

Section F: Grounds of appeal

Reasons for removal: -

- 1.1 Levelling and resurfacing the driveway is required to enable safe access for Mrs Garcia and this will result in damage to the tree's roots and lead to further stress on its physiological functioning. Add this additional stress to the partial felling and the Council's proposed removal of the rest of the crown and we have a situation where the tree will very likely enter into a spiral of terminal decline.
- 1.1.1 The tree's roots are predominantly occupying the top 600mm of the soil under the existing gravel driveway and will be damaged if using traditional construction techniques (e.g. digging down 350mm, laying down 200-250mm scalplings and compacting them with a wacker plate, then building back up to existing levels with block paving or resin-boned non-slip gravel (no higher than the pavement)).
- 1.1.2 Adopting a no-dig cellular confinement system technique is not cost-effective, realistically viable or sustainable because: -
 - The build up would need to be in excess of 300mm¹ above existing levels to support the expected vehicle loads, which would result in an unacceptable level change from the pavement onto the driveway. Raising the pavement to match is obviously not an option and installing any form of ramp at the apron between the pavement and driveway would be too close to the buttresses and major structural roots leading to unacceptable damage to the tree and distortion to the construction in the future.
 - Even no-dig construction can increase the bulk density of a soil to some degree and the vast majority of the tree's rooting zone is already under hard surfacing and consolidated soil (road, pavement and neighbours asphalt driveway). British Standard 5837 *Trees in relation to design, demolition and construction* advises that new hard surfacing should not exceed 20% of any existing unsurfaced ground within the trees root protection area. Re-surfacing the existing gravel driveway (which could be considered as existing unsurfaced ground) would be in contravention of this principle and cause further stress the tree's physiological function. Furthermore, the site lies on London clay formation, which is particularly sensitive to any disturbance associated with construction and resurfacing. Such extensive hard surfacing occupying the virtual entirety of the tree's root zone will result in reduced levels of oxygen and water and reduced biological activity in the soil, ultimately impairing root growth and function and decreasing uptake of water and nutrients, thus increasing susceptibility to pathogens, disease and leading to a spiral of physiological decline.
 - It is generally accepted best practice to leave a minimum of a 0.5m gap between the tree and the edge of new no-dig cellular confinement construction to avoid future distortion of the construction by direct contact through the incremental growth of the buttresses and large structural roots. This is not feasible in this case.

1 Arboricultural Association's Guidance Note 12 – The use of cellular confinement systems near trees – a guide to good practice (section 2.1/22)

- 1.2 The dropping of acorns, dead branches, leaves etc... on the driveway would present a hazard for Mrs Garcia when she is standing up and transferring in and out of her vehicle. The clearance of such material is normally expected as part of day to day property maintenance and on its own is not considered as sufficient justification to fell a protected tree. However, in this case, Mrs Garcia is not able to carry out such maintenance herself and during a mast year when acorn production is particularly high (typically every other year or so) this would add to Mrs Garcia's anxiety and risk of injury from tripping. Additional pruning sufficient to prevent acorn production would not bring significant benefit and is not a sustainable long-term solution.

Additional factors to consider: -

- The Council's Occupational Therapist and Mrs Garcia's Care Advisor at the Oxford Neuromuscular Centre have outlined the importance of Mrs Garcia's requirements for adapting her driveway to enable safe access. This effectively means a widened access, level non-slip surfacing such as block paving and permanent ramps leading up to the front door(s).
- It is important to stress the fact that Mrs Garcia was not doing anything wrong (legally or morally) by trying to remove the tree and create a safe access into her new home in the first place. There is considerable local support and understanding for her situation and for the removal of the tree, as demonstrated by the accompanying letters in appendix II (of the report).
- The likelihood of the tree surviving the partial felling and further heavy topping and lopping is slim. Its current amenity value is very low (it looks ridiculous to put it mildly) and its future potential amenity value is also questionable. No amount of remedial pruning will ever be able to recover its natural form. It is therefore argued that its loss (in its current or future form) will not have a significantly detrimental impact on the amenity of the local area and the proposal is justified given Mrs Garcia's special requirements and legal entitlement to safe access to her property.
- To prevent safe and level access being installed using cost-effective traditional construction by refusing this application on the grounds that the butchered tree might possibly survive even though the odds are stacked against it would be nonsensical. Just the same, insisting on Mrs Garcia paying considerably more for onerous and non-viable no-dig construction techniques which will still result in disturbance and further stress to the tree is unreasonable when its long-term future is not guaranteed.
- A more sustainable long-term and viable solution is to fell the tree, use traditional (cheaper) driveway construction techniques and carry out replacement planting. The Council are therefore urged by Mrs Garcia and the signatories in the supporting letters to show some pragmatism and understanding to her situation and grant consent for the removal of the remainder of tree under condition of replacement planting.

