

**OBJECTION TO TREE PRESERVATION ORDER NO. 7/03
LAND OF 10 VINCENT ROAD AND VINCENT CLOSE, NEW MILTON**

REPORT OF THE COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- # 1.1 Tree Preservation Order (TPO) No. 7/03 was made on 16 January 2003. The TPO plan and first schedule are attached as Appendix 1. The Order includes one Sycamore tree identified as T1 and situated in the south east corner of the rear garden of 10 Vincent Road, New Milton.
- 1.2 This TPO was made following submission of a detailed planning application for housing development to an area of land surrounding the tree. The Council's Tree Officer considers the tree provides a special amenity and is therefore worthy of protection.

2. OBJECTION

- # 2.1 Following service of the TPO, a letter of objection was received on 6 February 2003, from Mr Richard Hartell-Smith on 10 Vincent Road, New Milton. The objection was made on the grounds that Hinsley and Partners, Arboricultural Consultants, considered the tree to be a poor specimen and that the tree provides no amenity value in the area. Hr Hartell-Smith also stated that the tree was beginning to split and was therefore liable to collapse at any time. He included in his letter a formal application to fell the tree to avoid damage or injury. (Appendix 2).
- # 2.2 On 7 February 2003 the Council's Tree Officer wrote in response to this letter addressing the various issues raised and notifying Mr Hartell-Smith that his letter was being treated as a formal application to fell the tree. (Appendix 3)
- 2.3 Having received a copy of the tree report submitted by Mark Hinsley Arboricultural Consultants, the Council's tree officer visited the property on 20 February, to assess the tree work application. Particular regard was given to the points raised in the letter from Mr Hartell-Smith and the consultant's report.
- # 2.4 Following this inspection, the Council's tree officer wrote again to Mr Hartell-Smith in a letter dated 24 February, addressing the issues raised and seeking to know if he wished to pursue his objection. (Appendix 4). To date no further correspondence has been received regarding this matter, from Mr Hartell-Smith.
- # 2.5 A decision was issued by the Council on 14 March 2003, refusing consent to fell the tree but granting consent for some pruning works (Appendix 5). One local resident wrote supporting the application and the Town Council and nine local residents wrote with objections to the proposed felling.

3. THE TREE

- 3.1 T1 is a Sycamore tree growing at the south east corner of the rear garden of 10 Vincent Road, adjacent to the garage courtyard at the rear of Vincent Close. The tree stands some 9 meters tall and with a similar spread of branches. The tree has most likely grown from a self sown seed and has several trunks growing from near ground level. This form of growth is typical of a tree that has been extensively cut back or even coppiced near ground level.
- 3.2 The tree is covered in ivy which obscures some of the trunk and branch unions. The Council's tree officer did not find areas of weakness that at those unions that were visible, that exhibit weakness which would render the tree an imminent hazard. Overall the health of the tree appears good, with extension growth at the tips of the branches extending to 30cm or more.
- 3.3 Although the tree does not grow adjacent to the public highway, nevertheless it can be seen Vincent Road as well as from the rear of properties in Vincent Road, Vincent Close and Peckham Avenue. With sound arboricultural management, this tree could have a safe life expectancy in excess of 40 years and continue to provide a pleasant amenity feature in the area.

4. FINANCIAL IMPLICATIONS

- 4.1 If TPO 7/03 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 7/03 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 these trees 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 the 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 trees are 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 7/03 is confirmed without amendment to include the Sycamore tree, 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. 22/03

SCHEDULE 1
SPECIFICATION OF TREES

TPO: 7/03

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Sycamore	South eastern boundary of the rear garden of 10 Vincent Road and Land of Vincent Close

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		

(6) In this article—

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 7/03

Approximate Scale: 1250

Date Printed: 14/01/03

W John Ward BSc, MCD, MBA, MRTPI, MIMgt
 Head of Policy, Design & Information
 Community Services Directorate
 Appletree Court
 Lyndhurst
 SO43 7PA

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



New Forest
 DISTRICT COUNCIL

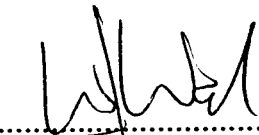
W John Ward

AN AUTHORISED SIGNATORY

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Dated this Sixteenth day of January 2003

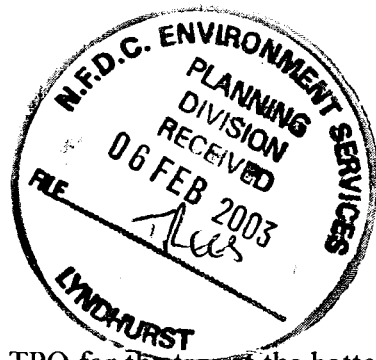
Signed on behalf of the District Council of New Forest



.....

