

F. GROUNDS OF APPEAL

1. This appeal relates to the decision of Camden Council to refuse consent for the removal of a single hornbeam tree, (identified as T1 in the application), which is directly implicated as a material cause of clay-shrinkage subsidence damage to the subject property (4B Hampstead Hill Gardens). The tree is located within the curtilage of the subject property.
2. The requirements of current 1App TPO regulations have been met through the submission of detailed site investigations, technical reports and level monitoring of the building.
3. The property suffered a previous episode of subsidence damage in 2005 with three trees (including the application tree) identified as the cause.
4. With respect to the current damage the following factual evidence has been established from site investigation and laboratory testing of soil and root samples:
 - i) A clay subsoil of high plasticity and volume change potential below the foundations susceptible to undergoing volumetric changes with changes in soil moisture.
 - ii) The soils were found to be desiccated in February 2015 with the desiccation being worst in BH1 located close to T1.
 - iii) Roots corresponding to T1 were recovered from the soil profile below foundations to a depth of 2.0m
5. Level monitoring from 16.01.2015 to 19.05.2015 identified a very significant uplift in the building consistent with hydration of a clay soil following desiccation by vegetation over the previous summer/autumn.
6. Alternative causes of the building damage i.e. leaking drains have been discounted by engineers and site investigations. Level monitoring and soil observations / test data, confirms leaking drains are not involved with the current damage.
7. The technical case and normal legal tests of causation in subsidence claims have been met and on the balance of probabilities confirm the soil drying effects of vegetation as the cause of damage with T1 being a material factor.
8. The council have based their refusal for consent to remove the tree on the basis that the level monitoring is inconsistent with movement related to vegetation influence. Unfortunately the council have misinterpreted the data failing to appreciate that uplift of the building is likely to have occurred prior to the commencement of monitoring in January 2015. The recovery recorded over the monitoring period is of course consistent with vegetation induced movement.

9. Prior to the council determining the application, they were provided with additional level monitoring data to 03.08.2015 which identified downward movement (subsidence) at pin 1 located at the front of the property.
10. The decision notice also implies a persistent moisture deficit is required for there to be no alternative action to felling. This statement suggests a lack of understanding of the relationship between trees (and other vegetation), clay soils and buildings and questions the validity of the council's reasons for refusal. (Regrettably a technical report by the council's arboriculturist is not available on the council's website to allow further appraisal of the arguments on which the council have based their decision).
11. The majority of clay soils subject to drying by vegetation recover to field capacity (i.e. fully hydrated) during the winter. Thousands of properties suffer damage annually in the UK due to seasonal desiccation alone and where no persistent soil moisture deficit is present.
12. The subject tree has been pruned on several occasions with applications for a reduction to previous pruning points and a 20% thinning approved in 2004, 2010 and 2014. This management has clearly failed to prevent a reoccurrence of damage and given the proximity of the tree to the property further pruning as suggested by the council will fail to arrest seasonal movement in the building.
13. In addition to the technical case, the owners of the subject property have a right in law to the peaceful enjoyment of their property which the council by refusing consent for the removal of T1 are denying them. A public authority must strike a fair balance between the interests of a property owner and the general interests of society as a whole. In this case it is our view that the rights of the owners have not been given sufficient weight by the council and request that the inspector gives this careful consideration when making their decision.
14. There are significant trees on neighbouring properties will providing visual amenity benefits in the local area.
15. Since the submission of the application, level monitoring has demonstrated subsidence at the front of the building (pin 1) and the latest results are attached to this appeal to assist the inspector.
16. Buildings insurers are willing to fund the planting of a young replacement tree the species and location to be agreed with the council.



Document List:

Crawford Technical Report 18.12.2014
Crawford Second Addendum Report 01.06.2015
CET Site Investigation and Laboratory Report 13.02.2015
MWA Arboricultural Report (REV1) 19.06.2015
Level Monitoring 16.01.2015 – 19.05.2015
Level Monitoring 16.01.2015 – 03.08.15 (Emailed to LA 08.09.15)
Completed TPO Application Forms
Council Refusal Notice