This Holm Oak is a significant local feature at the centre of the Whyke area of Chichester Conservation Area. The felling would seriously affect the quality of the local environment. The tree should be retained and an application for further pollarding be submitted.

### 6.3 Third party letters of objection

10 letters of objection have been received for the following reasons;

- a) The tree is an important and prominent visual feature contributing to the character of this part of the Conservation Area
- b) The tree should be pollarded, as on previous occasions.
- c) At a time when climate emergency has been declared by the District and City Councils, the loss of any tree should be avoided unless it is a danger to property or people.
- d) This fine Holm Oak is a landmark specimen and a major feature of Whyke. It appears to be in good health. It does not appear to be in any danger to property, except for its gradual destruction of the boundary wall.
- e) A tree of this stature and importance deserves our protection
- f) The tree is allegedly lifting of the tarmac in the public footpath area and collapsing of the boundary wall. Some accommodation on the paving could be made to allow infill of the pavement surface between the roots but neither presents a real danger to the public.
- g) If the tree was felled around climate change (CDC declaring a climate emergency should save mature trees must be considered), provides carbon capture and biodiversity loss. Trees provide oxygen
- h) The tree is not diseased and is an attractive feature and ancient, creates a sound buffer from the railway line, benefits human health, it is not creating a hazard or a danger, expensive nuisance to the owner and regular tree works would reduce the tree's impact.
- i) The tree provides life support for a myriad of threatened wildlife (starling roost)
- j) The removal of the tree would alter the character catastrophically and enhances the visual appeal to the neighbourhood immensely
- k) Before any decision to fell the tree is taken, an environmental assessment of its value to local wildlife should be undertaken

### 6.4 Third party letters of support

A total of 19 representations of support have been received and which include the following comments:

- a) The tree is causing a risk/hazard to general public (of all status) and structures
- b) Visible damage to pavement (roots lifting tarmac/trip hazard - are invasive and progressive) and the property boundary (cracking/distorted and has collapsed - currently being propped up with metal fencing).
- c) The tree could also be affecting public and private underground services.
- b) The tree makes an aesthetic and environmental benefit to this part of Chichester Conservation Area but has outgrown its location beyond the point of being able to be sustained and maintained and more suited to open parkland
- c) Holm Oak tree species not suited to the urban landscape (wrong tree wrong place) - makes area under the tree dark and slippery due to leaf fall which has blocked the drains and the area has flooded in the past

- d) The applicant has spent considerable sums and time over the past years attempting to contain this tree.
- e) West Sussex County Council cannot afford to repeatedly maintain the well-used pathway to safe standards as protected roots continue to damage it.
- f) No practical solution to give the space the tree needs and work around it
- g) The health and safety of the local residents and pedestrians must take priority - works on the tree would be of little benefit
- h) Plant a suitable replacement tree

#### 6.5 Applicant's supporting information

The applicant has provided the additional information, including advice from a structural engineer and correspondence from West Sussex County Council.

##### *a) General comment*

The proposed felling of the Holm Oak tree is a remedy to alleviate the impact on the public footpath surface (potential/actual trip hazard) and the damage caused to the boundary brick pillar, brick wall and railing, so as to help ensure the long-term stability these two areas.

##### *b) Assessment from the applicants' Structural Engineer;*

With immediate effect, the unstable corner pier must be restrained from falling and the quickest way to achieve that will be by lots of rope secured around the tree. Furthermore, plastic work barriers should be tied back in two directions, to bolster the masonry and the railings. The temporary barriers should continue for the full length of the affected panels. Highway's advice will be needed first because of the narrowing of the footpath width.

The tree should then be totally removed. Any attempts to reduce its height or bulk will only stimulate root growth and make the situation worse. However, it is always recommended to take down the tree in progressive stages to help reduce the effects of ground swelling.

Only when all major roots have been removed, will it be possible to consider specialist foundations to enable the rebuilding of the wall and railings. The cost of these works is likely to be high.

From the latest inspection, the amount of damage caused by the tree's root system is serious. It is, therefore, with reluctance to have to report that the holm oak cannot be left to continue damage to its surroundings and therefore must be removed. Upon felling, its larger roots within 300-400mm of the surface should be removed where possible.

I advise that a TPO should not be allowed to remain in force, over the safety of the applicants' and members of the public.

This work needs to be undertaken in conjunction with County's Highways and Transport Department and the County Council will be able to advise further on this process.

