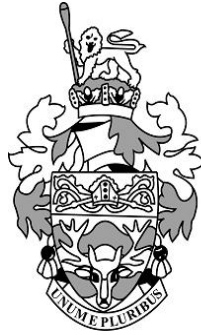


Tel: (0118) 974 6000
Email: wokinghamdirect@wokingham.gov.uk
Date: 28th June 2024
My ref: CH/TPO/184/1980/001



WOKINGHAM BOROUGH COUNCIL

Place and Growth
Development Management
Team

P.O. Box 157
Shute End, Wokingham
Berkshire RG40 1WR

Tel: (0118) 974 6000

FAO Jackie Gumsley
MWA Arboriculture Ltd
Unit 8 Stephenson House
Horsley Business Centre
Horsley
NE15 0NY

BY EMAIL: office@mwaarboriculture.co.uk

Dear Ms Gumsley,

TREE PRESERVATION ORDER 184/1980
APPLICATION NUMBER: 240819
SITE ADDRESS: BURIAL GROUND NEAR BOUNDARY WITH 66 READING ROAD,
WOKINGHAM, RG41 1EL

Thank you for your application (validated on 29th January), Thank you also for your agreement to extend the consultation period to 28th June 2024. Please accept the Council's apologies for the delay in determining this application.

Decision:

I am writing to advise you that Wokingham Borough Council **cannot approve** your application for the following work to protected trees:

Description of the works:

Proposed work to one oak, T1 of TPO 184/1980 (T9 – oak, on the applicant's Arboricultural Report):

T9 Oak of the MWA Arboricultural Report:

Remove (fell) to near ground level and treat stump to inhibit regrowth. Reason: Clay shrinkage subsidence damage at the property.

Reasons given, by the applicant, for the proposed work:

The applicant gives the following reason for the proposed tree removal:

The above tree is considered to be responsible for root induced clay shrinkage subsidence damage to 66 Reading Road, RG41 1EL.

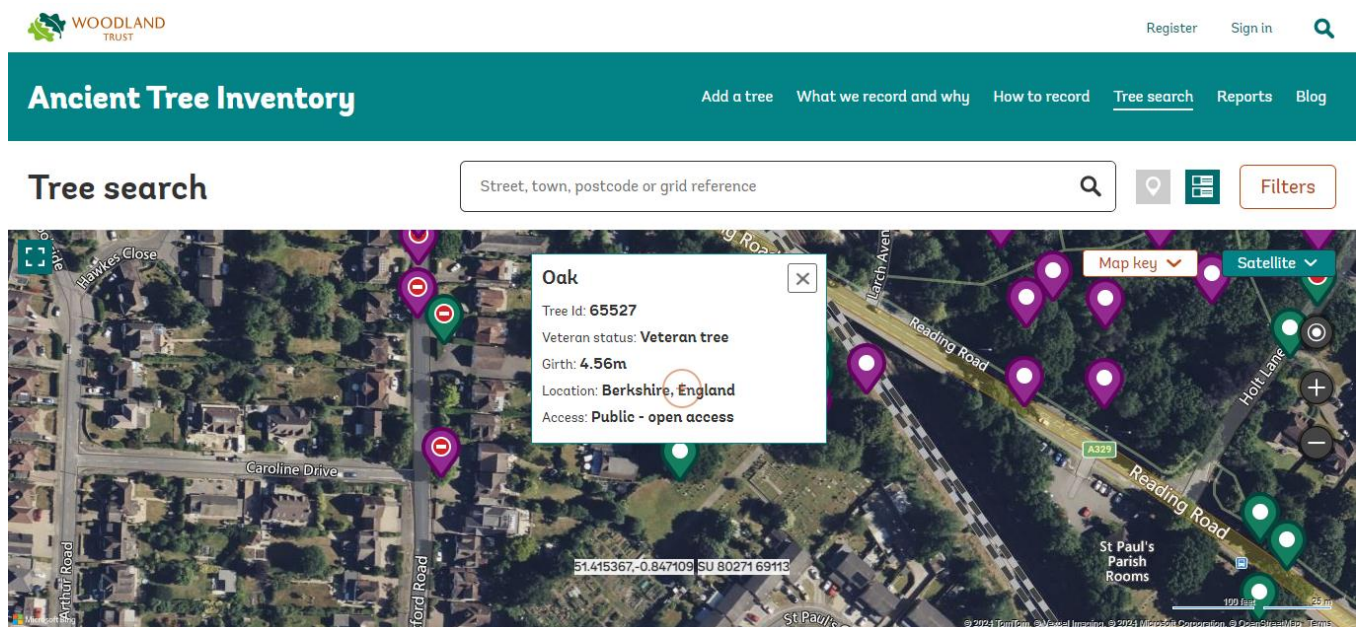
Information about T1, oak – a veteran tree:

