



APPEALS PANEL – 12 FEBRUARY 2004

**OBJECTION TO TREE PRESERVATION ORDER NO. 130/02
LAND OF KITWALLS LANE, MANOR CLOSE AND 15-25
MANOR ROAD, MILFORD-ON-SEA**

REPORT OF COUNCIL'S TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.130/02 was made on 28th November 2003. The TPO plan and first schedule are attached as Appendix 1. The Order protects thirty individual trees and eleven groups of trees.
- 1.2 The Order is one of 20 new TPOs that have been served to replace TPO 270 which was made in 1967. In accordance with Government guidance TPO 270 was revoked on 28th November 2003 as part of a District-wide review of 'Area' TPOs – those that protect all trees within a given area on a plan.
- 1.3 The District Council consulted with all residents affected by the proposed TPO 130/02 on 28th January 2003. The proposed Order included a Swamp Cypress in the front garden of Rhosa. The owner, Mrs England, telephoned to advise that the tree had been cut down, but it transpired that it was an adjacent Lawson Cypress that had been felled. Mrs England was advised that the draft TPO referred to the remaining Swamp Cypress.
- 1.4 The Council's Tree Officer met Mrs England to discuss the inclusion of the tree in the proposed new Order on 20th October 2003. Mrs England considered the tree to be unattractive and wished to remove it. The Council's Tree Officer remained of the opinion that the tree merited inclusion and agreement could not be reached.
- 1.5 TPO 130/02 was served on 28th November 2003. The Order included the remaining Swamp Cypress as T16 of the Order, but it had now been wrongly described in the TPO schedule as a Dawn Redwood, which is a very similar species.
- 1.6 Mrs England submitted an application for consent to fell the tree on 5th December 2003..
- 1.7 The Council's Tree Officer wrote to Mrs England on 12th December 2003, advising her that it was his intention to recommend that consent to fell the tree be refused, and that, if she wished, she may object to the inclusion of the tree in the new Order which had yet to be confirmed. Mrs England telephoned the Council on 17th December to confirm that she wished to formally object to the Order. The objection and related correspondence is included as Appendix 2. A letter in support of Mrs England, from Mr Gurd, a neighbour, is also included.

- 1.8 Mrs England's application to fell the tree was refused on 16th January 2004. Mrs England has advised the Council's Tree Officer that, in the event that the TPO is confirmed without modification, it is her intention to appeal to the Office of the Deputy Prime Minister against the refusal of consent to fell.

2. THE TREE

- 2.1 The tree in question is a Swamp Cypress (*Taxodium distichum*). It stands in the front garden of Rhosa, Kitwalls Lane, Milford-on-Sea.
- 2.2 Swamp Cypress trees are unusual in that they are deciduous conifers, as are Dawn Redwood (*Metasequoia glyptostroboides*), to which it is extremely similar.
- 2.3 The tree is approximately 14m in height with a stem diameter of 300mm.
- 2.4 The tree appears to be in a sound and healthy condition, with no visible defects. It has a high crown due to lower branches being shaded out by adjacent trees and shrubs which have since been removed. It has a slight lean to the east but this does not make the tree less stable.
- 2.5 The tree can be seen from surrounding houses and from Kitwalls Lane.

3. THE OBJECTION

A copy of the objection and associated correspondence is included as Appendix 2

- 3.1 Mrs England's grounds for the objection given in her letter of 3rd December 2003 are:
- The tree is and never will be more than a very poor specimen, with no branches for 12-15ft and dead and broken branches for a further 4-5ft. The tree is leaning and lop-sided when in leaf.
 - Kitwalls Lane is a private road and the tree is of amenity value to very few people.
 - Removal of the tree will give planned replacement trees a better chance of successful and fast establishment.

4. OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 The shape, form and lean of the tree have been influenced by surrounding vegetation, notably a Lawson Cypress that has recently been removed. As a result, the Swamp Cypress has not grown as a classic individual specimen tree and much of the stem is branchless.

However, the tree nevertheless makes a positive contribution to the amenity of Kitwalls Lane and its loss would leave a substantial gap in the tree cover on this side of the road. Furthermore, as the only representative of this unusual species, with its noted autumn colour, it adds valuable variety and interest to the appearance of the local environment.

