

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **15 February 2023**

Report of: **Director of Planning and Regeneration**

Subject: **TREE PRESERVATION ORDER (No 775) 2022: 35 – 42 FOSTER CLOSE,
STUBBINGTON, FAREHAM.**

SUMMARY

The report details objections to the making of a provisional order in October 2022 and provides officer comment on the points raised.

RECOMMENDATION

That Tree Preservation Order 775 is confirmed as originally made and served.

BACKGROUND

1. Section 198 of The Town and Country Planning Act 1990 gives local planning authorities the power to make tree preservation orders [TPOs]:

(1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

2. Fareham Borough Council Tree Strategy.

Policy TP7 - Protect significant trees not under Council ownership through the making of Tree Preservation Orders.

Policy TP8 - Where necessary protect private trees of high amenity value with Tree Preservation Orders.

3. A tree preservation order has been made to protect one mature oak tree at 35 – 42 Foster Close, Fareham.

INTRODUCTION

4. The tenants of 33 Foster Close, exercised the Right to Buy their property from Fareham Borough Council last year; the sale of the property was completed in early October 2022.
5. Shortly after the property sale, the owners of 33 Foster Close were advised in writing that the oak tree to the rear of their garden was not on land which has been sold to them and remains in the ownership of Fareham Brough Council. The owners of 33 Foster Close were also notified that the Council intended to serve a Tree Preservation Order in respect of the tree.
6. Because the occupiers of 33 & 34 Foster Close have expressed their desire to have the tree reduced, officers considered it expedient to serve a tree preservation order to protect the oak tree and to provide control over any future works carried out to it.
7. On 14 October 2022 a provisional tree preservation order was made in respect of one pedunculate oak tree situated at 35 – 42 Foster Close, to the rear of 33 and 34 Foster Close. The tree is a large mature specimen, which is clearly visible from several public vantage points and makes a significant contribution to the visual amenity of the area (Site plan at Appendix A).

OBJECTIONS

8. Two objections have been received following the serving of the tree preservation order from the occupiers of 33 & 34 Foster Close.

The main grounds of objection are as follows:

- The tree has been allowed to grow too wide and tall for its location.

- The tree needs to be maintained and brought down to a sensible size.
- The householder at 33 Foster Close offered to pay for the tree to be maintained but was led to believe the oak tree was already protected.
- The householder at 34 Foster Close is elderly and the falling debris and shading mean they cannot enjoy their garden safely.

PUBLIC AMENITY

9. The oak tree is visible from several public vantage points – Foster Close to the north and Green Road to the southwest. The tree by virtue of its size and prominence, make a significant contribution to the public amenity of the area (Photographs at Appendix B).

SIZE AND CONDITION OF TREE

10. The oak tree has historically been maintained by the Council and is subject to routine tree safety inspections. Recent tree works include crown lifting in 2016 and a localised reduction by 3 metres on the east side of the tree, over the rear gardens of 33 & 34 Foster Close in September 2022.
11. At the time of the last visit in September 2022 no defects or abnormalities were observed to suggest the subject oak tree poses an undue level of risk. There are no guarantees of absolute safety in the event of severe adverse weather conditions, since all assessments should be undertaken for normal conditions and not try to speculate about what might happen in the event of severe or abnormal weather.
12. It is not possible to eliminate all risk associated with trees because even those apparently free from defects can fail when the forces acting upon them exceed their inherent strength; some risk must be accepted to experience the multiple benefits trees provide our communities.

TREE RELATED DEBRIS

13. It is to be expected that large, mature trees will produce amounts of tree related debris and the periodic clearing of such material is, albeit an inconvenience, part of routine household maintenance when living near trees.
14. If a protected tree presents an immediate risk of harm to people or property, any urgent works necessary to make the tree safe, such as removing dead or broken branches, can be undertaken without consent. If a protected tree is either dead or dangerous, five days' written notice needs to be given to the local authority of any necessary tree works.
15. Officers acknowledge that for some residents, trees can be a source of frustration. However, these very same trees contribute to the pleasant appearance of Fareham and provide multiple benefits to the area.

TREE WORK APPLICATIONS

16. In dealing with applications to carry out works to protected trees the Council will consider whether the reasons given in support of an application outweigh the amenity reasons for protecting them. The Council is unlikely to support unnecessary or unsympathetic pruning that would harm a protected tree by adversely affecting its condition and appearance. Permission to prune and maintain protected trees in the context of their surroundings, species, and previous management history will not be unreasonably

withheld by the Council.

17. The existence of a TPO does not prevent works being carried out to a tree, or indeed the felling of the tree, if such a course of action is warranted by the facts. Whilst the Council's approval would be required to carry out works to the tree, there is currently no charge for making such an application to carry out works, and applications are determined quickly.

RISK ASSESSMENT

18. Based on the submitted information the Council will not be exposed to any risk associated with the confirmation of TPO 775 as made and served. Only where an application is made for consent to carry out work on trees subject to a TPO and subsequently refused does the question of compensation payable by the Council arise.

