

OFFICER REPORT FOR COMMITTEE

DATE: 10 April 2024

P/24/0296/TO
Ms HELEN STANIFORD

FAREHAM NORTHWEST WARD
AGENT: MWA ARBORICULTURE

FELL TWO OAK TREES PROTECTED BY TPO 304 & 305

37 HIGHLANDS ROAD, FAREHAM

Report By

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1.0 Introduction

1.1 This application is being presented to the Planning Committee for a decision as the applicant is a close relation of a Member of this Council.

2.0 Site Description

2.1 37 Highlands Road is a detached property situated on the south side of Highlands Road within the designated urban area. The property comprises a two-storey detached house built in 1928. It has been extended with a single-storey addition to the rear built in 2019. External areas comprise gardens to the front and rear.

2.2 The site is generally level with no adverse topographical features.

3.0 Description of Proposal

3.1 The application is for the removal of two mature oak trees, which have been implicated as a material cause of subsidence damage to the dwelling. The trees pre-date the dwelling and are protected by a tree preservation order. Damage is reported to have first been observed in late 2022. There is no history of previous subsidence claims.

4.0 Policies/Regulations

4.1 The following policies from the Fareham Local Plan 2037 apply to this application:

- NE6: Trees, Woodland and Hedgerows

4.2 In addition, The Town and Country Planning (Tree Preservation) (England) Regulation 2012 (as amended) are relevant, and set out the provisions for the creation of Tree Preservation Orders, and implications such as applications to lop, top or fell such trees.

5.0 Relevant Planning History

5.1 The following planning history is relevant:

P/22/1739/TO	Reduce height by 5 metres and spread by 2 metres of one oak tree
06/12/2022	Consent
P/11/0057/TO	Selected branch reduction to rebalance one oak tree
04/03/2024	Consent
P/04/0812/TO	Reduce one oak and fell several trees
30/06/2004	Consent
P/97/1115/TO	Fell one oak tree
15/12/1997	Consent

6.0 Representations

6.1 None received.

7.0 Consultations

7.1 None undertaken.

8.0 Planning Considerations

8.1 Policy NE9 (Trees, Woodland and Hedgerows) sets out that the removal of protected trees...will only be permitted in exceptional circumstances. External damage has been noted to the rear elevation, the left side elevation, the right-side elevation and the front elevation. Internally damage affects the lounge, bedroom 2, the landing, the master bedroom and bedroom 3.

8.2 The timing of the event, the presence of shrinkable clay beneath the foundations and the proximity of vegetation where there is damage indicates the shrinkage to be root induced – moisture abstraction at depth. The cause of the problem, soil dehydration, is reversible. Clay soils will rehydrate in the winter months, causing the clay to swell and the cracks to close. Provided the cause of movement is dealt with there should not be a recurrence of movement.

8.3 Generally the necessary subsidence site investigations involve trial pits to determine the depth and type of foundations, boreholes to determine the nature of the subsoil, the influence of any roots and monitoring to establish the rate and pattern of movement. The monitoring data provided must be sufficient to show a pattern of movement consistent with the influence of the

vegetation and therefore it may be necessary to carry out the monitoring for up to a 12-month period over a winter and summer season.

8.4 Summary of the key points in this case:

- Engineering opinion is that the damage is related to clay shrinkage subsidence.
- There is significant vegetation present with the potential to influence soil moisture and volumes below foundation level.
- Roots have been observed to the underside of the foundations and identified samples correspond to vegetation identified on site as oak.
- Laboratory tests indicate the soil has a high plasticity and hence will shrink and swell with changes in moisture content.
- Moisture content values confirm significant desiccation has occurred within bore hole 1.
- The arboricultural report confirms that the two oaks (T1 & T2) have been identified as the cause of the damage to the building and removal of the offending trees is recommended to help prevent any further foundation movement.

8.5 Part 6 of the Regulations sets out when compensation is payable (Reg 24 of the 2012 Trees Regulations (as amended)), and states:

1. If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—
 - a) the refusal of any consent required under these Regulations;
 - b) the grant of any such consent subject to conditions; or
 - c) the refusal of any consent, agreement or approval required under such a condition,that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

8.6 The Council can only make a decision whether or not to grant the consent under the TPO, there is no mechanism available for negotiation. In the event that the Council refuses this application, someone seeking to claim for compensation only needs to show that they have incurred loss or damage as a result of the Council's refusal. Officers are not aware of circumstances where someone could save money by keeping the tree and investing in other measures, as removing the tree is always going to be the cheapest solution and removes the cause.

8.7 There are precedents in law for subsidence cases involving protected trees, where local authorities have resisted the removal of a tree implicated in a subsidence event where site investigations demonstrate that on the balance

of probabilities the tree is a material cause. Officers are satisfied that sufficient investigations have been undertaken to demonstrate the influence the Oak trees are having on the building and therefore it is the probable cause. Having carefully reviewed all the submitted information Officers conclude that regrettably consent should be given to remove the two Oak trees to avoid potential financial claims against the Council, which would run into tens of thousands of pounds.

