

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **19 November 2014**

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

Subject: **TREE PRESERVATION ORDER No 695 (2014) – 14 & 17 St
Edmund Close, Titchfield Common.**

SUMMARY

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

RECOMMENDATION

That Fareham Tree Preservation Order 695 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. The Council has an on-going programme of reviewing its existing tree preservation orders [TPOs], which sets out broad priorities based on the age of orders and their content in terms of the schedule of trees, particularly old 'area' type orders. Many trees retained on developments during the 1980s and 90s were protected by planning conditions, a practice no longer undertaken and deemed inappropriate by Government guidance. Trees originally protected by outdated planning conditions are also subject to review and where appropriate protected by new TPOs.

INTRODUCTION

On the 1 August 2014 a provisional order was served in respect of two oak trees situated in the rear gardens of 14 and 17 St Edmund Close, Titchfield Common. T1 and T2 are mature pedunculate oaks estimated to be 16 metres in height and situated approximately 12 metres and 14 metres to the northeast of the dwelling at 14 and 17 St Edmund Close respectively. Oak T1 is approximately 10 metres to the southeast of the dwelling at 22 Abshot Road and approximately 6 metres to the southwest of the conservatory on the west elevation of no 2 Clarendon Crescent (Map at Appendix A).

OBJECTIONS

5. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 five objections have been received from the owners of 11, 12, 14 & 15 St Edmund Close and 22 Abshot Road in relation to T1 oak on the following grounds:

- The tree has grown significantly since the houses were built and have now become imposing, causing upset to neighbours and causing additional maintenance due to leaves and acorns.
- The root system of the oak tree is now encroaching into the foundations of the garage and driveway at no 12, blocking natural light to the garden and decking area; and the falling leaves kill the grass.
- The tree is too large, the associated debris blocks drains and gutters, stains the buildings and its growth is now uplifting fences, walls and other decorative features.
- Both trees have very limited amenity value as they are only visible from Abshot Road and Clarendon Crescent. In fact they are the polar opposite of an amenity to those residents directly affected by them.
- The tree prevents lawful development of adjoining properties in terms of extensions or conservatories because the foundations are likely to be compromised by tree roots.
- The risk of serious injury or death is significant because of the size of the tree, which could land on an adjacent house if it toppled in the right direction. Changes in weather patterns are leading to unprecedented storms, which can topple trees that have stood firm for hundreds of years.
- One of the main trunks has a wire hawser deeply embedded in the stem, which is acting as a ligature making the stem significantly weaker at this point.
- The oak is less than 10 metres from the nearest dwelling and 5 metres from a garage. Despite being reduced in size by a third approximately 5 years ago the tree has continued to grow and thicken making it extremely overbearing.
- The oak tree should be removed on the grounds of health and safety, which should be the Council's first concern.

A sixth objection has been made by the owners of 2 Clarendon Crescent in relation to both T1 and T2 oaks on the following grounds:

- The oak T2 is 5.8 metres from the dwelling and 5.1 metres from a foul sewer, which serves several properties in Clarendon Crescent and St Edmund Close.
- Roots from oak T2 have caused extensive damage to the foundation of an existing brick shed located approximately 5 metres from the tree. Damage to the shed is severe and it will have to be demolished in the near future.
- Root damage to the brick shed has raised concerns about potential damage to the foundations of the main house and adjacent sewer. There are also concerns that branches may fall onto the house and conservatory too.
- The oak T1, although a reasonable distance from the house, is also in close proximity to the same foul sewer.
- There is no public access to either of the two oak trees as they are contained in private gardens, which are not visible from adjacent public areas.
- The TPO should therefore be lifted to enable the tree owners and their neighbours to prune or remove the trees if they consider them to be a hazard to their property.

No objections have been received from the owner of oak T2 situated at 17 St Edmund Close or the adjoining neighbours at no's 16 & 18 St Edmund Close respectively.

COMMENT

6. The subject trees predate the surrounding development completed between the early to mid-1980s and are now situated in the rear gardens of no's 14 and 17 St Edmund Close respectively. The trees were originally protected by a planning condition and were successfully retained within the completed development 30 years ago. The trees form part of a wider landscape and planning context and contribute significant amenity value to their surroundings due to their size and prominence (Photos at Appendix B).
7. 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, then the stronger the reasons needed in support of such proposals.
8. 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.