- 4.2 The trees in Kitwalls Lane are an essential element of its pleasant character and the principal of a new TPO received a positive response from the majority of residents when consulted. Although it is a private road, its amenity is enjoyed by all the residents, their visitors, and by any members of the public who may use it to walk between the recreation ground to the west and the public footpath to the east. Although Government guidance is that TPO trees would normally be visible from a public place, it has been accepted at appeals that if a tree can be seen by the occupants of a sufficient number of residences, or an equivalent number of people, for example in private roads or communal gardens, a TPO may be justified.
- 4.3 The high canopy and foliage type of the Swamp Cypress is such that the tree does not cast heavy shade. Furthermore, the removal of a Cypress and Cherry tree has left this part of the garden open and light. Carefully selected and well tended plants should be able to thrive in the vicinity of the tree.

5. FINANCIAL IMPLICATIONS

- 5.1 If TPO 130/02 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 130/02 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.

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 will 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 130/02 is confirmed subject only to the amendment of the description of T16 in Schedule 1 to refer to a Swamp Cypress

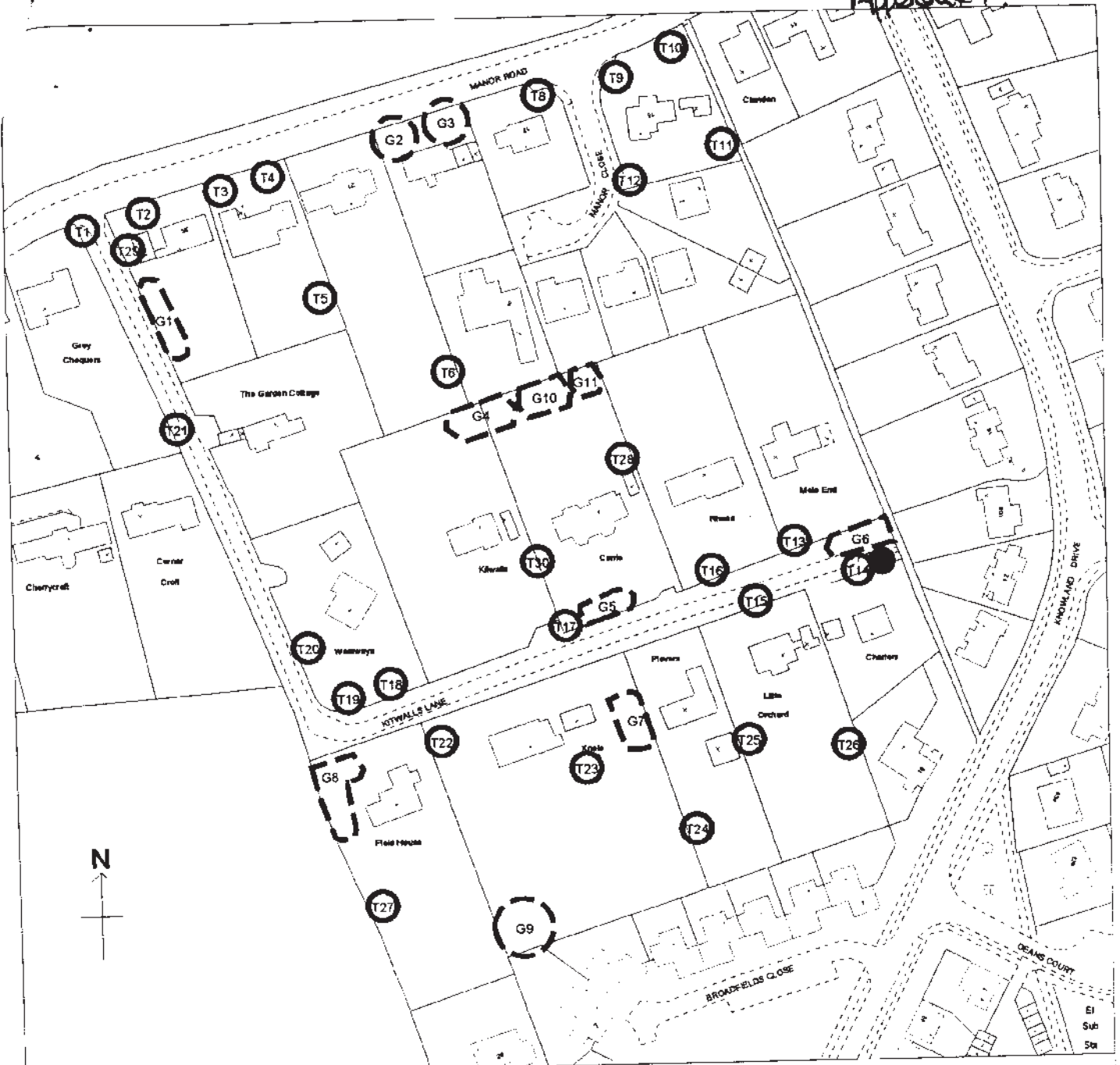
Further Information:

John Hearne
Arboriculturist

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

Background Papers:

Tree Preservation Order No. 130/02



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 130/02

Approximate Scale: 1500

Date Printed: 4 November 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



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AN AUTHORISED SIGNATORY

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)		
No. on Map	Description	Situation
T 1	Pine	West side of Kiwalls Lane on road verge near junction with Manor Road
T 2	Beech	Front garden of 25 Manor Road
T 3	Pine	Front garden of 23 Manor Road
T 4	Pine	Front garden of 23 Manor Road
T 5	Oak	Rear garden of 23 Manor Road
T 6	Oak	Rear garden of 21 Manor Road
T 8	False Acacia	Front garden of 17 Manor Road
T 9	Pine	Front garden of 15 Manor Road
T10	Holm Oak	Front garden of 15 Manor Road
T11	Copper Beech	Rear garden of 15 Manor Road
T12	Lime	Garden of 15 Manor Road adjacent to Manor Close frontage in south west corner
T13	Cotoneaster	Front garden of 'Mole End' adjacent to road frontage
T14	Birch	Adjacent to path outside front of 'Charters', Kitwalls Lane
T15	Crab Apple	On road side outside front of 'Little Orchard', Kitwalls Lane
T16	Dawn Redwood	Front garden of 'Rhosa', Kitwalls Lane
T17	Cypress	Front garden of 'Corrie', Kitwalls Lane
T18	Beech	Rear garden of 'Westways', Kitwalls Lane near southern boundary
T19	Cherry	Rear garden of 'Westways', Kitwalls Lane near southern boundary
T20	Horse Chestnut	Garden of 'Westways', Kitwalls Lane on west side of house
T21	Ash	West side of Kitwalls Lane opposite The Garden Cottage
T22	Pine	Front garden of 'Knole' near road frontage and boundary with 'Field House', Kitwalls Lane
T23	Eucalyptus	Rear garden of 'Knole', Kitwalls Lane near house
T24	Poplar	Rear garden of 'Plovers', Kitwalls Lane
T25	Ash	Rear garden of 'Little Orchard' adjacent to boundary with 'Plovers', Kitwalls Lane
T26	Pine	Rear garden of 'Little Orchard', Kitwalls Lane near boundary with 16 Knowland Drive
T27	Beech	Rear garden of 'Field House', Kitwalls Lane adjacent to

western boundary

T28	Lime (multi-stem)	Rear garden of Corrie adjacent to boundary with Rhosa, Kitwalls Lane
T29	Oak	Boundary of 25 Manor Road and Kitwalls Lane
T30	Oak	On or adjacent to front garden boundary between Corrie and Kitwalls, Kitwalls Lane

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
G 1	1 x Lime, 2 x Hornbeam	Rear garden of 25 Manor Road adjacent to boundary with Kitwalls Lane
G 2	2 x Beech	Front garden of 19 Manor Road
G 3	2 x oak	Front garden of 19 Manor Road
G 4	4 x Oak	Rear gardens of 'Kitwalls and 'Corrie', Kitwalls Lane adjacent to northern boundaries
G 5	2 x Douglas Fir	Front garden of 'Corrie', Kitwalls Lane adjacent to road frontage
G 6	The larger 4 x Cypress (excluding northernmost 5th Cypress)	At front of 'Mole End', Kitwalls Lane adjacent to path
G 7	2 x Lime	Garden of 'Knole', Kitwalls Lane adjacent to boundary east of house
G 8	3 x Pine, 1 x Beech	Front garden of 'Field House', Kitwalls Lane
G 9	3 x Pine	Rear garden of 'Knole', Kitwalls Lane in south west corner
G10	1 x Blue Atlas Cedar, 1 x Dawyk Beech, 1 x Maple	Rear garden of 'Corrie', Kitwalls Lane adjacent to rear boundary
G11	2 x Oak	Rear garden of 'Corrie', Kitwalls Lane adjacent to north east corner

Woodlands

(within a continuous black line on the map)

No. on Map	Description	Situation
None		

New Forest District Council
Appletree Court
Lyndhurst
Hants

Rhosa
Kitwalls Lane
Milford on Sea
SO410RJ 3/12/03

Appendix 2

Environment Services - ref Trees

05 DEC 2003

For the attention of Mr B Wilson / Mr J Hearne

Dear Sirs

Please accept this letter as an application to fell a deciduous conifer, either a swamp cypress or dawn redwood on the front boundary of the address above.