The Government's 'standing advice' from Natural England and Forestry Commission: *Ancient woodland, ancient trees and veteran trees - advice for making planning decisions*, advises on consulting inventories, it states:

You can use the following inventories to help you decide whether a development will affect ancient woodland (including wood pastures identified as ancient) or ancient and veteran trees:

- ...
- *ancient tree inventory (click on 'Tree search' and enter a postcode)*
- ...

The oak tree is shown as tree 65527 on the Ancient Tree Inventory. See screen snip below:



The individual record is shown below:

Ancient Tree Inventory

[Add a tree](#)[What we record and why](#)[How to record](#)[Tree search](#)[Reports](#)[Blog](#)

[View photos](#)

About the tree

[Show more](#)

Species:	Oak
Form:	Maiden
Standing or fallen:	Standing
Living status:	Alive
Girth:	4.56m at a height of 1.50m (estimated)
Veteran status:	Veteran tree

Location of tree

The tree is also shown on the Wokingham District Veteran Tree Association (WDVTA) survey database:

MapSatellite

Record Number: 3541 (Recorder: WT02)
Grid reference: SU 80270 69109
Oak (Maiden, Alive - standing)
Girth: 4.56m(est.) at 1.50m on 21-Mar-07
Setting: Cemetery
[Full record](#)[Photos](#)

Wokingham Free Church Burial Ground

Reading Rd

Larch A

Reading Rd

A329

Reading Rd

Google

Keyboard shortcutsMap data ©202410 mTermsReport a map error

Tree Documents

A number of the trees in the database have associated supplementary documents.
To see a list of documents click the "Tree Documents" button on the left. (Opens a new window).

The full WDVTA record shows that this tree was inspected on 21 March 2007 and the girth was estimated as 4.56 m.



Tree Record 3541

COMMON NAME	Oak		SCIENTIFIC NAME	<i>Quercus sp.</i>	
GRID REFERENCE	SU 80270 69109	RECORDER CODE	WT02	PARISH	Wokingham Town
GIRTH [DBH]	4.56m [1.45m] (est.)	HEIGHT OF GIRTH	1.5m	MEASUREMENT DATE	21-Mar-07
TREE FORM	Maiden	ALIVE OR DEAD	Alive	STANDING OR FALLEN	Standing
SETTING	Cemetery				
LOCATION	Wokingham Free Church burial ground				
TREE CONDITION	Missing limbs				
EPIPHYTES	Ivy				
ACCESS	Public access	EVIDENCE OF BATS	None recorded	EVIDENCE OF INVERTEBRATES	None recorded
LOCAL TREE NUMBER	7	LOCAL AREA CODE	29	LOCAL ACTION NOTE	
PHOTOS	3503.jpg , 3497.jpg	RECORD CREATED	15-Dec-09	RECORD LAST MODIFIED	15-Dec-09
ANCIENT TREE INVENTORY NUMBER	65527		ANCIENT TREE INVENTORY CLASSIFICATION	Veteran	

Photos 3503 and 3497, taken at the time of the WDVTA inspection, are shown below:



Photos for record 3541



Photo 0 (3503.jpg)



Photo 1 (3497.jpg)

Government guidance on determining applications affecting veteran trees

The oak tree is a veteran tree, this was confirmed by reference to the records (see above) and following an inspection during the site visit. The Council is therefore constrained to take into account standing advice from Government.

