

# FAREHAM

## BOROUGH COUNCIL

### Report to Planning Committee

**Date**                    **13 July 2022**

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

**Subject:**             **TPO NO. 774 2022 – FAIRACRE RISE, FAREHAM**

#### **SUMMARY**

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

#### **RECOMMENDATION**

That Tree Preservation Order 774 is confirmed as originally made and served.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.

**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 five mature oak trees between Fairacre Rise, Hollam Drive and Oxleys Close, Fareham.

## **INTRODUCTION**

5. On 14 April 2022 a provisional order was made in respect of five pedunculate oak trees situated to the rear of 38 to 50 Fairacre Rise. The trees are large mature specimens, which are clearly visible from several public vantage points and make a significant contribution to the visual amenity of the area.
6. The oak trees are estimated to be 100 – 150 years old and therefore pre-date the surrounding residential development. The trees form part of a historic field boundary, running east to west and are now situated at the end of the long rear gardens in several properties in Fairacre Rise. To the north is a private service road and garages benefitting properties in Hollam Drive and accessed from Oxleys Close (Site plan at Appendix A)

## **OBJECTIONS**

7. One objection has been received following the serving of the tree preservation order from the owner of 20 Hollam Drive. The main grounds of objection are as follows:
  - The trees are not prominent and public views of them are limited.
  - The trees have been allowed to grow to an inappropriate size for their location.

- The trees are causing damage to the private access road and potentially the surface water drainage.
- The trees continually shed debris over the access road and parking areas.
- The trees are not in good condition and should they break or fall could hit several properties or parked vehicles, which often have to be moved during a storm.
- The trees are imbalanced and oak T4 has a distinct lean to the north.

### **PUBLIC AMENITY**

8. The five oak trees are visible from several public vantage points - Oxleys Close to the northwest, Hollam Drive to the north, Fairacre Rise to the east and south. The trees by virtue of their size and prominence, make a significant contribution to the public amenity of the area (Photographs at Appendix B).

### **SIZE AND CONDITION OF TREES**

9. The Council acknowledge the amount of noise and movement associated with trees during high winds can be unnerving. However, a perceived threat of failure is not justification to prevent serving a preservation order on a tree.
10. During the assessment of the five oak trees no defects or abnormalities were observed to suggest the subject trees pose any 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.
11. Trees are dynamic, living organisms and their physiology and structure (condition) are subject to change throughout their lifetime. All observations and recommendations are relative to the trees at the time of inspection / assessment. Because of this, trees should be inspected regularly by an arboriculturist, which is the duty of the tree owner.
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.

### **DAMAGE TO PROPERTY**

13. The Council has not received any evidence to suggest the subject oak trees are the cause of any damage to property. In circumstances where a protected tree has been identified as a material cause of structural damage, 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.
14. Damage, distortion, or movement caused to lightly loaded structures such as paths, surfacing, walls and fences adjacent to large trees is not uncommon. Whilst this can be slightly burdensome, minor remedial repairs will usually be sufficient to ensure they can co-exist with a tree and remain fit for purpose.

## **TREE RELATED DEBRIS**

15. 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.
16. 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.
17. 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**

18. 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.
19. 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**

20. Based on the submitted information the Council will not be exposed to any risk associated with the confirmation of TPO 774 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**

