



APPEALS PANEL: 23 FEBRUARY 2005.

**OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER
82/04**

**LAND OF UPTON HOUSE, 51 SALISBURY STREET,
FORDINGBRIDGE.**

1.0 INTRODUCTION

1.1 This meeting of an Appeals Panel has been convened to hear an objection to the making of a Tree Preservation Order.

2.0 BACKGROUND

2.1 Tree Preservation Orders (TPOs, or Orders) are made under Sections 198, 199 and 201 of the Town and Country Planning Act 1990 (the Act). This legislation is supported by guidance issued by the Office of the Deputy Prime Minister on 17 April 2000 called "Tree Preservation Orders A Guide to the Law and Good Practice". This is commonly referred to as the "Blue Book".

2.2 This Council follows a procedure that ensures that as soon as an Order is made it gives immediate protection to the specified tree or trees. The owners and occupiers of the land on which the tree or trees are situated, together with all the owners and occupiers of the neighbouring properties, are served with a copy of the Order. Other parties told about the Order include the Town or Parish Council and District Council ward members. The Council may also choose to publicise the Order more widely.

2.3 The Order includes a schedule specifying the protected trees, and must also specify the reasons for protecting the trees. Normally this is on the grounds of their amenity value.

2.4 The procedures allow that any person who wishes may make representations to the Council, in writing, within 28 days of the Order being made. The Council must have a procedure for considering those representations.

2.5 Where an objection is made to the Order, in the first instance, the Tree Officers will negotiate with the objector to see if it can be resolved. If it cannot, then the objection is referred to a meeting of the Appeals Panel for determination.

2.6 The Order, when first made, has a life of 6 months. Within that period of 6 months, the Council must decide whether or not to confirm the Order, with or without amendment. The Order ceases to exist if it is not confirmed.

3.0 CRITERIA FOR MAKING A TREE PRESERVATION ORDER.

3.1 A local planning authority may make an Order if it appears to them to be:

“expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”.

4.0 TYPES OF TREE PRESERVATION ORDER

4.1 The Tree Preservation Order may specify one or more individual trees, groups of trees, woodlands or, more rarely, refer to an area of land.

4.2 As a general rule, an individually specified tree must meet the criteria for protection in its own right.

4.3 A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The value of the group as a whole may be greater than that of the individual trees.

4.4 A woodland order would be imposed over a more significant area of trees, where it is not practical, or indeed perhaps even desirable, to survey or specify individual trees or groups of trees. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. In general terms a woodland will be a significant area of trees, that will not be interspersed with buildings.

4.5 An area designation covers all the trees, of whatever species, within a designated area of land, and these may well be interspersed among a number of domestic curtilages and around buildings. An area order may well be introduced, as a holding measure, until a proper survey can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individuals or groups of trees. This process has been underway in this District, with the review of a number of older area orders that were imposed some years ago in response to proposed significant development. An area order is a legitimate tool for the protection of trees. It is not grounds for an objection that the order is an area order.

5.0 THE ROLE OF THE PANEL

5.1 While objectors may object on any grounds, the decision about whether the Order should be confirmed may only take into account strictly limited criteria.

5.2 ***The only issues before members of the Panel, in considering whether or not to confirm the Order, are the amenity value of the tree or trees, and the expediency of making the Order.***

5.3 Amenity value

This term is not defined in the Act, but there is guidance in the Blue Book. The guidance says:

- TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- There must be a reasonable degree of public benefit. The trees, or part of them, should therefore normally be visible from a public place, such as a road or a footpath. Other trees may however also be included, if there is justification.
- The benefit may be present or future.
- The value of the tree or trees may be from their intrinsic beauty; for their contribution to the landscape; or the role they play in hiding an eyesore or future development.
- The value of trees may be enhanced if they are scarce.
- Other factors, such as their importance as a wildlife habitat, may be taken into account, but would not, alone, be sufficient to justify a TPO.

It is not appropriate to protect a tree that is dead, dying or dangerous. As a general rule, officers will only consider protecting a tree where they are satisfied that it has a safe life expectancy in excess of 10 years.