The Government standing advice states:

Standing advice is a 'material planning consideration'. This means you should take it into account when making decisions on planning applications. It replaces the need for each agency to give an individual response to planning consultations. It has the same authority as an individual response.

And:

Making decisions

When making planning decisions, you should consider:

- *conserving and enhancing biodiversity*
- *avoiding and reducing the level of impact of the proposed development on ancient woodland and ancient and veteran trees*

You should refuse planning permission if development will result in the loss or deterioration of ancient woodland, ancient trees and veteran trees unless both of the following applies:

- *there are wholly exceptional reasons*
- *there's a suitable compensation strategy in place (this must not be a part of considerations of wholly exceptional reasons) - see paragraphs 33 and 34 of the planning practice guidance on compensation guidance*

You should make decisions in line with paragraph 180 (c) of the NPPF.

Ancient woodland, ancient trees and veteran trees are irreplaceable. Therefore, you should not consider proposed compensation measures as part of your assessment of the merits of the development proposal.

The NPPF was updated twice in 2023, most recently in December. Although the reference in the standing advice hasn't been updated to reflect this, the relevant paragraph number is now 186(c). It states:

186. When determining planning applications, local planning authorities should apply the following principles:...

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons⁶⁷ and a suitable compensation strategy exists;...

Footnote 67 states:

67 For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

No evidence has been submitted to demonstrate how the applicants have considered or complied with the Government's standing advice or the NPPF.

The Council can see no 'wholly exceptional reasons' for the felling of the veteran tree. There is no evidence that other solutions to the problem, including either traditional underpinning or geopolymer injection, have been investigated.

There is no evidence of a suitable compensation strategy.

There is no evidence that this application has avoided or reduced the level of impact of the proposed development on the veteran tree.

It is particularly important that, in determining this application, the Council considers *Juden v London Borough of Tower Hamlets*. This confirmed that both 'wholly exceptional reasons' and a 'suitable compensation strategy' are required to allow decision-makers to determine in favour of damage to, or the loss of, ancient or veteran trees.

In determining this application, therefore, the Council is constrained by the standing advice, the planning framework, and case law. In consequence, the Council cannot approve the application as it stands at this time.

Trees v foundations – general discussion

The legal situation is described in *The Law of Trees Forests and Hedges* (3rd Ed.) MYNORS C, HALL S and NICHOLLS E, 2023. it states:

In Patterson v Humberside CC, it was found that the encroachment of roots from street trees was an effective and substantial cause of the harm to the plaintiff's house, albeit not the sole cause-

"Other causes are the poor foundations of the property and the drought. The superior quality of construction of 42 Park Avenue may well explain why that property has suffered less damage. But it is sufficient to establish causation that the trees were an effective cause of the damage: Banque Bruxelles Lambert SA v Eagle Star Insurance Co. Ltd. The foundations were not so poor that the damage was bound to happen in any event. That is evidenced by the facts not only that the property had stood for over a hundred years, but also that the structure was in a stable condition at the time of the plaintiff's purchase and for several years after. That being so, the fact that the property had shallow foundations and was therefore more susceptible to damage from soil shrinkage caused by invasion of tree roots is no more relevant to liability than the fact that a plaintiff has a thin skull: Smith v Leech Barin and Co Ltd. The roots take their victim as they find it.

The judgement in *Patterson v Humberside CC*, (by Roger, now Lord Toulson QC sitting as a deputy judge), was a case from 1995. Putting this, in a more modern context is the following paragraph by the principal author, Charles Mynors KC, which states:

The application of the "thin skull" principle is doubtful. Plaintiffs in a personal injury case cannot increase the thickness of their skull so as to be more resistant to unexpected personal injuries: whereas the purchaser of a house with poor foundations may reasonably expect that the house will be less resistant to root damage than the superior house next door, as was indeed the case in Patterson, and would therefore (at least in theory) presumably pay less for it.

