

APPEALS PANEL - 7 JULY 2004

## OBJECTION TO TREE PRESERVATION ORDER NO. 10/04 LAND OF 10 MOUNT AVENUE, NEW MILTON

### REPORT OF COUNCIL TREE OFFICER

#### 1. TREE PRESERVATION ORDER HISTORY

- # 1.1 Tree Preservation Order (TPO) No.10/04 was made on 25 February 2004. The TPO plan and first schedule are attached as Appendix 1. The Order protects a single False Acacia tree in the front garden of 10 Mount Avenue, New Milton.
- 1.2 The Order was served following notification to the Tree Team from a Development Control Planning Officer that the property was for sale and that enquiries about possible redevelopment had been received which may affect trees.
- 1.3 The Council's Tree Officer inspected the site and considered that the False Acacia merited inclusion in a TPO. It is clearly visible to the public and its premature removal would be detrimental to the appearance of the area. This tree could be affected by any alterations to the existing access and it is therefore expedient to protect the tree with a TPO.
- 1.4 Mr K J Clark, of 8 Mount Avenue, wrote objecting to the Order on 7 March.
- # 1.5 The Council's Tree Officer telephoned Mr Clark on 17 March to discuss the grounds for objection and to attempt to resolve the matter. As a result of this conversation the Council's Tree Officer gained the impression that Mr Clark was reassured and had agreed not to progress his objection. However, Mr Clark wrote on 22 March clarifying that he wished to maintain his objection. Copies of correspondence are included as Appendix 2.

#### 2. THE TREE

- 2.1 The tree in question is a False Acacia (*Robinia pseudoacacia*). It stands in the front garden of 10 Mount Avenue, New Milton.
- 2.2 The tree is approximately 14m in height with twin stems of approximately 350 – 400mm diameter.
- 2.3 The tree appears to be in a sound and healthy condition, with no significant defects. A small third central stem has been removed and the remaining stump is decayed. However, the extent of decay is contained and shows no signs of affecting the structural integrity of the other two stems at this time. False Acacia is highly resistant to decay with only a few specialist fungi capable of degrading the heartwood.

- 2.4 The tree can be seen by the public from Mount Avenue, Mount Close, Orchard Grove, Lymington Road and Becton Lane.

### **3. THE OBJECTION**

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

- 3.1 Mr Clark's grounds for the objection, given in his letter of 7 March, are:
- The tree is currently 13 – 15m in height with a substantial spread. It is too big for the neighbourhood.
  - The tree extends over a highway and pathway. It drops branches (the most recent of which is at the tree base) and is a nuisance and possible danger to users of the highway and pathways.
  - The problems described above will substantially increase as the tree matures. The species grows rapidly and can be expected to reach a height of 18m in ordinary circumstances and possibly a maximum height of 30m on better sites. As there is no competition the height can be expected to approach the maximum. In view of the possible height, the danger from branch drop is particularly worrying.
  - Radial root spread is usually 1 to 1.5 times tree height so the roots will be expected to extend more than 18m and could even be 45m in some circumstances. This may cause problems to the utility supply and foundations of properties and further damage to the highway.
  - The tree is twin stemmed and this reflects the lack of care in establishing the tree, which is now a rather poor specimen. It is a fairly common species and two better specimens exist within 200m

### **4. OBSERVATIONS ON THE GROUNDS OF OBJECTION**

- 4.1 The Council's Tree Officer does not consider the current or potential height and spread of the tree to be too big for the neighbourhood. Larger mature trees add valuable height and scale to the urban landscape, providing a verdant counterfoil to harsh building outlines and an intrinsic visual amenity in their own right. The size of the tree can also be restricted by judicious pruning without detriment to its health or amenity.

- 4.2 Open grown specimens of the species can commonly attain heights of 20-25m (65-85ft). However, despite a lack of vegetative competition as mentioned by Mr Clark, it is extremely unlikely that this particular specimen will attain such a height due to the restricted and inhospitable nature of the rooting area where soils are likely to be compacted and there is surrounding hard surfacing. This means air and moisture availability is reduced.
- 4.3 All trees will shed dead branches and twigs from time to time. False Acacia is prone to dropping small dead twigs as do many species but these are a minor inconvenience and can hardly be described as a danger. The species is no more likely to shed larger diameter branches than other species and, in fact, has a very strong timber, which is only susceptible to rot from a very few specialist fungi. No such fungus was noted at the time of the inspection.
- 4.4 Radial root spreads are often quoted as being between 1 and 1.5 times the height of a tree. Such generalisations are inappropriate in an urban setting where root growth is often limited by areas of ground hostile to root growth. However, depending on ground conditions, the roots of this tree are capable of extending as far as adjoining properties. The vulnerability of a property to foundation damage cannot be known without details of soil type and foundation depth. Even when these are known, it is impossible to predict damage as evidenced by the many properties that might be thought vulnerable remaining stable even with large trees in close proximity. Modern materials and techniques associated with utility supplies can almost eliminate the risk of the damage recurring.
- 4.5 The twin-stemmed form of the tree is not necessarily a reflection of a lack of care in establishment. It is not uncommon for the species and is not unattractive.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 If TPO 10/04 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 10/04 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 10/04 is confirmed without amendment.

