



To All Councillors,

You are summoned to an **EXTRAORDINARY** Meeting of Billingshurst Parish Council on **TUESDAY 16 September 2025 at 7pm** at the Billingshurst Centre.

Members of the public are welcome to attend this meeting and speak for a maximum of three minutes about an item on the agenda for this meeting during the Public Session at the discretion of the Chairman. They must give their name. **AT THIS MEETING, IF ANY MEMBER OF THE PUBLIC WOULD LIKE TO SPEAK, PLEASE CONTACT THE CLERK IN ADVANCE TO RESERVE A 3-MINUTE SPEAKING SLOT.**



G.C. Burt

Clerk to the Council

9 September 2025

Please note that all supporting papers can be found on the Councils' website.

A G E N D A

1. Chairman's Announcements.
2. Apologies for Absence.
3. To Receive Declarations of Interest and consider any requests for a dispensation.
Adjournment for
4. Public Session (Members of the Public may speak for up to 3 minutes at the discretion of the Chairman). They must give their name.
Resume Meeting
5. Approval of the Minutes of the Meeting held on 3 September 2025. (Previously sent)
6. To consider the future of two trees at Willow Drive – Appendix A.
(Members are asked to revisit the report to the meeting of 3 September plus minutes, in conjunction with this report.)
7. Date of Next Meeting – 5 November 2025

Members of the public should be aware that being present at a meeting of the Council or one of its Committees or Sub-Committees will be deemed as the person having given consent to being recorded (photograph, film or audio recording) at the meeting, by any person present.

APPENDIX A
BILLINGSHURST PARISH COUNCIL
TUESDAY 16 SEPTEMBER 2025

TREES AT WILLOW DRIVE

REPORT BY CLERK

FOR DECISION

This report seeks to further update Members on the current position in respect of 2 Oak trees at Willow Drive owned and maintained by the Council, for which a local resident via their insurer, has Tree Preservation Order consent to fell, as they have been able to demonstrate that the roots have caused damage to an extension built on to the property.

To save restating much of what has already been said, Councillors are asked to revisit reports/minutes of meetings of the Property Committee of 20 May and Council of 3 September last.

I will try to address some unresolved issues.

1. **Possibility of future claims.** At the latter meeting, I advised that an agreement had been proposed setting out the terms of any agreement between the Council and the claimant but certain provisions required revisiting. It was the intention to put this to Councillors to agree once received.

I am not permitted to place the entire document in the public domain due to a confidentiality clause, but it has been shared to all Councillors. However, the point at had been unhappy with is now satisfactorily covered by

- (a) AXA Insurance and Mrs & Mr Y agree to waive any recovery against the Local Authority in respect of any potential heave damage to the Property, should T2 and T3 be felled.*

I am aware that an adjoining resident is against the felling of the trees; to date their property has suffered no damage that could be attributable to the trees; however they are concerned that heave caused by the felling might cause damage to their property. Understandably, because neighbours are not party to any agreement between the Council and the claimant, we cannot expect to see any similar waiver in this agreement covering them. However, our solicitor has advised that we should possibly expect to see included in the agreement an indemnity against *indirect consequential loss*. Basically, this is AXA agreeing to indemnify the Council against new claims resulting from this work, possibly by others.

Bat Survey

The claimant's insurer received Tree Preservation Order consent to fell the two trees. A condition attached to the consent was that

Note to Applicant

The applicants attention is drawn to the provisions of both the Wildlife and Countryside Act 1981, and the Countryside & Rights of Way Act 2000. Under the 2000 Act, it is an offence both to intentionally or recklessly destroy a bat roost, regardless of whether the bat is in the roost at the time of inspection. All trees should therefore be thoroughly checked for the existence of bat roosts prior to any works taking place. If in doubt, the applicant is advised to contact the Bat Conservation Trust at Quadrant House, 250 Kennington Lane, London, SE11 5RD. Details: Tel: 0345 1300 228; E-mail: enquiries@bats.org.uk

I asked the claimaint if a bat survey had been undertaken and the reply was as follows:

Three different arborictural experts have inspected the tree and none have presented any evidence on the presence of bat nests.

