Planning Committee

19 November 2025

TPA/24/2254 - Application to Fell T1 (Oak Tree) at 157 Long Catlis Road, Parkwood

Report from: Adam Bryan, Director of Place

Author: Margaret Wright, Arboriculture Consultant
Dave Harris, Chief Planning Officer

Summary

This report concerns an application to remove a privately owned oak tree at 157 Long Catlis Road protected by tree preservation order (TPO), due to the need to prevent further subsidence damage to the adjacent property at No 159 Long Catlis Road and to facilitate repairs. The Planning Committee has the authority to grant permission to fell the tree with or without a condition to replace it. If consent to fell the tree is refused, Medway will be liable to pay compensation for alternative measures subsequently needed to stabilise the property if it is proven that the tree is responsible for subsidence. The Planning Committee must decide on whether the removal of the tree is appropriate, balancing the liability to the Council and the environmental impact of removal.

1. Recommendations

1.1. The Planning Committee refuse the application on the following grounds:

1.1.1 **Lack of Substantiated Evidence:** The application fails to demonstrate a relationship between the oak tree (as a primary agent) and the reported damage. No progressive drying profile or multi-depth desiccation evidence has been provided.

1.1.2 **Insufficient Monitoring:** The level monitoring data spans a limited period and indicates movement within a normal seasonal range (maximum 2 mm). This does not support severe foundation movement attributable to tree roots or justify removal of a prominent protected tree.

1.1.3 **BRE Classification and Damage Thresholds:** According to BRE Digest 251, the observed damage is Category 2 (slight), and tree removal is not typically justified at this threshold.

1.1.4 **Heave Risk Unaddressed:** The oak predates the house, yet no assessment of potential heave risk has been submitted, contrary to good arboricultural and engineering practice.

1.1.5 **Amenity and Environmental Loss:** The tree makes a positive contribution to the local character and streetscape. Its removal would result in the unnecessary loss of an important tree, contrary to Local Plan and Tree Management policies.

2. Legislative and policy background

2.1. The tree is listed within area A1 of The Borough of Gillingham (Park Wood) No.5 Tree Preservation Order 1969. The tree is listed in the application, and referred to within the supplied documents, as T1.

2.2. The relevant legislation is the Town and Country Planning (Tree Preservation) (England) Regulations 2012. No exemptions for the need for application apply[1]. The site is not within a conservation area.

2.3. The 2012 Regulations allows for compensation to be payable for any loss or damage caused as a direct result of refusal of an application[2]. This would include the costs of repairs that would otherwise be unnecessary if the application were approved, such as underpinning, and is likely to include entitlement to annoyance, discomfort and inconvenience. The financial implications relating to this matter are set out in the advice and analysis section below.

2.4. If the Planning Committee were to overturn the recommendation and approve the application, the matter does not need to be referred to the Forestry Commission for a felling licence as trees within garden land are exempt from the need for a felling licence.

2.5. The relevant council policies are as follows:

- Medway Tree Policy 40 – *"Where an application to work on a tree protected by a tree preservation order is received Medway council will require sufficient evidence to show that the tree in question is, on the balance of probabilities, an influencing cause of any damage cited in the application. Medway council will follow industry best practice when considering any request to remove a tree based upon it allegedly causing damage. Where it can be demonstrated on the balance of probabilities that a tree is an influencing cause, permission to remove or prune the tree will not be unreasonably withheld."*

2.6. When an application is made on the grounds of subsidence, the Regulations require the submission of a defined minimum evidential package. This is listed on the TPO application form as an engineer's report, level or crack monitoring, soil data, root identification, details of drainage condition, proposed repair strategy, and an arboricultural report. The applicant has provided each of these documents, thereby meeting the minimum evidential threshold required for a valid application under the TPO Regulations. The legislation does not empower the local planning authority to request additional evidence beyond

[1] Section 14(1)(a)(1)(ii) Town and Country Planning (Tree Preservation)(England) Regulations 2012
[2] Section 24(1)(a) Town and Country Planning (Tree Preservation)(England) Regulations 2012

those items specified in the application form. Accordingly, the submission is considered complete for the purpose of determining the application.