**Further Information:**

John Hearne  
Arboriculturist

Telephone: 02380 285205

**Background Papers:**

Tree Preservation Order No. 10/04  
Associated correspondence

**DATED 25 FEBRUARY 2004**

**DISTRICT COUNCIL OF NEW FOREST**

**Town and Country Planning Act 1990**

**TREE PRESERVATION ORDER NO. 10/04**

**LAND OF 10 MOUNT AVENUE, NEW MILTON  
IN HAMPSHIRE**

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

# TOWN AND COUNTRY PLANNING ACT 1990

## TREE PRESERVATION ORDER NO. 10/04 LAND OF 10 MOUNT AVENUE, NEW MILTON IN HAMPSHIRE

The District Council of New Forest, in exercise of the powers conferred on them by sections 198, 200 and 203 of the Town and Country Planning Act 1990 hereby make the following Order—

### Citation

1. This Order may be cited as Tree Preservation Order No. 10/04, Land of 10 Mount Avenue, New Milton in Hampshire.

### Interpretation

2. In this Order “the authority” means the District Council of New Forest and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

### Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on 25 February 2004

### Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)(1),

- (a) cut down, top, lop, uproot, willfully damage or willfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, willful damage or willful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

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(1) Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping of trees which are dying, dead or have become dangerous, or the undertaking of those acts in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. Subsection (7) of that section makes section 198 subject to section 39(2) of the Housing and Planning Act 1986 (c.63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c. 10) (licences under that Act to fell trees comprised in a tree preservation order).

## Exemptions

5.—(1) Nothing in article 4 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary—
  - (i) in the interests of the safe operation of the undertaking;
  - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
  - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” have the same meanings as in the Land Drainage Act 1991; or
- (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

(2) In paragraph (1), “statutory undertaker” means any of the following—

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,

- a relevant airport operator (within the meaning of Part V of the Airports Act 1986)
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act is applied,
- a water or sewerage undertaker
- the Civil Aviation Authority or a body acting on behalf of that Authority,
- the Post Office.

### **Applications for consent under the Order**

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall—

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application.

### **Application of provisions of the Town and Country Planning Act 1990**

7.—(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

### **Directions as to replanting**

8.—(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to—

- (a) species;
- (b) number of trees per hectare;



- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

### Compensation

9.—(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article—

- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person—

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(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.

**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

No. on Map	Description	Situation
T1	False Acacia (twin stemmed)	Front garden of 10 Mount Avenue, New Milton

**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		

## SCHEDULE 2

### PART 1 PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) omit—</p> <p style="padding-left: 80px;">“, in such manner as may be prescribed by a development order,”</p> <p style="padding-left: 80px;">“such” in the second place where it appears, and</p> <p style="padding-left: 80px;">“as may be so prescribed”; and</p> <p style="padding-left: 40px;">(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)—</p> <p style="padding-left: 40px;">(i) after “contain” insert “, as regards each such order”; and</p> <p style="padding-left: 40px;">(ii) for paragraphs (a) and (b) substitute—</p> <p style="padding-left: 80px;">(a) “details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p style="padding-left: 80px;">(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) substitute—</p> <p style="padding-left: 80px;">“Subject to subsections (1A) and (1B), where” for “Where”;</p> <p style="padding-left: 80px;">“the authority” for “a local planning authority”;</p>

	<p>"consent under a tree preservation order" for "planning permission" where those words first appear; and</p> <p>"consent under the order" for "planning permission" in both of the other places where those words appear;</p> <p>(ii) after "think fit", insert—</p> <p>"(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and</p> <p>(iii) omit "subject to sections 91 and 92,".</p> <p>(b) After subsection (1) insert—</p> <p>"(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).".</p> <p>(c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute—</p> <p>(i) "Any" for the words from "Without" to "any";</p> <p>(ii) "consent under a tree preservation order" for "planning permission to develop land";</p> <p>(iii) "the consent" for "the permission"; and</p> <p>(iv) "the land to which the order relates" for "the land".</p> <p>(b) Omit subsections (2) and (3).</p>
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute—</p> <p>(i) "the authority" for "a local planning authority";</p> <p>(ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear;</p>

(iii) "consent under such an order" for "planning permission" in the second place where those words appear;

(iv) for paragraph (c) substitute—

"(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or

(d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,".

