

APPEALS PANEL MEETING: 21 NOVEMBER 2003

**OBJECTION TO TREE PRESERVATION ORDER NO. 93/03
LAND OF 32 GARDEN ROAD, BURLEY**

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.93/03 was made on 23rd July 2003.
The TPO plan and first schedule are attached as Appendix 1. The Order protects a single Birch tree.
- 1.2 On 7th July 2003, in accordance with Section 211 of the Town and Country Planning Act 1990, Mr L Browning of 32 Garden Road, Burley, notified the District Council of his intention to remove two trees within the Burley Conservation Area. The purpose of Section 211 notifications is to enable Local Authorities to consider proposed tree works in Conservation Areas and to make Tree Preservation Orders if appropriate. If an Order is not made within six weeks of the notification the proposed works may be implemented.
- 1.3 Mr Bailey of 30 Garden Road wrote on 24th July supporting the removal of the trees and commenting that light would be increased to his property.
- 1.4 Mr Browning wished to remove an Apple tree in his rear garden and a Birch tree in his front garden. The District Council's Tree Officer assessed the trees and formed the view that the Birch tree in the front garden provided a valuable amenity worthy of preservation. TPO 93/03 was subsequently served. The Apple tree provided no public amenity and no objections were made to its removal. At the same time Consent was granted to thin the crown of the Birch tree and to cut back branches from the building. The notification, representation and decision are included as Appendix 2.
#

2. THE TREE

- 2.1 The tree in question is a Birch (*Betula* sp.). It stands in the front garden of 32 Garden Road, in front of the house. The front garden measures approximately 10m deep by 23m wide.
- 2.2 The tree is approximately 13m in height with a stem diameter of 200mm. Typically for the species it has a relatively narrow branch habit.
- 2.3 The tree appears to be in a sound and healthy condition, with no visible defects.
- 2.4 The tree can be seen from surrounding houses and public roads. It is visible from Garden Road and Pound Lane.

3. THE OBJECTION

A copy of the objection is included as Appendix 3

3.1 Mr Browning's grounds for the objection are:

- The tree is simply in the wrong place, directly in front of the door and in the way.
- Branches are touching bedroom windows.
- The roots may cause damage to the building.
- The tree has very limited public benefit. It is only viewed by Mr Browning, his neighbour who supports its removal, and workers at Dawson Engineering. The tree can only be viewed from Pound Lane for a short distance of approximately 20 yards.
- The Forestry Commission seem to have a policy of clearing Birch from the open forest.
- A mature Ash at the rear of the property was felled to facilitate the building of an extension to the village Hall.
- Mr Browning would plant a more suitable tree in a more suitable location. Alternatively he would sponsor the planting of native trees elsewhere in the forest.
- Mr Browning's insurers have expressed concern about the proximity of branches to the house.

4. OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 The tree is estimated to be some 30 years old. In the opinion of the Tree Officer, it has not and does not unreasonably hinder access to the property. Birch trees are often regarded as one of the more suitable species for planting near houses as their shape and small leaf size causes minimal shade and long heavy lateral branches will not threaten buildings.
- 4.2 Relatively minor pruning would prevent branches touching the building. When refusing consent to fell the tree the Council granted consent to cut back these branches and also to thin the branch density to increase light.
- 4.3 Tree roots are only liable to damage buildings on shallow foundations on shrinkable clay soils. Even if the building could be considered vulnerable to such tree root damage, there is no certainty that damage will occur. No evidence of damage has been provided despite increasingly dry summers and current research places Birch in the

'low water demand' category. It is therefore reasonable to conclude that damage is unlikely. The TPO can be reconsidered in the light of any evidence of damage.

- 4.4 The tree is not just visible to residents and those working at Garden Road, but also to pedestrians passing by. Although visibility from Pound Lane is restricted to a stretch of some 20m, this is not insignificant and the importance of the tree is enhanced by the relative paucity of tree cover on this side of the road.
- 4.5 Birch is a pioneer species and able to colonise heathland. Current policies to restore and maintain heathland may require the removal of Birch but this is irrelevant to the current residential setting.
- 4.6 No objections were raised to the removal of an Ash at the rear of 32 Garden Road on 10th January 2000 (ref 99/599). Our records show that the tree was decayed with fungal brackets and constituted a potential hazard. The records also include an objection to the loss of the tree from a resident.
- 4.7 It would be some years before a replacement tree would compensate for the loss of amenity currently provided by the Birch. The TPO could be reconsidered when a new tree has established and is providing a significant public amenity.