5.4 Expediency

Again, this is not defined in the Act, but some guidance is given in the Blue Book. In essence, the guidance says:

- It is not expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.
- It may be expedient to make a TPO if the local authority believe there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. It may be a general risk from development pressures.
- A precautionary TPO may also be considered appropriate to protect selected trees in advance, as it is not always possible to know about changes in property ownership and intentions to fell.

5.5 Issues that may not be taken into account.

The question of whether or not the protected tree may influence the outcome of a planning application is not relevant to your decision. If a TPO is in place on an application site, it is a material consideration in determining the application. That is however an issue that may be addressed solely through the development control process.

The principle of whether or not the landowner wishes a TPO to be imposed is also not relevant. The test is the public amenity value of the trees.

6.0 THE EFFECT OF THE ORDER.

- 6.1 Once the TPO has been made, it is an offence to do any works to the protected tree or trees without first gaining consent from the Council. This is done through a Tree Work Application. There is no fee charged for making a Tree Work Application.
- 6.2 If consent is refused, the applicant has the right of appeal to the Secretary of State.

7.0 CONSIDERATION

- 7.1 Members are requested to form a view, based on the evidence before them, of the amenity value of the trees, and the expediency of confirming the TPO. Members will have visited the site immediately prior to the formal hearing, to allow them to acquaint themselves with the characteristics of the tree or trees within the context of the surrounding landscape.
- 7.2 The written evidence that is attached to this report is as follows:

Appendix 1 The schedule and map from the Order, which specifies all the trees protected.

Appendix 2 The report of the Council's Tree Officer, setting out all the issues he considers should be taken into account, and making the case for confirming the Order.

Appendix 3 The written representations from the objectors to the making of the Order

Appendix 4 The written representations from supporters of making the Order.

Members will hear oral evidence at the hearing, in support of these written representations. The procedure to be followed at the hearing is attached to the agenda.

8.0 FINANCIAL IMPLICATIONS.

- 8.1 There are some relatively minor administrative costs associated with the actual process of serving and confirming the TPO. There are more significant costs associated with the need to respond to any applications to do works (lopping, topping or felling). The officers will normally visit the site and give advice on potential works to the trees.

- 8.2 The Council does not become liable for any of the costs of maintaining the tree or trees. That remains the responsibility of the trees' owners.
- 8.3 The Council does not automatically become liable for any damage that may be caused by the protected tree or trees. The only situation in which the Council may become liable is where consent has been sought, through a Tree Work Application, to do works to the tree, consent is refused, and the consequent damage caused by the tree could, reasonably, have been foreseen.

9.0 ENVIRONMENTAL IMPLICATIONS

- 9.1 The trees must have significant value within their landscape to justify the confirmation of the TPO.

10.0 CRIME AND DISORDER IMPLICATIONS

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

11.0 OTHER IMPLICATIONS

- 11.1 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.
- 11.2 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).

12.0 RECOMMENDED:

- 12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 82/04, relating to land of Upton House, 51 Salisbury Street, Fordingbridge, with, or without, amendment.

For further information contact:

Jan Debnam, Committee Administrator
Tel: 023 8028 5389
e-mail: jan.debnam@nfdc.gov.uk

Julia Mutlow, Solicitor

Background Papers:

Attached

Tel: 023 8028 5149

e-mail: julia.mutlow@nfdc.gov.uk

SCHEDULE 1

TPO 82/04

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T 1	Sycamore	At the rear of Upton House, 51 Salisbury Street, adjacent to Green Lane frontage.

