

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date 20 November 2013

Report of: Director of Planning and Environment

Subject: FAREHAM TREE PRESERVATION ORDER 652
The Glade, The Copse & Kingston Gardens, Fareham.

SUMMARY

The report details objections to a provisional order made in July 2013 and provides officer comment on the points raised.

RECOMMENDATION

That Fareham Tree Preservation Order 652 is confirmed subject to a minor modification as set out in this report.

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 2012 - 2017.

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. TPO 33 was made on 19 October 1981 and subsequently confirmed on 14 January 82. TPO 33 was reviewed in 2012 and a new order made to protect those trees currently worthy of protection.

INTRODUCTION

5. On the 9 July 2013 a provisional order was served in respect of 40 individual trees - 4 ash, 1 beech, 1 birch, 1 horse chestnut, 30 oak, 1 rowan and 1 yew and woodland (W1 – oak)

OBJECTIONS

6. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 one objection has been received from the owner of 1 The Glade in relation to T6 ash on the following grounds:
 - The root system of the ash is travelling underneath the driveway causing it to lift, crack and subside.
 - Some of the branches of the tree are extending across the front of the property, which hit the building in windy conditions.

No other objections to the making of the order have been received.

COMMENT

7. The driveway is of concrete construction laid in sections and is believed to date from the original construction of the development in the early 1980s. The section that abuts the highway footpath is cracked in several places across its width and some lifting is visible on the edge adjacent to the ash tree circa 1.5 metres away (see photos at Appendix A).
8. Whilst roots from the ash being the potential cause of the damage to the drive cannot be dismissed the damage pattern is extensive and could be indicative of wear and tear given the age of the structure. Excavation of the driveway construction and confirmation of existing tree roots beneath would be necessary to establish the cause. It may be possible to sever and remove any offending roots carefully and then repair or indeed the replace the driveway surface.
9. The responsibility for a tree rests with the owner of the land on which it is situated and this includes potential liability for any damage caused by a tree. Neighbours have the right to prune back branches that encroach onto their property from a third party tree and such works would be subject to an application under the TPO.

IMPACT ON 1 THE GLADE

10. The ash is situated approximately 6 metres to the north east of the dwelling in an area of landscaping adjacent to the highway. The subject tree is one of a pair of ash trees, which are in a prominent position and make an important contribution to the character and public amenity of The Glade.
11. Tree preservation orders seek to protect trees in the interest of public amenity; therefore it follows that the removal of a protected tree should only be sanctioned where its public amenity value is outweighed by other considerations. In this instance Officers consider that the reasons for excluding the subject ash from the TPO are not sufficient to outweigh its public amenity value.

TREE WORK APPLICATIONS

12. 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. 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.
13. The existence of a TPO does not preclude the carrying out of arboricultural 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 8 weeks of registration.

RISK ASSESSMENT

14. The Council will not be exposed to any significant risk associated with the confirmation of the FTPO 652 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

15. 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 the rights of the public to expect the planning system to protect a tree when its amenity value justifies such protection.
16. Officers therefore recommend that ash T6 remains protected by Tree Preservation Order 652. However, members are invited to reach their own conclusions.
17. Three trees require minor amendments to their positions on the TPO map following information from householders in terms of their land ownership. It is therefore recommended that Fareham Tree Preservation Order No.652 be confirmed with the following minor modification: the re-plotting of T1, T2 and T40.
18. Upon confirmation of TPO 652 the existing FTPO 33 shall be revoked as where appropriate those trees currently worthy of protection have been included in the new TPO.

Background Papers: TPO 652.

Reference Papers: Tree Preservation Orders – A Guide to the Law and Good Practice, Fareham Borough Council Tree Strategy 2012 – 2017 and The Law of Trees, Forests and Hedges (second edition) – *Charles Mynors*.

Enquiries:

For further information on this report please contact Paul Johnston, Principal Tree Officer (Ext 4451)

Appendix A – damage to driveway at 1 The Glade



T6 & T7 viewed from The Glade

