

OBJECTION TO TREE PRESERVATION ORDER NO. 23/03 LAND OF 48 AMBLESIDE ROAD, LYMINGTON

REPORT OF COUNCIL'S TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- # 1.1 Tree Preservation Order (TPO) No. 23/'03 was made on 24 February 2003. The TPO plan and first schedule are attached as Appendix 1. The Order protects one Monterey Cypress (*Cupressus macrocarpa*) growing in the rear garden of 48 Ambleside Road, Lymington.
- 1.2 48 Ambleside Road lies within the Lymington Conservation Area and this TPO was made following notification by the householder, Mr Walton, of his intention to fell the tree. The Council's Tree Officer considers however that the tree provides a special amenity feature and it is worthy of retention and protection by TPO.
- # 1.3 The notification of intention to fell the Monterey Cypress was included in an application to undertake work to a number of trees on 46 and 48 Ambleside Road, some of which were already subject to TPO 48/92. The tree work application and decision are attached as Appendix 2.

2. OBJECTION

- # 2.1 Copies of correspondence are included as Appendix 2
- 2.2 Following service of the TPO, Mrs Hanson of 15 Daniell's Walk wrote to the Council on 26 February, objecting on the grounds that the tree is "...overly large, ugly and has outgrown its space in close proximity to the houses..." The Council responded to the points raised on 4 March, following which Mrs Hanson affirmed that she wished to maintain her objection.
- 2.3 On 10 March, Mr Mucklow of 5 Daniell's Close wrote objecting to the TPO on the grounds that in 1992 his wife was informed by a representative of the tree was dying and therefore inappropriate for protection by TPO. In addition, Mr Mucklow referred to trees that fell into his property during the gales of 1986 (sic).
- 2.4 On 7 March Mr and Mrs Walton wrote objecting on the grounds that the tree was diseased, domineering and endangered both their property and the immediately neighbouring properties. Mr Walton also stated that the tree was diseased, and considered not worthy of preservation in 1992.

3. THE TREE

- 3.1 The tree in question is a Monterey Cypress (*Cupressus macrocarpa*). It stands in the north west corner of the rear garden of 49 Ambleside Road, and its branches overhang the gardens of adjacent properties in Daniell's Walk and

- 3.2 As stated by Mr and Mrs Walton and Mr Mucklow, other trees on the land were included in a TPO in 1992 but the cypress the subject of the current TPO was not. Although there is no written record of the tree officers appraisal at the time, it is probable that, noting the tree was infected with Cypress Canker fungus, it was assumed the safe life expectancy of the tree was limited. However the tree has survived and continues to grow, albeit with signs of still being infected by fungus. Although consent was refused for the removal of the tree, at the same time consent was granted for pruning. The tree officer believed that the pruning would both improve the appearance of the tree by removing the dead branches and make it less dominating by cutting the ivy and thinning out the branches.
- 3.3 The tree can be seen from the surrounding public roads. It is the opinion of the Council's tree officer that the loss of this tree at this time would be detrimental to the appearance of the local environment.

4. FINANCIAL IMPLICATIONS

- 4.1 If TPO 23/03 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 23/03 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 Even with infection with Cypress Canker, extensive or uncontrolled cutting, or the premature removal of this tree, at this time without it being replaced with a similar large growing species would be detrimental to the appearance of the area. Replacement planting can only be enforced under the provisions of a TPO.

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 to peacefully 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 23/03 is confirmed without amendment.

Further Information:

Bryan Wilson
Tree Team Leader

Telephone: 02380 285327

Background Papers:

Tree Preservation Order No. 22/03
Correspondence attached

G:PPI/Veronica/Admin/App-Pan/Apr24 - 03
21 July 2003



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 23/03

Approximate Scale: 1250

Date Printed: 24/2/03

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

Key

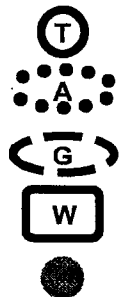
Individual Trees Covered by TPO

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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SCHEDULE 1

TPO: 23/03

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Monterey Cypress	North East corner of the rear garden of 48 Ambleside Road, Lymington

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

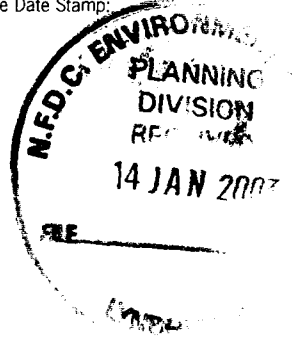
No. on Map	Description	Situation
	None	

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	

Application No: 2003/19
Presence Office: Lymington
TPO/CA: 48/92
Office Date Stamp: 

