

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date 13 December 2023

Report of: Director of Planning and Regeneration

Subject: TREE PRESERVATION ORDER (TPO 784) – 9 & 11 BUTTERCUP WAY, PARK GATE – THREE PENDUNCULATE OAK TREES

SUMMARY

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

RECOMMENDATION

That Tree Preservation Order 784 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 three pedunculate oak trees adjacent to 9 & 11 Buttercup Way.

INTRODUCTION

4. In early September the Council received communication from the owner of no 9 Buttercup Way as to whether three oak trees adjacent their property were protected. The three trees are situated on frontage land adjacent to 9 Buttercup Way. As there was a potential threat to the trees, Officers considered whether they were worthy of a tree preservation order.
5. On 7 September 2023, a provisional order was made in respect of three pedunculate oak trees in front of 9 Buttercup Way. 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 9 Buttercup Way. The main grounds of objection are as follows:
 - The trees are causing damage to parked vehicles.
 - The trees are preventing the use of the driveway due to bird droppings.
 - The trees are now getting too close to the house day by day.
 - The increased maintenance of the cars and the driveway is expensive, causing significant stress.
 - There are enough trees around the property and in the vicinity.
 - Our children can't play outside due to bird droppings.

PUBLIC AMENITY

7. The trees are situated approximately 9 metres to the southeast of the adjacent dwellings (Site map at Appendix A).
8. The three oak trees are clearly visible from the public highway, adjacent to the property frontages. The trees are large prominent specimens, which make a significant contribution to the character of the street scene and to local public amenity (Photographs at Appendix B).

PLANNING HISTORY - TPOs

9. TPO 83 was made on 20 December 1985 to protect those trees retained at the time of the Buttercup Way development. The TPO was an Area Order protecting 40 oak trees and 1 Silver birch.
10. The Council reviewed TPO 83 in 2013 and subsequently served TPO 655 on 17 May 2013 to protect 8 oak trees and one field maple. TPO 655 was confirmed as made and served on 11 September 2013 and TPO 83 was revoked on the same date.
11. The three oak trees subject to TPO 784 appear to have been protected by the original TPO 83, but were excluded from TPO 655. The reason for this may have been because they were considered to be on public open space, as with the group of adjacent oak trees situated on the other side of the driveway.
12. There is an area of public open space at the northeast end of the street and another linked to a greenway to the southwest, opposite no's 5 – 11 Buttercup way (map and aerial photo at Appendix A).

DAMAGE TO PROPERTY

13. 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.
14. The periodic clearing of debris, albeit an inconvenience, is considered to be part of routine household maintenance when living in close proximity to trees and provides no justification for their removal.
15. 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 many benefits to our communities.

TREE WORK APPLICATIONS

16. 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.
17. 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

18. The Council will not be exposed to any significant risk associated with the confirmation of TPO 784 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

19. 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.
20. Tree preservation orders seek to protect trees in the interest of public amenity. Therefore, the exclusion of trees from an order should only be sanctioned where their 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 oaks are not sufficient to outweigh their public amenity value.
21. Officers therefore recommend that Tree Preservation Order 784 is confirmed as originally made and served.


Background Papers: TPO 784.

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 MAPS



<p>Fareham Tree Preservation Order No. 784 FRONT OF 9 BUTTERCUP WAY, PARK GATE</p>	<p>FAREHAM BOROUGH COUNCIL</p>	<p>Date: 13 December 2023</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>	<p>Ref: 1 Scale: 1:1,000</p> 
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APPENDIX B – OAKS T1, T2 & T3 VIEWED FROM BUTTERCUP WAY