It has recently come to my attention, whilst speaking to Mr Hearne about other trees, that this tree has been designated as 'T16' on the new TPO 130/02, confirmed on receipt of your letter ref JH/MAC/TPO... dated 28th November and received on December 1st.

On receipt of your proposals for TPO 130/02 in January 2003 I informed Mr Hearne that the actual tree shown in the position of T16 had been partly felled (with permission) in October 2002.

Mr Hearne apparently decided to designate the above tree instead, which is actually situated about 3 metres away from the shown position of T16, but omitted to inform me of the change. Had he done so I would have immediately registered my objection to its inclusion on the new TPO on the grounds that it is, and never will be more than a very poor specimen, with no branches at all for about 12-15 feet, the branches above this are dead and broken for the next 4-5 feet. The tree is not vertical and when in leaf is very lop-sided.

Following a recent site visit and discussion with Mr Hearne at which I pointed out these reasons he said that he would still include it as he felt it had some 'amenity value' and also that it was the only tree on the property which would be subject to a TPO. I do not agree with his reasoning on the grounds stated above and would also like to point out that as Kitwalls Lane is a private road, technically speaking, the tree is of amenity value to very few people.

In conclusion, having recently removed a diseased cherry in the vicinity of this tree, and looking at the site with a view to replanting, I believe removing this tree would give a much better chance for the successful and fast establishment of replacement trees with regard to less competition and light, than would the option of trying to get replacements going and then removing the tree in question.

I enclose a copy of this letter for you to forward with your information to Milford Parish Council.

Yours faithfully Mrs J England



Mrs J England
Rhosa
Kitwalls Lane
Milford on Sea
SO41 0RJ

My ref: JH/TPO 130/02
Your ref:
12 December 2003

Dear Mrs England

TREE PRESERVATION ORDER 130/02

I refer to your letter dated 3rd December, in which you apply for consent to fell tree T16 of the above Order.

As we have discussed, I am of the opinion that the tree makes a valuable contribution to the amenity of Kitwalls Lane and, given its shape and form, I do not think it should overly hinder the successful establishment of newly planted trees. It will therefore have to be my recommendation that your application is refused and a final decision will be made by an officer with delegated powers. If you are refused consent you will be entitled to appeal to the Office of the Deputy Prime Minister.

I should point out that the Preservation Order is currently only temporarily in force and it must be confirmed within 6 months. Before confirming an Order the District Council must give careful consideration to any objections that are received. Please let me know if you wish me to treat your letter as such an objection and I will instigate our appeals procedure. Briefly, this involves an 'Appeals Panel' of elected Members meeting to view the tree, followed by a formal hearing at which you will have an opportunity to make further representations if you wish. Other residents who have been served TPO 130/02 will also be invited to attend and may make representations if they wish. The panel must consider whether or not the tree merits inclusion in an Order and, if so, whether the benefit it provides outweighs any disbenefit you may perceive.

If you would like to discuss any of these procedures please do not hesitate to contact me on the number given below

Yours sincerely

John Hearne
Arboriculturist

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

New Forest District Council,
Legal & Democratic Services,
Appletree Court,
Lynchhurst.

Mark East,
Kitwalls Lane,
Milford on Sea
SO41 0RJ

INFORMATION SERVICES 7 1 04
APPLETREE COURT
29 JAN 2004
N.F.D.C.

Dear Madam,

Regarding your letter of 13 1 04
reference JMD/TMH/TPO/130/02. I would like
to attend the site visit at Kitwalls Lane on
February 12th and the 10.30 AM meeting in the
Town Hall, Lyminster.

I have no objection to the felling of
the swamp cypress T16 of Tree Preservation
order 130/02 provided it is replaced by
a native deciduous tree.

Yours faithfully

J H Gard