

# Crawley Borough Council

## Planning Committee

3 April 2023

### Objections to the Crawley Borough Council Tree Preservation Order – Oak Tree at 22 Lowe Close - 05/2022

Report of the Head of Economy and Planning – *PES/430*

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#### 1. Purpose

- 1.1 This report presents the Oak Tree at 22 Lowe Close - 05/2022 Tree Preservation Order. The Committee is requested to consider the objection received and determine whether to confirm the Tree Preservation Order with or without modification for continued protection, or not to confirm the Tree Preservation Order.

#### 2. Recommendation

- 2.1 It is recommended that the Committee **CONFIRMS** the Tree Preservation Order for an oak tree at 22 Lowe Close - 05/2022 without modification.

#### 3. Reasons for the Recommendation

- 3.1 The tree has good shape and form.  
The tree is considered to have good landscape amenity value in the surrounding area.  
The tree is prominent in the locality and has significant amenity value.  
The tree is clearly visible from the public highway.  
The tree has a well balanced crown.

#### 4. Background

- 4.1 The tree the subject of this order is an oak tree located in the rear garden of 22 Lowe Close. The property is owned by Crawley Borough Council and is leased to a private individual. It is understood that the leaseholder is responsible for the maintenance of the garden and this includes maintenance of the tree.
- 4.2 Following complaints to Crawley Borough Council from the adjacent neighbours regarding the size and encroachment of the tree, the leaseholder was asked by the Council's Community Services Department to prune the tree. Following receipt of a TPO status enquiry from the leaseholder the tree was found not to be protected and following a desktop review it appeared to be a large and attractive specimen making a significant contribution to the public visual amenity of the area. A site visit was then conducted and the tree was indeed found to be visually prominent and made an important contribution to the green amenity of the area.
- 4.3 The provisional Tree Preservation Order was made on 11th October 2022 and remains provisionally in force for a period of six months (until 11<sup>th</sup> April 2023). If the Order is confirmed, the protection becomes permanent, if the Order is not confirmed it ceases to have effect.

## 5. Notification/ Consultation/Representation

5.1 A Council must, as soon as practicable after making a TPO and before it is confirmed, serve a copy of the order and a prescribed notice on persons interested in the land affected by the TPO. The Council therefore served a copy of the provisional TPO and notice on all the owners/occupiers of the land and other interested parties as set out below.

Owners and occupiers of the land:

- Crawley Borough Council, Town Hall, The Boulevard, Crawley, RH10 1UZ
- The Occupier, 21 Lowe Close, Crawley, RH11 9TF
- The Occupier, 22 Lowe Close, Crawley, RH11 9TF

Owners and occupiers of adjoining land affected by the TPO:

- The Owner/Occupier, 4 Jackson Road, Crawley, RH11 9TJ
- The Owner/Occupier, 3 Jackson Road, Crawley, RH11 9TJ
- The Owner/Occupier, 2 Jackson Road, Crawley, RH11 9TJ
- The Owner/Occupier, 3 Holman Close, Crawley, RH11 9TH
- The Owner/Occupier, 4 Holman Close, Crawley, RH11 9TH
- The Owner/Occupier, 5 Holman Close, Crawley, RH11 9TH
- The Owner/Occupier, 6 Holman Close, Crawley, RH11 9TH
- The Owner/Occupier, 23 Lowe Close, Crawley, RH11 9TF
- The Owner/Occupier, 24 Lowe Close, Crawley, RH11 9TF

5.2 The Council is required to consider any objections or representations made within 28 days of the date of the Order. The notification period for objections ended on 16th November 2022. Confirmation of the Order is required within six months of the date upon which the Order was provisionally made.

5.3 One representation has been received from the leaseholder of 22 Lowe Close, objecting to the TPO. A copy of the letter is provided with this report at Appendix A. A summary of the objection is set out below.

### Proximity to Properties

- The tree is in my small garden 6.5m from the property, subsidence is a real threat due to the close proximity of the building and the sheer size of the tree.
- The tree in question overhangs 5 separate gardens with mass debris being a huge issue to all concerned, due to damage occurring from the shedding of the tree.
- The position of the tree allows minimal sunlight into my property and garden and imposes on the view of my upstairs neighbours by severely reducing day light as its crown is all they can see from all back windows.
- The tree has outgrown its current position due to the previous owners not having maintained the tree for 13 years, this has caused the tree to grow causing damage to the fencing and ground.

### Safety

- Should the tree become damaged/diseased the risk in the future to cause significant damage to my property and all neighbouring properties is one that is potentially rather high.