GENERAL INCONVENIENCE ASSOCIATED WITH TREES

9. The characteristics associated with different tree species can 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 considered 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.
10. The subject oaks are large, prominent specimens of good form and make a significant contribution to the character and public amenity of their surroundings. Officers suggest that by virtue of the trees age and size the potential implications on the use and enjoyment of the adjacent properties would have been apparent to anyone at the time the development was built 30 years ago and at any time since.
11. Trees may be a source of frustration from time to time due to falling debris, sweeping up leaves, clearing gutters and such like. However, it is to be expected that large, mature trees such as these 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 either of the subject oak trees.

DAMAGE TO PROPERTY

Tree roots may potentially cause damage to structures in two ways:

12. **Direct damage** - can be caused by tree branches moving in the wind. This type of damage is generally minor – dislodged roof tiles or possibly damaged gutters. The remedy is usually a straightforward matter of keeping the tree cut back from the building. Damage can also occur when a tree is in constant physical contact with a building or structure by the gradual growth of the tree pushing against it. The most common manifestation of this type of damage is lifting of flagstones and tarmac by tree roots. Fences and walls can also be damaged in this way. Damage caused to substantial buildings in this way is unlikely because the forces involved are not strong enough. The greatest risk of direct damage is close to the tree from the incremental

growth of the main stem and secondary thickening of the roots, which diminishes rapidly with distance.

13. The existing dwellings and associated garages are all situated a reasonable distance from the two oaks and therefore the risk of direct damage to these structures is low.
14. **Indirect damage** - forces involved where trees cause subsidence by water abstraction are much greater and can cause significant damage to buildings. This damage only occurs on clay soils. When water is removed from clay the spaces between the soil particles close and the material shrinks. This affects the load bearing capacity of the soil that supports a buildings foundation. Whether a building is affected by a tree in this way is impossible to predict. It depends on the interactions between a number of factors, including the shrinkability of the soil, the construction and depth of foundations, the size, species, vigour and rooting pattern of the tree, effects of other vegetation and any surface treatment, drainage and prevailing weather conditions.
15. Some trees can cause subsidence damage to buildings at considerable distance, while others can grow very close without causing any damage. Current building standards require that the presence of trees is taken into consideration when specifying foundations for new buildings and foundations can be specified that will not subside.
16. The Council has not received any evidence to suggest either of the two oaks are the cause of damage to property as a result of clay soil shrinkage due to moisture abstraction by tree roots. In circumstances where a protected tree has been identified as a material cause of subsidence damage to property, the Council will not unreasonably withhold consent for the offending tree to be removed if such a course of action is justified by the facts of the case.
17. The brick built shed situated in the rear garden of 22 Clarendon Crescent appears to have been constructed when the house was built 30 years ago. The structure is of traditional construction single skin brick walls with a flat roof built on a concrete slab foundation cast at ground level. The concrete base is cracked in several places with significant disturbance to the levels. The base appears to be constructed in sections and there was no evidence of a steel reinforcement mesh having been used. The single skin brick walls remain intact with no evidence of cracking or distortion. (Photos at Appendix C).
18. The shed is situated approximately 5 metres from oak T2 and therefore the potential for direct damage is low. The immediate soil type on which the concrete slab has been cast is very stony and therefore the potential for indirect damage is also low. Given the age of the structure and its simple construction officers suggest that after 30 years the structure may be considered to have reached the end of its useful life. Any new structure could be designed with appropriate foundations to take account of the soil conditions and the proximity of the adjacent oak tree.
19. 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 to third party property. Oak T2 is situated in the adjoining garden at 17 St Edmund Close and therefore the owners of 22 Clarendon Crescent do not have control over the tree in any event. If it is the case that the brick shed has to be demolished then it would seem unreasonable to also remove such an important mature tree, even if the owners were to agree to such a course of action.

DAMAGE TO DRAINS

20. Generally tree roots do not physically break drains and pipe work. However, tree roots are opportunistic and if an old pipe with poor joints is leaking into the surrounding soil this will attract the roots that may then exploit the existing weakness. When repairs are required, a proliferation of tree roots often leads to blame being placed with a nearby tree. However replacement of faulty drains/pipes with modern materials will usually eliminate the leak and stop problems from reoccurring (Photos at Appendix C).

