

FAREHAM

BOROUGH COUNCIL

Report to Planning Committee

Date **19 November 2014**

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

Subject: **TREE PRESERVATION ORDER No 698 (2014) – 31 Ilex Crescent,
Locks Heath.**

SUMMARY

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

RECOMMENDATION

That Fareham Tree Preservation Order 698 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 Trees originally protected by outdated planning conditions are also subject to review and where appropriate protected by new TPOs.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 five Monterey pines situated on the north boundary of 31 Ilex Crescent on what appears to be a grass verge adjacent to the property, but actually forms part of the land holding of no 31. T1 – T5 are mature specimens growing in a linear group and estimated to be 18 - 20 metres in height. The trees are situated approximately 5 metres to the north of the dwelling at 31 Ilex Crescent and approximately 18 metres from the nearest neighbouring dwelling, no 12 Ilex Crescent, situated on the opposite side of the road to the north of the five trees (Photographs at Appendix A).

OBJECTIONS

5. Under Regulation 6 of the Town and Country Planning (Trees) Regulations 2012 one objection has been received from the owner of 12 Ilex Crescent in relation to all five trees on the following grounds:
 - The trees are quite ugly, lack a pleasing shape and therefore do not offer significant amenity value to the area.
 - The trees are in poor condition and recently shed two huge branches that could easily have killed a person or flattened a car.
 - The trees are too large and have not been maintained in 26 years.
 - The trees block the TV reception.
 - The associated pine needles and debris block drains and gutters; and the roots cause damage to the adjacent road.
 - The trees are very top heavy and if they were to fall would destroy the house because of the direction of the prevailing winds.

No other objections have been received.

COMMENT

6. The subject trees predate the surrounding development completed in the 1980s and have been specifically retained in a grass area adjacent to and in the ownership of 31 Ilex Crescent. The trees were retained as part of the planning context of this development and contribute significant amenity value to their surroundings due to their size and prominence (Photographs at Appendix A).
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. 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 the removal of the subject pine trees.

TREE MAINTENANCE AND DAMAGE TO PROPERTY

11. The owner of a tree is responsible for maintaining it in a safe and healthy condition by taking reasonable steps to minimise any risk to people and property arising from the position of the tree. This is likely to involve engaging professionals such as tree surgeons and tree consultants to carry out any necessary pruning work or undertake regular tree inspections.
12. The responsibility for highway safety is that of the Highway Authority, Hampshire County Council, who undertake routine inspections of carriageways and footways. The Highway Authority has specific powers to deal with trees on land adjoining the highway where they may impact on highway safety due to their condition.

RISK OF FAILURE

13. An informal visual inspection of the five pine trees was undertaken from ground level. At the time of inspection the 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.
14. 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.
15. 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

16. The group of five Monterey pines are large mature specimens and their position on a sweeping bend in the road makes them a particularly prominent feature of the street scene. The trees are clearly visible from several public vantage points and therefore contribute significant public amenity to the surrounding residential development and wider landscape character (Photographs at Appendix A).

TREE WORK APPLICATIONS

17. 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.

18. 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

19. The Council will not be exposed to any significant risk associated with the confirmation of TPO 698 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

20. 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.

21. 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.

22. Officers therefore recommend that Tree Preservation Order 698 is confirmed as originally made and served.

Background Papers: TPO 698.

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: Street scene photographs – Ilex Crescent viewed from the west.



Ilex Crescent – trees viewed from northwest.



Ilex Crescent – trees viewed from northeast.



Ilex Crescent – trees viewed from north.