### Amenity

- The tree has no amenity value due to lack of visibility and location. Question the reason for the sudden TPO order placed.
- Should the tree require removing this will not have an impact on public amenity due to the abundance of visible trees in the local area.

## Other

- The tree has caused great unrest with my neighbours and which cannot be resolved due to the TPO.
- The TPO has an adverse effect on my property value and its market appeal.
- I have been informed that a member of Crawley Council has recently inspected the tree and area, however, I question this due my garden being non-accessible without my attendance.

## **6. Amenity Value/Assessment**

- 6.1 The tree is clearly visible from Lowe Close, Creasys Drive, Terry Road, Jackson Road and Holman Close and can be glimpsed from Jarvis Close and Fry Close. It is therefore considered that the tree has extremely good public visibility and significant amenity value and as an individual specimen is justified for a TPO. There are several large trees in the surrounding area, however the subject tree is a standalone specimen and for this reason its removal would most certainly cause a significant loss of amenity and leave a large hole in the treescape.
- 6.2 All trees grow and it is common for them to overhang neighbouring boundaries. Such encroachment is the nature of trees and is to be expected and certainly does not exclude trees from protection. In such cases containment pruning in order to manage the tree at a more appropriate size for its location is usually acceptable in many cases and the imposition of a TPO does not prevent necessary/justifiable works from being undertaken subject to an application being made to the Council. In this case, consent for a reduction in the tree height and crown radius by a maximum of 2 metres was granted on the 10<sup>th</sup> February 2023 under application ref: CR/2022/0695/TPO, it is therefore considered that this issue has been addressed.
- 6.3 Leaves, fruit and other detritus are considered to be a seasonal nuisance and do not generally cause damage to properties. Larger branches have the potential to cause damage however deadwood can be removed without planning consent and any live branches which are imminently dangerous can be removed under a '5-day notice' exemption for emergency works, subject to the agreement of the Council's Planning Department.
- 6.4 Trees, by their nature, create shade and while this can often be considered a positive, can also create issues for those properties affected. Shade and reduced light levels do not however exclude trees from protection, trees grow and cast shade and this is largely unavoidable, however as above, remedial pruning works to protected trees will often be considered acceptable provided the works are justified and the level of works is considered proportionate.
- 6.5 In respect of the concerns about subsidence, provided the house is founded on footings of adequate depth, the likelihood of subsidence is greatly reduced. In the event that subsidence should occur, the onus is on the applicant to prove, with sufficient evidence, that the tree is a likely material cause of the damage. Felling or excessive pruning cannot be allowed on the off-chance that subsidence may be caused in the future (when none is currently evident) and this is not considered a valid reason not to protect this tree with important visual amenity which makes a significant contribution to the character of the area. Evidence of damage to the fence has not been submitted or demonstrated in support of the objection.
- 6.6 The duty to maintain the tree in a safe condition lies with the landowner or in this case the leaseholder and this includes regular inspections of the tree so as to identify potential safety risks as they develop – this is a legal duty. The imposition of a TPO does not prevent this duty of care and allows for any required works to be carried out subject to the relevant planning permission. For this reason, the potential for trees to become dangerous in the future does not exclude trees from protection.
- 6.7 The imposition of a TPO does not prevent works from being undertaken to protected trees subject to the relevant planning permission, provided these works are justified and proportional. Property value and market appeal are not considered valid when assessing a tree for a TPO.

## **7. Implications**

### *Human Rights Act 1998*

- 7.1 The referral of this matter to the Planning Committee is in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. Those persons who made representations in objection to the TPO are entitled to attend the Planning Committee meeting and to make any further verbal representations at the meeting. The Planning Committee must give full consideration to any such representations.

### *Article 8 and Article 1 of the First Protocol*

- 7.2 The right to respect for private/family life and the protection of property also needs to be considered. These are qualified rights and can only be interfered with in accordance with the law and if necessary to control the use of property in accordance with the law and if necessary to control the use of property in accordance with the general interest. The recommended continued protection of this tree by confirming the TPO is considered to be in the general interest of the community and is considered to be both proportionate and justified.