Application to carry out work to tree(s)
subject to a Tree Preservation Order
or within a Conservation Area

Town and Country Planning Act 1990
Town and Country Trees Regulations 1999

PLEASE COMPLETE THIS FORM USING BLOCK CAPITALS AND BLACK INK

Name of applicant	Mr and Mrs Walton		
Address of applicant	48 Ambleside Rd Lymington.		
Post code	S041 3QS	Telephone Number	01590 670424
Name and address of Agent (if any)	Broad Oak Tree-Care (Cyrus Crum) 28 River Way, Christchurch, Dorset.		
Post code	BH23 2QP	Telephone Number	01202 477310


Name and address of tree owner if different from applicant	T8 is in garden of No 46 Ambleside Rd.
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State the location of the tree(s) to which this application relates and complete a plan as described overleaf	See plan overleaf.
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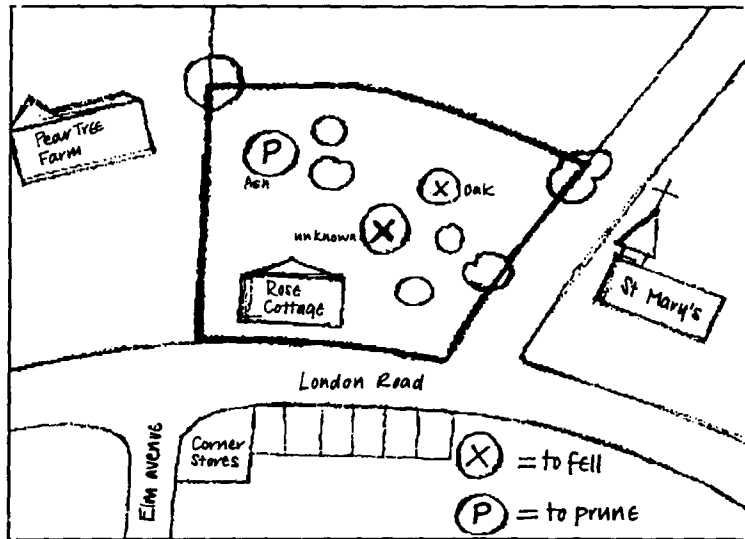
State the type(s) of tree(s), if known, together with the intended work, e.g. Pruning, Felling.	See report provided.
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Briefly note the reason for making this application	Routine Works. Maintenance and removal of dead Trees.
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Please put a tick in the box if you are an employee of the New Forest District Council

I/We apply for consent to carry out the operation specified above.	
Date: 6 th Jan 03	Signature:  Mr C. S. Crum. Applicant/Agent