2.7. Some local authorities adopt the Association of British Insurers Joint Mitigation Protocol (JMP), which establishes enhanced evidential standards and collaborative investigation processes for subsidence cases. Medway Council is not a signatory to the JMP, and its Tree Policy 40 instead applies a "balance of probabilities" test based on the statutory evidence listed above. Consequently, and whilst it is acknowledged that the supporting data is limited, it would be unreasonable to request additional monitoring or laboratory testing beyond the minimum dataset prescribed by the TPO application form. The Planning Committee should, therefore, assess the application on the evidence already supplied, recognising that it satisfies the procedural requirements of the Regulations but that its quality and conclusiveness remain open to professional interpretation when considering whether removal is justified.

3. Background

3.1. Tree T1 is a mature English oak, estimated to be between 100–150 years old, located in the rear garden of No. 157 Long Catlis Road. While partially visible from Long Catlis Road itself, it forms a dominant and legible feature when viewed from Plomley Close, where its full crown can be appreciated. The tree contributes to the continuity of mature tree cover typical of the Parkwood area, where scattered oaks form a defining landscape characteristic. T1 enhances the sense of visual enclosure, provides seasonal interest, and plays a role in screening between properties. Its retention supports both local landscape character and townscape identity. The arboricultural report recommends removal of T1 to facilitate stabilisation and repairs to the main dwelling house. Tree roots from oak species have been identified as a contributing factor. Although roots from other species have not been recovered, this does not preclude their presence at greater depths or elsewhere within the influence zone. Despite the absence of other species' roots, Medway's liability concerns the current application, and the potential involvement of other trees should not influence the Planning Committee's decision.

3.2. While the oak is in good health and not otherwise hazardous, the oak is within known zones of influence and is listed as having a higher water demand than the nearby small and young trees in the garden of No. 159 which are listed to be maintained as existing and to control/restrict future growth.

3.3. Structural movement and damage to the property has been observed between 2022 and 2024. Damage is occurring at the junction of the extension and main dwelling; which would, on visual assessment, fall within Category 2 (slight) of BRE Digest 251, with cracking <5 mm.3.6 Two bore holes were dug; both at the rear left-hand corner of the extension (bore hole 1) and one close to the right-hand flank wall of the main dwelling (bore hole 2). Geotechnical data has been provided and confirms the presence of clay soil.

3.4. The drains have been found to be in good repair and are not considered a contributory factor. Moisture abstraction from tree roots is asserted as the primary cause of damage and whether or not drains or shallow foundations will have contributed to the damage is irrelevant, as soil drying would not have occurred but for the presence of nearby trees.

4. Options

4.1. The recommended option is that the application to fell the tree is refused for the reasons set out.

4.2. The Planning Committee can decide to approve the application with or without a condition which requires the replacement of the tree. In considering replacement, it must first be recognised that any replacement would need to be low water demand species for clay soil with a history of movement and would be limited to species such as birch or hornbeam. However, the size of the garden must be factored in as to whether it would be appropriate to seek a replacement(s) on site. If not, then the option would be to secure financial payment for replacements to be planted in the area and this financial payment should build in maintenance to ensure establishment.

4.3. A condition on replacement could ensure establishment of up to two new trees but would offer protection only so far as to allow establishment. Thereafter, any replacement tree would not be protected by the original TPO and a new order would need to be made to secure enduring protection for any replacement tree or trees.

4.4. The Planning Committee can decide to approve the application without a condition requiring replacement of the tree due to the limited space available in the garden. Not to secure, though would result in environmental loss as well as loss of screening. An alternative, if there is not space on site would be a financial contribution to provide new tree planting in the area, although this would not address the screening/visual impact issue of either retaining the tree on site or securing new trees on site.