I have had advice from arborists in the past on nests (both bird and bat) or fungus which are present in the context of the subsidence claims and I would have expected the same to be the case on this matter. None of the 3 experts have presented any evidence to that regard.

I note the comments on facebook from protestors (possibly including local councillors) that there are bat nests present along with "1000 rare species" (of unidentified flora and fauna). However I am yet to be furnished with any evidence of the same.

Therefore may I suggest that this allegation would carry more weight if there were photographs of bats or their nests in the trees given the summer would be a good time to see them in the trees. Furthermore, if this is a particular concern of your client, it is completely in their power to ask Martin Dobson, as their retained expert, if he saw any evidence of bats or their nests. We can ask our client's expert the same question.

I asked the consultant we employed to carry our own independant report of the situation, if in his opinion, the various reports that he saw when he reviewed the evidence, counted as robust bat surveys and satisfy this planning condition?

He advised: *I have not seen any evidence that bats have been considered. Nonetheless, if trees are to be felled then the contractor would need to be satisfied that there are no bats. They would ordinarily carry out a survey before commencing work.*

I then asked *is the onus on the planning applicants, owner or tree surgeon please? I.e. Who would be liable in the absence of such a survey?*

He replied: *Ultimately, it would be the tree surgeon.*

I have spoken to the tree surgeon and he agrees that if the planning consent requires a bat survey then one should be undertaken.

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I received the following communication from our insurer's representative last week, just before our meeting, but too late for me to share it with Cllrs so that they could have digested it in time for the meeting:

Dear Greg,

Further to previous correspondence, I have been asked by your Insurers to remind you that the insurance cover it provides is in respect of accidental damage to Third Party property for which there is a legal liability. It is for you to decide what mitigation measures you carry out, albeit that Insurers, via Woodgate and Clark as its appointed Loss Adjusters, investigated comment on the legal liability position. If there is a conscious decision to take such action as would not constitute mitigation to avoid legal proceedings which there might be a legal liability, the policy may not respond to provide cover for the resultant claim for damages. Therefore, to that extent, Insurers reserve their rights as far as providing policy cover is concerned.

Turning to the correspondence from the various parties, and initially the communication from an adjoining neighbour (X). In my update to Insurers on 1 August 2025 I highlighted the fact that Mr Dobson had made an error in his report, confusing the position of the garage with that of the side extension, despite the fact that in Section 2.2 of his report he includes an extract from a report compiled by Auger which clearly shows the position of the boreholes. Whilst that mistake was easily avoidable, if one merely accepts that when referring to the garage in Section 2.3 of his report he really means the side extension, the rest of his report make sense. I do not think that X has any traction in an argument that, since the two parts of the same structure have been confused when reporting, the overall content of the report is not to be relied upon.

I believe that you are seeking a response from Mr Dobson but, in my opinion, if I was to simply substitute garage for side extension, the remainder of the report is valid.

As I have said in other correspondence, you may need legal advice on your applications to disclose under the Freedom of Information request, which you are already in possession of all the technical evidence submitted from the Claimant's solicitors. It might be that that technical evidence could form part of a disclosure/FOI request.

[REDACTED]

[REDACTED] The evidence has been reviewed by a Chartered Loss Adjuster and a Chartered Building Surveyor acting for your Insurers and our view that a legal liability could be established if this matter were to be taken to trial, has been communicated. We have also commented that our surveyor believes the installation of a root barrier would be highly problematic in this case and Mr Dobson supports that view, as does the surveyor for the Claimant's solicitors, albeit that I have not been provided with any written report from him on that aspect.

[REDACTED] The latest version of the Claimant's solicitor's settlement agreement is attached and remains silent as regards an indemnity for future heave damage to the Claimant's property. This has been pointed out and the solicitors now seem willing to include a waiver in respect of any such future damage.

Point 2 of her correspondence regarding maintenance history requires no particular response other than to say that I am aware that tree maintenance was comprised of generally ensuring that good

health of the tree, and not in respect of its continued growth to a size which has ultimately created a tree root nuisance situation.