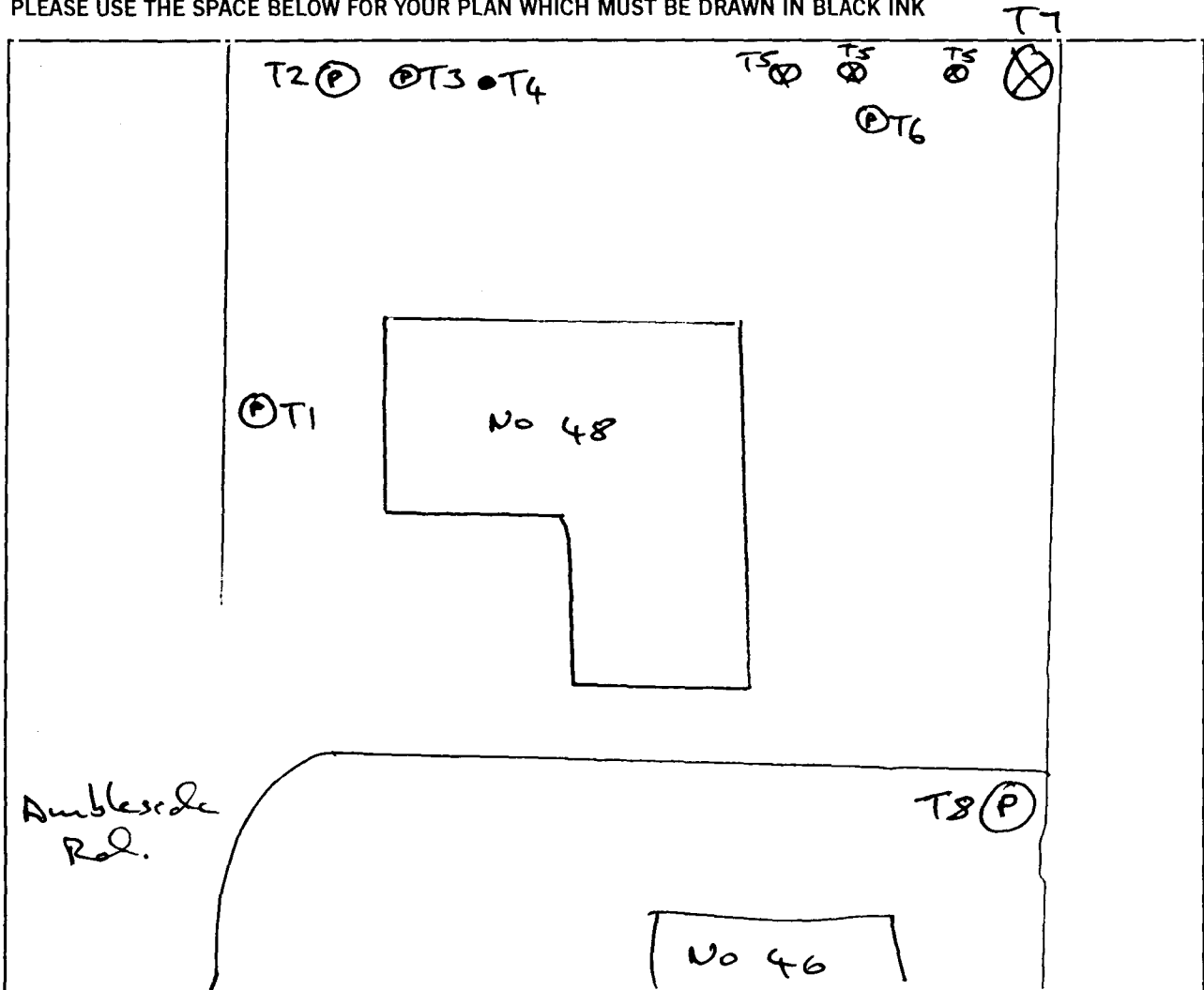
An example of a typical plan to accompany an application.



When drawing your plan:

1. Try and locate your house in relation to nearby properties.
2. Ensure that all relevant roads are named.
3. Ensure that the trees are clearly marked on the plan.
4. Put the type of the tree if known.

PLEASE USE THE SPACE BELOW FOR YOUR PLAN WHICH MUST BE DRAWN IN BLACK INK





28 River Way, Christchurch, Dorset BH23 2QP
Tel: (01202) 477310 Fax: (01202) 483898 Mobile: 07990 511416
www.broadoaktreecare.com
VAT No: 777 443 687

11th November 2002

F.A.O. Mr and Mrs Walton
48 Ambleside Road
Lymington
SO41 3QS

Dear Mr and Mrs Walton,

RE. Tree Surgery Works.

Further to my recent site visit with yourselves, I now have pleasure in submitting my quotation for your consideration.

T1. Silver Birch Tree

This tree leans at a 45 degree angle towards the house. I recommend thinning by 20% to lessen wind effect on the tree and relieve some weight from the canopy.

T2. Beech Tree

Crown raise to 5.5m from ground level.

T3. Yew Tree

Crown reduce and shape to form a more manageable tree. 1.5m

T4. Western Red Cedar

Reduce back from the garden by up to 3.4ft to clear the bed.

T5. Dead Elms x 3

Section fell to ground level.

T6. Yew Tree

Crown reduce and shape to clear the bed and produce a more manageable tree.

T7. Monterey Cypress

Section fell to as close to ground level as possible.

T8. Oak Tree

Remove secondary branch from stem growing over the garden and towards the house. Cut the Ivy at the base of this tree.

Remove all debris leaving the working areas clean and tidy.

I hope the above is satisfactory, should you have any queries or wish to discuss this with me further please do not hesitate to contact me.

I look forward to hearing from you.

Yours sincerely



Cyrus Crum (proprietor)

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

Mr & Mrs Walton
48 Ambleside Road
Lymington
Hants
SO41 3QS

Application Number: 2003/19
Tree Preservation
Order Number: 48/92

Re: Proposed Tree Works -

Within the garden of 46 Ambleside Road, Lymington.

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 ONE Monterey Cypress (T7 on the application plan).