4.5. Alternatives to soil stabilisation can typically include underpinning of the property and/or installation of a root barrier. A root barrier could feasibly be installed at the boundary of No. 159 but this is likely to cause harm to the structural roots of T1. Furthermore, root barriers are not completely effective as roots can grow around or under the plastic. A root barrier is equally likely to prevent movement of water through the soil and there is some emerging evidence to indicate that root barriers delay soil rehydration, prolonging the claim period. Should T1 remain, it is likely that a root barrier will affect the availability of soil water and may affect the long-term health of the tree.

5. Advice and analysis

5.1. **Hand penetrometer** tests of the soil within borehole 1 and 2 indicate stiff and very stiff soil. This would not naturally occur and possible causes are over-consolidation and manual compaction of the soil (during construction) or

moisture abstraction from tree roots. The evidence bundle indicates a strong presence of sand in the soil profile and this could increase resistance to probing tests, offering higher determination of soil stiffness and drying. As the moisture content tests show a soft soil, these tests should be reviewed in the context of sand in this profile and should not be viewed as evidence of desiccation in isolation.

5.2. **Moisture content** analysis shows a soil which is susceptible to volumetric change. However, the moisture content does not indicate a soil which is desiccated at the time of testing. Level monitoring shows some limited cyclical movement which would indicate seasonal drying and rehydration. It is possible that the tests were influenced by a higher than average amount of rainfall (April 2023). This suggests that roots belonging to T1 may exert a greater seasonal influence on soil moisture than test results indicate. Alternatively, that there are other factors involved in the damage.

5.3. **Level monitoring** shows limited seasonal, cyclical movement and this movement is most pronounced nearest T1. This supports the applicant's assertion that T1 is the cause of damage. However, movement is limited to approximately 2mm variation and some natural fluctuation in soil drying would be expected naturally, the presence of trees notwithstanding.

5.4. Taken together, the geotechnical and monitoring data do not provide compelling evidence that T1 is the cause of damage to property or has caused desiccation beneath foundation level. However, the inconclusive nature of the test results should be viewed on the balance of probabilities principal and given the unseasonable amount of rainfall in April 2023, it can reasonably be assumed that tree roots from T1 are having some influence and are contributing to differential movement. As such, it would be reasonable to assign a proportion of blame to T1. The above notwithstanding, it is considered that the level of damage does not warrant the removal of the tree.

5.5. No soil suction penetrometer tests have been provided, and the liquid limit readings are too low for Attenberg test comparison.

5.6. **BRE Digest 251 and category of damage** is a recognised industry guidance document that provides a framework for diagnosing subsidence-related building damage and categorising its severity. It establishes clear thresholds, from Category 1 (very slight) to Category 5 (very severe), based on the width, location, and progression of cracking. These categories are not only a diagnostic tool but also serve as a benchmark for deciding whether remedial action—particularly the removal of mature trees—is proportionate to the structural issues observed.

5.7. In this case, the reported damage at 159 Long Catlis Road is categorised as Category 2 (slight). This includes cracks up to 4mm in width, typically visible in internal finishes and occasionally extending through external brickwork but not affecting structural integrity. According to BRE Digest 251, damage at this level is generally deemed superficial and does not require foundation repair or structural intervention. More significantly, the guidance

makes clear that removal of trees is not normally justified for Category 2 damage unless supported by strong evidence of progressive movement or the failure of above-ground repairs.

5.8. The applicant has not demonstrated progressive worsening of damage over time, nor has a refusal or failure of cosmetic repair solutions been evidenced. In the absence of such justification, the proposal to remove a prominent and healthy oak tree must be viewed as disproportionate. The benchmark provided by BRE Digest 251 makes it clear that Category 2 damage does not constitute sufficient grounds for felling unless accompanied by additional, robust evidence—which has not been provided in this case.

5.9. Medway's policy mandates that subsidence cases be assessed based on the balance of probabilities. That balance would rest on whether the evidence provided within the application has satisfactorily demonstrated that tree roots are contributing to seasonal movement of soil beneath the foundations of the property.

