

**OBJECTION TO TREE PRESERVATION ORDER NO. 37/02  
LAND OF 21 COPSEWOOD ROAD, HYTHE****TREE OFFICERS REPORT****1. TREE PRESERVATION ORDER HISTORY**

- # 1.1 Tree Preservation Order (TPO) No. 37/02 was made on 24 April 2002. The TPO plan and first schedule are attached as Appendix 1. The Order protects one Oak tree, identified as T1 and situated in the northeast corner of the rear garden of 21 Copsewood Road, Hythe.
- 1.2 This TPO was made following a request from a local tree work contractor who was seeking to know whether consent was required before carrying works to the tree.

**2. OBJECTION**

- # 2.1 Following service of the TPO, a letter of objection was received on 8 May 2002 from Mr E M Payne of 4 Lanehayes Road, Hythe. The objection was made on the basis that the tree could not be regarded as of a public amenity and nor did it add to the appearance of the locality since it was growing in a depression. Mr Payne also stated that the tree was a nuisance to adjacent properties by obstructing sunlight and putting drains and building foundations at risk from spreading roots. Mr Payne also stated that the tree harboured pests, including birds and squirrels and also increased the risk of lightning strike to houses surrounding (Appendix 2).
- 2.2 On 5 June the Council's tree office wrote in response to this letter addressing the various issues raised. On the 20 June the Council received a second letter from Mr Payne reiterating his concerns and adding that a woodworm infestation in his garden shed could have originated from the tree.
- 2.3 The Council's tree officer telephoned and wrote to Mr Payne on 19 August, by which time Mr Payne had again stated that he wished to maintain his objection for the reasons stated in his letters. Mr Payne wrote to the Council again on 3 September about his concerns and the Council responded on 18 September. This correspondence is also included in Appendix 2.

**3. THE TREE**

- 3.1 T1 is an Oak tree growing near the northeast corner of the long rear garden of 21 Copsewood Road. It is the opinion of the Council's tree officer that this tree provides a positive contribution to the appearance of the area.
- 3.2 Although the tree does not grow immediately adjacent to a road boundary, nevertheless it can be seen from the public highway as well as from the rear gardens of the properties in Copsewood Road, Dale Road and Lanehayes Road.
- 3.3 With sound arboricultural management it is considered that this tree has a safe life expectancy well in excess of 20 years and it should be noted that the owner of the property on which the tree stands does not object to the Tree Preservation Order.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 If TPO 37/02 is confirmed, there will be the cost of administering the service of the confirmed TPO and any subsequent tree work applications.
- 4.2 If TPO 37/02 is confirmed, compensation may be sought in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the TPO or of the grant of such consent which is subject to condition. However, no compensation will be payable for any loss of development or other value of the land, neither will it be payable for any loss or damage which was not reasonably foreseeable.

#### **5. ENVIRONMENTAL IMPLICATIONS**

- 5.1 Extensive or uncontrolled cutting or the premature removal of this tree and the lack of controls to plant suitable replacements with a similar large growing species will be detrimental to the appearance of the area.

#### **6. CRIME AND DISORDER IMPLICATIONS**

- 6.1 There are no crime and disorder implications arising from this report.

#### **7. OTHER IMPLICATIONS**

- 7.1 The making or confirmation of a Tree Preservation Order could interfere with the right of a property owner peacefully to enjoy his possessions but it is capable of justification under Article 1 of the First Protocol as being in the public interest (the amenity value of the tree) and subject to the conditions provided for by law (Town and Country Planning Act 1990) and by the general principles of international law.
- 7.2 In so far as the tree is on or serve private residential property the making or confirmation of a Tree Preservation Order could interfere with the right of a person to respect for his family life and his home but is capable of justification as being in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8).

#### **8. RECOMMENDATION**

- 8.1 It is therefore recommended that TPO 37/02 be confirmed without amendment to include the Oak tree T1 for the amenity value it provides to the area.

