

**A MEETING OF THE REGULATORY BOARD
WAS HELD ON 4 SEPTEMBER 2024**

Councillors Bradley, Bradley, Casey, Earle, Hammond, Hayes, and Namdeo

16. APOLOGIES FOR NON-ATTENDANCE

An apology for non attendance was receive from Councillor Scard

17. DECLARATIONS OF INTEREST

There were no Member's declaration's of interest.

The Democratic Services Officer left the room for item number 4.

18. MINUTES OF THE MEETING HELD ON 24 JULY 2024

RESOLVED: That the minutes of the meeting of the Regulatory Board held on 24 July 2024 be signed as a true and correct record.

19. DEPUTATIONS - STANDING ORDER 3.4

Deputations were received on item 24/00142/TPO

20. PUBLIC QUESTIONS - STANDING ORDER 3.5

There were none

21. REPORT OF THE DEVELOPMENT MANAGER

Consideration was given to the report of the Development Manager.

**23/00446/FULL - INSTALLATION OF EXTERNAL HEAT EXCHANGE UNIT WITHIN
FRONT COURTYARD (RETROSPECTIVE)
143 Queens Road Gosport Hampshire PO12 1LG**

A Member advised that the application had taken considerable time to discuss and be determined and that they felt there had been barriers from both sides to this being resolved sooner.

The applicant had advised that they had not realised they would be able to speak and that could not arrange work cover to come along. They had advised the Member that they saw no positivity within the report of the Planning Officer and that it was excessively negative.

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The refusal of the application could lead to the closure of the pub as there would be costs to amend the cooling unit and concern was expressed that Gosport Borough Council would be blamed for this.

A Member advised that they felt that if there was a significant issue with the unit more than one person would have complained about it. The applicant was concerned about having to rectify unit that it would be too expensive for them to do so.

Members sought clarification as to what would happen if the application was refused, the Board was advised that planning enforcement action would need to be considered. The Board was advised that Environmental Health action had not been undertaken until now as it was being dealt with as a planning matter. It was also advised that there had had been no subsequent complaints but it was felt that this was because the complainant believed the matter to be under investigation.

Some Members of the Board felt that the applicant should give further consideration to adaptations to the existing units exploring sound muffling

The Board was advised that in the event of the application being refused, the applicant could, if they wish appeal the decision for consideration by the Planning Inspector. If the Planning Inspectorate agreed with the officers then time would be given to make amendments to the unit and mitigation options would be discussed.

Members felt that mitigation measures would be simple to undertake and that doing them should not cause the pub to cease trading, and that the pub should make an adequate effort to make amends and should have been more proactive. Members were particularly disappointed that the application had been withdrawn from a previous Board meeting to allow the applicant additional time to make amendments.

Members felt the issues with the unit were not subjective, but that they were clear as they were based on noise level numbers and that the unit needed planning permission. Had the unit been acceptable in planning terms and the noise disturbance been reported, Environmental Health would have investigated the complaint, discussed with the applicant and potentially enforcement action would be taken.

Members questioned whether the unit could be covered with plants or trellis to reduce the impact of the noise. The noise would not impact residents on the other side of the road. Disturbance as a result of noise was an impact on amenity.

Some Members felt that as only one noise complaint had been received there was minimal impact and that the complainant had only complained on one occasion and that if the impact was detrimental, they would have complained more than once.

Members were advised that the unit had been relocated from being inside as it was deemed to be a fire hazard and it was reiterated that there were standard options available to purchase for the unit to reduce the noise.

Members expressed disappointment that the applicant did not attend and hoped that the applicant could be supported in making the correct amendments to the unit to make it acceptable and refuse the noise level.

RESOLVED: That application 23/00446/FULL be refused.

**24/00142/TPO- FELLING OF 1NO. OAK TREE (TPO G.77)
Land Adjacent To 16 Hurst Green Gosport Hampshire PO13 0PY**

Consideration was given to the report of the Development Manager detailing the application.

Mr Wilkinson was invited to address the Board.

Good evening my name is Roy Wilkinson and I am the chairman of the Peel Common residents association. My apologies but may I begin with a brief outline of the Peel Common estate.

The Peel common Estate covers 70 acres and holds 544 properties covering approximately 40 acres. The estate was built under a Radburn system to help fulfill the ambitions of the Gosport Council in their aim to make Gosport a Garden town with safety in mind for their children.

