

**OBJECTION TO TREE PRESERVATION ORDER NO. 72/03
LAND OF 21 BELMORE ROAD, LYMINGTON**

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- #
- 1.1 Tree Preservation Order (TPO) No. 72/03 was made on 19 June 2003. The TPO plan and first schedule are attached as Appendix 1. The Order protects one Sycamore (T1) and one Willow (T2) within the rear garden of 21 Belmore Road, Lyminster.
 - 1.2 This TPO was made following a meeting between the District Council's tree officer and Mrs Rand, the owner of 21 Belmore Road. Mrs Rand had made a telephone enquiry to the Council following an approach for the lopping or removal of the Sycamore tree from neighbours, Mr and Mrs Stone of Seletar Cottage, 1, Old Farm Walk, who wished to build a conservatory under the crown spread.
 - 1.3 Mrs Rand sought advice because she was unsure that the tree could be removed without damage to her car port and because her son had expressed some concern. The Council's tree officer considered that excessive lopping or felling of the tree would be detrimental to the amenity of the area and recommended that it be included in a TPO. It was also considered expedient to include a second tree, a Weeping Willow, in the TPO at the same time.
 - 1.4 Five objections to the inclusion of the Sycamore (T1) in the TPO have been received. One is dated 29th June and the others are undated, but all were received on 30th June and 1st July. The objections are from Mr and Mrs Stone of 1 Old Farm Walk, Mrs Le Metois of 2 Old Farm Walk, Mr and Mrs Brown of 2a Old Farm Walk, Mrs Smith of 3 Maturin Close and the Occupier of 19 Belmore Lane.
 - 1.5 The Council's tree officer wrote to all objectors to try and resolve the objection. He has also met Mr and Mrs Stone and Mr Brown to discuss the matter. However, there proved to be no scope for compromise as Mr and Mrs Stone preferred removal of the tree whilst the tree officer remained of the opinion that the Sycamore tree (T1) merited protection.

2. THE TREE

- 2.1 The Sycamore (T1) is situated within the rear garden of 21 Belmore Lane adjacent to the rear boundary with 1 Old Farm Walk.

- 2.2 The tree is estimated to be approximately 14m in height and to have a stem diameter of 400mm. It is healthy and with appropriate maintenance, can be expected to have a safe life expectancy of several decades.

3. OBJECTION

- # Copies of correspondence are included as Appendix 2
- 3.1 A number of grounds for objection have been given. These can be summarised as follows:
- 3.1.1 The tree is large and close to property
- 3.1.2 The tree roots have damaged drains and surrounding hard standing at 1 Old Farm Walk.
- 3.1.3 The tree is on private property and should not be considered a public amenity.
- 3.1.4 The tree cannot be seen from a great distance. It is only visible clearly from its south side and only from Belmore Road for a short distance due to the rise of the land.
- 3.1.5 The tree shades the west side of 1 Old Farm Walk from 4pm to 8pm.
- 3.1.6 The prolific seeding and falling honeydew from the tree are a nuisance. The honeydew will soil windows and paintwork of the conservatory.
- 3.1.7 A better solution would be to fell the Sycamore and plant two replacement trees.

4. OBSERVATIONS ON THE GROUNDS FOR OBJECTION.

- 4.1 The tree is not unusually large in relation to its proximity to buildings. Many examples of larger preserved trees in similar proximity to buildings can be found in Lymington and the exclusion of this tree for this reason could set an unreasonable precedent.
- 4.2 The Council's tree officer was shown, and can confirm, the presence of roots under adjacent hard standing at 1 Old Farm Walk. It is possible that the roots that had blocked drains did emanate from the Sycamore although there was also a low Cypress hedge at this location that has since been removed. The blocked drains were of the older clay type and roots will penetrate any cracks or poorly sealed joints. However, these drains have been replaced and the offending roots pruned. Modern drainage materials are less likely to be damaged by tree roots and the recently constructed conservatory will render the area less conducive to tree root growth. Future damage to drains is therefore considered unlikely.