(b) Omit subsection (2).

(c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute—

"in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

(a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;

(b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant."

(d) For subsection (4), substitute—

"(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."

(e) For subsection (5), substitute—

"(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question."

Section 79 (determination of appeals)	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute—</p> <ul style="list-style-type: none"> <li>(i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;</li> <li>(ii) “consent under a tree preservation order” for “planning permission”; and</li> <li>(iii) “the authority” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of sections 65 or 71.”.</li> </ul> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p>
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**PART II**  
**PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,**  
**AS ADAPTED AND MODIFIED BY PART I**

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

**Section 69**

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order—

- (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

.....

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

## **Section 70**

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order—

- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

.....

## **Section 75**

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

## **Section 78**

(1) Where the authority—

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

.....

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—



- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

.....

### **Section 79**

(1) On an appeal under section 78 the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

.....

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

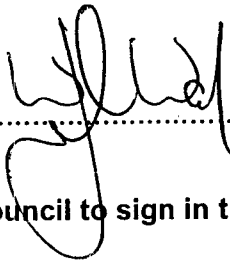
(5) The decision of the Secretary of State on such an appeal shall be final.

.....

(7) Schedule 6 applies to appeals under section 78.

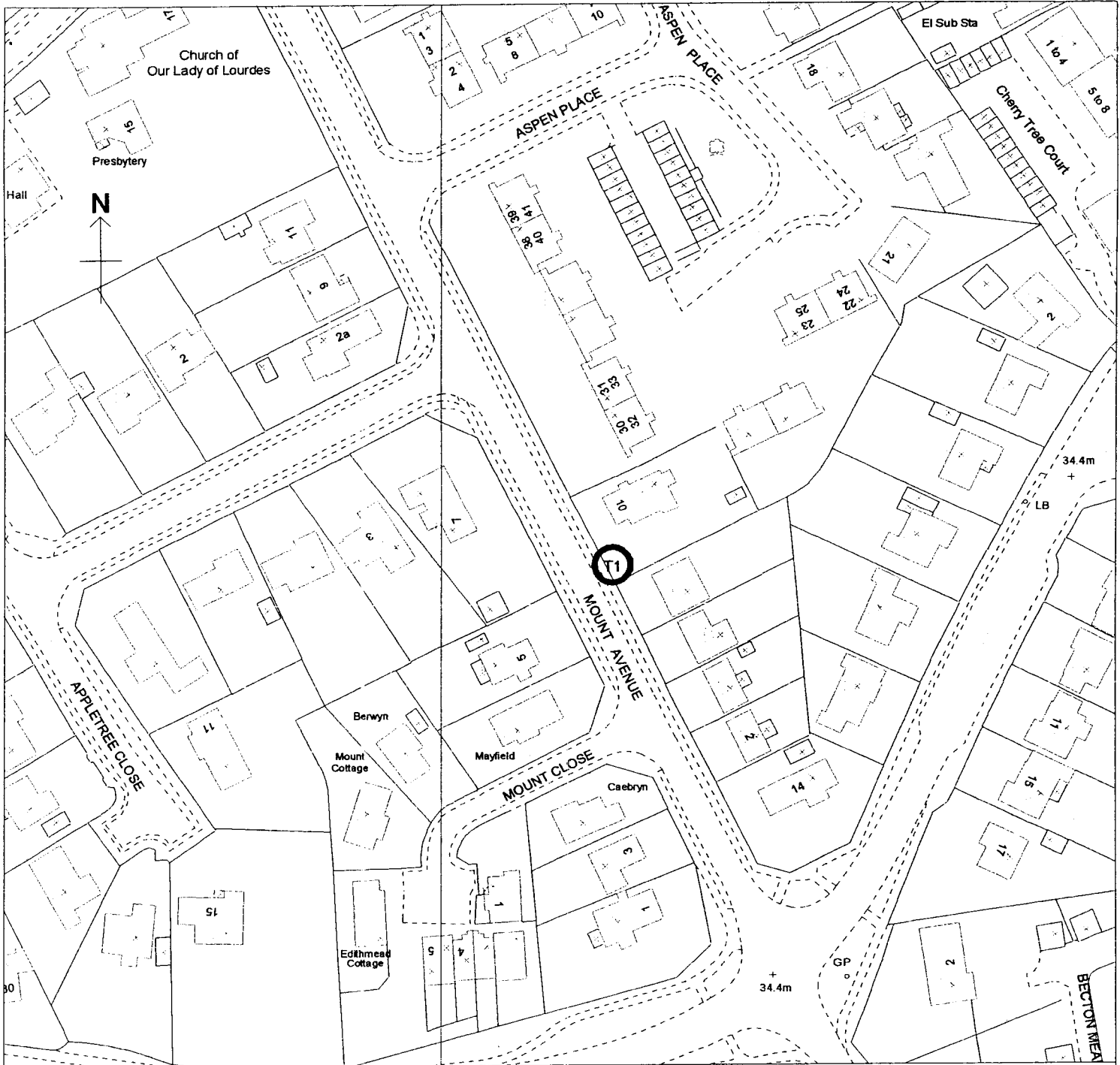
Dated this Twenty fifth day of February 2004

