



Member of Parliament for Fareham
HOUSE OF COMMONS

Via email:

PJohnston@Fareham.Gov.UK

Mr Paul Johnston,
Principal Tree Officer,
Fareham Borough Council,
Civic Offices,
Civic Way,
Fareham,
Hants.PO16 7AZ

9th April 2024

Dear Mr Johnston,

Re: P/24/0151/TO

I am writing on behalf of a constituent, [REDACTED] who recently contacted me regarding her concerns over the proposed felling of a mature oak tree (T3 TPO450) due to a subsidence insurance claim.

I understand that [REDACTED] has objected to the felling (please see attached).

I would like to request, if possible, a deferment to Fareham Borough Council's decision at the meeting tomorrow whilst other avenues, for example to restrict the roots of the tree without felling, could be explored? I believe it is crucial to allow for further discussion and exploration of alternative solutions that may address any underlying issues without resorting to the removal of the tree.

Thank you for taking the time to investigate this matter and I look forward to hearing from you in due course.

Yours sincerely,

[REDACTED]

Rt Hon Suella Braverman KC MP
Member of Parliament for Fareham

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I am writing to **strongly object** to the application to fell T3 protected by TPO450 due to a subsidence insurance claim.

The Town and Country Planning Act 1990 s198(6)(b) affords an exception to the Tree Preservation Order and allows for felling when the tree is causing a "nuisance".

The Town and Country Planning (Tree Preservation)(England) Regulations 2012 regulation 24 further limits the local authority's ability to refuse the application due to potentially becoming liable for compensation.

The above legislation is clearly outdated when it comes to considering modern alternative structural solutions and the tree's amenity value especially through the lens of climate change.

3 Hillcroft only need to show that they have incurred loss or damage as a result of the Council's decision to refuse and the monitoring reports do indicate T3 is exacerbating the clay shrink/swell subsidence.

However, in a similar case Reading Borough Council has taken a far more proactive approach by instructing a professional mediator in order to protect both the TPO trees and the affected property.

Whilst it's unfortunate that 3 Hillcroft appears to have suffered from Category 2 'Slight' subsidence, I do not believe it is proportionate to fell a beautiful and healthy oak tree.

This is clearly a **very complex** site and one which needs to be looked at in the whole with consideration for the local authority's fear of becoming solely financially liable (under reg 24). Fareham Borough Council is under pressure to approve the felling of protected trees in urban areas across the borough simply because it's the cheapest option.

Mediation is open to all parties in this case and there is mechanism for this as demonstrated by Reading Borough Council.

I propose this happens between the Office for National Statistics (the tree's owner), Crawford & Co/Royal Sun Alliance (the insurer) and Fareham Borough Council (local authority) – facilitated by a professional.

I will outline my reasonings for mediation and other relevant factors below:

1. The subsoil at 3 Hillcroft is clay with high/extremely high plasticity and is located in a more susceptible area in the south of England. According to the Clay Research Group (based locally in Whiteley), clay is (in the round) approximately 2.4 times riskier than other geological series.
2. Combined with an ongoing shrink/swell exacerbation risk from a number of other protected oak trees (as mentioned in the arboricultural report) this means that even if T3 were to be felled the site will continue to suffer from clay shrink/swell due to the natural geology of the location. This could lead to future insurance claims at 3 Hillcroft.

3. In terms of the wider location of T3 it is important to note that to the rear of the protected tree is an expansive non permeable tarmac carpark for the ONS. From photographs in the arboricultural report 3 Hillcroft have also laid artificial grass and a hard standing patio right up to the trunks of T3 and T4. Combined with the close proximity of H1 vegetation (laurel hedge) only minimal recharge and nourishment to T3 is possible. A gravel parking area near to the treeline would allow for significantly more recharge as would the removal of H1, the artificial grass and hardstanding patio surrounding the base of the trees. This type of hardscape should be outside of the dripline of the tree. Anything closer will crowd the roots, hinder water absorption, and rob the roots of oxygen.
4. When British Geological Survey climate change datasets¹ are applied to the location of 3 Hillcroft it is evident that the shrink/swell risk will not simply be mitigated by the removal of one protected oak (T3). It would not be right for Fareham Borough Council to end up in a situation in the future where all of the other protect oaks need to be felled too when we already know that these have been noted by the insurance company as an ongoing risk.
5. The Arboricultural Appraisal Report (table 2)² states under 'management history' for protected oaks T4, T5 and T6 that, "No significant recent management noted".
6. However, table 1 states that T3 has been, "Subject to periodic reduction as part of an ongoing management regime." This is untrue - none of the trees have been regularly maintained and I understand it is 3 Hillcroft's responsibility to do so under the terms of the lease agreement with the Office for National Statistics.
7. The applicant purchased 3 Hillcroft in 2000 and planning records show T3 has only been reduced *twice* in a 24 year period - once in 2003³ and once in 2017⁴. Given the proximity of the tree to the affected property a prudent regime of tree management by pruning should have been carried out either by the tree's owner (Office for National Statistics) or by 3 Hillcroft where the tree is located (due to the Crown Land being leased from the ONS), but it has not been.
8. According to the Royal Horticultural Society, in order for pruning to be effective the crown volume needs to be reduced by 70% and be repeated regularly such as every 3 years. Kathryn Lee, a geologist at the British Geological Survey explains that tree