- 4.3 The public benefit provided by some privately owned trees is recognised as a resource worthy of protection and TPO legislation exists for this purpose.
- 4.4 The tree is a prominent feature of this part of Lymington and is clearly visible from Old Farm Walk, Belmore Road, Maturin Close and Lentune Way. It can be glimpsed from Belmore Lane and will be visible from numerous surrounding properties. As such it provides a significant visual amenity and public benefit.
- 4.5 The tree shades the western side of 1 Old Farm Walk, which particularly affects the new conservatory. This will cause some reduction in direct afternoon and evening sunlight although, since the tree has previously been 'crown thinned' (branch density reduced), the degree of shading is not considered unreasonable.
- 4.6 Several tree species may cause seeding and honeydew problems and all trees will give rise to a certain amount of debris. This is not considered sufficient justification for the removal of protected trees.
- 4.7 If the Sycamore was felled now, it would take a considerable time before replacements would grow to give the degree of amenity provided by the Sycamore.

5. FINANCIAL IMPLICATIONS

- 5.1 If TPO 72/03 is confirmed, there will be the cost of administering the service of the confirmed TPO and any subsequent tree work applications.
- 5.2 If TPO 72/03 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.

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 72/03 is confirmed without amendment to include one Sycamore and one Willow tree.

Further Information:

John Hearne
Arboriculturist

Telephone: 02380 285205
e-mail: john.hearne@nfdc.gov.uk

Background Papers:

Tree Preservation Order No. 72/03

DATED 19 JUNE 2003

DISTRICT COUNCIL OF NEW FOREST

Town and Country Planning Act 1990

TREE PRESERVATION ORDER NO. 72/03

**LAND OF 21 BELMORE ROAD, LYMINGTON
IN HAMPSHIRE**

Head of Legal and Democratic Services
New Forest District Council
Appletree Court
Lyndhurst
Hampshire
S043 7PA

SCHEDULE 1

TPO: 72/03

SPECIFICATION OF TREES

Trees specified individually

(encircled in black on the map)

No. on Map	Description	Situation
T1	Sycamore	Rear garden of 21 Belmore Road on or adjacent to boundary with 1 Old Farm Walk
T2	Willow	Rear garden of 21 Belmore Road approximately south east of house

Trees specified by reference to an area:

(within a dotted black line on the map)

No. on Map	Description	Situation
None		

Groups of Trees

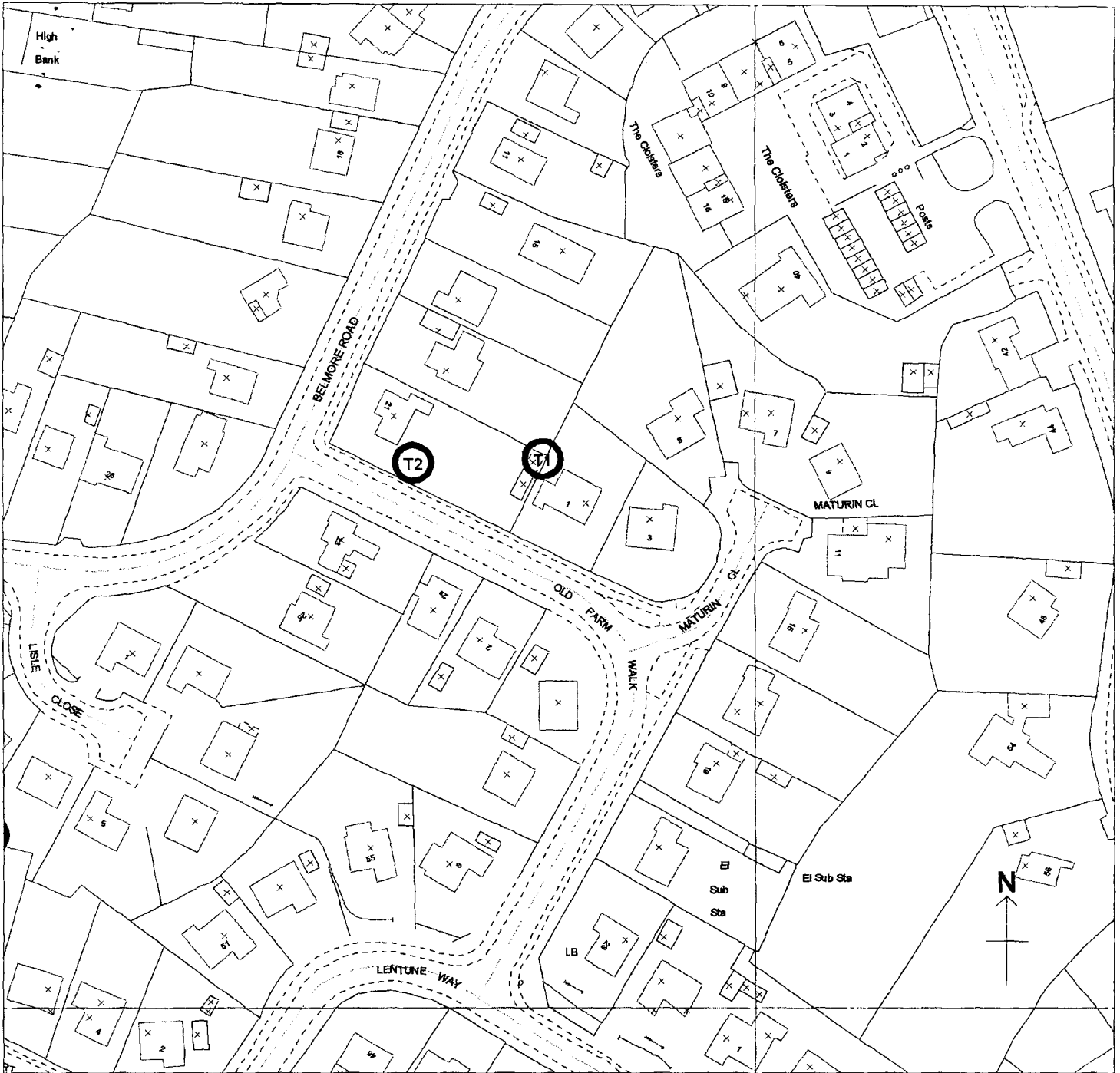
(within a broken black line on the map)