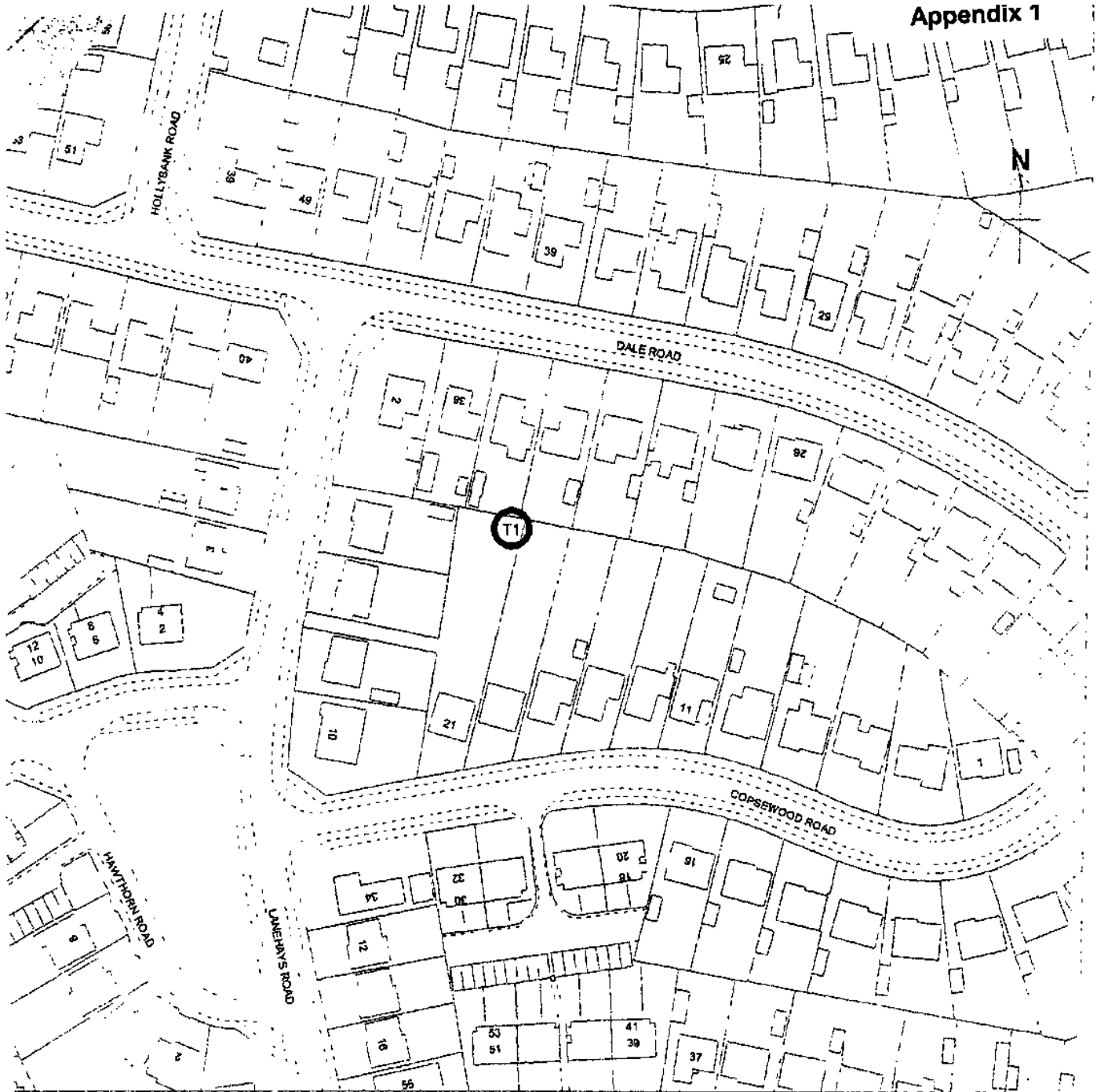
#### **Further Information:**

Bryan Wilson  
Tree Team Leader

Telephone: 02380 285327

#### **Background Papers:**

Tree Preservation Order No. 37/02



### Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 37/02  
 Approximate Scale: 1:1250  
 Date Printed: 22/04/02

#### Key

- Individual Trees Covered by TPO
- Area of Trees Covered by TPO
- Groups of Trees Covered by TPO
- Woodland of Trees Covered by TPO
- Trees Noted but not Worthy of Preservation



Elizabeth Malcolm B.A., M.R.T.P.I.  
 Director of Environment Services  
 Environment Services Directorate  
 Appletree Court  
 Wyndhurst  
 SO43 7PA



**New Forest**  
 DISTRICT COUNCIL

*Garraun O'Sourke*  
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**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

No. on Map	Description	Situation
T1	Oak	North east corner of the rear garden of 21 Copsewood Road, Hythe.

**Trees specified by reference to an area:**  
(within a dotted black line on the map)

No. on Map	Description	Situation
		NONE.

**Groups of Trees**

(within a broken black line on the map)

No. on Map	Description	Situation
		NONE.

**Woodlands**

(within a continuous black line on the map)

No. on Map	Description	Situation
		NONE.

Mr E M Payne  
4 Lanehayes Road  
Hythe  
Southampton  
Hants.  
SO45 5ER

My ref: BRW/vmw/TPO 37/02  
Your ref:

18 September 2002

Dear Mr Payne

**TREE PRESERVATION ORDER 37/02  
LAND AT 21 COPSEWOOD ROAD, HYTHE**

Thank you very much for your letter of 3 September and I note your further comments in relation to woodworm infestation and lightening damage potential to buildings near trees.