The Monterey Cypress is T1 of Tree Preservation Order 23/03.

Consent to prune the Monterey Cypress (T7 on the application plan) - Clean out the crown by removing any deadwood, broken branches, stumps or ivy. Lift the crowns to allow 4 metres clearance above ground level. Thin throughout the crown by up to 20%. The Monterey Cypress is T1 of Tree Preservation Order 23/03.

CONSENT to the carrying out of the works listed below:

1 Silver Birch (T1 on the application plan) - Thin throughout the crown by up to 20%. T2 of Tree Preservation Order 48/92.

1 Beech (T2 on the application plan) - Lift the crowns to allow 5.5 metres. T4 of Tree Preservation Order 48/92.

1 Yew (T3 on the application plan) - Reduce and reshape the crown by up to 1.5 metres. T5 of Tree Preservation Order 48/92.

1 Western Red Cedar (T4 on the application plan) - Reduce the lateral branches growing over the garden of 48 Ambleside Road by up to 1.5 metres. T6 of Tree Preservation Order 48/92.

1 Yew (T6 on the application plan) - Reduce and reshape the crown by up to 1.5 metres. T7 of the Tree Preservation Order 48/92.

1 Oak growing in the garden of 46 Ambleside Road (T8 on the application plan) - Remove the low secondary branch growing towards the property. T9 of Tree Preservation Order 48/92.

in accordance with the plans and particulars submitted with your application received on 14/01/03, 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 tree forms an important integral part of the landscape of this residential area. Its loss at this time would be of detriment.

... Continued

NEW FOREST DISTRICT COUNCIL
CONDITIONS ATTACHING TO TREE WORK DECISION

Application Number: 2003/19

Site Address: Within the garden of 46 Ambleside Road, Lymington.

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 28 FEB 2004 JS

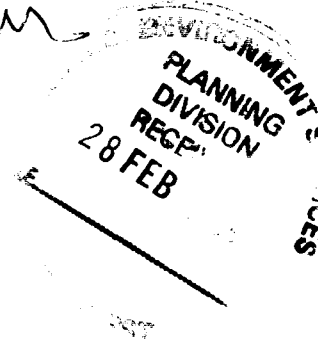
N.B. See notes overleaf

15 Daniells Walk
 Lymington
 Hampshire
 SO41 3PP

26th February 2003

The Tree Team
 New Forest District Council
 Appletree Court
 Lyndhurst
 Hampshire
 SO43 7PA

Boyan



Dear Sir

Re: T.P.O. No. 23/03

I would like ~~to object to~~ the implementation of the above Tree Preservation Order as the tree, in my opinion, does not "enhance our environment".

The tree in question is an overly large, ugly fir which has outgrown its space in close proximity to the houses of 48 Ambleside Road and 5 Daniells Close, blocking their natural light. If this tree were removed, the surrounding trees would also gain from more light and air.

This particular area has a high density of trees (including approximately 18 of various sizes in the back garden of 15 Daniells Walk), so the removal of one tree would not be detrimental, but judicious management of a maturing tree canopy.

I hope you will give due consideration to the feelings of the direct neighbours on this matter.

Yours faithfully

Lorna Hanson

Lorna Hanson (Mrs)

Mrs Lorna Hanson
15 Daniells Walk
Lymington
Hants.
SO41 3PP

My ref: BRW/vmw/TPO 23/03

Your ref:

4 March 2003

Dear Mrs Hanson

**TREE PRESERVATION ORDER(TPO) 23/03:
LAND AT 48 AMBLESIDE ROAD, LYMINGTON**

Thank you for your letter of 26 February and I note your comments regarding the TPO made to protect the Monterey Cypress in the rear garden of No. 48 Ambleside Road.

I note that your reason for objecting to this Order is because you do not feel the tree enhances your environment.

A number of trees were included in a Tree Preservation Order at the time 48 Ambleside Road was proposed for development but this Cypress tree was not preserved at that time. I am uncertain as to the reason why because it is easily visible from the local roads. My supposition is that the tree appears to be suffering from a fungus disease, which affects Monterey Cypress trees. It may be that 10 years ago the Council officer, who made the TPO, felt that the tree would therefore shortly die. However, it can be seen that the tree still has only very minor branches dying back and that generally it appears to be in good health.