5.10. A review of the submitted evidence finds that the soil was not desiccated at the time of testing. However, there is evidence of limited seasonal movement of the soil, and this is likely to be exacerbated by roots belonging to T1. On the balance of probabilities, T1 is likely to be exerting a contributory influence on soil movement. However, the threshold for removal has not been met, given the scale of damage and the absence of progressive movement or repair failure.

6. Climate change implications

6.1. Despite the importance and value of trees, the ecosystem services trees provide are not without their costs and the Planning Committee will need to balance the environmental value of the tree against the damage and inconvenience to private property and Medway's financial liability for refusal.

6.2. An arboricultural review of the case has offered two indicative values for the tree, based on the level of ecosystem services it provides and a replacement value for the tree using CAVAT[3].

6.3. CAVAT [4] determined a value of approximately £70,123.00. This valuation reflects the amenity value of the tree and reflects what is essentially a like-for-like replacement cost.

6.4. An iTree environmental valuation indicates that if the tree is retained it may present the following ecosystem services over the next 20 years[5]:

- 20kg carbon sequestered
- 66,000ltrs storm water intercepted (equivalent to 825 bathtubs)
- 50g carbon monoxide intercepted

[3] https://cdn.forestresearch.gov.uk/2022/01/FCRN008_IcXvkLV.pdf
[4] https://www.ltoa.org.uk/resources/cavat
[5] iTree valuation, based on USDA Forest Service data (approximate benefits in ideal conditions)

- Removal of an equivalent amount of air pollution to the weight of 8 smart phones.

6.5. The oak tree is expected to reach full maturity and a life expectancy of a further 100 years could reasonably be assumed.

6.6. The above valuations are replacement-centred and cannot consider immediate ecological loss of roosting and foraging habitat, or the tree's value as a food source for invertebrates. Any replacement oak tree will take a century to compensate for this loss, and a short-lived replacement species such as birch would not be able to offer the same ecosystem services or equivalent carbon capture value in its lifetime.

7. Cost implications

7.1. If the application is refused, the applicant retains a statutory right to submit a claim for compensation. Such a claim may relate only to reasonably foreseeable loss or damage caused or incurred in consequence of the refusal of consent. In practice, this may include the cost of remedial works required to stabilise and repair the property—for example, underpinning—which would not have been necessary had consent been granted. A claim cannot include costs already incurred in investigating the damage, carrying out monitoring, or preparing the application; only future works directly arising from the refusal are potentially eligible. Compensation is payable only where works are necessary as a result of the refusal and reasonably foreseeable at the time of that decision. The level of evidence provided so far, noting the absence of proof that repairs have been ineffective or that damage is indeed worsening, would impact the success and potential value of any future claim.

7.2. The applicants contend that the estimated costs of repair of the building are a minimum of £80,000 if the influence of the tree remains and £5,000 if the proposed felling is allowed to proceed. So the potential claim if the application is refused, is in the region of £75,000

8. Legal implications

8.1. Should the application be refused, Medway Council and the applicant's insurance team will discuss a settlement of costs incurred as a result of the refusal. If agreement cannot be met, a case can be lodged at the Land Tribunals Court for decision on costs. This will result in additional legal costs for the applicant and for Medway Council as well as lengthy delay during which time the applicant's property and insured value will be affected.

8.2. The engineer's report does not include a heave assessment. The tree predates the property and so it is possible that the removal of the tree could disturb soil moisture equilibrium and increase the risk of heave. In which case, Medway is advised to consider a heave indemnity in their decision, to satisfy their own insurer, should permission be granted.

8.3. Should the application be refused, the applicant retains the right to appeal to the Planning Inspectorate. If the Inspectorate finds in favour of the applicant, Medway Council may be liable for the full cost of remedial works that could have been avoided had consent been granted. This includes direct repair costs as well as any professional fees incurred. In the event of appeal, the Council would be responsible for its own legal costs, in accordance with standard procedure.

Lead officer contact

Dave Harris, Chief Planning Officer
Telephone: 01634 331575
Email: dave.harris@medway.gov.uk

Margaret Wright, Arboriculture Consultant

Appendices

None.

Background papers

None.