No. on Map	Description	Situation
None		

Woodlands

(within a continuous black line on the map)

No. on Map	Description	Situation
None		



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 72/03

Approximate Scale: 1250

Date Printed: 17th June 2003

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

Key

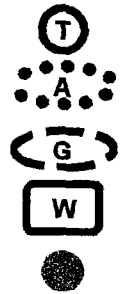
Individual Trees Covered by TPO

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

[Handwritten Signature]

 AN AUTHORISED SIGNATORY

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Mrs B H Le Metois
2 Old Farm Walk
Lymington
Hants
SO41 3NY

My ref: JH/TPO 72/03
Your ref:
30 June 2003

Dear Mrs Le Metois

TREE PRESERVATION ORDER 72/03

I refer to your letter objecting to the inclusion of a Sycamore tree in Tree Preservation Order (TPO) 72/03.

I am processing your letter as a formal objection which, if not resolved earlier, will be determined by an 'Appeals Panel'. Briefly, the procedure involves the Panel (which comprises a number of Councillors) meeting on site to view the trees followed by a formal meeting where the reasons for your objection will be fully considered and a decision made. You will be invited to attend the meeting and will have an opportunity to make further representations if you wish. All those served with the Order will also be invited and can speak if they wish to.

We often find that objections to TPOs can be resolved before the Appeals Panel meets and, to this end, I thought it might be useful if I were to visit and we could discuss the problems you and your neighbours may be experiencing. To this end I would be very grateful if you would contact me on the number given below so that we can arrange a convenient time for me to visit.

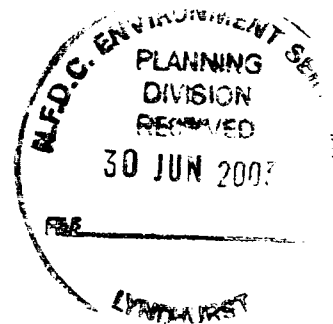
Yours sincerely



John Hearne
Arboriculturist

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

2 Old Farm Walk
Lymington
Hants
SO41 3NY



**TO: NEW FOREST DISTRICT COUNCIL
JOHN WARD
HEAD OF SERVICE**

TPO 72/03

I believe a Tree Preservation Order has been appointed to a Sycamore Tree situated at 21 Belmore Lane, Lymington.

I wish to lodge an objection to this Order.

The Sycamore is a very large tree in a residential area and as a resident of the neighbourhood I consider the tree to be a nuisance due to prolific, rampant seedlings and heavy falls of honeydew.

I do not feel that the tree provides any public amenity and as such should not be served with a TPO. The tree is too big and is a private nuisance in a residential area.

The tree is not clearly visible from any distance and cannot be claimed to be a prominent feature of the Lymington.