Authorised by the Council to sign in that behalf





10, Vincent Road,
New Milton,
Hants.
BH25 6SN
05.02.03

Dear Sir,

I am in receipt of your TPO for the tree at the bottom of my garden, which adjoins the car parking area off Vincent Close. I am not prepared to sign or accept it for the following reasons:-

Carlton Developments have recently commissioned Hinsley and Partners, Arboriculture Consultants, to examine and prepare a report on the condition of the tree. I understand they consider the tree to be a poor specimen and is in fact five branches growing from a root cluster. The tree serves to provide no amenity value to the area, being only visible to myself, my immediate neighbours and users of the garages in Vincent Close.

In addition, and the most serious reason for opposing your application to place a TPO on the tree is the fact that the tree is beginning to split and is therefore liable to collapse at some time. Bearing in mind the tragic event last weekend I feel I should be looking for an immediate felling of the tree on safety grounds.

If you persist in your proposal to place a TPO on the tree, which has obviously been done to thwart Carlton Developments proposal, without any serious consideration by yourselves as to whether or not the tree really deserves to be retained, it seems to me to be an abuse of the Tree Preservation Order system.

I hereby give you notice that I will not be responsible for the tree, and in the event of the tree collapsing and causing any damage or, even worse, any personal injury to a third party, I hold the Local Authority responsible.

Based on the report prepared by Hinsley and Partners, I hereby make formal application to fell the said tree forthwith, before any damage or injury is caused.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Richard Hartell-Smith'.

Richard Hartell-Smith

Mr Richard Hartell-Smith
10 Vincent Road
New Milton
Hants.
BH25 6SN

My ref: BRW/vmw/TPO 7/03
Your ref:

7 February 2003

Dear Mr Hartell-Smith

**TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER(TPO) 7/03
LAND OF 10 VINCENT ROAD, AND VINCENT CLOSE, NEW MILTON**

Thank you for your letter of 5 February and I note your comments regarding the recent Preservation Order made to protect the Sycamore tree growing on the borders of your rear garden and the garage block in Vincent Close.

I am sorry you do not share my view that this tree provides an important amenity feature, being visible to a number of users and residents of Vincent Road, Vincent Close and Peckham Avenue.

I inspected the tree recently and did not note any serious structural weakness and have not yet seen a detailed report from Hinsley and Partners, although I understand one is being submitted to the Council. I shall of course take note of any problems that are identified and will re-inspect the tree in any case in light of your comments.

I do assure that the condition, position and amenity value of the tree were given serious consideration before the Tree Preservation Order was made. It was not placed upon the tree to thwart, development aspirations but to ensure that the tree is given due consideration in conjunction with any proposed changes to the local environment and that it receives adequate protection to ensure its continued well-being, should such development take place.

A Tree Preservation Order does not devolve ownership onto the Council nor does it remove liability for its safe maintenance from the landowner. The TPO legislation provides for applications to prune and remove trees and also for appeals to be made in the event of a refusal or a consent with conditions.

Contd...

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Mr Hartell-Smith
7 February 2003

In the final paragraph of your letter you say that wish to fell the tree forthwith and will therefore register your letter as an application to fell the tree and you will shortly be receiving further details in regard to this matter.

Yours sincerely

Bryan Wilson
Tree Group Leader

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

Copy to: D C South
A Caldwell – for information

Mr R Hartell-Smith
10 Vincent Road
New Milton
Hants.
BH25 6SN

My ref: BRW/vmw/TPO 7/03 - 2003/54

Your ref:

24 February 2003

Dear Mr Hartell-Smith

**TREE PRESERVATION ORDER 7/03:
APPLICATION TO FELL A PROTECTED SYCAMORE TREE
REAR GARDEN 10 VINCENT ROAD, NEW MILTON**

I write further to your letter received on 6 February and mine in response of 7 February.