5. FINANCIAL IMPLICATIONS

- 5.1 If TPO 93/03 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 93/03 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. ENVIRONMENTAL IMPLICATIONS

- 6.1 Uncontrolled cutting or the premature removal of this tree at this time and the lack of controls to plant a suitable replacement would be detrimental to the appearance of the area.

7. CRIME AND DISORDER IMPLICATIONS

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

8. OTHER IMPLICATIONS

- 8.1 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.
- 8.2 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).

9. RECOMMENDATION

- 9.1 It is therefore recommended that TPO 93/03 is confirmed without amendment.

Further Information:

John Hearne
Arboriculturist

Telephone: 02380 285205

Background Papers:

Tree Preservation Order No. 93/03

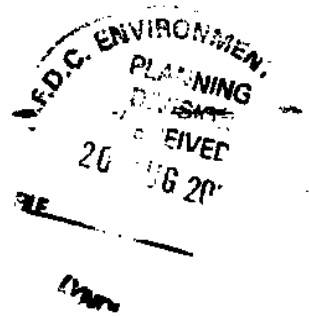
Replied by telephone
call. J.H.

32 Garden Road,
Burley,
Ringwood,
Hants.

BH24 4EA.

19th August 2003.

The Tree Team
New Forest District Council
Community Services
~ Applebee Court
Lyndhurst
Hants
SO43 7PA.



For the attention of Mr. Hearn.

Dear Sir,

Re: Tree Preservation Order 93/03.

Further to your letter reference JH/mac/TPo 93/03 and my telephone conversation with your Mr. Hann I would take this opportunity to object to the above tree preservation order on the Silver Birch tree in my front garden. I have lived in Burley all of my life and wholly appreciate the benefits of trees and the associated problems with the needless felling of trees, however, in this instance I feel it is justified. This tree is simply the wrong tree in the wrong place, as it is directly in front of my front door and is now virtually

touching my bedroom windows. It blocks the light to the rooms at the front of my house and all that can be seen from the front of my house is this tree. It is quite literally right in the way. Another cause for concern is the possible damage to my house that the roots could be causing now or at some point in the future.

I feel that this tree is of very limited public benefit as the only people who can see the tree are myself and my next door neighbour, who is more than happy for the tree to be cut down. This is because I have a high hedge at the front of my property, which is opposite the rear entrance to the local garage (Dawson Engineering). This means that only the top section of the tree is visible to anyone but myself and my neighbour and the only people who can see this section of the tree are the motor mechanics if they visit the rear of their workshop. It is possible to see the top of the tree from Pound Lane, but only for a distance of approximately 20 yards by the entrance to Garden Road, as the tree is obscured by the village hall and by Dawson Engineering.

I was surprised that you have chosen to protect this tree as it is a silver birch and the forestry Commission seem to have a policy of clearing these trees from the open forest. There was also a mature ash tree at the rear of my property which it was seen fit to be felled to facilitate the building of an extension to the village hall. This was when my property was owned previously by my uncle and aunt.

As I mentioned in my telephone call, I would be more than happy to take your advise on the planting of a more suitable tree in a more suitable location. If this were not possible then I could maybe sponsor the planting of some native trees ie oak or beech maybe, at some other location in the forest (dependent upon the costs involved of course).

I honestly believe that the removal of this tree would improve my standard of life and would hope that you view my objection favourably and even if you do not I would like to be allowed to prune the tree as much as is allowed as my house insurance company have expressed some concern about the close proximity of the branches to my house. This would then lessen the benefit to the public even more and it would therefore seem to make sense to fell the tree.

I look forward to hearing from yourselves regarding this matter.

Yours faithfully,

LES BROWNING.

P.S. Should you wish to contact me by telephone my numbers are:

Mr L Browning
32 Garden Road
Burley
Ringwood
Hants
BH24 4EA

My Ref: 2003/301

Your Ref:

22 August 2003

Dear Sir/Madam

Re: Proposed Tree Works - Fell - 1 Silver Birch & 1 Apple
Front and rear gardens of 32 Garden Road, Burley,
Ringwood.

