

# FAREHAM

## BOROUGH COUNCIL

### Report to Planning Committee

**Date**                    **20 November 2013**

**Report of:**            **Director of Planning and Environment**

**Subject:**              **FAREHAM TREE PRESERVATION ORDER 684**  
**6 and 8 Abshot Close, Titchfield Common.**

#### **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 684 is confirmed as 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 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. T2 is a large mature pedunculate oak situated on the rear boundary of 8 Abshot Close, the trunk straddles the boundary and as such the Council considers the tree to be a boundary feature, which is not under its control or maintenance. Tree Officers have had previous dialogue with the owner of 8 Abshot Close in terms of the tree's ownership and the desire of the householder to have the tree reduced in size. Some recent pruning has been undertaken to the western side of the crown and Tree Officers have stated that they would be concerned if the tree was to be drastically pruned or indeed removed completely.
5. In June 2013 Officers were made aware that the subject oak may be under threat of removal.

## **INTRODUCTION**

6. On the 5 July 2013 a provisional order was served in respect of 2no oak trees situated to the rear of no's 6 and 8 Abshot Close. Both trees are clearly visible from several public vantage points including Oriel Drive open space; Oriel Drive, St Edmund Close, Abshot Close and Warsash Road (see Appendix A).

## **OBJECTIONS**

7. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 one objection has been received from the owner of 8 Abshot Close in relation to T2 oak on the following grounds:
  - In the twenty years the householder has lived at the property the oak has grown significantly and is having an adverse impact on the enjoyment of the property.
  - Lights are required to be on inside during the day, the patio is being damaged by tree roots and the garden is unusable.
  - The Council has misled the owner in terms of the ownership of the oak tree and have been involved in discussions as to what could be done to the tree by way of pruning.
  - The owner would have taken steps to manage the size of the oak before now and maintained it in proportion to adjacent buildings had ownership been made clearer.
  - Therefore it is quite unreasonable for a TPO to be made immediately after ownership of the tree had been confirmed.

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

## **COMMENT**

8. Tree Officers have previously met with the owner of 8 Abshot Close on several occasions to discuss the subject tree and regarded the relationship between both parties as one of negotiating a compromise that balanced the desire to reduce the impact of the tree on the property and maintain the value of the tree in terms of its contribution to local public amenity. The Council's position is clear in that the oak is a boundary tree over which it has no direct responsibility. The purpose of these discussions was not to mislead the householder, merely confirm that the Council view the oak as an important specimen that it would be concerned to see significantly pruned or indeed removed.
9. The characteristics associated with different tree species vary greatly; some are more burdensome than others and there can be considerable subjectivity amongst the public as to why a certain tree species is inappropriate. A judgement has to be made in terms of balancing the many positive benefits trees provide with any negative characteristics associated with them. The Council's Tree Strategy acknowledges that a conflict of interest exists because for many residents trees can be a source of frustration. However, these very same trees make Fareham a pleasant place and provide multiple benefits to our communities.

## **IMPACT ON 8 ABSHOT CLOSE**

10. The oak is situated on the eastern boundary approximately 8 metres from the façade of the original building and 5 metres from the single storey extension. The oak predates the Abshot Close development by a significant margin and is situated much closer to dwellings than would be permitted in a modern planning context. The tree has a significant impact on the use and enjoyment of the property in terms of dominance and shading; and there is some damage to the paved surfaces in the rear garden, which are believed to have been installed by a previous owner over twenty years ago.
11. The subject oak is a large, prominent specimen of good form and makes a significant contribution to the character and public amenity of its surroundings. Officers suggest that by virtue of the tree's age and size the potential implications on the use and enjoyment of the property would have been apparent at the time the development was built in the mid-1960s and at any time since.
12. In general terms the higher the amenity value of a protected tree and the greater the impact of pruning or removing it on the amenity of the area, the stronger the reasons needed in support of such proposals.
13. 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 oak from the TPO are not sufficient to outweigh its public amenity value and thereby justify modification of the order.

