

## OFFICER REPORT FOR COMMITTEE

DATE: 10 JULY 2024

P/24/0607/TO  
IG ENVIRONMENTAL SERVICES

STUBBINGTON  
AGENT: IG ENVIRO' SERVICES

FELL ONE OAK PROTECTED BY TPO 653 – T1

36 BURNT HOUSE LANE, STUBBINGTON

### **Report By**

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#### **1.0 Introduction**

1.1 The application is presented to the Planning Committee for determination in light of the number of representations received.

#### **2.0 Site Description**

2.1 The oak tree is located within the rear garden of number 36, a property on the west side of Burnt House Lane.

2.2 Immediately to the south and southwest of the oak tree are properties served by Darren Close. To the north and northwest of the oak tree are properties within Ennerdale Road.

2.3 The oak tree pre-dates the surrounding residential development and is protected by a tree preservation order (number 653).

#### **3.0 Description of Proposal**

3.1 The application is for the removal of one mature oak tree at 36 Burnt House Lane, which has been implicated as a material cause of subsidence damage to the dwelling at 8 Darren Close.

3.2 During the summer of 2022, cracking was noted to the interior and exterior of the building. The insured instructed a survey report which concluded that seasonal foundation movement had caused the damage.

#### **4.0 Policies**

4.1 The following policies apply to this application:

- NE6: Trees, Woodland and Hedgerows.

## **5.0 Relevant Planning History**

5.1 The following planning history is relevant:

<b>P/23/1047/TO</b>	Oak - crown lift to 5 metres above ground level and reduce overextended branches on north side of crown
<b>Consent</b>	03/08/2023
<b>P/13/0224/TO</b>	Oak – reduce crown by 1.5 – 2 metres
<b>Refuse</b>	09/04/2013

## **6.0 Representations**

6.1 Seven representations have been received. Five objecting to the felling of the oak, including the tree owner, on the following grounds:

- The buildings foundations are insufficient and should be improved so the tree can remain.
- There are alternative solutions to removing this important tree.
- The foundations should be strengthened / underpinned.
- The oak tree supports many species who rely on the tree as habitat.
- Is it beyond any doubt the tree is causing the building to move
- The tree is very old and was there before the houses.

6.2 One letter of support has been received from the owner of the damaged property – 8 Darren Close and one comment questioning the need to remove the tree if there are alternative solutions.

## **7.0 Consultations**

7.1 None undertaken.

## **8.0 Planning Considerations**

8.1 Policy NE6 (Trees, Woodland and Hedgerows) sets out that the removal of protected trees...will only be permitted in exceptional circumstances.

8.2 Damage to the property (cracking) was first noted in the Summer of 2022. The pattern and nature of the cracking was indicative of an episode of subsidence. The cause of movement is consistent with clay soil shrinkage.

8.3 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 during 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.

- 8.4 No structural changes to the building have been carried out which have contributed to the current subsidence related damage and no previous underpinning has taken place.
- 8.5 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.
- 8.6 Summary of the key points in this case:
- Engineering opinion is that the damage is related to clay soil 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 plasticity and hence will shrink and swell with changes in moisture content.
  - Level monitoring during 2023 indicates that there was significant recovery in soil moisture compared to summer 2022 which was notably hotter and dryer.
  - The arboricultural report confirms that the oak has been identified as the cause of the damage to the property and removal of the offending tree is recommended to help prevent any further foundation movement.
- 8.7 The Council can only make a decision whether or not to grant the consent under the tree preservation order- there is no mechanism available for the Council to negotiate alternative solutions. 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.
- 8.8 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. There have been significant claims for damages on the basis the local authority was made aware of the

damage and failed to take the necessary action to abate the nuisance or grant consent under the TPO.

8.9 Officers are satisfied that sufficient investigations have been undertaken to demonstrate the influence the Oak tree is 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 granted to remove the Oak tree to prevent ongoing damage to property and avoid potential financial claims against the Council.

