

# FAREHAM

## BOROUGH COUNCIL

### Report to Planning Committee

**Date**                    14 October 2015

**Report of:**            Director of Planning and Development

**Subject:**            Fareham Tree Preservation Order No 706 (2015) – 1 Highfield Avenue and Land to the West of 7 Highfield Avenue

#### **SUMMARY**

The report details an objection to the making of a provisional order in June 2015 and provides officer comment on the points raised.

#### **RECOMMENDATION**

That Tree Preservation Order 706 is confirmed.

## BACKGROUND

1. Section 197 of The Town and Country Planning Act 1990 places a duty on local planning authorities when granting planning permission to include appropriate provision for the preservation and planting of trees.

*It shall be the duty of the local planning authority –*

- (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
  - (b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.
2. Section 198 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.*
  3. Fareham Borough Council Tree Strategy 2012 - 2017.

**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.

4. The order was made on an oak at on land west of 7 Highfield Avenue in response to a perceived threat to this particular tree from redevelopment work at the property. A second oak, situated at 1 Highfield Avenue, was also identified as an important tree during the amenity assessment and subsequently included in the order as a proactive measure to maintain continuity of tree cover in the landscape.

## INTRODUCTION

5. On 12 June a provisional Order was served in respect of two pedunculate oaks situated within the rear garden of 1 Highfield Avenue and at land to the west of 7 Highfield Avenue.

## OBJECTIONS

6. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 one objection has been received from the owner of 1 Highfield Avenue in relation to T1 on the following grounds:
  - The tree does not offer amenity value as it is obscured by other vegetation and only residents at the rear of the property would be able to see it;
  - The tree overhangs an existing boundary and a footpath and may pose a threat in the

- future due to dead and dying branches;
- Unsympathetic work has already been undertaken and further work would reduce the amenity value further;
  - The oak tree is poorly positioned too close to an outbuilding to be of value.

No other objections have been received to the making of the Order.

### **PUBLIC AMENITY**

1. The subject oak tree predates the surrounding development established in the 1930s and the many outbuildings subsequently constructed in the rear gardens of Highfield Avenue properties in the intervening years. The tree is a remnant of the original landscape of field boundaries with trees and hedges. The tree is clearly visible from several public vantage points and makes a significant contribution to the amenity of the surrounding residential development (Photos at Appendix A).

### **RISK OF FAILURE**

2. An informal visual inspection of the oak was undertaken from ground level. At the time of inspection the tree was observed to be healthy and free from any significant defects or abnormalities that would give rise to concerns about the health and safety of the tree.
3. The Council is unlikely to support unnecessary or unsympathetic pruning that would harm a protected tree by adversely affecting its condition and appearance. However, routine tree works will be viewed on its merits and permission will not be unreasonably withheld if pruning can be supported on sound tree management grounds.
4. Trees are dynamic living organisms that are subject to natural changes as they age or are influenced by changes in their environment. 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' notice shall be given to the local authority of any necessary tree works. If works are to be carried out under this exemption it is important to keep evidence of the tree's condition to avoid potential legal action in the future.

### **POSITION CLOSE TO OUTBUILDING**

5. Officers acknowledge that the position of a mature oak so close to a building is a concern for the owners of the property. However, the building is not habitable, appears to be well constructed and has coexisted with the tree for many years. The oak is a mature specimen with limited potential for future growth and despite the close proximity there is nothing to suggest the tree is currently causing damage to the structure.

### **TREE WORK APPLICATIONS**

6. 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. 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.

7. The existence of a TPO does not preclude the carrying out of pruning works to, or indeed the felling of, any tree if such a course of action is warranted by the facts. There is currently no charge for making an application to carry out works to protected trees, applications are normally determined within 6 weeks of registration.

### **RISK ASSESSMENT**

8. The Council will not be exposed to any significant risk associated with the confirmation of TPO 706 as made and served. Only where an application is made for consent to work on trees subject to a TPO and subsequently refused does the question of compensation payable by the Council arise.

### **CONCLUSION**

9. When making tree preservation orders the Council endeavours to consider the rights of those affected and use their powers responsibly. However, the rights of the individual must be balanced against the rights of the public to expect the planning system to protect a tree when its amenity value justifies such protection. In this instance, it is officers' opinion that the protection of the two oaks should prevail.
10. Officers therefore recommend that Tree Preservation Order 706 is confirmed as originally made and served.

**Background Papers:** TPO 706.

**Reference Papers:** National Planning Policy Framework: Planning Practice Guidance - Tree Preservation Orders (2014), Fareham Borough Council Tree Strategy 2012 – 2017 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: Oak T1 & T2 - view from the northwest at St Michael's House spur road.**



**Oak T1 – view from the north at Broadacre Place parking area.**





Oak T1 - view from the north showing proximity to garage outbuilding.





**Oak T1 – view from the south on the public footpath.**