Yours faithfully

(Mrs.) Barbara H. Le Metais

Mr and Mrs Stone
Seletar Cottage
Old Farm Walk
Lymington
Hants.
SO41 3NY

My ref: JH/TPO 72/03
Your ref:
30 June 2003

Dear Mr and Mrs Stone

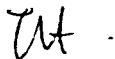
OBJECTION TO TREE PRESERVATION ORDER 72/03

I refer to your undated letter, which I received today, objecting to the above Tree Preservation Order.

I am processing your letter as a formal objection which, if not resolved earlier, will be determined by an 'Appeals Panel'. Briefly, the procedure involves the Panel (which comprises a number of Councillors) meeting on site to view the trees followed by a formal meeting where the reasons for your objection will be carefully considered and a decision made as to whether or not the Order should or should not be confirmed, with or without modification. You will be invited to attend the meeting and will have an opportunity to make further representations if you wish. All those served with the Order will also be invited and can speak if they wish to.

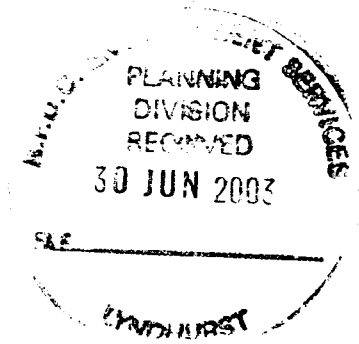
We often find that objections to TPOs can be resolved before the Appeals Panel meets and, to this end, I thought it might be useful if I were to visit and we could discuss the problems you and your neighbours are experiencing and the opportunities for overcoming them. To this end I would be very grateful if you would contact me on the number given below so that we can arrange a convenient time for me to visit.

Yours sincerely



John Hearne
Arboriculturist

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



*Seletar Cottage
Old Farm Walk
Lymington
Hants
SO41 3NY*

**TO: NEW FOREST DISTRICT COUNCIL
JOHN WARD
HEAD OF SERVICE**

Re: Tree Preservation Order No: 72/03

We have been served with a notice that a Tree Preservation Order has been appointed to a Sycamore Tree situated at 21 Belmore Lane, Lymington.

We wish to lodge an objection to this Order due to the following points:

Reasons for objection:

1. The tree is a very large sycamore in close proximity to residence.
2. The tree has caused root damage to our drainage system, and to the surrounding concrete areas, making it a private nuisance.
3. The tree is on private property and should not be considered a valuable public amenity.
4. The tree cannot be seen from any great distance. Due to the lie of the land it can only be clearly visible from the south side, and is only visible from Belmore Road for a short period of time due to the rise of the land.
5. The tree puts the garden and west side of our house into shade from 1600 to 2000 hours approximately.
6. The tree is considered a private nuisance due to prolific seeding, and honeydew falls.
7. Mr Hearne states in his letter dated 17 June 2003, to Mrs Rand, that 'One problem that can be associated with Sycamore trees is that they can be prone to heavy aphid attacks and, in consequence, honeydew can fall from the tree for a month or so during the summer. If branches overhang the conservatory your neighbours will be inconvenienced to the extent that this will soil windows and paintwork.' Our gardener states that the tree regularly suffers from bad attacks of Aphid and that the fall of honeydew will affect the state of our conservatory.

We trust that you will take into account the above matters when considering whether a TPO on the Sycamore is appropriate.

Yours faithfully

DAWN & TOBY STONE

Mr and Mrs M A C S Brown
Little Orchard
2A Old Farm Walk
Lymington
SO41 3NY

My ref: JH/TPO 72/03
Your ref:
17 July 2003

Dear Mr and Mrs Brown

TREE PRESERVATION ORDER 72/03

I refer to your letter dated 29th June objecting to the inclusion of a Sycamore tree in Tree Preservation Order (TPO) 72/03.

I am processing your letter as a formal objection which, if not resolved earlier, will be determined by an 'Appeals Panel'. Briefly, the procedure involves the Panel (which comprises a number of Councillors) meeting on site to view the trees followed by a formal meeting where the reasons for your objection will be fully considered and a decision made as to whether or not the Order should or should not be confirmed, with or without modification. You will be invited to attend the meeting and will have an opportunity to make further representations if you wish. All those served with the Order will also be invited and can speak if they wish to.

We often find that objections to TPOs can be resolved before the Appeals Panel meets and, to this end, I have arranged to meet Mr Stone on 18th July to discuss the problems he is experiencing. If you think it would be useful I would be more than happy to meet you to discuss the matter and any options for alleviating problems the tree may be causing. Please contact me on the number given below if you would like me to visit.