CONCLUSION

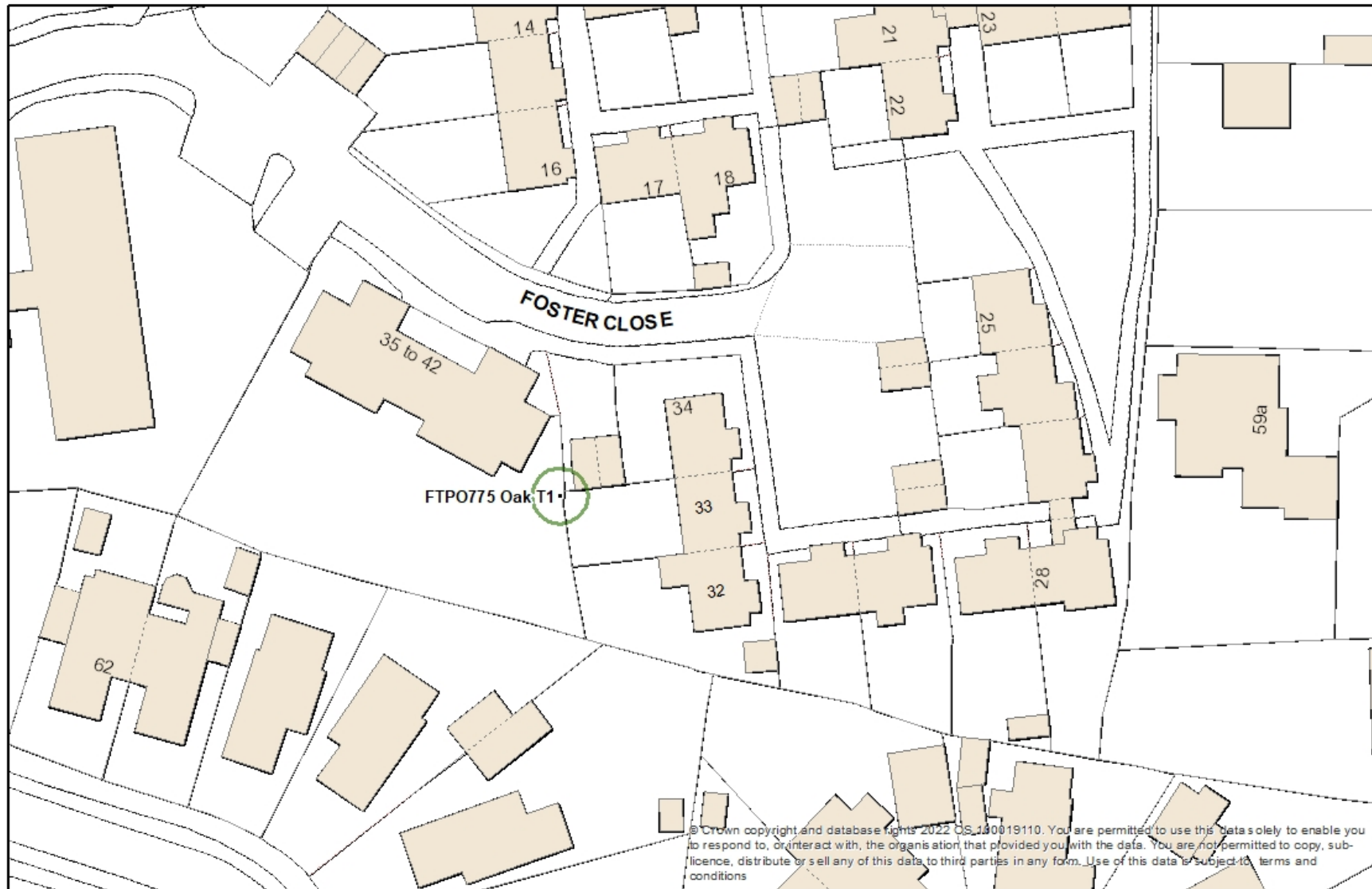
19. When making tree preservation orders the Council endeavours to consider the rights of those affected and use their powers responsibly. The rights of the individual must be balanced against public expectation that the planning system will protect trees when their amenity value justifies such protection.
20. Tree preservation orders seek to protect trees in the interest of public amenity; therefore, it follows that the exclusion of a tree from an order should only be sanctioned where its public amenity value is outweighed by other considerations.
21. In this instance Officers consider the reasons put forward for objecting to the protection of the pedunculate oak are not sufficient to outweigh its public amenity value. The tree is not of such a size and in such a restricted location, that it has a major impact upon the amenity of adjacent properties. It is open to adjacent occupiers to apply to carry out works to the tree and each request will be carefully considered on their merits.
22. Officers therefore recommend that Tree Preservation Order 775 is confirmed as originally made and served.

Background Papers: TPO 775.

Reference Papers: Forestry Commission: The Case for Trees – 2010. Planning Practice Guidance - Tree Preservation Orders (2014) and The Law of Trees, Forests and Hedges (second edition) – *Charles Mynors*.

Enquiries: For further information on this report please contact Paul Johnston. (Ext 4451).

APPENDIX A – SITE PLAN



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Tree Preservation Order No. 775 (T1)
 East Boundary of 35 - 42 Foster Close, Stubbington

FAREHAM
 BOROUGH COUNCIL

Date: 15 February 2023

Ref: 1
 Scale: 1:500



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Tree Preservation Order No. 775 (T1)
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APPENDIX B – PHOTOGRAPHS



1. View of oak from Foster Close looking south



2. View of oak from Foster Close looking south



3. View of oak (centre tree) from Green Road looking north-east



4. View of oak (centre tree) from Green Road looking north-east