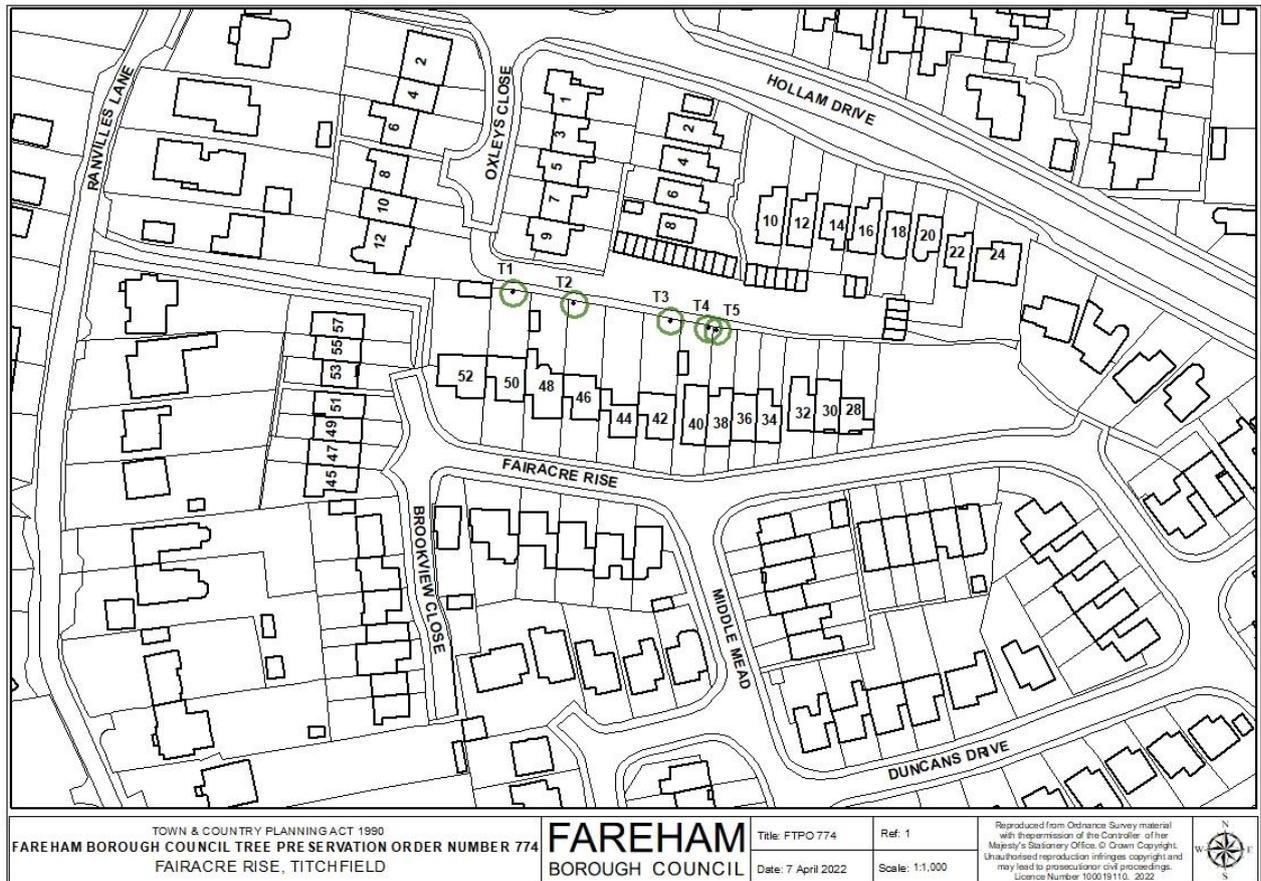
21. When making tree preservation orders the Council endeavours to consider the rights of those affected and use their powers responsibly. The rights of the individual must be balanced against public expectation that the planning system will protect trees when their amenity value justifies such protection.
22. 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 five pedunculate oaks are not sufficient to outweigh their public amenity value.
23. Officers therefore recommend that Tree Preservation Order 774 is confirmed as originally made and served.

