OFFICER REPORT FOR COMMITTEE
DATE: 11/09/2024

P/24/0803/TO **TITCHFIELD WARD**
360GLOBALNET **AGENT: 360GLOBALNET**

FELL TWO OAK TREES PROTECTED BY TPO 629 – T11 & T12

35 HEATH LAWNS, FAREHAM

Report By
Paul Johnston – direct dial 01329 824451

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 two oak trees are situated within the rear garden of number 35 Heath Lawns, a detached property on the north side of this residential street.

2.2 Immediately to the north of the application oak trees are properties served by Southmead Road.

2.3 The oak trees pre-date the surrounding residential development and are protected by tree preservation order no 629 (Site plan at Appendix A).

3.0 Description of Proposal
3.1 The application is for the removal of two mature oak trees at 35 Heath Lawns, which have been implicated as a material cause of subsidence damage to the dwelling at 20 Southmead Road – a detached 3-bedroom dormer bungalow constructed in the 1950's.

3.2 During the summer of 2022, cracking appeared in multiple parts of the building, both internally and externally. The householder submitted a claim for subsidence under their building's insurance. Subsequent investigations were undertaken by engineers and arboriculturists, which concluded seasonal foundation movement has caused the damage.

4.0 Policies
4.1 The following policies apply to this application:

<u>Adopted Fareham Local Plan 2037</u>
NE6: Trees, Woodland and Hedgerows.

5.0 Relevant Planning History

5.1 The following planning history is relevant:

P/15/0951/TO	Oak – reduce lower branches back to boundary and one branch back to fork.
Consent	22/10/2015

6.0 Representations

6.1 Five representations have been received objecting to the felling of the two oak trees, 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 these old, important trees.
- The foundations should be strengthened / underpinned.
- Oak trees support many species who rely on the tree as habitat.
- The trees provide many benefits and help to mitigate the impacts of climate change.
- The trees are very old and were there before the houses were built.
- The Council should be retaining mature trees and the TPO should provide the necessary protection.

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.

9.0 Damage to Property

9.1 Damage to the bungalow at 20 Southmead Road (cracking) was first observed in the Summer of 2022. The internal damage has occurred throughout the building on both floors, in the hallway, bedrooms, dining room, lounge, kitchen, landing and bathroom. External damage has affected the front, rear and both side elevations. The pattern and nature of the cracking is indicative of subsidence and the pattern of movement is consistent with clay soil shrinkage.

9.2 The timing of the damage, the existence of shrinkable clay beneath the foundations and the proximity of vegetation (trees) 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 any movement.

9.3 No structural alterations to the building have been carried out which may have contributed to the current subsidence related damage and no previous underpinning has taken place.

9.4 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.

10.0 Site investigations

10.1 Following site investigations carried out on 29th January 2024 a valid claim was accepted by the householder's buildings insurers, due to the influence of nearby vegetation, located to the rear of the bungalow, causing clay shrinkage subsidence.

10.2 **Trial pit / borehole 1** was sunk to the front of the bay, to a depth of 4 metres, which confirmed the foundations to be 500 mm deep, sitting on a concrete footing. The soil descriptions were described as being initially soft/firm clay with rare medium gravel, turning to firm/stiff clay with rare medium gravel. Roots were discovered from nearby vegetation to a depth of 1 metre.

10.3 **Trial pit / borehole 2** was sunk to the rear left of main house, to a depth of 4 metres, which confirmed the foundations to be 800 mm deep, sitting on a concrete footing. The soil descriptions were described as being initially soft/firm clay with rare medium gravel and rootlets, turning to firm/stiff sandy clay with rare medium gravel. Roots were discovered from the nearby vegetation to a depth of 2.5 metres.

10.4 **Trial pit / borehole 3** was sunk to the rear left of the conservatory, to a depth of 4 metres, which confirmed the foundations to be 750 mm deep, sitting on a concrete footing. The soil descriptions were described as being initially soft/firm clay with rare medium gravel and rootlets, turning to firm/stiff slightly sandy clay with rare medium gravel. Roots were discovered from the nearby vegetation to a depth of 2.5 metres.

10.5 The clay soil was confirmed to be desiccated and within a high plasticity soil, we can therefore confirm the influence of the nearby vegetation as the cause

of movement to the property. Level and crack monitoring is in progress and the readings to date show seasonal movement on points 5, 6, 7, 8 & 9.

10.6 The arboricultural report confirms the two oak trees have been identified as the cause of the damage to the property and removal of the offending trees is recommended to help prevent any further foundation movement.

11.0 Determining the application and compensation

11.1 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.