¹ https://mapapps2.bgs.ac.uk/geoindex/home.html?_ga=2.72227155.1796485154.1709544040-610525034.1709544040

² <https://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=5f4df1d0-4373-4ebb-9b8c-8026a055f0d9>

³ <https://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=ff99449b-281b-4ac4-9b21-afe4231c2052>

⁴ <https://www.fareham.gov.uk/casetrackerplanning/ApplicationDetails.aspx?reference=P/17/0922/TO&uprn=100060344735>

management by crown reduction or thinning may be better than removal because it will maintain a stable moisture profile.

9. 3 Hillcroft has previously felled another protected oak tree in its garden in 2007 and the supporting documents referenced clay shrinkage to their neighbour's conservatory at 5 Hillcroft as justification. As in the case of Khan and Khan v Harrow and Kane, it would have been 'reasonably foreseeable' to a 'reasonably prudent' landowner such as the ONS or 3 Hillcroft (who were aware of a neighbour's issue) that there was a risk to their property if they didn't properly maintain the trees to reduce moisture deficit.
10. In total, 4 oak trees have so far been removed along the treeline with 3, 5, and 7 Hillcroft. The applicant was fully aware of the risks of not regularly pruning yet still only crowned T3 twice in 24 years.
11. The ONS confirmed it uses a specialist contractor to periodically inspect all of its trees, however this only inspects above the ground conditions and not below the ground root structures. No consideration has been given to the impact of the protected oaks on neighbouring properties and the trees have not been subject to an ongoing programme of maintenance to mitigate these risks.
12. A CAVAT assessment has not yet been carried out by the local authority and this could aid any cost/benefit analysis done by the insurance company. A collective amenity value calculation should be done on T3, T4, T5 and T6 (the oak trees were all registered at the same time and all pose an ongoing risk).
13. The ONS is located in a residential area and as the tree's owners it should fight to keep the protected trees whilst also finding a solution for the affected homeowner. The ONS self insures.
14. The ONS are not arboricultural experts and are relying on the council and specialists engaged by the insurer to inform their decision. Having spoken to other tree officers at other local authorities they do not solely rely on the specialists engaged by insurers as often their conclusions are incorrect and in any case, they always recommend felling even though there's a TPO as it's the easiest and quickest option. In today's climate crisis that default position needs to be questioned further through negotiation.
15. On 12th August 2016, Scott Howell, Deputy Director of Service Centre ONS wrote to me and said, "We should look to protect our landscape and especially oak trees which are our link with our history." Yet the confidential land leases and expansive tarmac non-permeable car park do not give due consideration to the protected oak trees of which the ONS owns.

16. In 8.7 of Fareham Borough Council's Local Plan⁵, *"The approach taken in Policy NE6 Trees, is to maintain and improve tree canopy cover in the Borough where appropriate and possible to do so. This approach is not just to improve biodiversity and visual amenity, but to also help offset the 'urban heat island' effect and pollution issues."*
17. No evidence has been submitted with the application to suggest the application tree is unsound or otherwise unhealthy.
18. No drain survey has been carried out.
19. Given the extreme nature of what's being asked for now (and potentially felling T4, T5 and T6 in the future) an independent structural engineer's report is needed before a decision should be made on T3.
20. A bat survey hasn't been carried out. Oak trees all play a role in supporting bats, with ancient and veteran trees being particularly sought after by these flying animals.⁶
21. The risk of heave has been too readily dismissed and the photograph of the blockpaving driveway being risen rather than sunken suggests this shouldn't be dismissed without further investigation, especially as a portion of the driveway is escheat land (title no: HP255829) and is not owned by the policyholder at 3 Hillcroft which could also possibly have serious insurance implications.
22. With many alternative solutions available nowadays Fareham Borough Council should have regard for its Local Plan and explore with the tree's owner and insurance company alternative solutions to felling the oak tree such as root barriers, expansive geopolymer injection, new innovative screw piling or traditional underpinning.
23. The tree in question (T3) is located on Crown Land and owned by the Office for National Statistics, but I note that no formal comments have yet been submitted by the ONS. It is imperative to emphasise that the preservation of T3 aligns with broader conservation efforts, and as a government body, the Office for National Statistics should be at the forefront of protecting our landscape and natural heritage.
24. Again, this is clearly a **very complex site** and I urge Fareham Borough Council to consider the bigger picture at this location. It's noted that with regards to T6 (oak owned by 3 Hillcroft) table 2 recommends "No works required at present (subject to a review if movement persists). Given that this tree is substantially larger and has the potential to not only impact my property but a neighbouring property too, a triannual pruning management should also be in place and enforced. The tree's owner (3