THE RESIDENTS ASSOCIATION

The PCRA is a recognised non political residents association. As a residents association our aim is to collectively represent residents' views and concerns and encourage a community spirit that we believe is essential to the well being of residents living on the Peel Common Estate.

REVIEW OF EVIDENCE

The PCRA are deeply concerned that the applicant Sedgwick insurance has created a case for an oak tree felling with no degree of certainty in most of their conclusions. It is with grave doubt that the insurance companies evidence meets the high demands of a TPO set by the council nor consequently protects the interests of the resident of 16 Hurst Green. It is also with concern that opinions of an independent report from a professional Chartered Arboriculturist (also employed by Hampshire County Council) has been ignored.

- The Kiss Tree Arboricultural report commissioned by the estates managing agent highlights the current industry damage classification guidance of a 1 to 5 standard wisely used by the applicant. The applicant however is calling for a category fix of 5 on an admitted category 3 situation. It is disturbing that such an issue has been met with silence.
- The Kiss Tree Management report also questions the applicant's tree selection. The oak tree is chosen because of its position but not on any conclusive factual basis. There has never been a surveyors report or detailed test or review actually directly linking this tree to the property movement, If the applications assumption of tree root cause is accepted, (there are a number of oak trees) the possibility exists that the wrong tree is targeted.
- The subsidence has only occurred at the porch affixed to number 16 Hurst Green. There are a row of houses all within a similar distance of oak trees. It is greatly

suspicious that the porch is the only construction that succumbed to the ground movement causing the problem.

- As explained by the Kiss Tree Arboriculturist, there is a practiced industry system that follows a set of recommended rules when this type of damage is reported. These advisory rules take into account value and this appears to have been ignored in this application. On this occasion a single porch in a group of houses has suffered some form of foundation damage. There is obvious damage but the cracks have been sealed and a Category 3 case is very evident. When considering cost the application does not factor the question of valuable proportion to this application.

The insurers contracted surveyor states:

I consider that works including structural crack repair and redecoration at an approximate cost of £9,000 will be appropriate in order to repair the damage in this case.

This cost assumes the oak tree is removed.

A valuation of the Oak tree referring to Capital Asset Valuation for Amenity Trees (CAVAT) provides an estimation of £130,000 for the tree value. This value actually enforces the council and estates opinion that the oak tree provides significant amenity value and a visual contribution to the character of the location. The loss of the tree would also have a significant impact on the location.

Consideration of the calculated differences in value is normal practice in the industry. We are in the firm belief that Gosport Council should not remove the protection of the TPO for this oak tree.

In answer to a Member's question, the Board was advised that the survey referred to in the deputation had been commissioned by the residents association prior to the submission of the application being considered.

Councillor Philpott was invited to address the Board.

Mr Chairman. Thank you for the opportunity to address your Committee this evening.

To begin, I would like to be clear that I have not discussed this application with any resident of Hurst Green. I have not been lobbied to take a position one way or the other.

I am addressing your Board as the Ward councillor for Peel Common, having read the background papers.

I did put some questions about this application to the Planning Officer – nine in total – on 29th July, and for which I received only a limited amount of information in response. Many of my questions remain unanswered, and that is why I asked for this application to be considered by your Board, and why I am here making a deputation.

If satisfactory answers to my questions are now provided this evening I, and I hope your Committee, will be satisfied. But if not, then I would invite you to consider the evidence that has been presented from all sides and ask yourselves whether the case presented by the Planning Officer is persuasive enough for you to consider that the case for removing this healthy and protected tree has been made.

If you like, I am here to speak for the tree. It is a living thing, and it cannot speak for itself. So, before my questions, a very brief background.

The tree in question, T2, is one of nine oak trees in the vicinity of the properties in Hurst Green. Their position is such that no one tree appears to be especially closer to the buildings than the others, and all are several metres from the houses.

When looking at the background to this application, I was most interested in the two consultee comments submitted by the Council's Arboriculture Officer. The first was on 3rd June 2024 and the second on 23rd July 2024. These two submissions are available as background papers to this application, and I note that there were no other papers submitted by anyone in between these two dates. His letter of 23rd July 2024 appears as part of the report at page 7, but his original letter of 3rd June 2024 does not.