Trees v Foundations - at 66 Reading Road

The Technical Appraisal Report (Rev. 1) states that:

The risk address is a 1960 Detached Dorma Bungalow The condition of the property is considered to be good

And discussing when the 'discovery' of the subsidence was made The Technical Appraisal Report states:

Discovery

Cracking to the internal wall of the ground floor front room and hallway wall and second floor bedroom was discovered by at the beginning of 2020

And

[The] policyholder has lived at the risk address as owner since 1996

The National House Building Council (NHBC) released a revision of "Practise Note 3" in 1974 - a handy pocket guide for architects, builders and surveyors - giving differing foundation depths depending on tree type and tree-to-building distance ratios. Based on the guidance at this time foundation depths of at least 1.2m would have been indicated far more than the depths of foundations for the property as built.

The Arboricultural Assessment indicates that the oak is 14.4m from the building (monitoring point 5 on the house). On a site visit I carried out on 27th June, I measured the distance from the tree to various points with the kind assistance of the claimant, Mr Graham.

The distances measured from the tree were:

- A - the distance south-west to the SE corner of 66 London Road (monitoring pt 3) = 17.3m
- B - the distance west to the north-eastern corner of 66 London Road (monitoring pt 5) = 14.15m
- C - the distance north-west to the south-eastern corner of 68 London Road = 16.5
- D - the distance north to the western corner of garden fence of 64A London Road = 15.5

During the site visit I asked the owners of 68 Reading Road, Mr and Mrs Grannum, whether their property had suffered any subsidence. They confirmed that it had not. Not in the original (c.1960) parts of the house nor in the extensions.

As can be seen from the measurements above, 68 London Road, that has suffered no subsidence, is a similar distance from the tree to 66 London Road. No applications to fell the tree have been received from any other properties in the vicinity.

The Claims Consortium Technical Appraisal Report gives foundations depths of 0.45 in trial pit one and 0.56 in trial pit two. The Arboricultural Report shows that the oak tree (T9) is 14.4 m from the property. Where an oak is 14.4m from a building the *NHBC Standards, Chapter 4.2, Building near trees (2003)*, recommends that, for these distances and for this tree species, the foundations should have been built to a depth of over 2m.

It seems that the inadequate foundations of this building are most likely to be the major contributor to the subsidence in this building.

Other species as contributory factors:

The root samples found included Cupressus, a family of trees, (Cupressaceae species), that NHBC 4.2 states has high water demand. Although this implicates plants of this family as being contributory to the subsidence, Cupressus species remain on site and in a neighbouring garden to the south, This is sanctioned by the Arboricultural Report but is inconsistent with the advice to fell the oak.

A valued tree:

Mr Graham, the owner of the affected property told me that he valued the tree and would be sad to see it go. The tree is valued by the neighbours Mr and Mrs Grannum. The tree is valued by the users and the trustees of the Wokingham Free Church Burial Ground who say, in a letter from, Dorothy Adams:

The tree in question is listed as a veteran tree and we have always ensured that regular work has taken place to maintain its condition. The oak lies on the boundary line between the burial ground and 66 Reading Road. Most recently in September 2022 following correspondence with the insurers of the property (66RRoad) we shared a substantial cost of reducing the crown in both height and radius following a request from yourselves, WBC - see your letter dated 6 May 2022 with Ref. SD/TPO/0184/1980/220401. This, we had believed, was enough to stem the problems of structure in the resident's property at No. 66.

Furthermore, the tree also is of great importance to the families of many people who are buried close under the canopy of the oak, who I am sure would be quite distressed if it was to be felled.

For obvious reasons those visiting the burial ground will be particularly sensitive to change and so added weight should be given to any concerns that the trustees have raised in this regard. The Council would hope that the Insurance company can and would give weight to the views of local residents and especially to those of visitors to the graveyard.

Note:

The Council is sensitive to that fact that the owners of 66 Reading Road have suffered lengthy delays and inconvenience over the last four years. The Council is hopeful that a sensible and viable long-term solution can quickly be found by the insurers to speedily and effectively resolve the subsidence whilst retaining this irreplaceable veteran tree. The Council would point to the foundations being inadequate being the major cause of the subsidence. The Council therefore, earnestly hopes that agreement can quickly be reached to underpin the foundations so that Mr and Mrs Graham's house can be restored, their home return to normal, and peace return to the nearby graveyard and its visitors.

Once again, the Council would wish to apologise for the delay in determining this application which was due to the resignation of the Snr Tree Officer and the unusual and complex nature of this case.