11.2 In the event that the Council refuses the application, the compensation that can be claimed by a person 'for loss or damage' that has been 'caused or incurred in consequence of the refusal of any consent' is going to be the actual sums spent in respect of that loss/damage. Therefore, the Council could be liable to pay compensation for anything that was reasonably foreseeable by the Council at the time it refused consent. This could include the cost of carrying out repairs to the cracks in the property and the cost of implementing an engineering solution (such as underpinning) to prevent further cracking from the trees if they remain.

11.3 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.

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

11.5 Should Members approve the recommendation to fell the trees, it would be appropriate to impose a condition securing 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.

12.0 ***Recommendation***

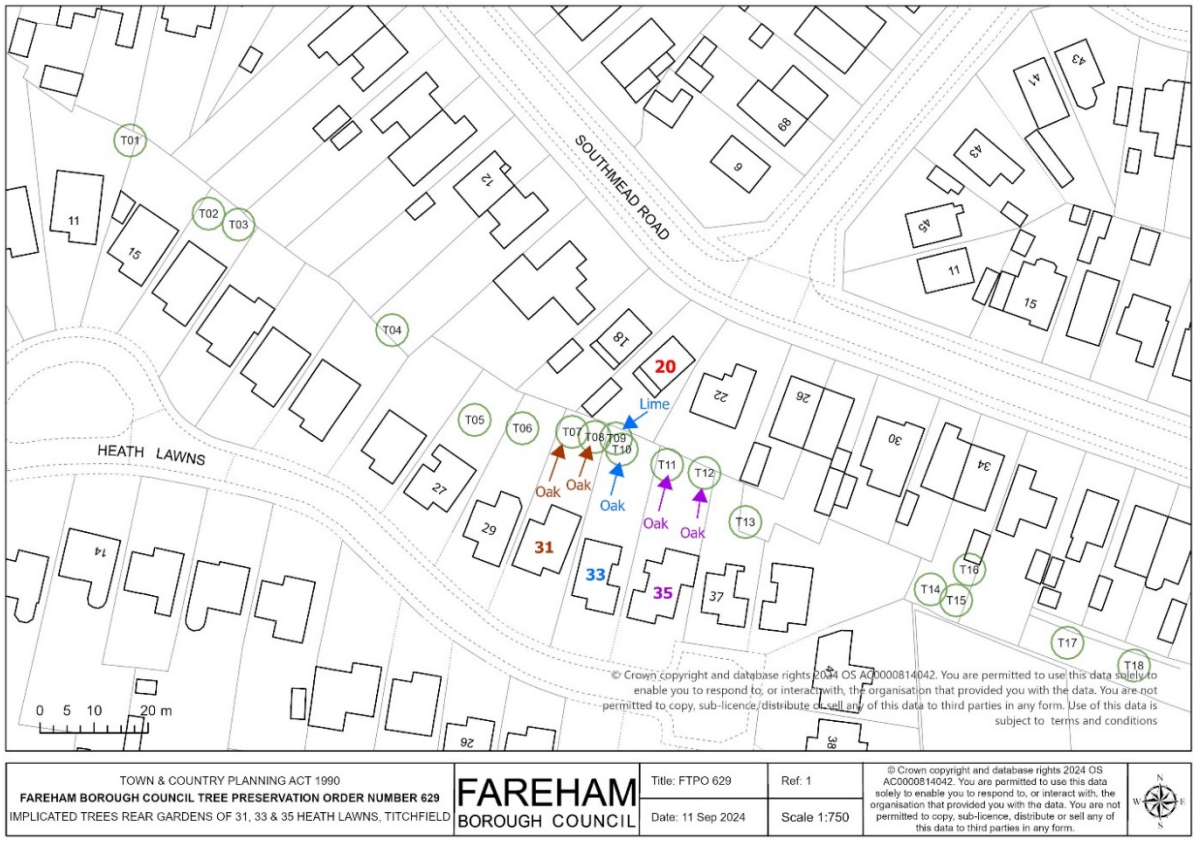
12.1 **GRANT CONSENT**, subject to the following Condition:

Replacement trees – size and species to be agreed.

13.0 Background Papers

13.1 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.

Appendix A – Site plan



TOWN & COUNTRY PLANNING ACT 1990 **FAREHAM BOROUGH COUNCIL TREE PRESERVATION ORDER NUMBER 629** IMPLICATED TREES REAR GARDENS OF 31, 33 & 35 HEATH LAWNS, TITCHFIELD	FAREHAM BOROUGH COUNCIL	Title: FTPO 629	Ref: 1	© 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.
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