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

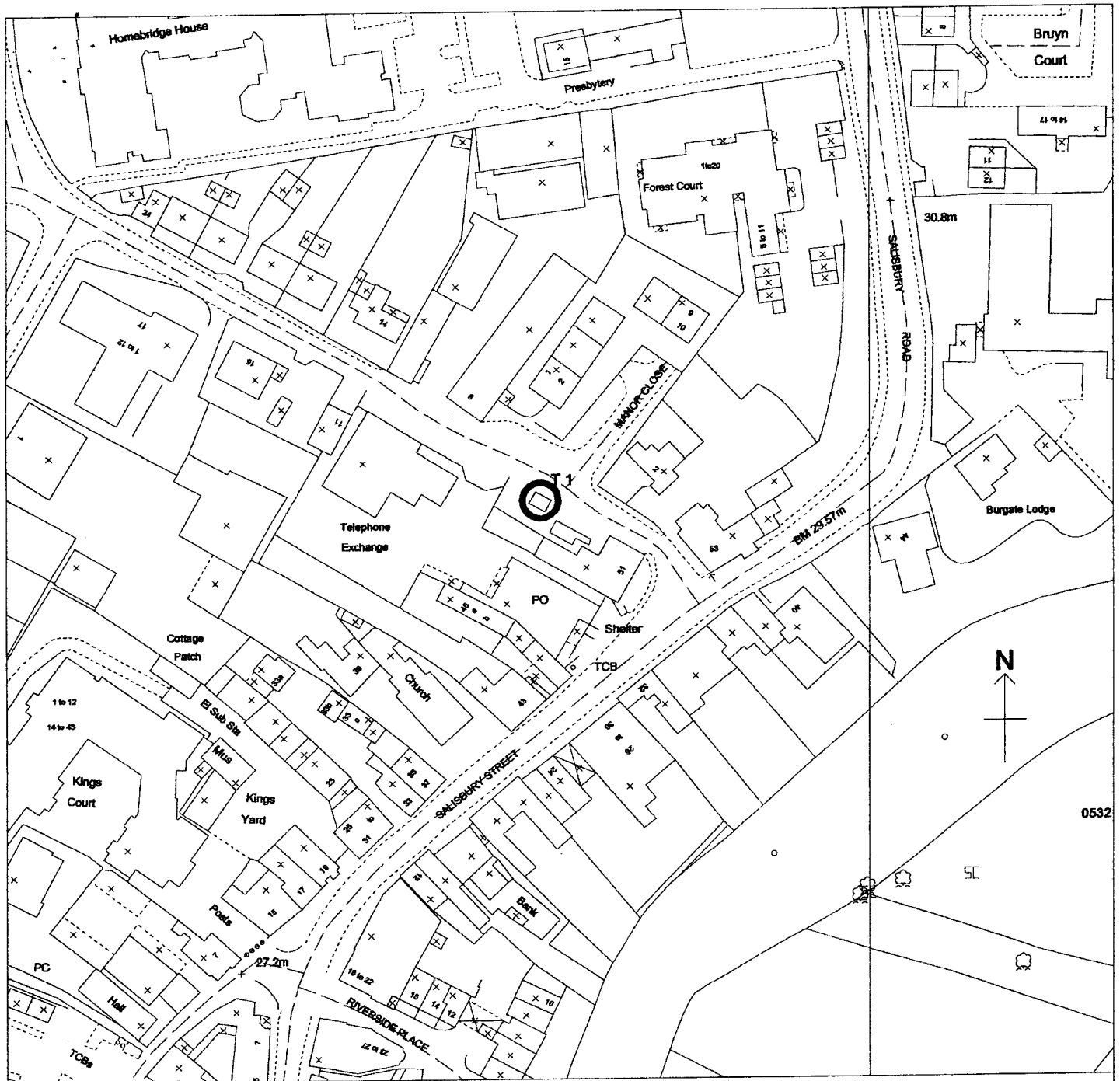
No. on Map	Description	Situation
None		

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: 82/04

Approximate Scale: 1250

Date Printed: 9 September 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

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office. © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. New Forest District Council licence no. 100026220 2004