Conservation Area: Burley

Application Number: 2003/301

I refer to your recent notice giving details of proposed work to trees at the above address which are growing within a Conservation Area.

Following an inspection by the Council's Tree Officer, your proposals are considered to be reasonable and the Council's decision is as follows:

Object to fell the Birch tree in the front garden of 32 Garden Road, Burley. Tree Preservation Order 93/03 has been made to protect this tree.

Reason: The loss of this tree would be detrimental to the visual amenity of this part of the Burley Conservation Area.

Raise no objection to thin throughout the crown of the Birch by up to 20%. Reduce selected branches to allow up to 2 metres clearance from the building. The Birch tree is T1 of Tree Preservation Order 93/03.

No objection to the removal of the Apple tree in the rear garden.

This work should be carried out by 22 August 2005.

If it is required to carry out work to trees growing in property other than your own, then prior agreement from the owner of the trees should be obtained. It is advisable to obtain this agreement in writing.

Yours faithfully

Bryan Wilson
Senior Arboriculturist - Tree Group

Tel: 023 8028 5330
Fax: 023 8028 5223
Email: bryan.wilson@nfdc.gov.uk

Mr Bailey
30 Garden Road
Burley
Ringwood
Hampshire
BH24 4EA



7/2003

MR REF: 2003/301

Dear Sir,

With reference to your letter of the
9th inst re proposal to FEL - 1 SILVER BIRCH
& 1 APPLE TREE - APPLICATION NO: 2003/301.

We have no objection whatsoever
to this proposal, in fact it will give us
(being the adjoining property) far more
light.

Thanking you,
Yours sincerely



Environment Services,
 Appletree Court,
 Lyndhurst, Hampshire,
 SO43 7PA

For office use: Ringwood

Application No: <u>20031301</u>
TPO/CA: <u>Burley</u>
Office Date Stamp: <u>11 FEB 2003</u>
<u>Nct. Park boundary yes.</u>

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 (Tree Preservation Order) Regulations 1969

Name of applicant <u>MR L BROWNING</u>	
Address of applicant <u>32 GARDEN ROAD, BURLEY, RINGWOOD HANTS</u>	
Postal code <u>BH24 4EA</u>	Telephone Number
Name and address of Agent (if any) <u>PAUL GUTTORIDGE</u>	
<u>11 CARTRET CLOSE, VERWOOD, DORSET</u>	
Post code <u>BH31 6UT</u>	Telephone Number <u>01702 832853</u> <u>01202 825110</u>

Name and address of tree owner if different from applicant	
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State the location of the tree(s) to which this application relates and complete a plan as described overleaf	<u>FRONT + REAR GARDEN</u>
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State the type(s) of tree(s), if known, together with the intended work, e.g. Pruning, Felling.	<u>SILVER BIRCH FELL IN THE WRONG PLACE</u> <u>APPLE FELL TO CLOSE TO HOUSE</u>
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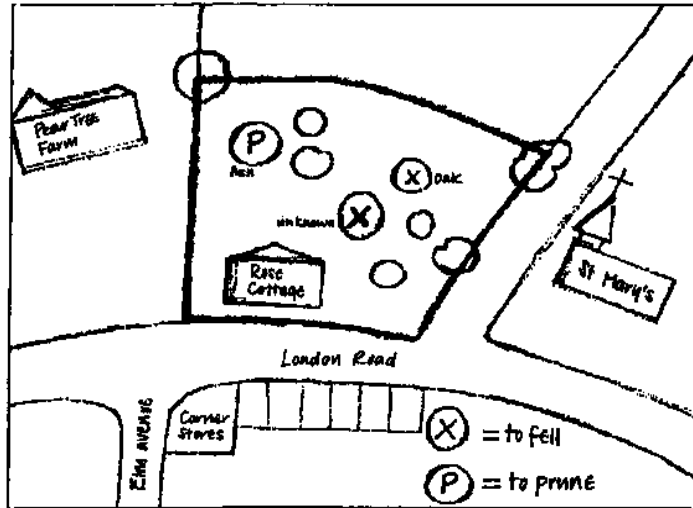
Briefly note the reason for making this application	<u>TO ENHANCE GARDEN</u>
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Please put a tick in the box if you are an employee of the New Forest District Council

I/We apply for consent to carry out the operation specified above.