Since it is so readily visible and appears to me to be in reasonable health, despite a few dead branches, I consider it meets the requirements for inclusion within a Tree Preservation Order. I have discussed the matter with the tree's owners, and have informed them that, whilst the Council may refuse consent for the felling of the tree, nevertheless there is some pruning work which could be undertaken to make the tree cast less shade. I will forward a copy of the Council's decision over this tree work to you for information.

copy sent BW.

If you wish to maintain your objection to the Order, the matter will be placed before a public meeting at which a number of elected Councillors will decide whether the Order should be confirmed or not.

Bearing in mind the above comments and the proposal to allow some pruning work to be undertaken to the tree, I should be grateful if you would reconsider your objection and let me know if you wish to maintain or withdraw it.

Yours sincerely

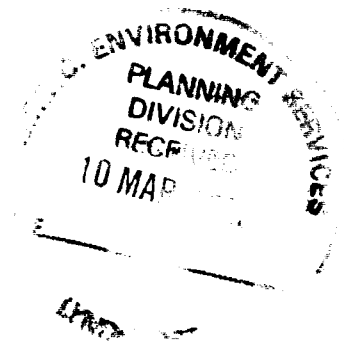
Bryan Wilson
Tree Group Leader

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

15 Daniells Walk
Lymington
Hampshire
SO41 3PP

7th March 2003

Tree Group Leader
New Forest District Council
Appletree Court
Lyndhurst
Hampshire
SO43 7PA



Dear Mr Wilson

Re: T.P.O. No. 23/03

Thank you for your letter dated 4th March and for your further information on the above Tree Preservation Order at 48 Ambleside Road.

However, I would still like to let my objection be considered for the reasons stated in my previous letter.

Thanking you for your prompt attention,

Yours sincerely

Lorna Hanson

Lorna Hanson (Mrs)

Mrs L Hanson
15 Daniells Walk
Lymington
Hants
SO41 3PP

My ref: BRW/ET/TPO 23/03
Your ref:

10 March 2003

Dear Mrs Hanson

OBJECTION TO TREE PRESERVATION ORDER NO: 23/03 - LAND AT 48 AMBLESIDE ROAD, LYMINGTON

Thank you for your letter of 7 March 2003 and I note your wish to maintain your objection to this Tree Preservation Order. I shall pass the information to one of the Council's Committee Administrators to process your objection and you will shortly be receiving further details about this.

In the meantime if you have any further queries or require any additional clarification please do not hesitate to contact me.

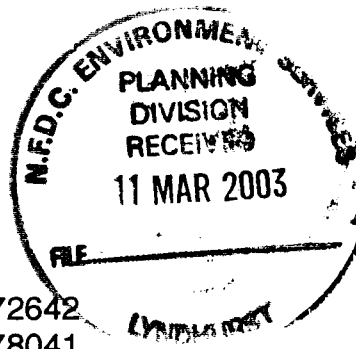
Yours sincerely

Bryan Wiilson
Tree Team Leader

Tel: (023) 8028 5330
Fax: (023) 8028 5223
Email: pdi@nfdc.gov.uk

Cc: Andy Rogers, Committee Administrator

Bryan



Tel 01590 672642
Fax 01590 678041

Head of Policy Design and Information
NFDC

5 Daniells Close
Lymington
Hants
SO41 3PQ

10 March 2003

Dear Sir,

**Proposed tree works at 46 Ambleside Rd Lymington.
Application 2003/19 TPO 23/03**

I am very concerned at your refusal of consent to felling one Monterey Cypress (T7 on the application plan). This tree is within 6 feet of the South West corner of my boundary. My wife was informed by one of the NFDC officials, during discussions over TPO 48/92, that the tree was already dying and that it was inappropriate to include it within that TPO. Over the last 10 years the current and previous owners have removed dead branches. Last year a piece 12 feet long fell onto my lawn.

During the severe gale in 1986 3 trees came down in my garden, one narrowly missing my car on the drive and the other landing on my roof. With a prevailing wind gale I believe that there is a real risk of severe damage to my my house and injury to people in the house if the tree falls. I imagine that the only people who would be comfortable with this situation would be my insurers in the knowledge that the NFDC had, by their decision, accepted the risk.

Accordingly I object to TPO23/03 and ask that you reconsider your decision to refuse consent to fell the tree.

Yours faithfully,

J B Mucklow

cc Mr B R Wilson,
Tree Team NFDC

J B Mucklow
5 Daniells Close
Lymington
Hants.
SO41 3PQ

My ref: BRW/vmw/TPO 23/03
Your ref:

12 March 2003

Dear Mr Mucklow

**TREE PRESERVATION ORDER 23/03
MONTEREY CYPRESS TREE - REAR OF 46 AMBLESIDE ROAD, LYMINGTON**

Thank you for your letter of 10 March and I note your concerns about the proximity and condition of the Monterey Cypress tree, which overhangs your garden from your neighbours'.