Following our telephone conversation in August and your most recent letter, I feel it would be best if we put your concerns to the Council's Appeals Panel for a decision whether to confirm this Tree Preservation Order or not.

Turning to your point about responsibility for damage or other situations arising from a tree subject to a Tree Preservation Order, I can tell you that responsibility for a tree rests with that tree owner irrespective of whether it is subject to legal protection or not.

I trust this clarifies the situation for you but please do not hesitate to contact me if you wish to discuss it further. You will in any case shortly be receiving details of the Appeals Panel meeting.

Yours sincerely

Bryan Wilson  
Tree Group Leader

Tel: (023) 8028 5327  
Fax: (023) 8028 5223  
Email: [pdi@nfdc.gov.uk](mailto:pdi@nfdc.gov.uk)

4 Lanehayes Road ,  
Hythe ,  
Southampton ,  
Hants .  
SO45 5ER .

3rd. Sept. 2002

Tree Time  
Environmental Services ,  
Appletree Court ,  
Lyndhurst ,  
Hants .  
SO43 7PA .  
For the attention of Mr B . Wilson .

Dear Sir        Re Proposed tree preservation order  
nr. 37/02 , 21 Copewood Road , Hythe .

I wish to acknowledge receipt of your letter dated 19 th. August 2002 and to inform you that I am well aware that there are systems for treating woodworm ; just as there are methods of repairing damaged drains and buildings, all of which can cost considerable sums of money .

I note from the above letter that rather than take a proactive approach to the issues that have been highlighted you are proposing to adopt a wait and see policy. I therefore trust that New Forest District Council are prepared to accept full responsibility for any resulting damage .

I would also advise you that I have been informed that in recent times a garage attached to domestic premises in Oak Close , Dibden Purlieu ; was struck by lightning, apparently due to the close proximity of tall trees .

Would you please acknowledge receipt of this letter .

Yours faithfully .

Edward Maurice Payne .

M E M Payne  
4 Lanehayes Road  
Hythe  
Southampton  
SO45 5ER

BRW/vmw/TPO 37/02

19 August 2002  
2855327  
285223

Dear Mr Payne

**OBJECTION TO TREE PRESERVATION ORDER 37/02  
OAK TREE ON LAND AT THE REAR OF 21 COPSEWOOD ROAD, HYTHE**

First I must apologise for the delay in responding to your letter of 18 June. This is entirely due to an oversight on my part and I am very sorry that I have not written to you earlier.

Having read your letter of 6 May and Mr Cashman's response of 5 June I now note additional issues which you raise in regard to this tree. First of all the Tree Preservation Order was made following enquiries from local tree work contractor regarding the protective status of the tree.

Whilst it is possible for tree roots to contribute to building subsidence, nevertheless this only happens where a number of issues, when added together, lead to an adverse result. Should it be shown that the tree has caused settlement damage to nearby buildings then this matter can be addressed at that time but in the meantime I consider the tree continues to provide an amenity value to the public using the roads nearby as well as other residents.

Those squirrels, birds and indeed many other insects and mammals depend on trees for food and shelter. I am sorry that you do not enjoy the grey squirrels that apparently inhabit this tree but I do not consider this a reason for not making the tree subject to Tree Preservation Order.

You mention your suspicions that woodworm in your garden shed had originated from this tree. I do not know of any way that your suspicions can be either proved or disproved but of course there are certain proprietary treatments which can deal with woodworm infestations.

Notwithstanding my comments in this letter, and Mr Cashman's comments in his letter of 5 June, I understand that you wish this matter to be heard by the Council's Appeal Panel. I shall therefore ask for the Panel to be convened and you will shortly receive details regarding this matter. Should you wish to reconsider in the meantime then please do not hesitate to contact this office.

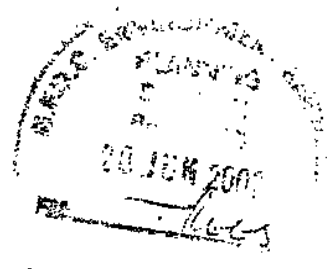
Yours sincerely

Bryan Wilson  
Tree Group Leader

Copy to: Andy Rogers – Committee Administrator

~~15/97~~  
closed by letter  
19/8/02  
Date C.

4 Lanehayes Road,  
Hythe,  
Southampton,  
Hants.  
SO45 5ER.



18th. June 2002

Tree Time  
Environmental Services  
Appletree Court,  
Lyndhurst,  
Hants.  
SO43 7PA.  
For the attention of Mr. Cashman

Dear Sir            Re Proposed tree preservation order  
nr. 37/02, 21 Copsewood Road, Hythe.

