

32 OLD WAY, FRINTON ON SEA

PURPOSE OF THE REPORT

To consider the evidence submitted in support of the notification of the proposed felling a single Oak where it is claimed that it is causing damage to property (32 Old Way, Frinton on Sea) and to balance the case for the retention of the tree against a potential claim, made to the Council, for compensation.

The application also includes the felling of a Pyracantha and a small group of mixed species trees. The Pyracantha and other trees are poor quality with very low amenity value and are not considered further in this report.

DETAILS OF THE APPLICATION

The Section 211 Notification to fell the Oak tree and other trees was received on 24 February 2025 and is supported by technical reports relating to the moisture content and load bearing capacity of the soil, the damage to the property and the protected trees.

LEGISLATION RELATING TO TPO's

Section 203 of the Town and Country Planning Act 1990 provides that a tree preservation order may make provision for the payment of compensation in respect of loss and damage resulting from the refusal of consent under the order or the grant of consent subject to condition. Section 24 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides formal guidance on the compensation process.

In the decision-making process a balance needs to be struck between the Council's duties in relation to the protection the districts trees and the potential exposure to future claims for compensation. Additionally due consideration must be given to the rights of the landowners to the peaceful enjoyment of their property.

In essence the retention of a protected tree that is the subject of a subsidence related application will leave the Council exposed to a claim for compensation which is likely to place a considerable financial pressure on the Council.

A disputed claim for compensation is dealt with by the Land Tribunal. Whilst the direct cost of the process may be relatively low the engagement of representation in the court as well as engaging appropriate expert witnesses along with the provision and collation of evidence to repudiate the claim is likely to be significant.

At the present time the subject tree is afforded protection by way of its position within The Frinton and Walton Conservation Area and not by a TPO. In the determination of the Section 211 Notice consideration is given to the acceptability of the proposed works and the potential for making of a new TPO to prevent the works proceeding.

EVIDENCE

In support of the application the applicant has submitted an Arboricultural Appraisal, a Geotechnical Report containing an analysis of the soil and its particle size. They have also provided a Level and Crack Monitoring Report

ANALYSIS OF EVIDENCE.

The evidence submitted in support of the Section 211 Notice to fell the Oak demonstrates that damage has occurred to the dwelling.

The evidence also shows that tree roots are present in the soil beneath the foundations and the Level and Crack Monitoring Report demonstrates that the damage to the dwelling is cyclical, meaning that the cracks open in the summer as the soil dries out and close in the winter when re-hydration occurs. This is a clear indication that the trees are implicated in the damage to the dwelling.

During a site visit the external cracking to walls was viewed.

The damage to the property exhibits signs of tapering cracks which is typical of tree related damage to buildings.

The evidence provided is sufficient to show the key elements of tree related subsidence and identify the Oak as contributory cause of the damage.

If the tree were to be protected by a TPO then the evidence would be sufficient to justify its removal. Therefore, in this case the application has been dealt with, in respect of technical issues, as though the tree was the subject of a TPO.

REPRESENTATIONS

The Town Council has responded and have not objected to the proposed works although they suggested that replacement planting is secured.

CONCLUSION.

The amenity value of the Oak and the benefits that it provides to the public by way of its visual and ecological values are fully recognised.

It is accepted that; in the normal course of event the tree would have a long safe useful life expectancy.

However, the value of the tree must be balanced against the right of the resident to the peaceful enjoyment of their property and the potential claim for compensation against the Council for the cost of the resultant works to repair the dwelling should the tree be retained.

The evidence submitted in support of the application is sufficient to implicate the protected Oak as contributory factor in the subsidence related damage to the dwelling.

On balance it is considered that the amenity and other values of the tree does not outweigh the rights of the homeowner and the potential claim for compensation against the Council for cost of the repairs to the dwelling and consequently consent will be granted for the works as applied for.

DECISION. No Objection

Clive Dawson
Tree And Landscape Officer