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

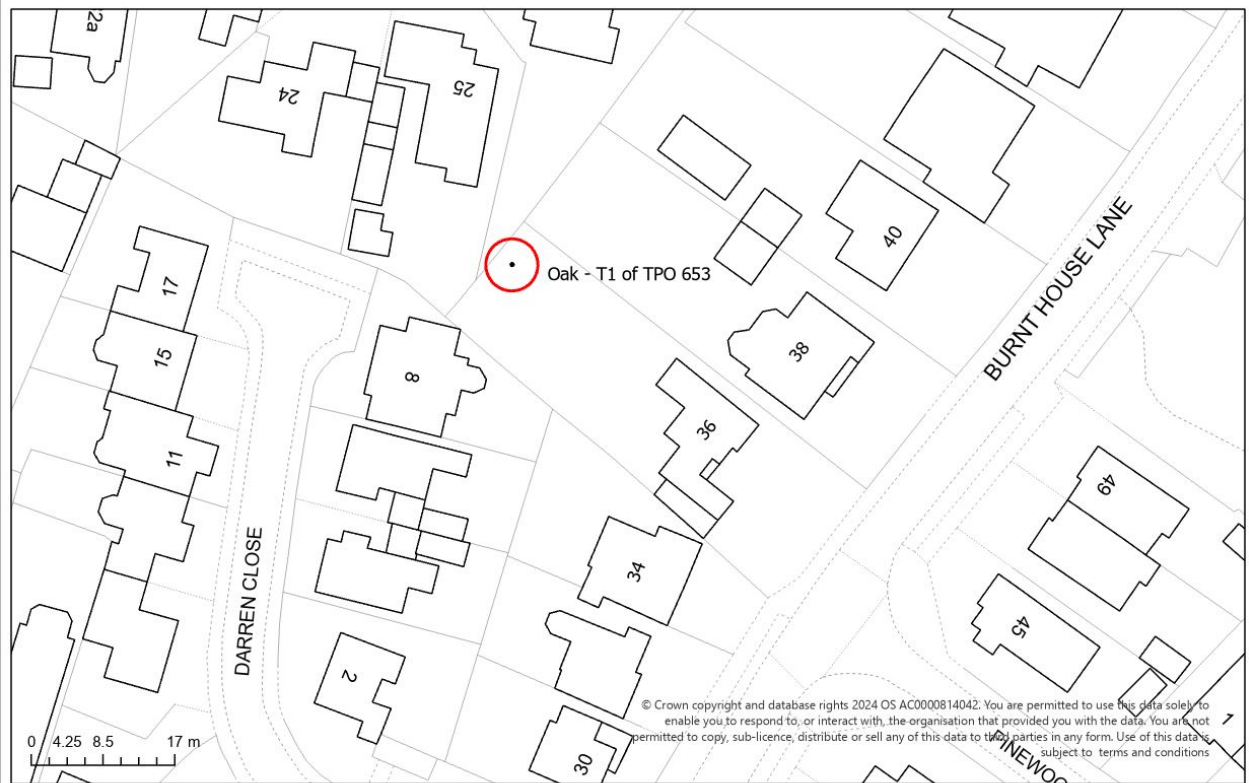
10.0 ***Recommendation***

10.1 **GRANT CONSENT**, subject to the following Condition:

**Replacement tree** – size and species to be agreed.

**11.0 *Background Papers***

11.1 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.



<p>FAREHAM BOROUGH COUNCIL TREE PRESERVATION ORDER NUMBER 653 T1 OAK - REAR GARDEN OF 36 BURNT HOUSE LANE</p>	<p><b>FAREHAM</b> BOROUGH COUNCIL</p>	<p>Title: FTPO 653 Date June 26, 2024</p>	<p>Ref. 1 Scale 1:500</p>	<p>© Crown copyright and database rights 2024 OS AC0000814042. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.</p>	
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