Having read the two submissions by the Council's Arboriculture Officer, I note that in his first letter dated 3rd June 2024 he concluded that:

“extensive drain repairs are required to address escaping water which would appear to be a more likely cause of the damage to the property. I would suggest until the drainage has been repaired and the situation thereafter monitored it would be supposition to suggest the oak tree is the sole cause of any damage.”

But, in his second letter he has completely changed his view and concludes that he:

“would therefore concur that it is likely that movement will be of a cyclical nature with cracks opening in summer and closing in winter suggesting the tree to be a contributing factor in any damage to the property”

He explains that he has reviewed the documents supplied in support of the application when drawing the conclusion he made on 23rd July 2024. That supporting document was, presumably, the report by Sedgewick dated 7th July 2021.

However, I note that the report by Kiss Tree Management draws a very different conclusion. It says,

“Drainage repairs are required – drains leaking at three points and one drain MH4 blocked and not inspected. Further issues with the local water authority sections of pipework. There is a caveat that there may be further issues with the drainage. Water has escaped from the drains and are located close to the point of damage.”

This report by Kiss Tree Management was written on 21st October 2023, more than two years after the document supplied in support of the application and upon which the Arboriculture Officer appears to have based his conclusion that “repairs to the drainage have taken place in 2021”.

QUESTION 1

So why did the Council's Arboriculture Officer only rely on “documents supplied in support of the application”? Did he carry out his own inspection of the drains that were said in October 2023 to be “leaking at three points”; that were, in October 2023 said to be “blocked and not inspected”; and that there was evidence in October 2023 that “water had escaped from the drains and (were) located close to the point of damage”?

On 3rd June 2024 the Council's Arboriculture Officer stated that:

“with a number of oak trees in the vicinity there is no DNA evidence to support the claim that T2 is the sole cause.”

Furthermore, Kiss, when commenting on Sedgewick's report said in October 2023:

“Oak roots were found but no detailed (DNA) analysis has been done. As there are other oaks nearby, and their rooting pattern is unpredictable, it is possible that the small number of oak roots found are not originating from T2. This could result in the removal of a valuable tree for no reason”.

Having read the Sedgewick report, I note that it is silent on the subject of DNA, leading the reader to conclude that Sedgewick did not carry out DNA testing analysis on the tree roots that it claims have impacted the but extension at 16 Hurst Green. This would seem to

suggest that the Council's Arboriculture Officer was correct to assert in his original letter of 3rd June 2024 that no DNA evidence existed to support the Applicant's claim.

Yet, just seven weeks later, and with no apparent additional documentary evidence, the Council's Arboriculture Officer changed his mind and concluded that he had been persuaded by the supporting evidence submitted by the Applicant.

QUESTION 2

What did the Council's Arboriculture Officer see that persuaded him by 23rd July 2024 that DNA evidence to establish the identity of the tree singled out for removal was no longer necessary?

Similarly, the Council's Arboriculture Officer stated on 3rd June 2024:

"We would also request further root identification to ensure any claim as to T2 being the sole cause of damage is fully supported."

By 23rd July 2024 he had changed his view and concluded that:

"the submitted evidence meets the threshold to justify the felling of the tree identified in the reports".

QUESTION 3

When carrying out his review between 3rd June 2024 and 23rd July 2024 what root identification work did he rely on to support his change of opinion?

Both Sedgewick and Kiss identified an adjacent pyracantha as being a potential contributory factor to damage to the extension building at 16 Hurst Green.

In their report from July 2021 Sedgewick describe the pyracantha as "mature", and they include photographs of it growing up against the built extension at 16 Hurst Green. They recommended its removal.

In their report of 21st October 2023 Kiss noted that:

"The Pyracantha has been recently removed. (But that) No further evidence has been provided to show whether this has had a positive effect on the damage"

In his letter to the Planning Officer dated 3rd June 2024 the Council's Arboriculture Officer justifiably highlights:

"With the recent removal of the Pyracantha I would welcome evidence as to whether this has improved the situation"

But, in his second letter to the Planning Officer dated 23rd July 2024 there is no mention of the pyracantha.

QUESTION 4

What evidence did the Council's Arboriculture Officer see between 3rd June 2024 and 23rd July 2024 that persuaded him that the removal of the pyracantha had "improved the situation", or had made little or no difference?

