

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date 11 October 2023

Report of: Director of Planning and Regeneration

Subject: TREE PRESERVATION ORDER 780: 9 - 11 BERRY LANE, HILL HEAD

SUMMARY

The report details an objection to the making of a provisional order in May 2023 and provides officer comment on the points raised.

RECOMMENDATION

That Tree Preservation Order 780 be confirmed.

BACKGROUND

1. Section 198 of the Town and Country Planning Act 1990 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.

2. 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.

3. A tree preservation order was made to protect two pedunculate oak trees adjacent to 9 & 11 Berry Lane.

INTRODUCTION

4. In early May the Council received communication from Hampshire County Council (Highways) Arboriculture Team as to whether two oak trees in Berry Lane were protected. The two trees are situated on the highway margin, adjacent to residential properties and Hampshire highways had received a request to lop the trees. As there was a potential threat to the trees, Officers considered whether they were worthy of a tree preservation order.
5. On 18 May 2023, a provisional order was made in respect of two pedunculate oak trees, one in front of 9 Berry Lane and one in front of 11 Berry Lane. The trees are mature specimens, which are prominent in the street scene and make a significant contribution to the visual amenity of the area.

OBJECTIONS

6. One objection has been received from the owner of no 11 Berry Lane. The main grounds of objection are as follows:
 - The roots are encroaching across the front boundary towards the main sewer in Berry Lane.
 - The trees are pushing over the trees in the front garden.
 - The trees require maintenance and the neighbour has to pay to prune back any encroaching branches to exercise their common law right.
 - Why should the neighbour have to pay for work on Hampshire County Council's trees.

PUBLIC AMENITY

7. The oak trees are situated on the margin of the public highway, adjacent to the property frontages and are clearly visible from Berry Lane. The trees are large prominent specimens, which make a significant contribution to the wider public amenity of the area (Photographs at Appendix B).

8. The trees are approximately 13 metres and 17 metres to the southwest of the dwellings at 9 & 11 Berry Lane respectively (Site map at Appendix A).

RISK OF DAMAGE TO PROPERTY

9. The Council has not received any evidence to suggest the subject oaks are the cause of any damage to property due to tree root activity. In circumstances where a protected tree has been identified as a material cause of structural 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.
10. Root ingress into older drains can occur and generally involves roots exploiting a defect in the drain itself, which allows water to escape into the surrounding soil, where any tree roots will proliferate in response to the moisture source and potentially enter the drain. Generally, such damage and any root ingress is easy to repair and tree removal is not necessary.
11. The growth of larger more dominant trees will influence any neighbouring trees that are younger and smaller. The two subject oak trees predate both properties and will, by virtue of their age and size, dominate any subsequent planting.
12. 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

13. 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.
14. 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

15. The Council will not be exposed to any significant risk associated with the confirmation of TPO 780 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

16. 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.

17. 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.

18. Officers therefore recommend that Tree Preservation Order 780 is confirmed as originally made and served.

Background Papers: TPO 780.

Reference Papers: Forestry Commission: The Case for Trees – 2010. Planning Practice Guidance - Tree Preservation Orders (2014) and The Law of Trees, Forests and Hedges – *Charles Mynors*.


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

APPENDIX A – TPO SITE MAP

FAREHAM

BOROUGH COUNCIL




<p>TOWN & COUNTRY PLANNING ACT 1990 FAREHAM BOROUGH COUNCIL TREE PRESERVATION ORDER NUMBER 780 9 - 11 Berry Lane, Hill Head</p>	<p>Title: FTPO 780 Date: 11 October 2023</p>	<p>Ref: 1 Scale: 1:1,000</p>	<p>Reproduced from Ordnance Survey material with the permission of the Controller of Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes copyright and may lead to prosecution or civil proceedings. Licence Number 100019110. 2023</p> 
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APPENDIX B – T1 VIEWED FROM BERRY LANE (WEST)



T1 VIEWED FROM BERRY LANE (WEST)



T1 VIEWED FROM BERRY LANE (EAST)



T2 VIEWED FROM BERRY LANE (WEST)



T2 VIEWED FROM BERRY LANE (EAST)

