

**Report to  
Planning Committee**

**Date** 24 April 2013

**Report of:** Director of Planning and Environment

**Subject:** FAREHAM TREE PRESERVATION ORDER 681  
113 KILN ROAD, TIMBERS, RED BARN LANE AND 32 HOLLY  
GROVE, FAREHAM

**SUMMARY**

The report details objections to a provisional order made in February 2013 and provides officer comment on the points raised.

**RECOMMENDATION**

That Fareham Tree Preservation Order 681 is confirmed as made and served.

## 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. During the last week of January the Council received a call from a local resident who was concerned that two mature oak trees had apparently been cut down at Timbers, Redbarn Lane. The resident was concerned that other mature oak trees in the vicinity may be at risk and requested officers investigate the threat to the remaining trees.

## INTRODUCTION

5. On the 8 February 2013 a provisional order was served in respect of 4no oak trees situated along the frontage of 113 Kiln Road, Timbers, Redbarn Lane and 32 Holly Grove, Fareham. The order was served on a precautionary basis as two mature trees had been felled and there was a perceived threat to the remaining trees.

## OBJECTIONS

6. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 one objection has been received from the owner of Timbers, Redbarn Lane, Fareham on the following grounds:
  - The trees overhang the highway and a bus stop and require regular maintenance to ensure they do not cause a serious risk to the public. The owner wishes to reserve the right to cut back the trees when necessary and avoid any public liability claims against him.

- The tree preservation order will adversely affect the owner's ability to meet his insurance obligations with his insurer.
- The tree preservation order will adversely impact on the resale value of the property.
- If the order is upheld then the Council should adopt the trees and become responsible for their maintenance.

## **COMMENT**

7. The four subject oaks were informally inspected from ground level adjacent to the trees and from surrounding public vantage points to assess their contribution to public amenity. In officers' opinion the four oaks make a significant contribution to the public amenity of the locality due to their size and prominence in the landscape. No obvious visible defects or abnormalities were observed that may give rise to concerns over the general health and condition of the four oaks. All four trees were assessed on their merits for TPO suitability and considered worthy of protection.
8. The responsibility for a tree rests with the owner of the land on which it is situated and this includes making arrangements for their trees to be inspected by an arboriculturist to assess their condition in the interests of health and safety. The Council is unlikely to support unnecessary or unsympathetic pruning that would harm a protected tree by adversely impacting on its condition and appearance. However, routine tree works will be viewed on their merits and permission will not be unreasonably withheld if pruning can be supported on arboricultural grounds.
9. Trees are dynamic living organisms that are subject to natural changes as they age or are influenced by changes in their environment. Where a protected tree presents an immediate risk of serious harm urgently necessary works can be undertaken without consent; and five days' notice will have to be given to the local authority of any works to a tree that is either 'dead or dangerous'. If works are to be carried out under this exemption it is important to keep evidence of the trees' condition to avoid potential legal action in the future. Any necessary tree works required to ensure the safe use of the public highway in compliance with any obligation under The Highways Act or imposed by the Highway Authority would also be an exception to the requirement for formal permission from the Council.
10. All trees pose some degree of risk, but in this case there is nothing to suggest that the subject trees pose any undue level of risk. Regular tree inspections by an arboriculturist to assess any change in the health and condition of trees is considered to be a reasonable way of managing the risks associated with trees.

## **TREE WORK APPLICATIONS**

11. 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.

12. The existence of a TPO does not preclude the carrying out of arboricultural 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 8 weeks of registration.

### **RISK ASSESSMENT**

13. The Council will not be exposed to any significant risk associated with the confirmation of the FTPO 681 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**

14. 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.
15. In this instance, it is officers' opinion that the protection of the subject trees should prevail. However, members are invited to reach their own conclusions.
16. Officers therefore recommend that Tree Preservation Order 681 is confirmed as originally made and served.

**Background Papers:** TPO 681.

**Reference Papers:** Tree Preservation Orders – A Guide to the Law and Good Practice, 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, Principal Tree Officer (Ext 4451)