- 8.8 Should Members approve the recommendation to fell the two trees, it would be appropriate to impose a condition securing two replacement trees. In light of the space constraints and the scale of the existing Oak trees, Officers believe any replacement should be subject to discussions with the applicant.

9.0 Recommendation

- 9.1 **GRANT CONSENT**, subject to the following Condition:

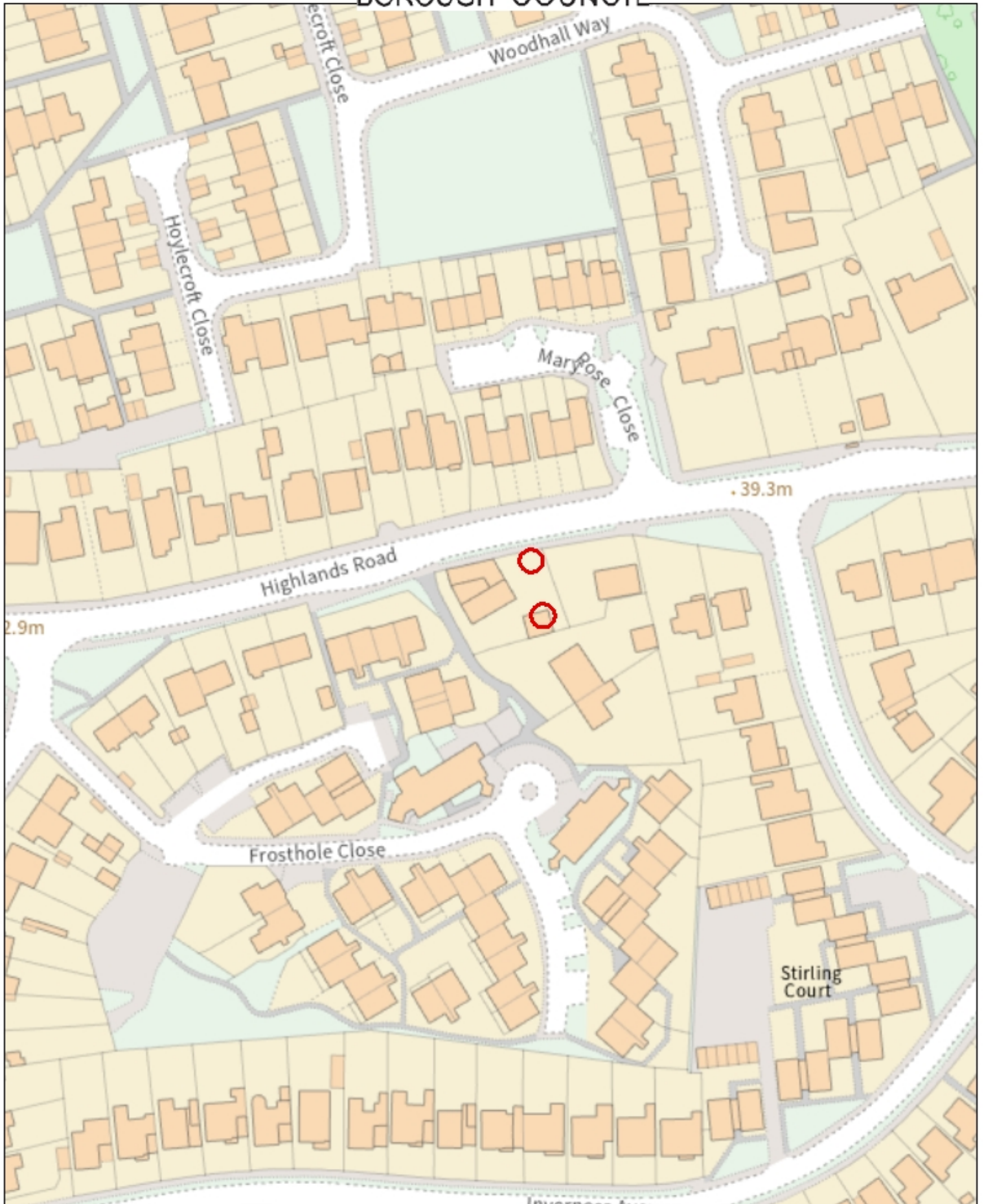
Two replacement trees – size and species to be agreed.

10.0 Background Papers

- 10.1 Application documents and all consultation responses and representations received as listed on the Council's website under the application reference number, together with all relevant national and local policies, guidance and standards and relevant legislation.

FAREHAM

BOROUGH COUNCIL



37 Highlands Road
Fareham

Scale 1:1,250



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