

# Trees and Design Action Group

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Executive Leader

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# Situation in Fareham

- Widespread clay subsoils.
- Extensive housing stock built in the 1950s, 60s and 70s.
- Legacy of mature trees on residential developments.
- Significant spike in subsidence cases following the summer of 2022.
- Climate change increasing the likelihood of hot dry periods and the likelihood of increased subsidence events.
- Currently insurers seek to remove trees implicated in subsidence cases in a large number of cases.

# Applications to remove protected trees - subsidence

- When receiving applications to fell trees, the Council can only grant consent or refuse consent.
- The Council cannot require applicants to investigate alternative engineering solutions which would retain implicated trees.
- In deciding applications to fell implicated trees, the Council needs to consider the evidence provided, the amenity value of the tree and the potential compensation payable if consent is refused.
- Other benefits such as habitat value, mitigating climate change, and health / wellbeing benefits cannot be considered as part of the decision making process.

# Applications to remove protected trees - subsidence

- If the Council refuses the application, compensation can be claimed 'for loss or damage' as a consequence of the refusal.
- Councils could be liable to pay significant compensation for anything that was reasonably foreseeable at the time it refused consent.
- This could include the cost of repairing the cracks in the property and the cost of implementing an engineering solution (such as underpinning) if the tree(s) remain.
- If full underpinning works are necessary, compensation claims can exceed £100,000



# What needs to change?

- If sustainability and environmental matters are a priority, then tree removal should be the last resort.
- The combined benefits of trees should be considered.
- There are alternative feasible options for managing structural damage other than felling trees.
- The insurance industry could deal with subsidence differently by considering the environmental, social and sustainability impacts of pruning and removing trees.
- They could adopt tree valuation methods to inform decision making, a cost benefit analysis that considers the value of the tree.
- The costs most likely being spread to some degree across all premiums for buildings cover and then more targeted based on risk.



# What we have done at Fareham

- I have written to the Deputy Prime Minister (DPM) setting out the impact of subsidence across the borough resulting in the loss of trees and the fact that climate change appears to be increasing these events.
- I set out 4 changes to the DPM I believe should be made to existing tree preservation legislation:
  1. In making decisions on applications seeking to fell protected trees, decision makers should be required to give considerable weight to all the benefits arising from trees, not just the amenity benefit. The greater the value of the tree, the greater the weight which should be attached to its retention in decision making.
  2. All opportunities for retaining protected trees must first be explored, with felling being the last resort rather than the starting point.

# What we have done at Fareham

3. Applications to fell trees implicated in subsidence, must be accompanied by a report demonstrating that all alternatives to felling have been explored, and that the felling of the tree is the only viable option. If a viable structural solution can be implemented, the expectation is that such a solution would be implemented rather than a tree felled.
  4. Lastly, the compensation provisions of the Regulations would need to be far more limited than they are at present. As they presently stand, local authorities have a very limited defence against compensation claims when refusing consent for felling protected trees. Potential compensation claims should be limited to situations such as those where it has been demonstrated that there is no viable alternative to felling a tree, and the local authority still refuses consent.
- I have also written to the Chief Executive of Direct Line seeking clarification as to what alternatives to felling trees they carry out, once tree roots have been identified as the cause of property damage.