- c) *Extract of correspondence from West Sussex County Council's Highway Section to applicant providing an assessment prior to submission of formal application.*

Our concerns cover two main areas -

- 1) Firstly the safety of the existing boundary wall;

With regards to the boundary wall, this has suffered significant damage due to its proximity to the tree trunk and the shallow roots. This has resulted in the wall being broken into sections and to lean towards the adjacent public footpath. This footpath is on a route taken by many local children, going to and from the nearby school on a daily basis. There is a clear risk that at some point a section of this wall may break away altogether and fall on the public highway and that this could result in injury to a member of the public. Whilst taking down this wall would remove this risk, the property would then not be secure and there is no way that any form of boundary wall or fence could be constructed without encroaching on the public highway, which is not acceptable, as long as the existing tree remains in place.

- 2) Secondly the damage to the footpath caused by the tree roots;

With regard to the public footway, adjacent to the property. This has clearly been significantly affected by the tree roots from the private tree. This has resulted in the back of the footway being pushed by and additionally there are now a number of raised areas in the footway, which are causing a potential trip hazard. The intervention level for a footway hazards, is a 20mm difference in level and this already exists in a number of places. We could look to remove the existing footway surface and lay a new one over the roots, in order to remove the trip hazards. However this would only provide a short term solution and given the extremely limits budgets currently available, we cannot justify a situation, where we would be committed to undertaking repeated repairs, on a periodic basis, in order to keep the footway safe.

Given all of the above we believe that the only acceptable long term solution is for this tree to be completely removed and we would support any formal application to the local authority to do so.

This conclusion is not one that we have made lightly, as no one (especially the County Council) wants to see a large tree like this being remove. However, this particular tree is clearly in the wrong place, given its current size and location, we have to consider the safety of the general public when they are using the public highway, including the footway. It must also be a concern to the property owner, regarding possible damage to the property.

## **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. There is no specific policy in the currently approved Local Plan in relation to tree matters such as this.

7.2 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:

- Promote and increase sustainable, environmentally friendly initiatives in the district
- Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

## **8.0 Planning Comments**

8.1 The main issues arising from this proposal are the impact of the loss of the tree on the visual amenities of the locality and the risks associated with its retention.

### Assessment

8.2 The Holm Oak tree the subject of this application is one of three trees subject to a Tree Preservation Order (TPO) CC/93/00284/TPO. The other two trees are a Maidenhair tree (T1) and a London Plane tree (T2) which are located in the rear garden. The TPO was made on 13 December 1993.

8.3 The tree is a mature specimen and its trunk is around 3.0 metres from north-east corner of the garage and adjacent to the surrounding boundary. This is formed from brick pillars and a brick wall (with railings on top) and which is adjacent to the north and east of the tree's trunk. The tree is in an adequately sound and healthy condition and is understood to have been pruned three times in the past 20 years. The tree is clearly visible from various public vantage points and it is a prominent and significant feature within the street scene. It consequently makes an important environmental contribution to the visual amenity of the locality.

8.4 The Holm Oak tree, which is subject of this application, is one of the larger trees along this road and area and it appears to be in good health. The removal of this tree would have an adverse impact upon the verdant qualities of the area and would result in some change to the established attractive character of the area. There is another large mature Holm Oak tree to the north, within an adjacent property (40 Lyndhurst Road), and these are the two significant trees within the street.

8.5 Because of the positive contribution that this tree makes to the character of the area, its removal should only be considered if there are robust and sound reasons for doing so.

8.6 The applicant has commissioned an engineer's report to identify the impact that the tree is having on the adjacent public footpaths and on the boundary structures (walls) at the property, this has been prepared to support this application. It can be ascertained from the applicant's submitted report that the causal link is the incremental development of the tree's rooting system and stem growth, which is causing the lifting/cracking of the footpath and is also damaging the boundary wall. Photographic evidence has also been submitted to support this conclusion.