In consideration of your application to fell the newly protected sycamore tree, I visited your house to inspect the tree on Thursday 20 February. Having previously viewed the tree from the adjacent garage block at Vincent Close, I was grateful for the opportunity of also inspecting the tree from the rear garden of No. 10 Vincent Road. Both these inspections lead me to believe that the tree is in a healthy condition and as far as I could see there is no weakness in the branch unions significant enough to cause them to fail at this time.

Since my last letter, I have seen a copy of the tree report, prepared by Mark Hinsley Associates, that you mentioned in your letter but as I explained to your wife there appear to be some inaccuracies and anomalies in the assessment of the condition of the tree and I do not take the view that it poses an imminent threat. In addition, I consider that the loss of this tree at this time would be detrimental to the appearance of the area. It was for this reason that I included it in a Tree Preservation Order.

Without any substantiated evidence to the contrary, I could not therefore recommend the removal of the tree, which I have so recently protected. However, the tree is covered in ivy and there are some low branches which could be pruned. This will achieve a reasonable clearance from the roofs of the adjacent garage blocks and ensure that high-sided vehicles using the garage area do not damage the tree, or do not become damaged by contact with the tree. So, whilst I could not recommend to the removal of the tree at this time, nevertheless I can see that some minor pruning is appropriate.

Contd...

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TPO 7/03 – 2003/54

24 February 2003

I will therefore recommend that consent for the felling of the tree be refused but that it is pruned as described above. A formal consent to this effect may then be issued after 7 March.

Taking account of the above comments, and providing you are happy to undertake some pruning of the tree, I should be grateful if you would consider withdrawing your objection to the Tree Preservation Order. Please will you let me know what you decide, either by letter, telephone call or e mail.

If you wish to maintain your objection, the matter will be considered before a public meeting of the Council's Appeals Panel, comprising elected Councillors who will decide if the order should be confirmed. Details of this procedure will be forwarded to you if your objection stands.

Please do not hesitate to contact me if you would like clarification of any of the points raised in this letter.

Yours sincerely

Bryan Wilson
Tree Group Leader

Tel: (023) 8028 5327

Fax: (023) 8028 5223

Email: pdi@nfdc.gov.uk

Copy to: Lucy Bamber – DC South

NEW FOREST DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999

Mr R Hartell-Smith
10 Vincent Road
New Milton
Hants
BH25 6SN

Application Number: 2003/54

Tree Preservation
Order Number: 7/03

Re: Proposed Tree Works -

Border of rear garden of 10 Vincent Road, New Milton.

In pursuance of their powers under the above Act and Regulations, the decision of the Council, as the Local Planning Authority is:

REFUSE consent to fell Sycamore T1 of Tree Preservation Order 7/03.

CONSENT to the carrying out of the works listed below:

Sycamore T1 of Tree Preservation Order 7/03 - Lift the crown to allow 3 metres clearance above ground level. Reduce selected branches to allow up to 3 metres clearance from the roof of adjacent garage buildings, and sever the ivy near ground level.

in accordance with the plans and particulars submitted with your application received on 06/02/03, subject to compliance with the conditions on the following page.

The reason for the decision of the Local Planning Authority to refuse consent (where applicable) is:

The loss of this tree at this time would be detrimental to the appearance of the local environment.

... Continued

NEW FOREST DISTRICT COUNCIL

CONDITIONS ATTACHING TO TREE WORK DECISION

Application Number: 2003/54

Site Address: Border of rear garden of 10 Vincent Road, New Milton.

CONDITIONS:

All works hereby approved shall be carried out within one year of the date of this consent. Please note however that between April and June special care should be taken not to disturb wild bird nests which are protected by the Wildlife and Countryside Act 1981. Contact English Nature on 023 8028 3944 for further details.

N.B. This consent does not grant the applicant the right to carry out work over property other than his / her own without the agreement of the owner. All terms contained in this decision are as defined in British Standard 3998: 1989 - Recommendations for Tree Work - and work should be carried out in accordance with recent arboricultural research as recommended by the Arboricultural Association and Forestry Commission.

Appletree Court
Lyndhurst
Hampshire
SO43 7PA

Tel: 023 8028 5327

Head of Policy Design and Information

Date *PL* 14 MAR 2003

N.B. See notes overleaf