Date: 1.7.03 Signature: _____
 Applicant/Agent

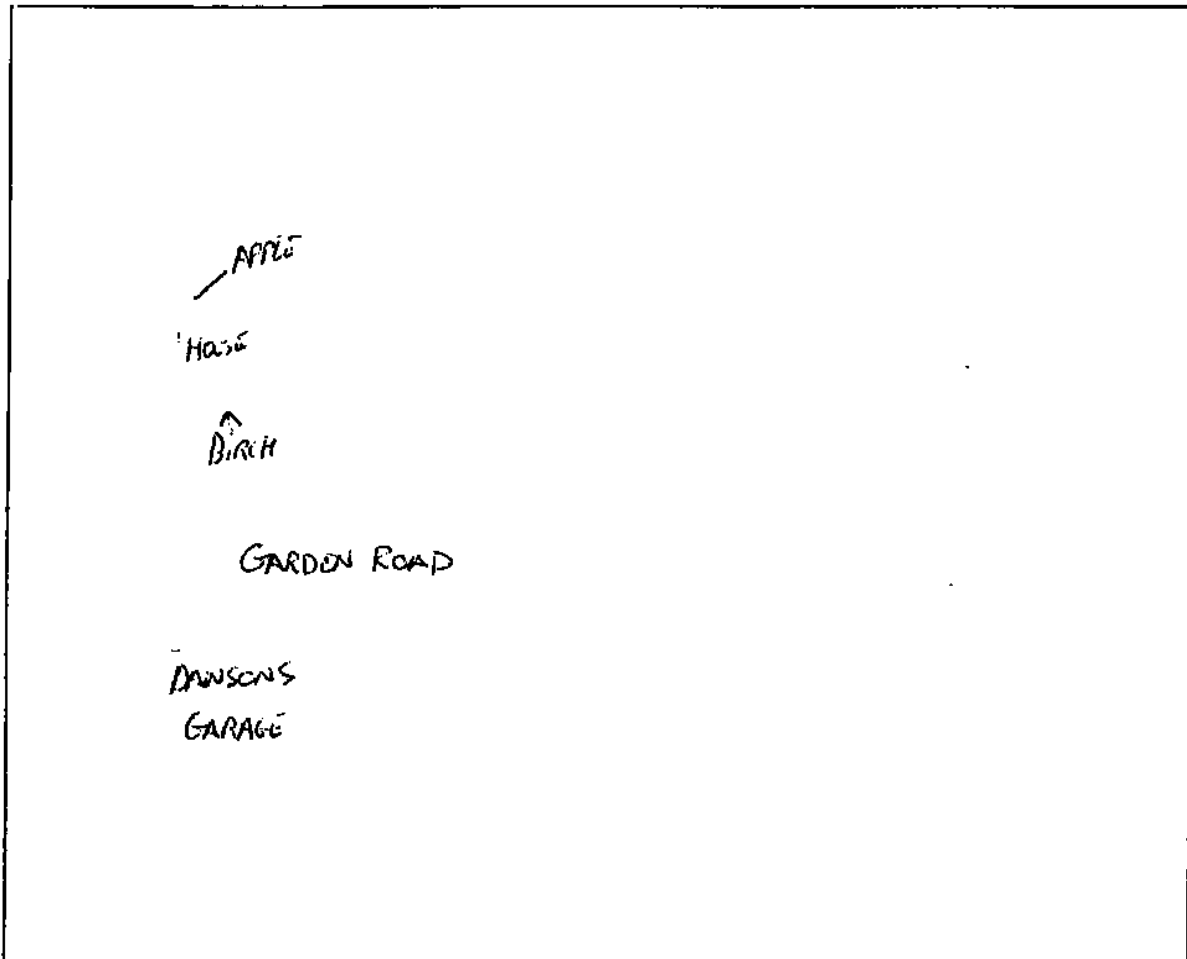
An example of a typical plan to accompany an application.