Appeal:

If you are aggrieved by this decision or any of the conditions attached to your consent, you may appeal to The Planning Inspectorate (PINS). Because of coronavirus (COVID-19), you currently can only make a planning appeal online. You cannot currently apply by post.

For more information go to:

<https://www.gov.uk/government/publications/tree-preservation-order-appeal-form>

You can also telephone 0303 444 5570 or e-mail
treeandhedgeappeals@planninginspectorate.gov.uk

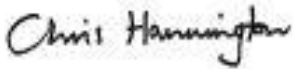
Your appeal should be received within one month of receipt of this decision or any such longer period as the Planning Inspectorate may allow.

Consent for third party trees:

You are advised that this letter is in respect of the **Tree Preservation Order only** and it does not imply that consent would be forthcoming from the owner of the tree(s) or any such other persons from whom consent would be required.

If we can be of any further assistance, please contact the Tree and Landscape Officer via email to: development.control@wokingham.gov.uk

Yours sincerely



Chris Hannington BSc (Hons) MPhil, CMLI, MRTPI
Planning Trees and Landscape Team Manager

cc.

Cllrs Imogen Shepherd-DuBey, Rachel Bishop-Firth, Basit Alvi.

IMPORTANT INFORMATION:

Bird Nesting Season and Presence of Bat Roosts

In accordance with the Wildlife and Countryside Act (1981) and Countryside Rights of Way Act (2000), consideration must be given to the timing and type of tree work operations. This is to avoid causing disturbance to any nesting birds or roosting bats; and avoid any damage to bat roosts that may be present within the tree(s) (whether occupied at the time or not).

The Act makes it an offence (subject to exceptions) to intentionally kill, injure, or take, possess, or trade in any wild animal listed, and prohibits interference with places used for shelter or protection, or intentionally disturbing animals occupying such places.

It is advised that all non-urgent major tree work and hedge cutting operations are undertaken at a time to avoid disturbing nesting birds during the breeding season (to which the bird nesting season is considered to be from March to July). Where there are features or signs that indicate bats or bat roosts (whether occupied at the time or not) may be present, it is recommended that advice first be sought from a licenced bat specialist and if appropriate, the relevant licence(s) be obtained before any major tree work or hedge cutting commences.

The introduction to the Forestry Commission guidance on **Managing Deadwood in Forests and Woodlands** says:

'In the UK up to a fifth of woodland species depend on dead or dying wood for all or part of their life cycle. Generally speaking, the greater the volume of deadwood the greater the value of the woodland for biodiversity, such that the amount of deadwood in forests and woodlands is now used as a key international indicator of the biodiversity of forest ecosystems'.

Deadwood, both standing and on the woodland floor, is outside the scope of the TPO Regulations. However, in responding to its duties, under the Natural Environment and Rural Communities Act (2006), the Council would seek to help woodland and tree owners understand the importance of achieving balance between health and safety requirements and the biodiversity benefits of retaining standing dead wood and fallen trees and branches.

The guidance is available online or from the Forestry Commission.

Further information on these topics can be found at the following:

DEFRA (Department for the Environment Food and Rural Affairs)
Tel: 08459 33 55 77 or by email at helpline@defra.gsi.gov.uk
Website: www.defra.gov.uk/

Natural England
Tel: 0845 600 3078 or by email at enquiries@naturalengland.org.uk
Website: www.naturalengland.org.uk

Bat Conservation Trust
Tel: 0845 1300 228 or by email at enquiries@bats.org.uk
Website: www.bats.org.uk

Forestry Commission

Forestry Act 1967 and Felling Licences

If it proposed to fell a tree or trees greater than 5 cubic metres or sell more than 2 cubic metres of timber in any calendar quarter, a Felling Licence from the Forestry Authority may be required.

Where you are the landowner of large pieces of land with numerous trees, clarification from the Forestry Commission may be required as to whether a Felling licence is needed.

For more information on Felling Licences, please speak to the Woodland Officer at the Forestry Commission on 01296 696543

Further Information can be found on the Forestry Commission Website:
www.forestry.gov.uk