



**REPORT of  
DIRECTOR OF SERVICE DELIVERY**

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to  
**CENTRAL AREA PLANNING COMMITTEE  
11 DECEMBER 2019**

<b>Application Number</b>	<b>WTPO/MAL/19/01071</b>
<b>Location</b>	34 Highlands Drive, Maldon
<b>Proposal</b>	Fell oak tree and treat stump to prevent regrowth and replace.
<b>Applicant</b>	Miss Abrams
<b>Agent</b>	Dr Jon Heuch
<b>Target Decision Date</b>	03.12.2019
<b>Case Officer</b>	Louise Staplehurst
<b>Parish</b>	<b>MALDON NORTH</b>
<b>Reason for Referral to the Committee / Council</b>	Member Call In by Councillor C Mayes Reason: Policy N1 and N2

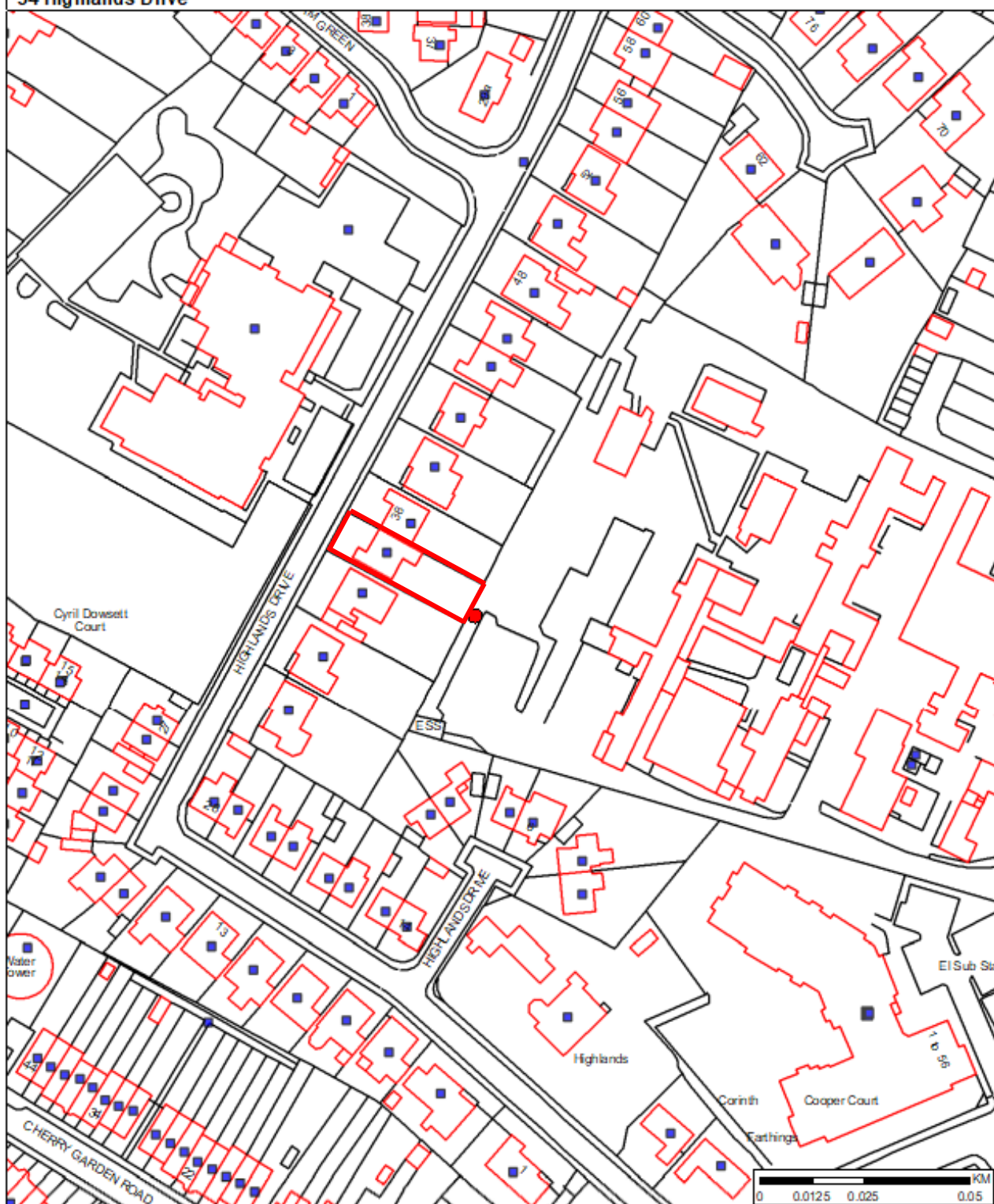
**1. RECOMMENDATION**

**REFUSE** for the reasons as detailed in Section 7 of this report.

**2. SITE MAP**

Please see overleaf.

**19/01071/WTP0**  
**34 Highlands Drive**



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 Maldon District Council 100018588 2014



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Scale: 1:1,250

Organisation: Maldon District Council

Department: Department

Comments: Central Area Committee

Date: 27/11/2019

MSA Number: 100018588

### **3. SUMMARY**

#### **3.1 Proposal / brief overview, including any relevant background information**

- 3.1.1 The application site is located on the south eastern side of Highlands Drive, within the settlement boundary of Maldon. The Oak tree, subject of this application, is located along the rear boundary of the site, shared with St Peter's Hospital.
- 3.1.2 It is proposed to fell the Oak tree, subject to Tree Preservation Order (TPO) 1/06.
- 3.1.3 Supporting information and reports have been provided with the application which appear to implicate the tree as a cause of damage to the dwelling on the application site.
- 3.1.4 The Agent has provided further information regarding the costs related to the tree. He considers that if the tree is removed, the costs of repair to the dwelling are around £4,000. If the tree remains and the dwelling has to be underpinned, the costs will be around £30,000. This assumes that the property can be underpinned without the residents having to move out. If they have to live elsewhere, this may add another £24,000 to the bill. Therefore, the Agent considers the minimum foreseeable loss to be £26,000.