Note: As the proposed location for replacement planting is on Council (highways) land, I might suggest that Mrs Garcia pays for the cost of purchase and planting of the new trees and the Council subsequently takes care of the establishment and future maintenance. This would seem reasonable given the Council believe the oak is within the adopted highway (and thus one of their assets). That said, since the tree is clearly within the red line of the property on the title deed plan for 13 Arbor Lane, it is proposed that this provides sufficient evidence that the tree does in fact belong to Mrs Garcia.

Reasons for refusal (appellant's disagreements in blue text below): -

1. The subject Oak tree, though partially dismantled, remains structurally viable and biologically alive. The tree is situated in a prominent position with potential for restored amenity value through natural regeneration and sympathetic management.

It is agreed that the tree will initially need crude topping and lopping in an attempt to try and restore its amenity value, which will take many years (a decade or more) to achieve. Such crude treatment would ordinarily be refused by most local planning authorities in the event of a protected tree work application, which will be required before carrying out such work.

2. The TPO was made to prevent further loss, and the tree still makes a meaningful contribution to the local landscape. TPO legislation does not require a tree to be in pristine condition—only that it offers amenity value and can recover.

The tree does not make a meaningful contribution to the local landscape – it is a half felled eyesore and it is argued that the Councils judgement is misguided in this case and they are stretching the spirit of the TPO guidance.

Tree Preservation Order guidance has the word amenity as the golden thread that runs through it. Government Guidance states: -

- *'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.*
- *Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public.*
- *In considering an application, the local planning authority should assess the impact of the proposal on the amenity of the area.*
- *When considering an application the authority is advised to:*

assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area

3. Native oaks have strong regenerative capability, particularly from epicormic growth and the tree shows signs of significant active regrowth, which can restore canopy form over time and, while currently visually compromised, the tree's potential to recover form and function supports retention at this time.

The officer now admits that the tree is visually compromised (an understatement). The key question is whether the loss of this visually compromised tree is likely to have a significantly detrimental impact on the amenity of the area and it is argued that it will not, when also considering the proposed replacement planting, which will provide long-term mitigation.

4. Council policy CP7 'Biodiversity' of the adopted Core Strategy commits Wokingham Borough Council to conserve and enhance such areas and retaining mature trees, even damaged ones, aligns with biodiversity net gain principles and climate resilience goals.

CP7 reads.....

CP7 - Biodiversity

Sites designated as of importance for nature conservation at an international or national level will be conserved and enhanced and inappropriate development will be resisted. The degree of protection given will be appropriate to the status of the site in terms of its international or national importance.

Development:

- A) Which may harm county designated sites (Local Wildlife Sites in Berkshire), whether directly or indirectly, or
 - B) Which may harm habitats or, species of principle importance in England for nature conservation, veteran trees or features of the landscape that are of major importance for wild flora and fauna (including wildlife and river corridors), whether directly or indirectly, or
 - C) That compromises the implementation of the national, regional, county and local biodiversity action plans
- will be only permitted if it has been clearly demonstrated that the need for the proposal outweighs the need to safeguard the nature conservation importance, that no alternative site that would result in less or no harm is available which will meet the need, and:
- i) Mitigation measures can be put in place to prevent damaging impacts; or
 - ii) Appropriate compensation measures to offset the scale and kind of losses are provided.

Neither the front garden of 13 Arbor Lane nor the immediate surrounding locality is a site designated as of importance for nature conservation at an international or national level, nor is it a county designated site (Local Wildlife Site in Berkshire). The tree is not ancient or veteran. I strongly believe that in this particular case, the need for the removal of the tree to enable cost-effective, safe and level access with minimal maintenance requirements for the applicant without any further delay outweighs any potential impact on biodiversity caused by the loss of this tree.

Further it is argued that the need for the proposal outweighs the need to safeguard a visually compromised tree and that mitigation measures can be put in place (replacement planting) to reasonably offset the temporary loss.

5. Wokingham Borough Council declared a climate emergency in July 2019 which commits us to playing as full a role as possible in reducing our carbon footprint to be net carbon zero by 2030. The Borough Council aims to increase the levels of carbon sequestration through greening the environment. Consequently, the preservation and enhancement of tree canopy cover in the Borough will play an important role in this.
6. The Council's Operational Trees team manager has confirmed that the tree is situated within the boundary of the adopted highway and is therefore owned by the Council.

The applicant was told by the Council's Customer Service team that the tree was not owned by the Council and that there was no TPO on it. The tree is situated within the red line of the applicant's property deeds plan. The Council have shown no evidence to support their subsequent claim. Irrespective, the ownership of the tree should have no material relevance in the determination of the application.

7. The current application does not demonstrate that removal is the only means of facilitating disabled access. The layout of the driveway has not been shown to be unachievable with tree retention, nor have alternative design solutions (e.g., permeable surfaces, curved layouts) been explored fully.