**Background Papers:** TPO 774.

**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*.

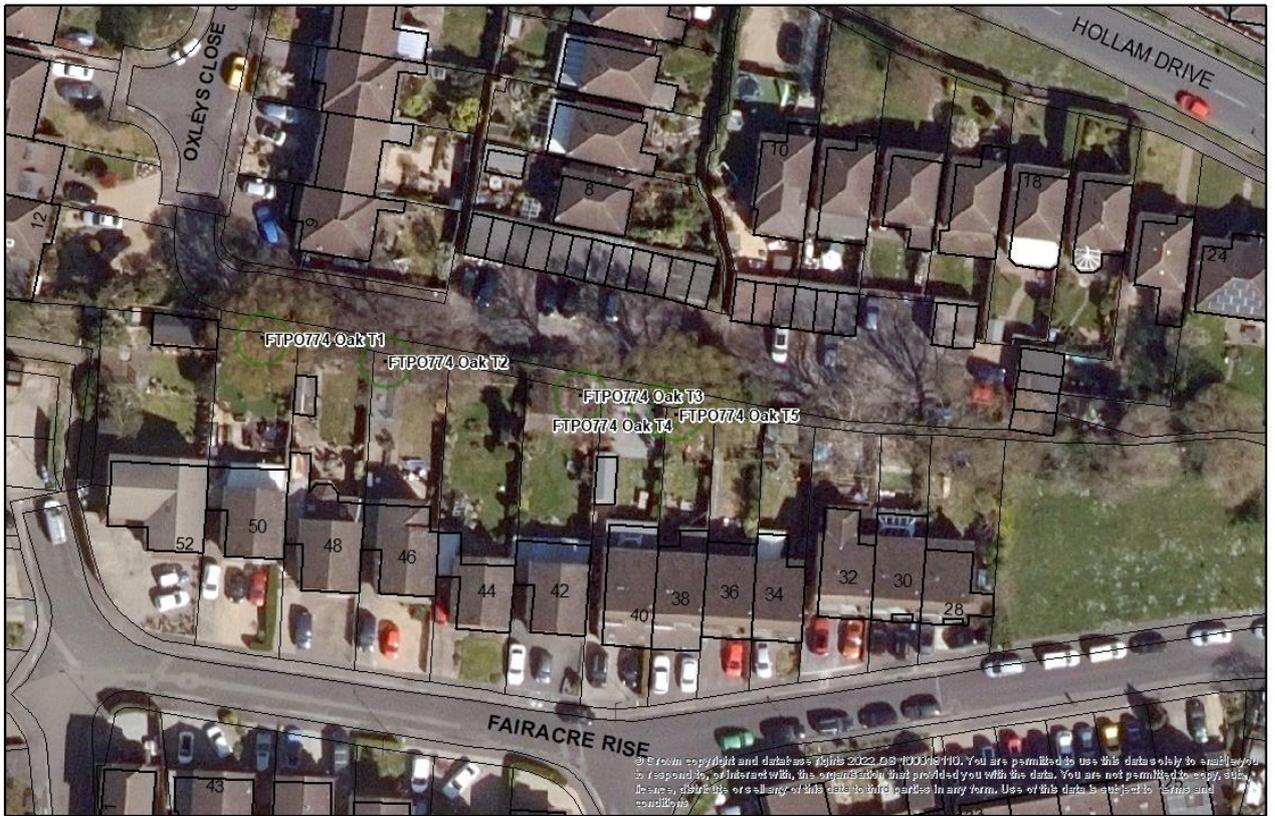
**Enquiries:** For further information on this report please contact Paul Johnston. (Ext 4451).

## APPENDIX A – SITE PLAN





<p><b>Tree Preservation Order No. 774</b> FAIRACRE RISE</p>	<p><b>FAREHAM</b> BOROUGH COUNCIL</p>	<p>Ref: 1</p>	<p>Date: 14 April 2022</p>	<p>Scale: 1:1000</p>	
<p>Reproduced from Ordnance Survey material with the permission of the Controller of Her Majesty's Stationary Office. © Crown Copyright. Unauthorised reproduction infringes copyright and may lead to prosecution or civil proceedings. Licence Number 100019110. 2022</p>					



<p><b>Tree Preservation Order No. 774</b> FAIRACRE RISE</p>	<p><b>FAREHAM</b> BOROUGH COUNCIL</p>	<p>Ref: 1</p>	<p>Date: 14 April 2022</p>	<p>Scale: 1:500</p>	
<p>Reproduced from Ordnance Survey material with the permission of the Controller of Her Majesty's Stationary Office. © Crown Copyright. Unauthorised reproduction infringes copyright and may lead to prosecution or civil proceedings. Licence Number 100019110. 2022</p>					

**APPENDIX B – Oak T1 viewed from east on access road**



**Oak T1 viewed from west on access road**



Oaks T2 and T3 viewed from west on access road



Oak T2 viewed from west on access road



Oaks T3, T4 and T5 viewed from west on access road



T1 and T2 viewed from Oxleys Close



Oaks T3, T4 and T5 viewed from Hollam Drive



T1 – T5 viewed from Fairacre Rise



T1 – T5 viewed from Fairacre Rise open space