#### **3.2 Conclusion**

- 3.2.1 It is considered that the Oak tree provides significant amenity value and makes a positive contribution to the character and appearance of the surrounding area. The evidence put forward does not consider other works which may be undertaken in order to prevent damage to the dwelling and the loss of the TPO Oak tree. Therefore, it is not considered that satisfactory information has been submitted that would justify the loss of the tree. The removal of the Oak tree would be detrimentally harmful to the character and appearance of the area and therefore the proposal works are unacceptable. This approach is considered to be in accordance with appropriate case law.

### **4. MAIN CONSIDERATIONS**

#### **4.1 Impact on the Character and Appearance of the Area**

- 4.1.1 The Oak tree is located to the rear of the bungalows along this part of Highlands Drive. Due to the large size of the tree, even though it is positioned to the rear of the dwellings in this location, it is highly visible from the streetscene. It contributes positively to the visual amenity of the area and therefore the tree is considered to hold significant amenity value.
- 4.1.2 The proposed removal of the tree is considered to be unacceptably harmful to the character and appearance of the surrounding area and the justification provided is not considered adequate to warrant the removal of the tree; this will be discussed further below in the report. It is considered that the tree currently provides significant amenity value within the surrounding area which would be lost with its removal. There are other large trees in the area, including other Oak trees. However, these

trees are located further north east and south west of the tree, subject of this application. Therefore, its removal would not be mitigated by other trees in the area.

- 4.1.3 Overall, it is considered that the proposed removal of the tree would result in detrimental harm to the character and appearance of the surrounding area.

## **4.2 Health of the Tree**

- 4.2.1 The Tree Consultant has not reported any damage or decay to the tree and therefore the removal of the Oak tree is not justified on health grounds.