Section 1.1.2 (5.1.2 in the full report) reasonably demonstrates the principle that in this instance adopting no-dig cellular confinement system techniques are unlikely to comply with Arboricultural Association's Guidance Note 12 – *The use of cellular confinement systems near trees – a guide to good practice*. It is reasonably foreseeable that retention of the tree is not compatible with traditional construction methods involving excavation. Therefore, the quickest, most cost-effective, viable and sustainable solution is to remove the tree, plant two new placements and use traditional construction methodology.

8. The Council is sympathetic to the applicant's disability and access needs and will work to support a redesigned access solution that maintains tree retention.

To date, no tangible attempt has been made by the Council or its officers to acknowledge or support Kathy's disability and urgent requirements, highlighted by the requests from her medial team and the Council's own Occupational Therapist for a quick resolution to this whole fiasco. No-one from the tree team has bothered to visit her at her home in order to meet her and see or understand for themselves the nature of the problem in relation to this application and the argument put forward in the supporting report.

The case officer has not reasonably demonstrated an ability to cast careful judgement of the special individual circumstances of Kathy's case to balance the competing interests of the policies stated.

Government Guidance states: -

Must there be an arboricultural need for the work?

In general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work.

It is proposed that the need to enable a quick, safe, cost-effective and robust resolution outweighs the loss of the tree and that new planting of two new trees (as proposed) will bring sustainable long-term mitigation.

9. The Council will review the condition of the tree annually to assess its recovery and take appropriate action if regeneration fails.

It may well be the case that the half felled tree could be lopped and topped to match the remaining stumps and survive and that a new driveway with ramps could be built with minimal damage to the roots (by way of a further costly and time consuming application). MAY is the key word here and if it doesn't work out and the tree dies anyway, then we've gone through this whole song and dance over a year or more at great expense and delay to Kathy for something that was completely avoidable if pragmatism and common sense had prevailed in the first place.

Concluding statement

Kathy (the applicant) has been trying to achieve safe access to her home, which has now been on-going since last June. In trying to use temporary ramps she has fallen twice and this is now a matter of urgency and I am not charging her for time spent on this appeal.

Why am I not charging her for my additional time? Out of a sense of duty for a fellow human being because she is understandably floundering under the bureaucracy that the Council has imposed on her. And because I feel extremely aggrieved for the way in which they have treated one of their tax paying residents who is really struggling to fight her own corner. In my 30 years of working with trees (of which 4 was spent as a local council tree officer) this is the worst example of a tree officer riding roughshod over one its own residents I have ever seen and complaints have been lodged to the Council's Chief Executive, local councillor and local MP.

Kathy has Girdle Muscular Dystrophy (which gets progressively worse all the time) and is dependent on a wheelchair for mobility, for which she requires (needs desperately and is legally entitle to) ramps to access her house. She has paid a contractor to level her front garden/driveway and build the ramps. However, the contractor still has her money and the work has not been done because of the TPO and the Council's refusal of the application to fell the remaining part of the tree. All she is doing is trying to achieve safe access to her home and because of the Council's obstructive and unreasonable approach she is no nearer that goal after a year. This is completely unacceptable whichever way you look at it especially when you take account of what that tree actually looks like. Refusing the application is not taking account of her special circumstances (highlighted in the application report) and stretching the spirit of the TPO legislation beyond reasonable judgement.

I am having to try and explain all this to her and I am embarrassed by my own profession and the way in which a fellow arborist (the tree officer) has dismissed Kathy's special (if not exceptional) circumstances and the support of over 15 local residents around her wish to remove the tree in order to get her driveway levelled and the ramps built. Kathy has shown great restraint, humility and tolerance.

Levelling the driveway and building the ramps to the required standards and that will last for many years will require excavation into the root zone of the tree and thus damage it to such an extent that it is unlikely to survive. The obvious alternative is to adopt a no-dig approach using a cellular confinement "up and over" system. I have recommended and worked with these many times during my career and they can offer a useful solution in the right circumstances. However, since they require building up over existing levels, in this example matching those raised levels (>150mm) with the existing pavement and the damp course of the house presents a serious engineering challenge. Furthermore, this technology invariably costs more than using traditional techniques and the Council would most likely require a further application to approve it, adding to Kathy's burden and delay.

Kathy wanted to appeal the decision on the recent application and I believe she should out of principle.

Is the loss of this one hacked tree going to have a significantly detrimental impact on the climate, carbon sequestration, biodiversity or amenity of the locality? No. And do the reasons for refusal make the decision right or fair? Absolutely not, given the special circumstances to this case.

I therefore urge the inspector to do the right thing for Kathy and grant the appeal to enable her to move forward to a common sense resolution without any further delay.