In determining the removal of any tree protected by a TPO the bar should be set high, so that the evidence for its removal is conclusive and persuasive. I note some of the language used by all parties in the submitted documents.

In their report of October 2021 Sedgewick concludes that removal of the oak tree T2 and the pyracantha:

"will assist in reducing the impact of the adjacent vegetation on soil moisture levels, thereby potentially stabilising foundations of the affected area of the building."

Sedgewick also supplied an Engineering Appraisal report dated 25th June 2021 in which they made a number of assessments:

- The assessment of the damage is slight and is classified as category 2 in accordance with BRE Digest 251.

- Categories 0,1 and 2 can, according to BRE Digest 251, “be regarded as ‘aesthetic’ issues that require only redecoration”. The impact on the built extension at 16 Hurst Green is classified as “slight damage”.
- The statement , “It is likely that movement will be of a cyclical nature with cracks opening in the summer and closing in the winter” appears to be speculation.

In his letter of 3rd June 2024 the Council’s Arboriculture Officer very much agrees that the evidence to support the felling of the tree is, at best, circumstantial:

- “escaping water which would appear to be a more likely cause of the damage”
- “it would be supposition to suggest the oak tree is the sole cause of any damage”
- “Streetscene Landscape Management would request the situation be re assessed on completion of full drainage repairs followed by a suitable period of monitoring.”
- He concludes that “any request for removal must be fully evidenced and justified before its removal.”

In his letter to the Planning Officer dated 23rd July 2024 he highlights the cyclical nature of soil movement “suggesting the tree to be a contributing factor”. Note that it is only “a” factor, and that this is only suggested.

QUESTION 5

Why, despite all the clear and obvious doubts expressed by all parties (including himself on 3rd June 2024) – and including experts on behalf of the Applicant, did the Council’s Arboriculture Officer change his mind and write on 23rd July 2024 that the felling of the tree would be justified?

The report of the Planning Officer before you this evening says under principal issues, ***“the main issues in this case are the acceptability of the felling of the tree in terms of the impact on the character and appearance of the streetscene and the wider visual amenity of the locality”.***

The letter of the Council’s Arboriculture Officer of 3rd June 2024 says:

“The oak tree provides significant amenity value and a visual contribution to the character of the location, its loss would also have a significant impact on the location.”

QUESTION 6

This question is for the Committee.

Are you satisfied that these two statements by two officers of this Council are consistent with the recommendation before you?

In April 2024 Sedgewick set out their case for the felling of the tree on the basis of damage to the property at 16 Hurst Green. In their submission they said:

“The subject property is a mid-terrace house in a residential estate on a plot that is generally level. The property also benefits from a Porch, which is the subject of the claim.”

I would suggest that the built extension, or porch, is, therefore a material consideration to this application. It is curious that no suggestion has been made that the house itself at 16 Hurst Green has sustained any structural damage, nor the attached adjacent property at number 18.

In all the expert submissions included as supporting documents to this application reference is made to “heave”. Heave is the opposite of subsidence. It occurs when the soil beneath a building expands and pushes the ground upwards. The removal of a tree can exacerbate this, especially in clay soils. When a tree is removed, the moisture levels of the surrounding soil increase and the soil expands. So, it is possible that removing T2 might make matters worse.

Heave can also occur following construction work, or when there is a problem with a building. This can have an effect on soil drainage. Even something as common as a broken drain could leave a building at risk of heave if clay soils become too saturated. Looking back over the past 27 years of planning applications on GBC's website for Hurst Green I was not able to find any planning application for the porch. Perhaps it did not require planning permission? It is impossible, therefore, to know what specification the porch was built to, or whether the way in which it was constructed has been a contributing factor to the slight damage that it has incurred.

QUESTION 7

Are we completely satisfied that it is the tree T2 that is responsible for the damage to the porch at 16 Hurst Green and not heave, or the condition of the building itself?

CONCLUSIONS

I would suggest that the Board needs to be satisfied with, and fully understand, the reasons why the Council's Arboriculture Officer changed his mind between 3rd June 2024 and 23rd July 2024; what the evidence was that persuaded him; and why he chose to review his original conclusions by only reading the "documents submitted in support of the application".