⁵ https://www.fareham.gov.uk/pdf/planning/local_plan/1.FLP2037.pdf

⁶ <https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/british-trees/ancient-trees/>

Hillcroft) should have due regard for potential impacts on neighbouring properties.

25. The Arboricultural report also states, "In some circumstances however, where vegetation initially recommended for removal is subsequently pruned and monitoring indicates the building has stabilised, removal becomes unnecessary with decisions based on best evidence available at the time." Given that the protected oaks have not been subject to ongoing maintenance, H1 (Laurel hedge) has been planted within close proximity to the protected oak and artificial grass installed around T3 – further adding to the moisture deficit – these actions should be reversed and T3 crown reduced to monitor their impact and exacerbation of the soil moisture deficit.
26. The submitted reports make no reference to the impact of climate change and the efficacy of the removal in the longer term given the hotter summers and wetter winters. More extreme weather will become the new norm⁷ and alternative solutions have not been properly considered in any of the submissions thus far.
27. Felling is an irreversible act and whilst I acknowledge the 'slight' subsidence is an issue – the applicant and or the owner of the trees doesn't appear to have carried out sufficient hard reduction to limit the clay moisture reduction in the first place.
28. An alternative solution needs to be found to this application, as the removal of these trees cannot continue. It will only be a matter of time before 3 Hillcroft starts applying for the felling of the remaining protect oaks. In 2016 I wrote to Scott Howell, Deputy Director of Service Centre ONS foreseeing the situation we have now in relation to felling protected trees on crown land.
29. When purchasing 3 Hillcroft (which is also named 'The Oaks') the buyer/conveyancing solicitors would have been aware of potential issues from the oak trees and their roots. Fareham Borough Council website even stated *"You are not just buying the house, you are also buying the trees. They come as part of the package, not as an optional extra. If you don't like the trees, don't buy the property."* The developer of the property chose to build within close proximity.
30. The general public take a dim view on the felling of protected oak trees where there is an alternative structural solution. Society's views in 2024 are far more environmentally focused given climate change.
31. Fareham Borough Council should refuse this application citing environmental reasons from its newly adopted Local Plan and look to negotiate with the ONS and insurer to find a long term solution. FBC has an opportunity to inspire other LPAs and lead the way in finding a compromise via mediation especially as this area of England which is

⁷ <https://www.bgs.ac.uk/news/six-ways-to-prepare-your-home-for-climate-change-related-subsidence/>

more susceptible to clay shrink/swell subsidence.

32. If consent to fell were to be granted with the caveat of planting an alternative tree it's well known that enforcement of such caveats are rarely followed through, again because of limited LPA resources, and in any event the planting of saplings is not comparable to that of a mature oak tree. If T3 is to be felled it would be naive to think there will be, "several trees still remaining", as given the history and ongoing risk, I wonder for how long?

33. A protected tree should only be felled in exceptional circumstances and as the world tries to get a grip on climate change the granting of applications to fell will become the norm and Fareham Borough Council needs to do more to "maintain and improve tree canopy" - mediation is one way of achieving that. I understand 33 protected trees have already been felled in Fareham so far this year.

I implore the local authority to prioritise the long-term environmental well-being of our community and to explore alternative forward-thinking measures to address legitimate concerns regarding subsidence without resorting to the irreversible removal of this/these invaluable natural asset(s).

Joe Fitzpatrick from Crawford Claims Solutions puts the cost of repairs to 3 Hillcroft at £20,000 if the tree is removed, but at £55,000 if the tree isn't removed due to the need for a root barrier. The root barrier is briefly mentioned in the report, but never expanded upon. Mediation would allow for a discussion for a structural solution thus protecting the tree and the property.

Thank you for your attention to this matter.