PERMITTED DEVELOPMENT RIGHTS

21. In some circumstances protected trees can pose a material constraint on a land owner being able to implement development in accordance with their permitted development rights. In terms of rear extensions to properties in St Edmund Close, existing permitted development rights would enable the construction of a single or two storey extension 3 metres from the existing rear elevation. Prior notification would be necessary for any extension between 3 – 6 metres in depth.
22. During a site meeting on 2 September 2014 the owners of 15 St Edmund Close suggested they wished to extend their property off the rear elevation by several metres, but would be unable to do so because of the proximity of oak T1. Officers response at the time was that they did not consider oak T1 would constrain a modest extension that in all probability could be implemented lawfully under permitted development rights. Therefore officers acknowledge the fact that the protection of the two oaks will constrain some permitted development opportunities. However, in officer's opinion the trees would not prevent development of a reasonable scale rear extension.
23. Any application for planning permission would take account of the protected status of the trees and would be determined against the policies within the Council's Core Strategy and the merits of the proposed development.

RISK OF FAILURE

24. An informal visual inspection of the two oaks was undertaken from ground level. At the time of inspection both trees were observed to be healthy and free from any significant defects or abnormalities that may have an adverse impact on their health and stability.
25. Oak T1 has the remains of what is believed to be an old clothes line wound round one of the stems several metres above ground level. When material such as wire is tightly attached to the circumference of a stem the annual incremental growth of the stem will eventually grow over the object. Over time the annual deposition of new wood tissues will leave the object embedded within the stem in the position it occupied at the time it was situated on the outside of the stem over the bark. Remains of old wire fences and other objects that become embedded within tree stems are not generally considered to weaken wood strength or increase the risk of failure as a result.
26. It is acknowledged that the amount of noise and movement associated with trees during high winds can be unnerving and those living close to trees may feel anxious about their safety during a storm. However, a perceived threat of tree 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 subject trees pose 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 conditions.

27. The Council is unlikely to support unnecessary or unsympathetic pruning that would harm a protected tree by adversely affecting its condition and appearance. However, routine tree works will be viewed on their merits and permission will not be unreasonably withheld if pruning can be supported on sound tree management grounds.
28. Trees are dynamic living organisms that are subject to natural changes as they age or are influenced by changes in their environment. If a protected tree presents an immediate risk of harm to people or property, any urgent works necessary to make the tree safe can be undertaken without consent. If a protected tree is either dead or dangerous five days' notice will have to be given to the local authority of any necessary tree works. If works are to be carried out under this exemption it is important to keep evidence of the trees' condition to avoid potential legal action in the future.

PUBLIC AMENITY

29. Both the oak trees T1 & T2 are clearly visible from Abshot Road - northwest, Clarendon Crescent - north and Oriel Drive - east and partially visible from St Edmund Close – southeast / south and Abshot Road west. Both trees are prominent in the landscape and contribute significant public amenity to the surrounding residential development (Photos at Appendix B).

TREE WORK APPLICATIONS

30. 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.
31. The existence of a TPO does not preclude the carrying out of pruning 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

32. The Council will not be exposed to any significant risk associated with the confirmation of TPO 695 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

33. 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.

34. In this instance, it is officers' opinion that the protection of the two oaks should prevail. However, members are invited to reach their own conclusions.

