

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date: 16 February

Report of: Director of Planning and Regeneration

Subject: 78 EAST HOUSE AVENUE, STUBBINGTON, TREE
PRESERVATION ORDER NO. 773 2021.

SUMMARY

The report details two objections to the making of a provisional order in September 2021 and provides officer comment on the points raised.

RECOMMENDATION

That Tree Preservation Order 773 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. A tree preservation order was made to protect one mature oak tree at 78 East House Avenue.

INTRODUCTION

5. In early September 2021 the Council received an enquiry as to whether the oak tree on the property was protected. As there was a potential threat to the tree Officers considered whether it was worthy of a tree preservation order.
6. On 15 September 2021, a provisional order was made in respect of the pedunculate oak situated in the rear garden of 78 East House Avenue. 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.

OBJECTIONS

7. Two objections have been received following the serving of the tree preservation order. One objection is from the owner of 78 East House Avenue with the second from the neighbour at no 80. The main grounds of objection are as follows:
 - The tree is extremely large and the root spread could affect the house.

- The trunk is forcing the Daedalus airfield fence to lean, making it unsafe and damaging the garden fences.
- The tree sheds debris all over the rear gardens and bird droppings, which pose a health risk.
- The oak tree harbours squirrels, magpies and crows, which have tried to attack a pet rabbit and deter small birds from visiting the gardens.
- Why has a tree preservation order been placed on a private tree?

PUBLIC AMENITY

8. The mature oak tree is situated at the bottom of the rear garden of the property and is clearly visible from East House Avenue and Southways. The tree is a large prominent specimen, which makes a significant contribution to the wider public amenity of the area (Photographs at Appendix A).
9. The tree is positioned at the far end of the garden approximately 12 metres to the northeast of the dwellings at 78 & 80 East House Avenue. The southwest portion of the tree's crown extends approximately 3.5 metres above the rear gardens of these properties.

RISK OF DAMAGE TO PROPERTY

10. When water is removed from clay soils by tree roots the spaces between the soil particles close and the material shrinks. This affects the load bearing capacity of the soil that supports building foundations. Whether a building might be affected by a tree in this way is impossible to predict. It depends on the interactions between a number of factors, including the shrinkability of the soil, the construction and depth of foundations, the size, species, vigour and rooting pattern of the tree, effects of other vegetation and any surface treatment, drainage and prevailing weather conditions.
11. Some trees can cause subsidence damage to buildings at considerable distance, while others can grow very close without causing any damage. Current building standards require that the presence of trees is taken into consideration when specifying foundations for new buildings and foundations can be specified that will not subside.
12. The Council has not received any evidence to suggest the subject oak is the cause of damage to property as a result of clay soil shrinkage due to tree root activity. In circumstances where a protected tree has been identified as a material cause of subsidence damage to property, the Council will not unreasonably withhold consent for the offending tree to be removed if such a course of action is justified by the facts of the case.
13. Damage, distortion or movement caused to fences adjacent to large trees is not uncommon. Whilst this can be slightly burdensome, minor remedial repairs will usually be sufficient to ensure a fence can co-exist with a tree and remain fit for purpose.
14. It is to be expected that a large, mature tree will produce amounts of tree related debris and the periodic clearing of such material is, albeit an inconvenience, considered to be part of routine household maintenance when living near trees. The oak tree is estimated to be over 150 years old and therefore predates the adjacent houses.

15. 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 tree works.
16. 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

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, and applications are normally determined quickly.

RISK ASSESSMENT

19. The Council will not be exposed to any significant risk associated with the confirmation of TPO 773 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

20. 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 public expectation that the planning system will protect trees when their amenity value justifies such protection.
21. 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 for objecting to the protection of the pedunculate oak are not sufficient to outweigh its public amenity value.
22. Officers therefore recommend that Tree Preservation Order 773 is confirmed as originally made and served.

Background Papers: TPO 773.

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.
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APPENDIX A

**OAK VIEWED FROM WEST (FACING 41 SOUTHWAYS & REAR GARDENS OF
78 – 86 EAST HOUSE AVENUE)**







JUXTAPOSITION OF TRUNK AND FENCES



LOCATION PLAN



LOCATION PLAN WITH AERIAL PHOTOGRAPHY