I would contend that all these reasonable questions need to be answered.

I am not taking sides in this matter. I am merely highlighting what I see as anomalies.

- I do not think it has been adequately demonstrated that the tree T2 is solely to blame for the damage to the porch at 16 Hurst Green
- I do not think it has been proven that damage was not caused by ongoing problems with drainage; by other oak trees in the immediate vicinity; by the recently removed pyracantha; by heave; or even as a result of the way in which the porch was constructed
- Removal of valuable oak tree, protected by TPO, should require a high bar. I contend that it is not sufficient for a Council Officer to simply say that he has reviewed the situation by reading just one side of the argument and, as a result, has changed his mind

I contend that Policies LP41(2) and Policy LP44 (3) are relevant in this case and, unless acceptable justification is forthcoming at this meeting, represent grounds for refusal.

Members sought clarification that there was no DNA proof that the tree was damaging the porch and this was confirmed, only that it was possible.

This was one of many reasons the Peel Common residents association had commissioned a report.

It was believed that if the tree was felled, the cost to the insurance company would be £8000 and that if the tree remained the cost would be £90000 as a result the residents had sought a second opinion from a highly recommended specialist.

The report considered by the arboricultural officer was submitted prior to the planning application and why later reports had not been considered.

Members were advised that there was a benchmarks of checks that needed to be attained before a tree was considered for removal, and the applicant had reached the benchmark in this case and although the threshold had been met, it did not mean that officers were happy that the tree was being proposed for removal.

The Board felt that there were gaps in the evidence supporting this.

It was reiterated that the answer to the questions were as follows

Question 1. – The Arboricultural Officer was provided evidence from professionals and used their extensive professional experience.

Question 2 – There was no DNA evidence of the tree causing the issues

Question 3 – The pyracantha was removed in 2022

Question 4 – Enough to determine the application, no extra information was received. The tree was healthy but had potentially contributed to the issues and that officers were satisfied as they could be that removing the tree would improve the situation.

Question 5 – this was based on the evidence provided and it was believed the tree was a contributing factor to the issues.

Question 7 – There is no record on the condition of the building

Policy LP10 advises how to apply LP41.2 and LP44.3

It was reiterated that it was felt that the insurance company's interest was financial and expressed concern that investigation had not been undertaken into the potential damage from drainage, water, construction or other trees and that there was a real possibility that the tree was not the cause of the subsidence. Members felt that soil should be tested for more definitive answers and that damage to one porch was not sufficient enough to remove the tree, particularly as there was no conclusive evidence it was the cause.

Members were advised that the tree had a financial value of £153000 and expressed concern that the tree could be removed and would not be the cause of the issue and as a result lead to more trees being felled.

Members were disappointed that there had not been further investigation into the drainage, the building, the soil to conclusive prove the damage was as a result of the tree.

Members acknowledged that the tree was 70 years old and deserved the best opportunity to remain.

It was proposed, seconded and unanimously agreed to refuse the application.

RESOLVED: Notwithstanding the submitted evidence, the tree the subject of this application makes such a significant and positive contribution to the locality as well as ecological and environmental benefits that insufficient evidence has been provided to overcome the harm associated with its felling. The proposal is therefore contrary to Policies LP10, LP41 and LP44 of the Gosport Borough Local Plan 2011 - 2029.

**24/00162/FULL - ERECTION OF OUTBUILDING (RETROSPECTIVE)
61 St Thomas's Road Gosport Hampshire PO12 4JU**

Consideration was given to a report of the Development Manager detailing the application.

Members expressed disappointment that the application was retrospective but acknowledge that it was an improvement on the previous building and that had it been 10cm lower it would not have required planning permission.

RESOLVED: That application 24/00162/FULL be approved subject to the conditions in the report of the Development Manager.

**24/00206/FULL - ERECTION OF SINGLE STOREY REAR EXTENSION
41 Gorran Avenue Gosport Hampshire PO13 0NF**

Consideration was given to a report of the Development Manager.

The Board were advised that the application was required to be considered by the Board as the applicants are parents of a Gosport Borough Council officer.

RESOLVED: That application 24/00206/FULL be approved, subject to the conditions in the report of the Development Manager.

22. ANY OTHER ITEMS

There were none.

CHAIRMAN

Concluded at 7.47 pm