In reply to your letter dated 5th June 2002 and further to my recent telephone call, I would confirm that a 15 inch diameter surface water drain which passes beneath the rear of my property and my neighbours at number 6 Lanehayes Rd. has collapsed twice in recent times, apparently as the result of root damage. The latest incident occuring in my neighbours garden earlier this year, which cost in excess of £5000 to repair. There is also a main foul sewer crossing our gardens.

I note your comments regarding the ammenity value of this tree and in response would query why it did not warrent protection a few years ago when other trees in this area were listed.

As far as damage to buildings is concerned it is a well known fact that the pressence of trees can have an adverse effect upon the moisture content of clay soils with cosequential settlement and damage to buildings; irrespective of the adequacy of the foundations to carry the loads for which they were designed; unless the building has piled foundations.

I would venture to suggest that the Forestry Commission has a different perspective on the pressence of grey squirrels and the damage they can cause; to that proferred in your letter. I would suggest also that the vast majority of people would prefer to see and hear songbirds,



in their gardens instead of noisy aggressive crows and magpies .

Furthermore since writing to you on the 6th May I have discovered active woodworm in my garden shed which I suspect originated from this tree .

In view of the foregoing I have no alternative but to maintain my objection to the proposed preservation order and would pose the question ; in these enlightend times ; would any responsible person plant an oak tree in that location knowing the potential consequences .

Will you please acknowledge receipt of this letter.

Yours faithfully ,

E.M.PAYNE

Mr E M Payne  
4 Lanehayes Road  
Hythe  
Southampton  
Hants.  
SO45 5ER

DWC/vmw/TPO 37/02

5 June 2002  
285329  
285223

Dear Mr Payne

**TOWN AND COUNTRY PLANNING ACT 1990  
TREE PRESERVATION ORDER NO. 37/02  
LAND OF 21 COPSEWOOD ROAD, HYTHE**

Thank you for your letter of 6 May and I apologise for the delay in responding. I note that you wish to object to this Tree Preservation Order which protects a single Oak tree growing in the north-east corner of the rear garden of 21 Copsewood Road and, to the east of your property at 4 Lanehayes Road. In your letter you list three reasons for your objection and the following responses relate to these.

You state that the tree is situated in a depression and surrounded by houses and so cannot be regarded as a public amenity. Having driven around Dale Road, Lanehayes Road and Copsewood Road I was able to view the tree, albeit over the rooftops, and in my opinion does make the area look more pleasant and therefore, constitutes a positive public amenity value.

You also mention that sunlight is obstructed to neighbouring properties and drains and building foundations are at risk from spreading roots. The terms of a Tree Preservation Order (TPO) allows for reasonable pruning of protected trees from time to time. One of the most common reasons for wishing to prune protected trees is to allow more light into adjacent properties and such reasonable applications, for which there is no charge, will be given favourable consideration. Provided drains and foundations are adequately built, there should be no risk of roots causing them damage. If you are aware of damage already caused then I should be grateful to hear about this.

Whilst I appreciate your concern about the presence of crows, magpies and squirrels being detrimental to the population of smaller birds, nevertheless they are all part of the natural wildlife population and indeed one of the secondary reasons for protecting trees is in order to enhance wildlife diversity.

Contd...

2

Mr E M Payne  
5 June 2002

I am not aware of the presence of a tree increasing the risk of a lightning strike to adjacent properties and am endeavouring to find more information about this although, as with the natural animal population, I do not feel that this is a sufficient reason to remove the tree from protection by a Tree Preservation Order.

If you still wish to maintain your objection in the light of my response, the matter will be considered by the Council's Appeals Panel made up of elected members. Please will you write or telephone me to let me know if you wish to maintain your objection.

Yours sincerely

D Cashman  
Arboriculturist

4 Lanehayes Road ,  
Hythe ,  
Southampton ,  
Hants .  
SO45 5ER

6 th. May 2002

Tree Time ,  
Environmental Services ,  
Appletree Court ,  
Lyndhurst ,  
Hants .  
SO43 7PA .  
For the attention of Mr. Cashman

Dear Sir        Re Proposed tree preservation order  
nr. 37/02 , 21 Copsewood Road , Hythe .

In response to the Director of Environmental Services letter dated 24 th. April 2002 I wish to register my objection to the proposed imposition of the above tree preservation order; on the basis that since the tree is located in a depression in a private garden and surrounded by houses it cannot be regarded as a public ammenity and does not add to the appearance of the locality .

Also ; in its present form ; it constitutes a nuisance to adjacent properties by obstructing sunlight and putting drains and building foundations at risk from spreading roots .

In addition it harbours pests such as crows , magpies , and squirrels , to the detriment of the small bird population which has declined in recent years

The pressence and form of this tree must also increase the risk of lightning strikes to property in the area with associated damage and possible injuries to people

Will you please acknowledge receipt of this letter .

Yours faithfully,

Edward M. Payne