## **TREE WORK APPLICATIONS**

14. 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.
15. 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**

16. The Council will not be exposed to any significant risk associated with the confirmation of the FTPO 684 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**

17. 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.
18. In this instance Officers acknowledge the subject oak is a large and dominant tree, which is positioned closer to property than one would expect. The public benefit the tree provides is considered to be significant and therefore in Officers' opinion the protection of the oak T2 should prevail in this case. However, members are invited to reach their own conclusions.
19. Officers therefore recommend that Tree Preservation Order 684 is confirmed as originally made and served.

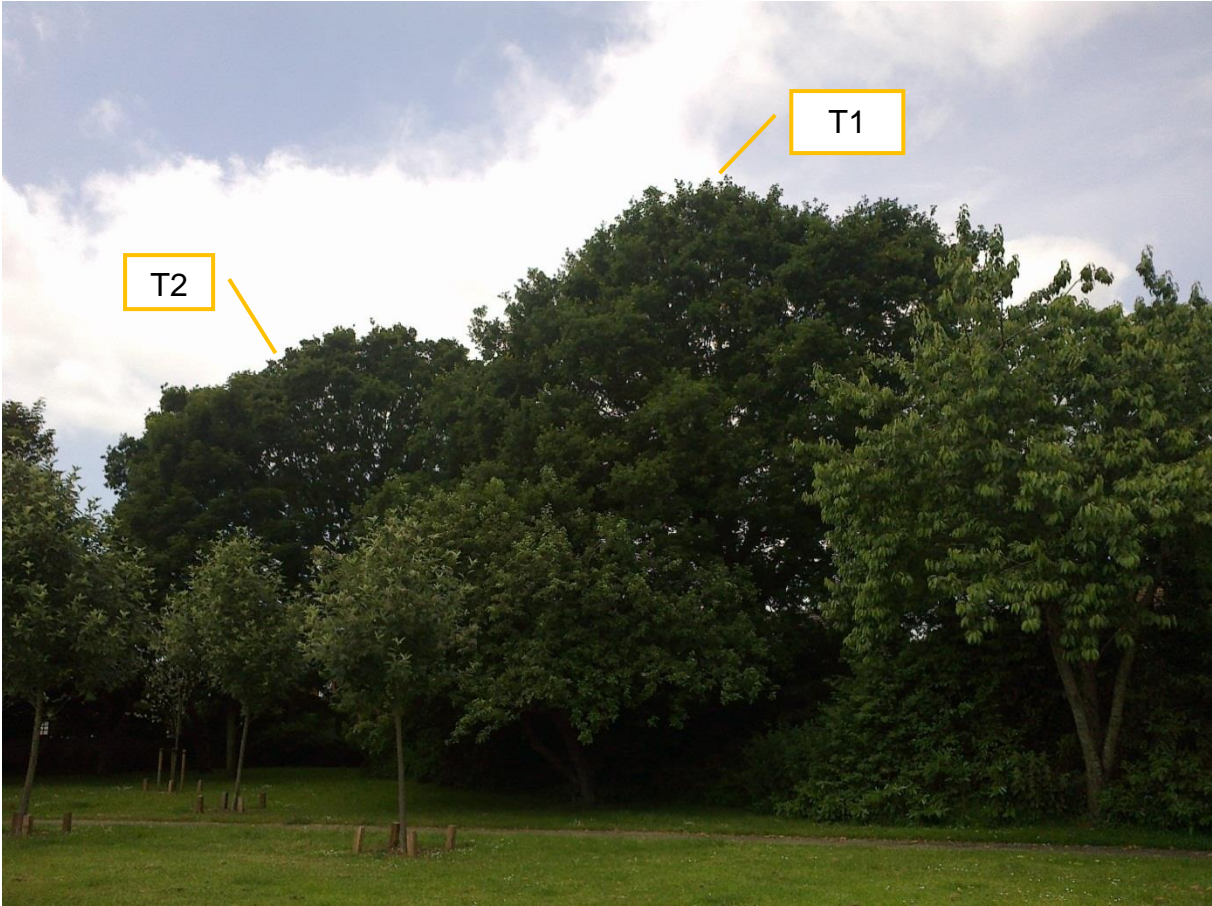
**Background Papers:** TPO 684.