## **4.3 Justification of Works**

- 4.3.1 The information submitted with the application is suggesting that the Oak tree is causing subsidence to the dwelling on the site. The following documents have been provided as part of the application:

- Duramen Arboricultural Report 7 October 2019
- Duramen Fig 1 Rev A Tree and Shrub locations 15 January 2019
- Drainage Repair Company – Schedule of Completed Repairs 3 January 2019
- Drainage Repair Company 28 November 2018
- 360 Globalnet Engineer Report 19 October 2018
- Geo-serv Subsidence Monitoring Services 10 September 2019

- 4.3.2 The Tree Consultant has reviewed this information and considers that, as the main report from TMA Chartered Surveyors (27 September 2018) is missing from the information sent in, he has been unable to fully assess the information based on what was available to the Arborist at the time of writing the Arboricultural Report. This therefore limits the weight that can be attributed to the assessment.

- 4.3.3 The tree report refers to roots being found by the foundation that emanate from an Oak however no root or soil analysis has been provided to confirm this. The report also comments that crack monitoring has shown a progressive movement over the summer. The crack monitoring shows a slight movement, which could be as a result of the natural dry conditions being experienced and not necessarily as a direct impact of the tree. The tree report also comments that some reversal movement will occur when the tree is leafless. No continued monitoring data has been provided to suitably demonstrate the movement is seasonal and a likely result of the tree's influence. It should be remembered that seasonal movement occurs naturally depending on the weather conditions. The movement is slight and if a high-water demanding species such as the Oak was major contributing factor, it would be expected to see more dramatic changes in the results. Further investigation over a longer period would offer a better understanding of the movement being experienced.

- 4.3.4 The tree report provides solutions as to how to address the suspected tree's influence on the property. It highlights the preferred option is removal over the other possibilities, this appears to stem from a financial perspective, rather than viable options to retain this important tree within the landscape. The Tree Consultant undertook a CAVAT (Capital Asset Value for Amenity Trees) assessment and this resulted in a figure of the tree being worth an amenity monetary value of £72,556.

Therefore, other options to retain and protect the tree should be explored. It is noted that this figure is based on the Consultant's interpretation of the system and others may come to alternative conclusions.

- 4.3.5 The engineer's report is dated 19 October 2018 and does not provide any justified evidence in this document to implicate the tree; it is only speculative. A mix of various report information has been sent to include drainage repair and crack monitoring, but no final report from an engineer to discuss the findings and other options to address the situation.
- 4.3.6 Drainage investigation found a displaced joint within 3 metres of the rear left corner of bungalow. This is where the damage to the building has been identified. It is feasible that this has caused the ground to soften and the slight movement could be a result of this. Further information is required to determine if the damage is as a result of soil desiccation, with the tree being a significant contributory factor.
- 4.3.7 No foundation details have been provided. It is possible that under the National House Building Guidelines, the foundations are not suitable to support the building in respect of the tree, therefore underpinning to rectify the problem could be considered the correct solution rather than remove the tree and risk damage by heave to other properties being caused, as well as removing a valuable amenity asset within the landscape.
- 4.3.8 It is not impossible that the tree could be having a negative effect on the property, however it is felt that insufficient evidence has been provided to demonstrate that the tree is definitely causing the harm and that the removal of the tree is the only option, as insufficient consideration has been given to alternative options to address the damage other than removal of this tree. The removal of this tree has not been suitably justified given the evidence provided within this application.
- 4.3.9 The purpose of TPO legislation is that trees of a high amenity value should be protected for the benefit of the public. It therefore follows that even where damage to the property is involved, felling should be a last resort and other alternatives should be preferred wherever possible, and in this case a root barrier should be considered.
- 4.3.10 This approach has been handed down by the Court of Appeal in the case of *Perrin v Northampton Borough Council* 2007, it was the Judgment of Lord Justice Wall that "If, as is obviously the case, the underlying purpose of the legislation is to preserve trees which are the subject of TPOs, it would seem counterintuitive to that purpose when considering what is the minimum necessary that needs to be done in order to prevent or abate a nuisance caused by a tree that is subject to a TPO, to ignore altogether steps that may be taken other than to the tree itself and instead focus simply on the works to the tree".
- 4.3.11 Therefore, despite the evidence submitted with the application in relation to damage to the dwelling and the cause of the damage, the Council does not consider this is sufficient to justify the removal of the Oak tree, given its significant amenity value. The Council considers that other methods of protecting the tree should be investigated.