35. Officers therefore recommend that Tree Preservation Order 695 is confirmed as originally made and served.

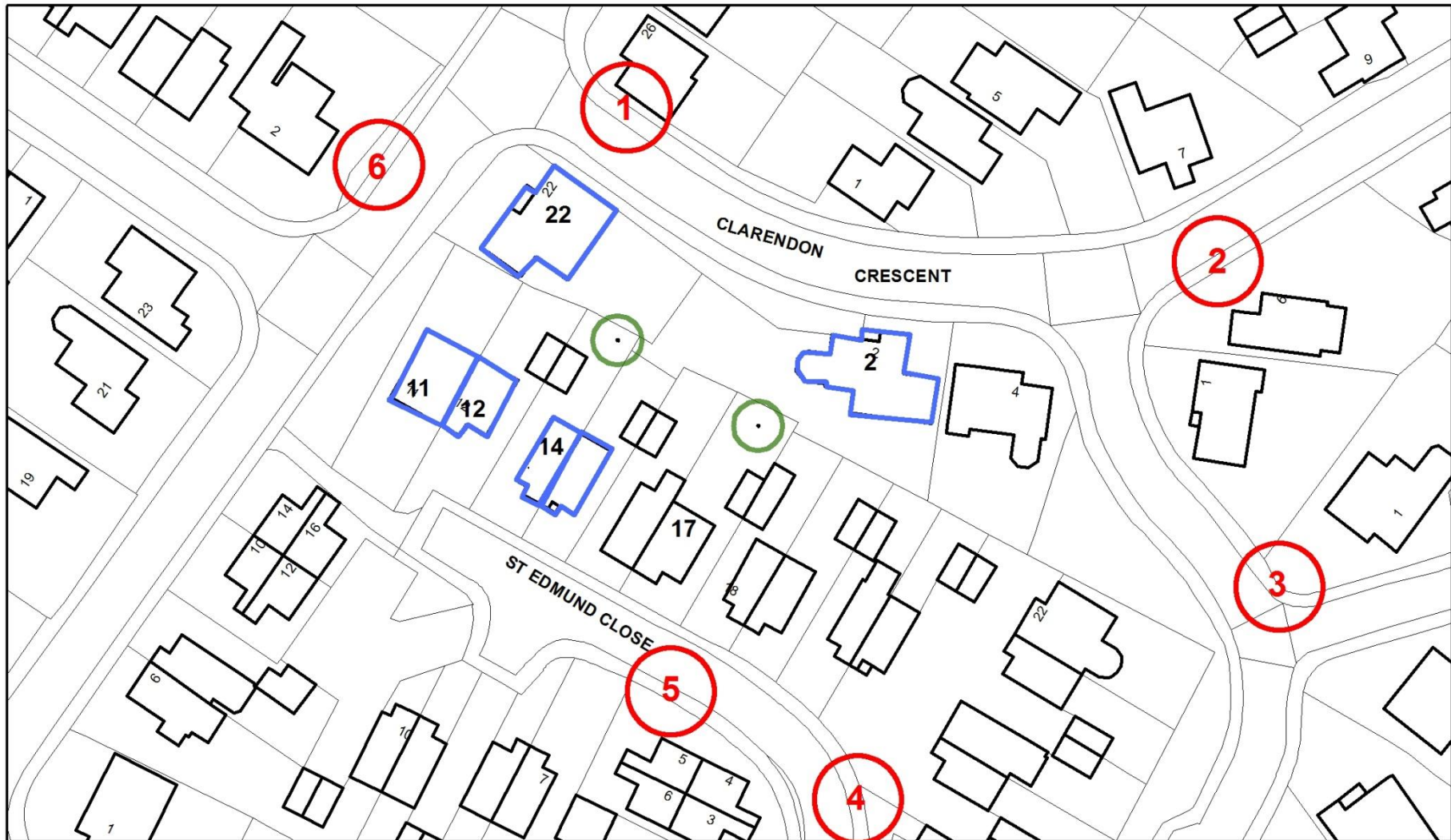
Background Papers: TPO 695.

Reference Papers: Tree Preservation Orders – Planning Practice Guidance 2014, 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. (Ext 4451)

Appendix A: Map - photographs (red) objection properties (blue).



<p>TPO 695 14 & 17 St Edmund Close</p>	<p>FAREHAM BOROUGH COUNCIL</p>	<p>Ref:</p>	<p>Scale: 1:600</p>	
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Appendix B: Clarendon Crescent - T1 & T2 view from north and northeast. (Photo 1&2)



Appendix B: T2 view from Oriel Drive. T1 & T2 view from St Edmund Close. (Photo 3&4)



Appendix B: T2 view from St Edmund Close. T1 view from Abshot Road. (Photo 5 & 6)



Appendix C – 2 Clarendon Crescent proximity of brick shed and sewer to oak T2



Appendix C: Damage to brick shed at 2 Clarendon Crescent