APPEALS PANEL MEETING – 23 FEBRUARY 2005

OBJECTION TO TREE PRESERVATION ORDER NO. 82/04 LAND OF UPTON HOUSE, 51 SALISBURY STREET, FORDINGBRIDGE

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No. 82/04 was made on 10 September 2004. The Order protects a single Sycamore (*Acer pseudoplatanus*) tree which is numbered T1 on the plan and First Schedule of the order.
- 1.2 On 23 August 2004, Mr Tony O'Connell of Novastead Ltd, Upton House submitted notification to the Council of his intention to fell the tree. As the tree was then protected by growing in a Conservation Area the Council had six weeks in which to consider making a TPO or raise no objection to its removal. If, following the six weeks notification period the Council had not made the TPO then the tree could have been cut down.
- 1.3 Having inspected the Sycamore tree, the Council's tree officer took the view that it makes a positive contribution to the amenity and appearance of the local environment and TPO No.82/04 was therefore made to protect the tree and on 8 October 2004 the Council issued a decision objecting to the removal of the Sycamore and stating that TPO 82/04 had been made to protect it.
- 1.4 On 2 November 2004 Mr O'Connell submitted an appeal to the Secretary of State against the Council's decision but as yet no date has been set for an Appeal site visit.

2. OBJECTION

- 2.1 Although Mr. O'Connell has not written specifically to the Council objecting to the TPO, officers consider his original notification and subsequent Appeal constitute a valid objection.
- 2.2 Mr O'Connell makes four separate points as the grounds for Appealing to the Secretary of State. These are listed below with the Council's responses.
 - 2.2.1 1st Ground of Appeal: The removal of the appeal Sycamore tree would not be overly detrimental to the Fordingbridge Conservation Area as an adjacent Sycamore tree would benefit and flourish if the appeal tree was removed.

Council's Response: The appeal tree stands close to the roadside. There is no evidence of significant previous pruning. The tree has a single trunk and the branches are evenly spread. Overall the tree is well shaped with no evidence of weakness or decay. It is clearly visible to the public and is a positive amenity feature. The other Sycamore tree referred to stands close to a brick wall and some 5m south of the appeal tree, and is dominated by the appeal tree. This smaller tree has been previously cut back to near ground level. As a result, it has grown with three trunks, and these in turn have subsequently been reduced in height.

This has resulted in a weakened branch structure with large wounds at the points of secondary regrowth. The tree stands so close to adjacent brick walls that it could damage those walls if allowed to continue to grow larger. As a result it could never safely be retained as such a significant tree as the appeal tree.

- 2.2.2 2nd Ground of Appeal: The removal of the tree would enable Novastead to tidy up the parking spaces at the rear of the building and plant a smaller tree, such as a birch to enhance the amenity of the area.

Council's Response: The removal of the Sycamore and its replacement with a smaller tree would result in a lesser amenity impact. Whilst an attractive tree in the urban setting, a Birch will not attain the same size as the appeal tree and its foliage will have less impact than a Sycamore. A Birch would not make such a notable feature in the street scene. The issue of tidied up parking spaces is not one that is relevant when considering the amenity value provided by the Sycamore.

- 2.2.3 3rd and 4th Grounds of Appeal: There have been no objections to the removal of the tree and all the adjacent residents support removal partly because the tree exudes a sticky sap which damages the paintwork of cars parked beneath them.

Council's Response: When the application was publicised by the Council, two letters of support and one objection were received. Whilst parked cars may suffer from aphid honeydew drip in the summer months, this can be easily remedied by regular washing. Sycamore is one of the few larger trees that can thrive in relatively hostile urban planting situations and the secondary effects of having trees, such as honeydew drip, should be measured against the benefit that a tree of this stature provides in softening the appearance of the surrounding built environment.

- 2.3 In addition to Mr O'Connell's Appeal, three letters were received by the Council objecting to the TPO. These letters are appended to this report and the reasons for objection are briefly outlined below.

- 2.4 Susan Carter of Artisans Hair Salon, Upton House lists five reasons of objection:-

1. More space is needed for parking
2. Clients of Artisan have to buy a parking clock
3. Tenants of Upton House need space to park
4. The tree drops a sugary substance onto car paintwork
5. A drain gets blocked by falling leaves

- 2.5 Mr D Waterman of Versatiles, Upton House wrote in support of the application to fell the tree and listed five reasons.