I inspected this tree myself and noted some dead branches within the general crown of the tree as well as at the top. It may well be that the tree is infected with a fungal disease commonly known as Cypress Canker. It is probably the case that this tree was similarly infected when the land was inspected, and a Tree Preservation Order made, some 10 years ago. It may also be that the tree officer at the time took the view that, since the tree was infected with a fungal disease, that it would soon die. This is obviously not the case.

There is no doubt that the tree is visible from a number of public viewpoints in the area. This means that it is suitable for inclusion within a Tree Preservation Order and for that reason I have so included it.

Although permission has recently been refused for the felling of this tree, nevertheless some pruning works have been permitted. This work will include removing all dead and broken branches and thinning of the other branches in order to allow more light through the tree and lessening its dominating and densely foliated appearance. Once this work has been carried out it may be that, notwithstanding the tree's proximity to your house, it becomes less of a threat than you have previously perceived it to be.

Contd...

2

J B Mucklow
12 March 2003

A nearby neighbour of yours has also written in objecting to the inclusion of this tree within a Preservation Order and the matter is going to be placed before the Council's Appeals Panel for a decision on confirming it or not. When you have given some thought to the permitted pruning works, you may wish to reconsider your objection, but if not I will include yours along with your neighbour's objection about which you will shortly be receiving more details.

I trust the above information helps to clarify the situation for you but please do not hesitate to contact me if you would like further details.

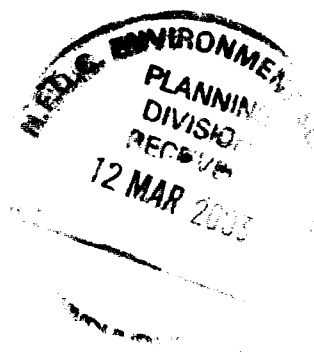
Yours sincerely

Bryan Wilson
Tree Group Leader

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

Copy to: Appeals Administrator

Mr. B.R. Wilson
Tree Team
New Forest District Council
Appletree Court
Lyndhurst SO43 7PA



7th March 2003

Dear Mr. Wilson

Your Ref. BRW/mac/TPO 23/03

Thank you for your letter dated 24/2/03

We wish to object to the tree preservation order and would make the following comments concerning the Monterey Cypress shown as T1.

We consider the diseased tree to be inappropriately domineering and endangers our property and our immediate neighbours properties, and we are concerned as to who can be held liable in any event of damage or injury.

The tree did not merit inclusion in tree preservation order 48/92 dated 5/8/92 and we cannot see how the situation can have improved. Indeed, because of disease, the top of the tree has already been removed.

The tree is encircled by properties whose owners have expressed support for the proposal to fell the Monterey Cypress.

Apart from the above the tree is only visible from certain directions and has limited amenity value.

We may not have the ability to fell the tree at some later date when the situation worsens.

Yours sincerely

A handwritten signature in cursive script, appearing to read "N.R. & B.E. Walton".

N.R. & B.E. Walton
48 Ambleside Road
Lymington SO41 3QS

Mr and Mrs Walton
48 Ambleside Road
Lymington
SO41 3QS

My ref: BRW/vmw/TPO 23/03
Your ref:

19 March 2003

Dear Mr and Mrs Walton

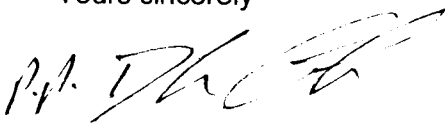
**TREE PRESERVATION ORDER 23/03
MONTEREY CYPRESS AT THE REAR GARDEN OF 48 AMBLESIDE ROAD, LYMINGTON**

Thank you for your letter of 7 March in which you state your reasons for objecting to the Monterey Cypress tree recently made subject to a Tree Preservation Order(TPO).

You may like to know that 2 of your neighbours have also objected to this tree being made subject to a TPO and the matter will therefore be placed before a committee of District Councillors for a decision about confirming the Order. You will shortly be receiving further details about this and a colleague of mine will contact you to arrange dates for your convenience.

If you require any further information in the meantime please do not hesitate to contact me.

Yours sincerely



Bryan Wilson
Tree Group Leader

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

Copy to: Andy Rogers – Committee Administrator