### *Planning legislation*

- 7.3 The law relevant to the protection of trees is set out in Part VIII of the Town and Country Planning Act 1990 as amended and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

## **8. Background Papers**

- 8.1 The Crawley Borough Council Tree Preservation Order Oak Tree At 22 Lowe Close - 05/2022

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**SCHEDULE**  
**SPECIFICATION OF TREES**

**Trees Specified Individually**  
**(encircled in black on the map)**

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
T1	English Oak	Grid Ref: TQ-25693-33946

**Groups of Trees**  
**(within a broken black line on the map)**

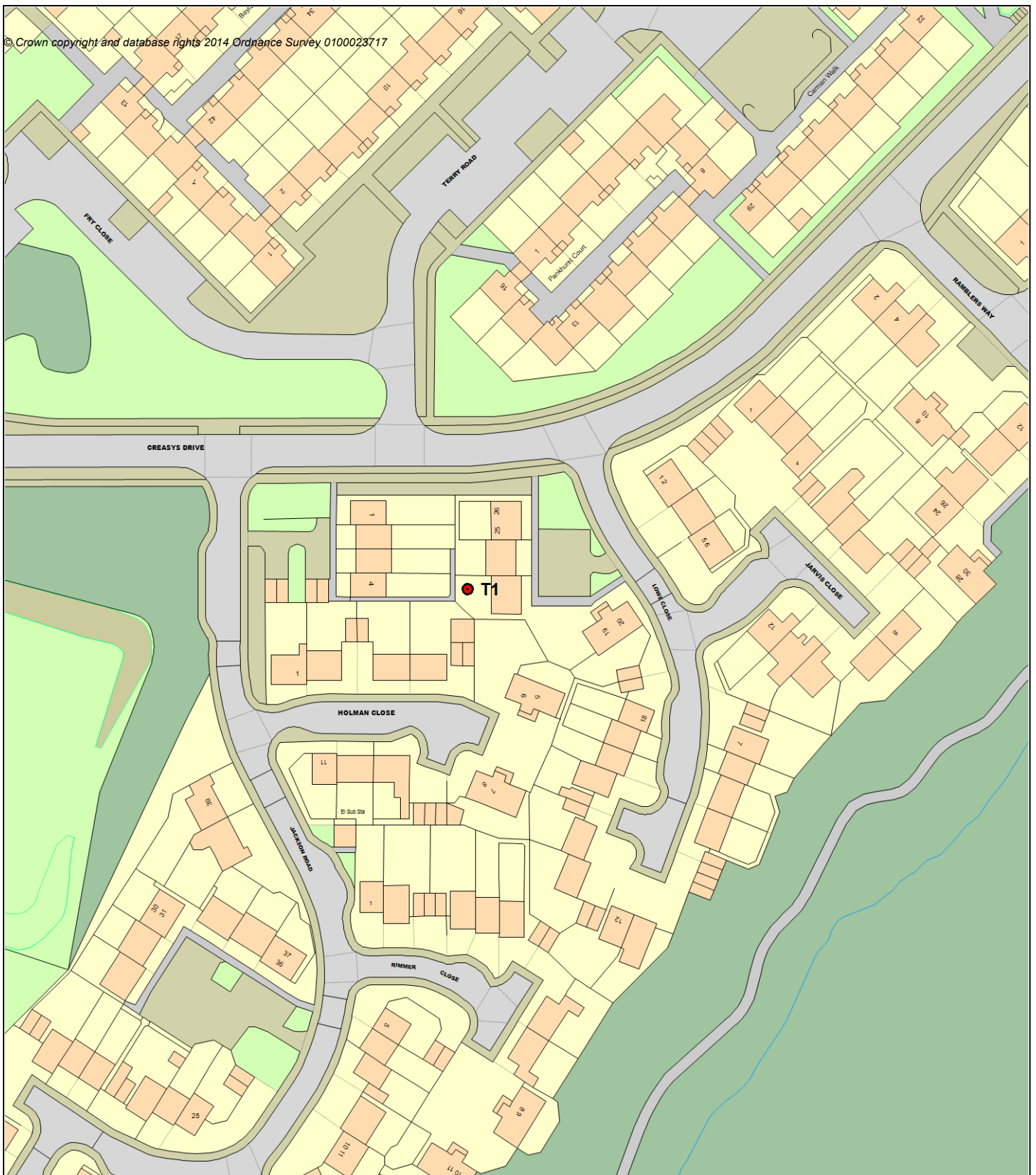
<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
NONE		

**Woodlands**  
**(within a continuous black line on the map)**

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
NONE		

**Reference to an Area**  
**(within a dotted black line on the map)**

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
NONE		



**Tree Preservation Order No 05/2022**  
**Oak Tree At 22 Lowe Close**

**Clem Smith**  
**Head of Economy and Planning Services**

*The scale shown is approximate and should not be used for accurate measurement.*

Scale 1:1250

Date 17/03/2023