Yours sincerely

John Hearne
Arboriculturist

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

01590 670928

Little Orchard
2A Old Farm Walk
Lymington
SO41 3NY

29 June 2003



New Forest District Council
Mr J Ward
Head of Service

Dear Mr Ward

TPO 72/03

My wife and I understand that a Tree Preservation Order has been applied to the Sycamore tree sited in the garden of 21 Belmore Lane, Lymington.

We wish to lodge an objection to this Order, since we are sited directly opposite the tree and are therefore affected by its presence.

This tree may have been acceptable adjacent to farmland when it was planted, but in the residential housing that now prevails it is too big and too close to adjacent properties. Indeed had BS5837:1991 existed when No.1 Old Farm Walk was built, I assume that special measures would have had to be taken to protect its drains and foundations.

As far as we are concerned, the tree is a nuisance due to the seeds in Autumn and the honeydew in Spring. The former self-seed in our garden and also add to the general level of tree debris (Pine, Willow and Cherry) that originates from No. 21 and which obstructs the foot-path and blocks the road drain outside our property.

The tree is mainly visible from the South (our) side, and we do not consider it a valuable feature of the view. It provides no public amenity and as such should not be served with a TPO.

Yours sincerely

Mr & Mrs M A C S Brown

MACS Brown

Mrs P Smith
3 Maturin Close
Lymington
Hants
SO41 3NX

My ref: JH/TPO 72/03
Your ref:
17 July 2003

Dear Mrs Smith

TREE PRESERVATION ORDER 72/03

I refer to your letter objecting to the inclusion of a Sycamore tree in Tree Preservation Order (TPO) 72/03 which I received on 1st July..

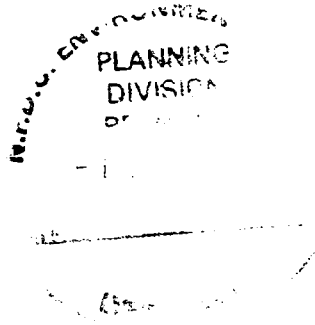
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We often find that objections to TPOs can be resolved before the Appeals Panel meets and, to this end, I have arranged to meet Mr Stone on 18th July to discuss the problems he is experiencing. If you think it would be useful I would be more than happy to meet you to discuss the matter and any options for alleviating problems the tree may be causing. Please contact me on the number given below if you would like me to visit.

Yours sincerely

John Hearne
Arboriculturist

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



3
Maturin Close
Lymington
Hants
SO41 3NX

**TO: NEW FOREST DISTRICT COUNCIL
JOHN WARD
HEAD OF SERVICE**

TPO 72/03

I believe a Tree Preservation Order has been appointed to a Sycamore Tree situated at 21 Belmore Lane, Lymington.

I wish to lodge an objection to this Order.

The Sycamore is a very large tree in a residential area and as a resident close to where the tree is sited I consider the tree to be a nuisance due to prolific, rampant seedlings and heavy falls of honeydew.

I do not feel that the tree provides any public amenity and as such should not be served with a TPO. The tree is too big and is a private nuisance in a residential area.

Yours faithfully

Patricia Smith (073)

The Owner/Occupier
19 Belmore Lane
Lymington
Hants
SO41 3NX

My ref: JH/TPO 72/03
Your ref:
17 July 2003

Dear Sir/Madam

TREE PRESERVATION ORDER 72/03

I refer to your letter objecting to the inclusion of a Sycamore tree in Tree Preservation Order (TPO) 72/03 which I received on 1st July..

Please accept my apologies for the impersonal salutation of this letter. Unfortunately I was unsure of my reading of your signature.

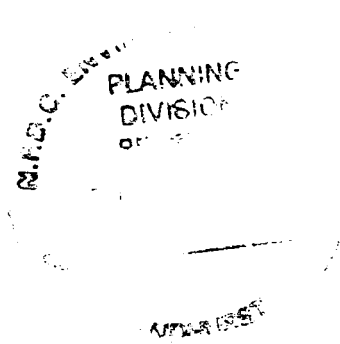
I am processing your letter as a formal objection which, if not resolved earlier, will be determined by an 'Appeals Panel'. Briefly, the procedure involves the Panel (which comprises a number of Councillors) meeting on site to view the trees followed by a formal meeting where the reasons for your objection will be fully considered and a decision made as to whether or not the Order should or should not be confirmed, with or without modification. You will be invited to attend the meeting and will have an opportunity to make further representations if you wish. All those served with the Order will also be invited and can speak if they wish to.