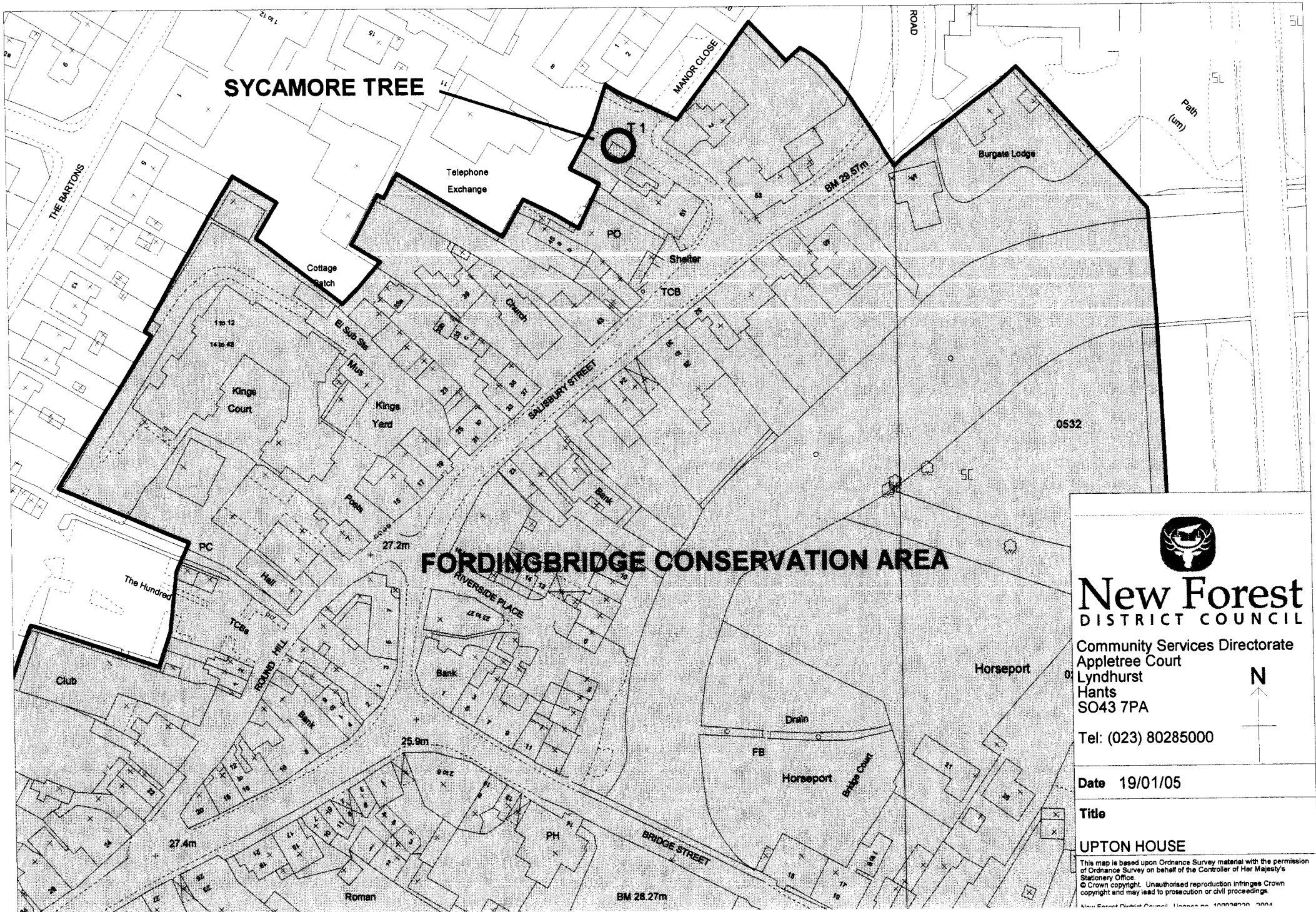
1. The tree blocks two potential parking places which are needed on account of a higher occupancy of Upton House and increased clients of Artisans Hair Salon.
2. The Tree sheds sticky sap onto cars
3. The tree compromises visibility when joining traffic flow in Green Lane.
4. An adjacent Sycamore would benefit if the TPO tree was removed.
5. Novastead will improve and enhance the whole area at the rear of Upton House if the TPO tree was removed.