I believe that Mr Dobson has comprehensively dealt with the mitigation measures available, and of course we have been presented with a similar arboricultural report from the Claimant's solicitors,

Other comments on the various emails supplied relate to the discovery of tree roots in boreholes. We have previously been supplied with a copy of the Richardson's Botanical Identifications Report which showed the following:-

TH1, 0.7m		
2 no.	Examined root: QUERCUS (Oak).	Alive, recently*.
TH2, 0.7m		
4 no.	Examined root: very THIN. We cannot rule out QUERCUS (Oak).	Alive, recently*.
TH2, 1.2m		
2 no.	Examined root: QUERCUS (Oak).	Alive, recently*.

I do not believe that any reference has previously be made to roots having been found at a level of 2.2m, although our surveyor did comment that suction testing on soil samples suggest quite significant desiccation in soil samples retrieved from a depth of 2.2m below ground level. In my report from Insurers, I specifically said that 'roots were noted to be present in the soil to a depth of 1.2m below ground level'.

No evidence has been provided to prove that, had the trees not been present, the repetition of hot, dry summers would, in any event, have caused the damage, which is now apparent, given the composition of the soil material beneath the foundations. What we do know is that expert opinion falls on the side of the trees being the dominant (active and efficient) cause of the damage to the property. Furthermore, correspondents should be aware that the leading case of Paterson v Humberside County Council (1995) was one in which the Judge refused to criticise the relatively shallow depth of the foundations on the basis that in that case the property had stood for over 100 years and was in a stable condition.

Another correspondent (Z) also has concerns in respect of heave, and these have been relayed the Claimant's solicitors as well, although no reference has been made to the names of individuals with concerns. In my opinion, providing the Settlement Agreement includes an indemnity or a waiver of a right to pursue a claim in respect of any subsequent heave damage; any failure to sign the Agreement and remove the trees promptly will result in legal proceedings being issued against the Parish Council, in respect of which Insurers may well decide that no cover available.

I look forward to hearing from you.

Etc.

I have sought guidance from the Council's Solicitor and she advises accordingly:

Dear Greg,

I write just to summarise the points and advice discussed earlier today.

The Council is really stuck between a rock and a hard place here, and through no fault of its own. However it cannot allow the matter to drift and must give weight to the advice it has received from its insurers (who I understand have had 3 different underwriters consider the claim) and other experts.

On the insurance front, various other options have been considered and/or suggested, for example root barriers. However given the location of the trees, siting of various service media, the likelihood that in these particular circumstances both root barriers and substantial pruning are unlikely to be effective or are likely to kill the trees in any event, they have advised the only real option is to fell the trees.

I understand the insurers have gone to considerable lengths to explore all options, both in terms of physical works which could be undertaken to rectify the issues and the legal position and whether the claim can be rebutted, but have not been able to find a preferable solution.

In terms of planning there are also some difficulties, namely that although the local planning authority has given its consent for the two trees to be felled, there were some conditions attached which have not yet been met, and which the Claimants are refusing to undertake. In particular, a bat survey.

In some respects the fact the Claimants are refusing to obtain a bat survey leaves them in breach of the planning conditions, but I can see the Council's reticence to allow its contractor's to undertake the works where there is a risk of liability for any breach falling to the Council or its contractor.

This puts the Council in a difficult position, but it is noteworthy that having considered its own position, planning permission for the felling of the trees has been granted. As you know this will not have been granted lightly, but again indicates there is not really any alternative to the trees being felled.

In considering its, what I view as limited options, the Council must take into account the professional advice it has received via its insurer, and of course the purpose of having insurance in any event. No doubt the Council pays its insurer a not insignificant amount to benefit from situations exactly like these, so ultimately it does not have to meet the costs of the litigation/remedial works itself.

Whilst I appreciate this is a difficult position for the Council, it must bear in mind that if it does not follow the advice of its insurer, the insurer may refuse to cover the claim/meet any further costs incurred in relation to the claim (or indeed any periphery issues in the future). Not only could this be costly for the Council, but it would be a difficult decision for the Council to justify, and given how controversial the matter is, could lead to a judicial review on the basis reaching a decision against professional advice is irrational. I just flag this as a point to consider.