**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)

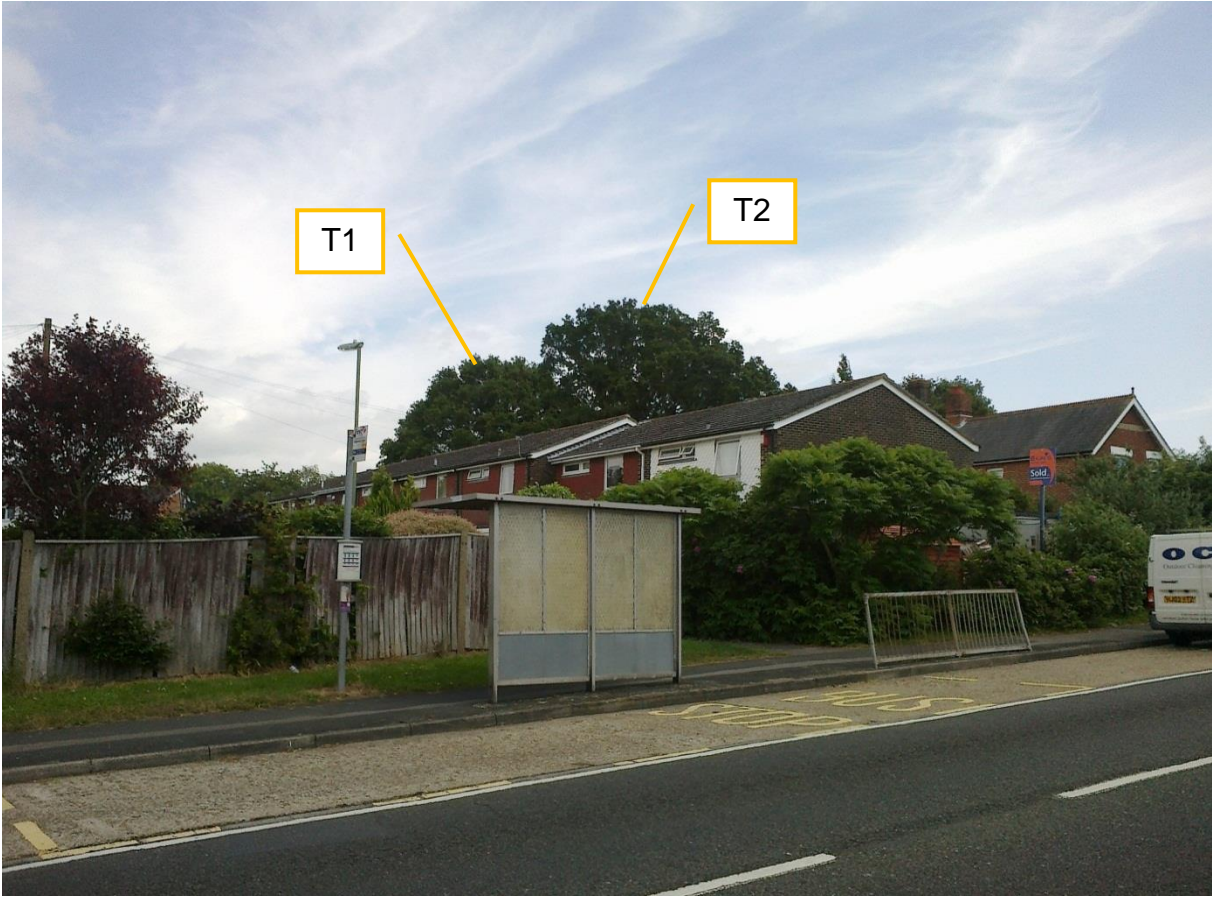
Appendix A: T1 and T2 viewed from public open space to east.



T1 and T2 viewed from Abshot Close to west



**T1 and T2 viewed from Warsash Road to southwest**



**Entrance to rear garden from public open space**



T2 situated on east boundary of 8 Abshot Close.