**Signed on behalf of the District Council of New Forest**



.....

**Authorised by the Council to sign in that behalf**



## Tree Preservation Order Plan

**Town and Country Planning Act 1990**

**T.P.O Number: 10/04**

**Approximate Scale: 1250**

**Date Printed: 19th February 2004**

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



*[Handwritten Signature]*  
 AN AUTHORISED SIGNATORY

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TPO 10/04

8 Mount Ave.  
New Milton  
Hants BH25 6NS

Telephone 01425 616184

Email [ken@clarknewmilton.freemove.co.uk](mailto:ken@clarknewmilton.freemove.co.uk)

Monday, March 22, 2004

You reference JH//TPO 10/04

Dear Sir

Tree Preservation Order - TPO 10/04 - False Acacia (twin stemmed) - front garden of 10 Mount Ave.

Thank you for your letter of 19 March..

When you telephoned me, I said I would leave matters as they were. By that I meant I wanted the objection to stand so that my concerns were taken into account when the application was considered. It was not the withdrawal of my objection and to have my comments recorded on file, presumably to be considered when the TPO was granted, does not meet my wishes.

Please note I have not withdrawn my objection and I should be glad if you would progress the matter on that basis.

Yours sincerely



K J Clark

Mr John Hearne  
New Forest District Council  
Appletree Court  
Lyndhurst  
Hants SO43 7 PA



Mr K J Clark  
8 Mount Avenue  
New Milton  
Hants  
BH25 6NS

My ref: JH/TPO 10/04  
Your ref:  
19 March 2004

Dear Mr Clark,

**TREE PRESERVATION ORDER 10/04**

I refer to your letter dated 7<sup>th</sup> March and our telephone conversation on 17<sup>th</sup> March.

As we agreed, I will not now progress your letter as a formal objection to the Order. However, as requested, your comments as to the unsuitability of the tree to its location and its quality as a specimen will be recorded on file.

I would also assure you that works to the tree required for safety reasons are exempt from the need to obtain consent, although if possible the Council should be given advance notice.

Yours sincerely

John Hearne  
Arboriculturist

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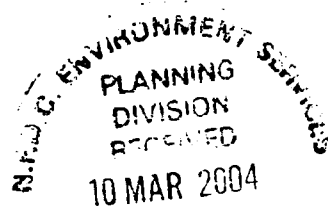
John has original

8 Mount Ave.  
New Milton  
Hants BH25 6NS

Telephone 01425 616184

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Sunday, March 07, 2004



You reference JH/vmr/TPO 10/04

Dear Sir

Tree Preservation Order - TPO 10/04 - False Acacia (twin stemmed) - front garden of 10 Mount Ave.

Thank you for your letter of 25 February. I return the requisition for information. I object to the making of the above order. The reasons for my objection are:-

1- the tree currently 13 - 15 metres in height and with a substantial spread is too big for the neighbourhood.

2- the tree extends over a driveway, over a Highway and over the pathway to the house on the adjoining land. The tree drops branches (the most recent of these can be seen dumped at the base of the tree) and is a nuisance and possible danger to those using the highway and pathways.

3- the problems described in 1 and 2 are likely to substantially increase as the tree matures. This specie grows rapidly and be expected to reach a height of 18 metres in ordinary circumstances and possibly a maximum height of 30 metres on better sites. As there is no competition I think we can expect the tree to approach this maximum. In view of the possible height this tree will reach the danger from branch drop is particularly worrying..

4- Radial root spread is usually 1 to 1.5 times the height so the roots will be expected to extend more than 18 metres and could even be 45 metres in some circumstances. This may cause problems to the utility supply and foundations of my property and further damage to the highway.

5- As described in the order the tree is twin stemmed and this reflects the lack of care in establishing the tree which is now a rather poor specimen. It is a fairly common species and two better specimens exist within 200 metres.

Yours sincerely

A handwritten signature in black ink, appearing to read "K J Clark".

K J Clark

New Forest District Council