We often find that objections to TPOs can be resolved before the Appeals Panel meets and, to this end, I have arranged to meet Mr Stone on 18th July to discuss the problems he is experiencing. If you think it would be useful I would be more than happy to meet you to discuss the matter and any options for alleviating problems the tree may be causing. Please contact me on the number given below if you would like me to visit.

Yours sincerely

John Hearne
Arboriculturist

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



**19 Belmore Lane
Lymington
Hants**

**TO: NEW FOREST DISTRICT COUNCIL
JOHN WARD
HEAD OF SERVICE**

Re: TPO 72/03

I have been served with a Tree Preservation Order that has been appointed to a Sycamore Tree situated at 21 Belmore Lane, Lymington.

I wish to lodge an objection to this Order.

The Sycamore is a very large tree that overhangs my garden. I consider the tree to be a private nuisance due to prolific, rampant seedlings and heavy falls of honeydew.

I do not feel that the tree provides a public amenity and as such should not be served with a TPO.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'C. Burns'.

Mr T Stone
Seletar Cottage
Old Farm Walk
LYMINGTON
Hampshire
SO41 3NY

My ref: JH/TPO/72/03
Your ref:

7 August 2003

Dear Mr Stone

**TREE PRESERVATION ORDER 72/03
LAND OF 21 BELMORE ROAD, LYMINGTON**

Your letter received by Fax on 5th August 2003 addressed to Mr John Ward has been passed to me for attention as I am Mr Hearne's Manager.

I note the points you make in your objection to the Tree Preservation Order No. 72/03 and your reference to discussions with Mr Hearne.

Mr Hearne is currently on annual leave and I have read through the TPO file in his absence.

It appears that there is another objector to this TPO and that therefore the matter will be placed before the Council's Appeals Panel, as explained in Mr Hearne's letter to you of the 30th June 2003. You will shortly be receiving further information about this.

Yours sincerely

Bryan Wilson
Tree Team Leader

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

*Seletar Cottage
Old Farm Walk
Lymington
Hants
SO41 3NY*

**TO: NEW FOREST DISTRICT COUNCIL
JOHN WARD
HEAD OF SERVICE**
Re: Tree Preservation Order No: 72/03

Dear Sir,

Reference the above order I am very disappointed to hear from you today that to date you still intend to proceed with the order.

My letter objecting to the order explained the rationale as to why such an order should not proceed. Further more our site meeting a couple of weeks ago allowed what I thought was a useful debate on the subject with a possible way forward.

During the meeting you stated that in your opinion the tree was not a particularly good specimen. You also asked me directly if I would consider replacing the tree if it was felled. I very clearly indicated to you that this would be a very acceptable solution. Indeed, I stated that I would be able to plant at least 2 trees on the North East flank.

The meeting ended with what I had considered an amicable solution. Today though you have pointed out that for you to retreat at this point would be setting precedence. The consideration of precedence should not be the overriding factor to proceed with the order.

I have explained to you quite clearly over several telephone calls why I consider the tree order should not be in place. A site meeting has supported this and several neighbor objections.

I am now at a loss as to why we cannot resolve this situation. There is an obvious financial implication to proceeding with the TPO, both in staff and actual costs. I believe this is unnecessary and should be resolved at this stage.

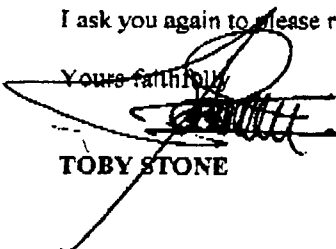
I have yet to approach Mary, my elderly neighbor on the subject of compensation reference damage. My solicitor has advised me I should be moving in this area, particularly as my insurance company loss adjusters have stated they are not liable for present and future damage. I do not want to harass my neighbor on this subject for current and future damages.

Clearly the best solution is to have the tree felled, and another one planted. I would accept the costs incurred so far. However, if the TPO persists, I will have no option but to sue my neighbor for present and future damage. I am unclear on the position with the council on this liability issue.

The ball is clearly in the court of your good self and the New Forest District Council before it goes any further, which will mean grief for several parties.

I ask you again to please re-examine the facts to the case before embarking on the next phase.

Yours faithfully


TOBY STONE