#### 4.4 Other Considerations

- 4.4.1 It is noted that the application proposes a replacement tree, however a replacement tree would not be as well established as the Oak tree. Furthermore, as insufficient information has been provided to justify why the removal of the tree is the only and most suitable option, it is not considered that a replacement tree would sufficiently mitigate the loss of the Oak tree and the impact its removal would have on the character and appearance of the surrounding area.
- 4.4.2 The Tree Consultant considers that alternative options, other than the removal of the tree, have not been considered. If a further application were to be submitted, consideration should be given to the possible use of a root barrier and lesser works such as a crown reduction.

#### 5. ANY RELEVANT SITE HISTORY

*(Only relevant history of the site will be referred to here.)*

- **18/00837/DD** - Oak tree on boundary of property and St Peters Hospital, dangerous branch needs to be removed from TPO 1/06 – Allow to proceed (12.07.2018).

#### 6. CONSULTATIONS AND REPRESENTATIONS RECEIVED

##### 6.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Maldon Town Council	Recommends refusal: The proposal is contrary to policies N1 and N2 of the LDP.	Comments noted.

##### 6.2 External Consultees *(summarised)*

Name of External Consultee	Comment	Officer Response
Tree Consultant	The report from TMA is missing, so we are not able to fully assess this based on what was available to the arborist.  The tree report refers to roots being found by the foundation that emanate from an Oak. No root or soil analysis has been provided to confirm this.  The crack monitoring	Comments noted.

Name of External Consultee	Comment	Officer Response
	<p>shows a slight movement, which could be as a result of the natural dry conditions being experienced and not necessarily as direct impact of the tree. No continued monitoring data has been provided to suitably demonstrate the movement is seasonal and a likely result of the trees influence.</p> <p>The removal of the tree is preferred however this stems from a financial perspective.</p> <p>The engineer report is dated 19-10-2018 and does not provide justified evidence to implicate the tree, it is speculative.</p> <p>Drainage investigation found a displaced joint within bungalow. This is where the damage has been identified. It is feasible that this caused the ground to soften and the slight movement could be a result of this. Further information is required to determine if the damage is as a result of soil desiccation, with the tree being a significant contributory factor.</p> <p>No foundation details have been provided. It is possible that the foundations are not suitable to support the building in respect of the tree, therefore underpinning could be considered rather</p>	

Name of External Consultee	Comment	Officer Response
	<p>than remove the tree and risk damage by heave to other properties and removing a landscape feature.</p> <p>Insufficient evidence has been provided to demonstrate that its removal is the only option, I do not consider removal of this tree has been suitably justified given the evidence provided at the time of the application. A Crown reduction and a root barrier could be a suitable compromise.</p>	

### 6.3 Representations received from Interested Parties (*summarised*)

6.3.1 **One** letter was received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
There are four Oaks to the rear of these properties, over 60ft high and they appear to delineate the rear boundary.	Comments noted.
The owners of No.34 appear to want to extend their rear boundary and incorporate the adjacent tree into their land, which may encroach into St Peter's land.	Comments noted. The alteration of a boundary line is a civil matter.
The tree preservation order was put in place as severe works were proposed.	Comments noted.

6.3.2 **One** letter was received **commenting** on the application and summarised as set out in the table below:

Comment	Officer Response
The tree is probably 200 years old and marks a boundary along St Peter's Hospital.	Comments noted.
The tree is visible from the highway and forms part of the landscape. It would be disappointing if it was felled.	Comments noted.
Appreciate the tree is large and may need works, a crown reduction is preferred.	Comments noted.



**7. REASON FOR REFUSAL**

- 1      The Oak tree positively benefits the character and appearance of the area and provides significant amenity value. It is felt that insufficient evidence has been provided to demonstrate that the tree is definitely causing the harm to the dwelling. The submitted information also does not consider other works which may be undertaken in order to prevent damage to the dwelling and the loss of the TPO Oak tree. Therefore, it is not considered that satisfactory information has been submitted that would justify the loss of the tree. The removal of the Oak tree would be detrimentally harmful to the character and appearance of the area and therefore the proposed works are unacceptable.