The Council has limited options but as I understand it the insurer has negotiated a settlement agreement whereby the Claimants are providing an indemnity to the Council for any losses it may suffer as a result of the trees being felled and that replacement trees will be planted in a preferred location.

As discussed you should so far as possible ensure that any indemnity is as broad as possible and covers indirect and consequential losses in the hope that it will catch any unforeseen losses and potential future claims that may arise from here following the felling of the trees. I also suggest that if the Claimants will not move on the stance regarding the bat survey, you get an indemnity in relation to any costs/losses etc the Council or its contractors suffer as a result of proceeding in breach of the planning condition. I suggest you are quite strong on this point.

I hope this helps give the Council some points to bearing in mind when deciding how to proceed.

Best wishes

Kate Jackson

Partner

www.surreyhillssolicitors.co.uk

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Other issues

Two issues keep being raised which the Council has said it would seek answers to. I do think that these have been covered by the various reports that have been previously circulated and/or are in the public domain. However, to summarise:

- a. Why can't a **root barrier** be put in place? By virtue of the position of the Oak trees, these are next to the fence of the garden in question. Therefore most of the roots on that flank are in the affected garden. If a root barrier were put in place, the roots would go around the ends of the barrier, therefore the barrier would need to extend across several gardens. This would require the cooperation of several home-owners. I have also subsequently learnt that the position of drains etc, may prohibit any root barrier.
- b. Can't the trees be **reduced in size**? To achieve the effect that the householder is seeking, the tree would need to be reduced in size so considerably, that it would be a mere shadow of its current self. Moreover, drastic work would be required near-yearly to prevent the tree significantly regrowing.
- c. The **CAVAT** (Cost of Advanced Valuation and Tree) formula has been cited to try to put a figure on the loss to the wider community etc of the trees. However this is relatively new and uncharted territory and it is difficult to see who should be applying this here and how? In my opinion, the planning authority who originally gave permission to fell the trees would have been best placed to consider any monetarisation of the loss of the trees to the community and environment. Whilst the Parish Council is a local authority, on this occasion it is acting first and foremost in its capacity as a land owner and therefore is liable and exposed to such liabilities as any other landowner.

Conclusion and recommendation

Members will be aware from previous reports that.....*The RFO shall negotiate all claims on the Council's insurers.* (Financial Regulation 16.3). However I am not willing to undertake this role on this occasion as I consider it is a matter for Councillors sitting at the Council. Whilst no Councillor (or Officer) wishes to see the trees lost, Members are reminded of the significant risk to the Council of ignoring such professional advice which could expose the Council to unlimited costs which may or may not be covered by the Council's insurers. Thus, I am **recommending** to Members that in the light of all the evidence sourced and presented, **that Council agree to the felling of the trees (through the signing of the agreement), subject to**

The inclusion of an indirect consequential indemnity clause and undertaking a professional Bat Survey (to protect all parties) or indemnification of the Council and its agents if no Bat Survey is undertaken. [I need to take further advice as to whether it is possible for a planning condition to be ignored if one party agrees to indemnify all other parties.]

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Fyi the Council received this yesterday, 9 September

Dear Paul,

This just to let you know that Save Billi Oaks has launched a crowdfunder [Save Billi Oaks! Stop Axa axing them!](#) to raise money for a legal challenge to Axa. Richard Buxton Solicitors have a good track record on cases like this. They have advised us to inform you to urgently put your insurers on notice that any agreement must be with your consent and that they are likely to receive representations in the near future that there is no basis for any agreement to fell.

Richard Buxton Solicitors (RBS) believe there is an arguable case that the Parish Council is not liable for the nuisance alleged by AXA and, anyway, that the decision to fell is unlawful.

RBS is a specialist environmental law firm with experience of fighting tree cases in the face of unreasonable demands of insurers, most recently in Cambridge where the City Council was persuaded that it was wrong to give permission to fell historic trees on a public space said to be damaging a property. RBS also dealt with an historic oak tree in Essex where a root barrier was installed and a similar complex issue in London, again all in the face of insurers blaming trees for damage or not looking for better solutions than felling them.

Kind regards

Mela Davidson