

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **20 February 2019**

Report of: **Director of Planning and Regulation**

Subject: **TREE PRESERVATION ORDER (NO. 753) – 24 THORNTON
AVENUE, WARSASH.**

SUMMARY

The report details objections to the making of a provisional order in November 2018 and provides officer comment on the points raised.

RECOMMENDATION

That Tree Preservation Order 753 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.

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. An order was made on one mature Monterey cypress situated on the frontage of 24 Thornton Avenue in response to a perceived threat that the tree was to be removed following several enquiries about the status of the tree.

INTRODUCTION

5. On 9 November 2018, a provisional Order was served in respect of one Monterey cypress in the front garden of 24 Thornton Avenue.

OBJECTIONS

6. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 three objections have been received; one from the owner of 24 Thornton Avenue and two from neighbouring householders on the following grounds:
 - Fears the tree may break or fall during a storm.
 - The tree has shed two large branches in the last few years.
 - The tree is old and there are concerns about its weakening structure and uncertain condition.
 - The tree is beside and overhangs the highway and poses a safety risk.
 - The roots are causing damage to the road and driveway.

PUBLIC AMENITY

7. The Monterey cypress tree predates the surrounding development. The tree is a large prominent specimen, situated approximately 16 metres from the dwelling, adjacent to the highway and is clearly visible from several public vantage points. The cypress tree makes a significant contribution to the verdant character of the area (Photos at Appendix B).

TREE HEALTH AND RISK OF FAILURE

8. A visual inspection of the Monterey cypress was undertaken from ground level on 31 October 2018. 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. There was no evidence of recent significant branch shedding / failure during the observations made at the time.
9. The tree was observed to be in good physical condition and exhibiting normal growth characteristics for a mature Monterey cypress in terms of foliage, size, density and colour.
10. Trees are living organisms and their condition and vitality can alter quickly depending on environmental and physical factors. It is acknowledged that trees have a natural failure rate as an evolutionary process leading to the optimisation of structural strength verses efficient use of resources. Some species have adapted more effectively than others, and some are naturally more prone to failure than others. Therefore, no tree can be considered completely safe.
11. The amount of noise and movement associated with trees during high winds can be unnerving. However, the perceived threat of failure should not be a basis for tree pruning or indeed removal. 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 events.
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.
13. The Monterey cypress is not considered to be in a dangerous condition and officers conclude there is no evidence available to demonstrate that it poses a hazard sufficient to outweigh its public amenity value and thereby justify any significant pruning or indeed the removal of the tree.
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 shall be given to the local authority of any necessary remedial tree works.

TREE SAFETY INSPECTIONS

15. Managing the risks from trees is the responsibility of the owner of the land on which they grow. This responsibility or duty requires that reasonable precautions are taken to avoid any risks that would be deemed reasonably foreseeable, for example removing a dead branch above a neighbour's property. A tree owner is not expected to guarantee a tree is completely 'safe', nor indeed act as an 'insurer of nature'.
16. Tree owners can discharge their duty by engaging a suitably qualified and competent arboriculturist to undertake regular tree inspections.

TREE WORK APPLICATIONS

17. 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.
18. The existence of a TPO does not preclude 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 4 weeks of registration.

DAMAGE TO SURFACES

19. Damage to structures such as footpaths, driveways and roads is not uncommon in close proximity to large mature trees, as roots may grow under these structures or the structures themselves are constructed above existing tree roots. Whilst this can be burdensome to a degree, minor remedial repairs will usually be sufficient to ensure the surface is fit for purpose.
20. Thornton Avenue comprises a concrete construction cast in sections with expansion joints. Such construction can be prone to differential movement between the sections over time whether influenced by trees or not. In this case there is some lifting of a section adjacent to the subject tree, but similar movement is evident along the road in several locations with and without trees.

RISK ASSESSMENT

21. The Council will not be exposed to any significant risk associated with the confirmation of TPO 753 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

22. When making tree preservation orders the Council endeavour to consider the rights of those affected and use their powers responsibly. However, 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.
23. 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. In this instance Officers consider the reasons put forward objecting to the making of a Tree Preservation Order on the Monterey cypress are not sufficient to outweigh its public amenity value.
24. Officers therefore recommend that Tree Preservation Order 753 is confirmed as originally made and served.

Background Papers: TPO 753.

Reference Papers: Forestry Commission: The Case for Trees – 2010. Planning Practice Guidance - Tree Preservation Orders (2014), Fareham Borough Council Tree Strategy 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).

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APPENDIX B – T1 viewed from Thornton Avenue



APPENDIX B – T1 viewed from Thornton Avenue

