

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **24 September 2014**

Report of: **Director of Planning and Development**

Subject: **TREE PRESERVATION ORDER No 693 - 33 HAZEL GROVE,
LOCKS HEATH**

SUMMARY

The report details objections to a provisional order made in June 2014 and provides officer comment on the points raised.

RECOMMENDATION

That Tree Preservation Order 693 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. TPO 693 was served on the 3 June 2014 in the interest of local public amenity.

INTRODUCTION

5. On the 3 June a provisional order was served in respect of 1 Monterey cypress situated in the rear garden of 33 Hazel Grove.

OBJECTIONS

6. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 one objection has been received from the owner of 29 Hazel Grove on the following grounds:
 - The tree is a nuisance and has health and safety implications
 - Debris falling from the tree blocks a rainwater drain in the corner of the drive, which causes the drive to flood in heavy rain.
 - The root system of the tree is travelling underneath the block paved driveway causing individual pavers to lift, creating a trip hazard.
 - The tree has developed a lean and is not upright, which could make it more susceptible to being blown over in high winds.
 - The tree is too large and should be pruned regularly to control its size.

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

COMMENT

7. An informal visual inspection of the Monterey cypress was undertaken from ground level. At the time of inspection the tree was observed to be healthy and free from any significant defects or abnormalities that may have an adverse impact on its health and stability.
8. A perceived threat of failure should not be a basis for tree pruning or indeed removal. All trees pose some degree of risk, but in this case there is nothing to suggest that the Monterey cypress poses any undue level of risk. There are no guarantees of absolute safety in the event of severe adverse weather conditions, since all assessments should be undertaken for normal conditions and not try to speculate about what might happen in the event of severe or abnormal weather events.
9. Trees may be a source of frustration from time to time due to falling debris, sweeping up leaves and clearing gutters and such like. However, it is to be expected that a large, mature tree such as this will produce copious amounts of tree related debris. The periodic clearing of such debris, albeit an inconvenience, is considered to be part of routine household maintenance when living in close proximity to trees and provides no justification for removing the Monterey cypress, which predates the development within which it was successfully retained.
10. Given the proximity of the driveway, within 3 metres of the base of the cypress tree, the existence of roots beneath the construction is highly likely. Tree root damage to lightly loaded structures such as walls, footpaths, patios and driveways is relatively common, particularly to paved surfaces laid on sharp sand. Generally excavation of the surface construction and confirmation of existing tree roots beneath is necessary to establish the cause. It may then be possible to carefully sever and remove the offending root(s) and then carry out remedial repairs to the driveway surface.
11. 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 encroaching branches and roots from a third party tree to abate a nuisance. However, such works would be subject to an application where a tree is protected by a TPO.
12. 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 put forward objecting to the confirmation of TPO 693 are not sufficient to outweigh its public amenity value.

TREE WORK APPLICATIONS

13. 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.

14. 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

15. The Council will not be exposed to any significant risk associated with the confirmation of the FTPO 693 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

16. 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.
17. In this instance, it is officers' opinion that the protection of the Monterey cypress should prevail. However, members are invited to reach their own conclusions.
18. Officers therefore recommend that Tree Preservation Order 693 is confirmed as originally made and served.

Background Papers: TPO 693.

Reference Papers: National Planning Policy Framework: Planning Practice Guidance - Tree Preservation Orders (2014), Fareham Borough Council Tree Strategy 2012 – 2017 and The Law of Trees, Forests and Hedges (second edition) – *Charles Mynors*.

Enquiries:

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