- 8.7 The Holm Oak tree is of a significant size and the damage to the wall and footpath (lifting/cracking) has not been fully quantified by the applicant, (potentially through trial holes being dug). However, it is clearly apparent that the tree's location and size and its proximity to the public footpaths and boundary structure is the likely cause. An alternative to felling might be undertaking some root pruning works, but there is also a concern that this could destabilise the tree and this might only be a short term solution.
- 8.8 The Council must deal with this application to fell the Holm Oak tree on its own merits, having regard to the information submitted with the application, all of the submitted representations and the third party comments and having regard to the high amenity value of the tree and its contribution within the locality. In this case, there is clearly evidence of tree damage to both the adjacent footpaths and the boundary wall and there are also concerns about further damage and public safety.
- 8.10 West Sussex County Council as the highway authority, have raised concern with regard to the tree's on going retention. Member's attention is also drawn to the advice of the applicant's structural engineer, who has undertaken a detailed structural survey. This advice is very clear and includes some very specific recommendations and early actions that are required in order to help ensure public safety. The advice is a relevant material consideration, particularly as there is no contrary evidence and as similar concerns can be found in other representations. The welfare and safety of the public at large is an important consideration and while the loss of the tree is highly regrettable in amenity terms, on balance, in this case, it is considered that the safety and well-being of the public is over-riding. A potential consequence of not properly considering the professional advice submitted and any consequential refusal of the application allow the removal of the tree may result in some future liability.
- 8.11 It is now quite a long period of time (26 years) since the tree became first protected and that during this time, it will have grown quite considerably. Furthermore, while Holm Oak has significant amenity value, they are not traditionally suited to a tight urban environment or being located as close to the boundary wall and footpath, as this one is. The tree roots and the main tree itself will have grown significantly over this period and despite pruning on three occasions, there will still be other growth and expansion. This helps to justify the tree's removal, along with the provision of an appropriate replacement tree.

### **Conclusion**

- 8.12 The contribution that this Holm Oak tree makes to this part of the Whyke area of Chichester and the Chichester Conservation Area is significant. However, the proposal to fell this mature tree, on the basis of existing and potential future impacts on adjacent public footpaths and structures, which could result in significant future health and safety risks, outweigh the general presumption in favour of retaining this aesthetically valuable tree.

8.13 Because of its maturity, the size and position of this tree has become unsustainable for its location and this further justifies its removal. It is, consequently, recommended that the application is approved, subject to a condition requiring a suitable replacement tree being planted. A suitable replacement example might be a Fastigiate Yew, a Fastigiate Oak or a Fastigiate Beech, which should be provided in as practicable location, close to that of the current tree.

#### Human Rights

8.14 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**

**PERMIT** subject to the following conditions and informatives:-

1) The works hereby permitted shall be completed within two years from the date of this consent. After the expiry of the time limit a further application for consent would have to be made.

Reason: A limited period has been imposed to prevent the accumulation of consents on the tree(s).

2) Within the first planting season following the completion of the proposed removal of 1 no Holm Oak tree (T3) subject to CC/93/00284/TPO, a suitable replacement tree type, for example Fastigiatae Yew tree or a Fastigiate Oak tree or Fastigiate Beech tree, shall be provided in a position as near as practicable to the location of the original tree to be felled and with a height of at least 2 metres when such planting is carried out. The location and species type must be agreed in writing with the Local Planning Authority prior to planting. Any root balled trees shall be planted in accordance with standard arboricultural practices as set out in British Standard BS 8545: 2014 (Transplanting Root Balled Trees). In the event that any such trees die or become seriously damaged or diseased within a period of 5 years following planting they shall be replaced in the next planting season with others of a similar size and species.

Reason: In the interests of the amenities of the locality.

3) The tree works for which consent is hereby granted shall not be carried out other than in full accordance with all standard arboricultural practices as set out in British Standard 3998:2010 (Tree Work).

Reason: In the interests of amenity and to protect the tree.

## INFORMATIVES

1) Your attention is drawn to the provisions of the **Countryside and Rights of Way Act 2000, Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017.**

These make it an offence to:

- Kill or injure any protected species or wild bird,
- Damage or destroy the breeding sites and resting places (roosts) of certain animals including bats and dormice even if the species is not present.
- Damage, destroy or take the eggs or nest of any wild bird (when the nest is being built or is in use)

**The onus is therefore on you** to ascertain whether such bats, birds, other animals or insects may be nesting or using the tree(s), the subject of this consent, and to ensure you do not contravene the legislation. This may, for example, require undertaking a bat survey or delaying works until after the nesting season for birds.

If the tree is being used as a breeding site or resting place (roost) by bats, then a Natural England Licence would be required before removal of the tree. You are advised to contact Natural England for more information on 0845 601 4523. Trees which have any holes, cracks, ivy or deadwood are more likely to have roosting bats.

The nesting season for birds is between the 1st March and the 30th September. If you need to undertake works during this period you are advised to contact the local office of Natural England at Lewes for further information (tel: 01273 476595).

2) The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

3) The location of the 1 no. Holm Oak tree (T3) subject to CC/93/00284/TPO relates to the plan submitted with this application.

For further information on this application please contact Henry Whitby on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PWHJAMER0ZT00>