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



SCHEDULE 1

TPO: 93/03

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Birch	Front garden of 32 Garden Road, Burley

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

No. on Map	Description	Situation
None		

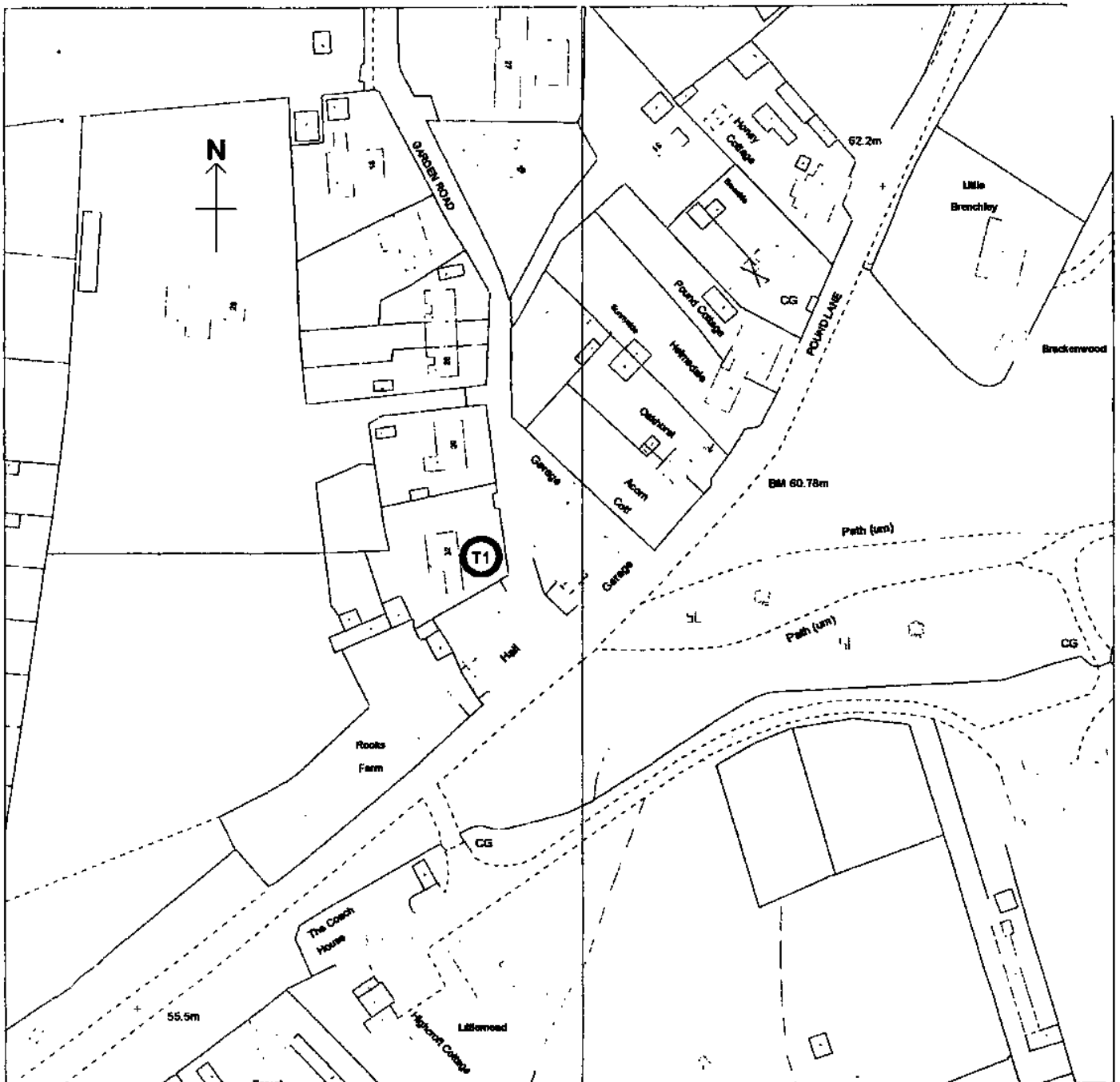
Groups of Trees
(within a broken black line on the map)

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: 93/03

Approximate Scale: 1250

Date Printed: 17th July 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

AN AUTHORIZED SIGNATORY

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