2.6 Melanie J Tregenza of Upton Cottage, Green Lane wrote in support of the original notification for felling and listed her reasons as:-

1. Improving pedestrian safety.
2. Provide extra parking and disabled access for local business.
3. Enable another sycamore to grow unhindered

3. THE TREE

- 3.1 The Sycamore tree grows surrounded by a low brick 'box', some three or four courses tall and measuring some 3m by 4m. The tree is situated to the north east of the rear elevation of Upton House fronting onto Green Lane. It is a dominant feature on entering Green Lane from Salisbury Street and can be readily seen by local residents from their properties and by the public from a considerable length along Green Lane. There is a smaller, previously pollarded Sycamore about 5m to the south of the appeal tree and a Cypress and Liquidambar tree further to the north west along Green Lane.
- 3.2 The Council holds no previous record of pruning work notification for the tree and there were no obvious signs of major pruning having been undertaken. The Sycamore grows to a height of some 14m tall with a single stem and a relatively open crown. When visually inspecting the tree from ground level, the Council's tree officer considered that as it exhibited no significant outward signs of ill health or weakness there was no necessity for a more detailed inspection.



New Forest
DISTRICT COUNCIL

Community Services Directorate
Appletree Court
Lyndhurst
Hants
SO43 7PA

Tel: (023) 80285000



Date 19/01/05

Title

UPTON HOUSE

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office.
© Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

New Forest District Council, Lyndhurst, SO43 7PA

Mr D Waterman
Versatiles
Shop 1
51 Salisbury Street
Fordingbridge
Hants.
SP6 1AB

My ref: BRW/vmt/TPO 82/04
Your ref:

21 October 2004

Dear Mr Waterman

**TREE PRESERVATION ORDER(TPO) 82/04: APPLICATION TO FELL A SYCAMORE
TREE AT THE REAR OF 51 SALISBURY STREET, FORDINGBRIDGE**

I write further to your letter and e-mail of 21 October in which you state your reasons for wishing to remove the Sycamore tree recently made subject to TPO 82/04, growing at the rear of 51 Salisbury Street, Fordingbridge.

My colleague Mrs Tilburn explained to Sue Carter of Artisans Hair Salon that the Sycamore tree was made subject to a TPO, following notification of intent to remove the tree. At the time of notification, the tree stood in a Conservation Area.

On the 8 October 2004, the Council responded to the notification of intent to remove the tree by stating that the Council objected to its removal and therefore made TPO 82/04 to protect it. So the decision regarding the notification to fell has already taken place but I will treat your letter as an objection to the TPO and you will shortly be receiving details of an appeals panel meeting which will decide whether the Order should be confirmed.

If you require clarification about this matter, please do not hesitate to contact me.

Yours sincerely

Bryan Wilson
Tree Group Leader

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

Copy to: Jan Debnam – Committee Services

Versatiles

Shop 1, 51 Salisbury Street, Fordingbridge, Hampshire. SP6 1AB. Telephone & Fax (01425) 653857

Suppliers of: Carpets, Vinyls, Woodstrip Flooring, Ceramic and Terracotta, Wall and Floor Tiles. Fitting Service Available

21st October 2004

Elsie Tilburn
Tree Team Leader
New Forest District Council
Town Hall, Avenue Road
Lymington
Hampshire
SO41 9SG

Dear Miss Tilburn

Ref: Felling of Tree Application no: 2004/473
(Tree Preservation Order No: 82/04)

Further to your telephone conversation with Sue Carter of Artisans Hair Salon, Shop 2, 51 Salisbury Street, Fordingbridge, I am writing to support the above application to fell the sycamore tree at the rear of these premises.

I understand that a decision on this matter is to be made on Friday the 22nd October and I would be grateful if you would forward this letter to the appropriate department.

My reasons for supporting the application are as follows:

1. The tree in question effectively blocks 2 parking spaces. Due to higher occupancy in the flats in Upton House and the increase in customers to the hairdresser and Versatiles, these parking spaces have now become an essential requirement.
2. The sycamore tree sheds a sticky sap which damages the paintwork of cars parked in the existing spaces.
3. Due to the size of the tree there is a poor visibility when attempting to join the traffic flow in Green Lane.
4. There is a similarly sized sycamore adjacent to the tree in question which, we are advised, would benefit from its removal
5. The removal of this tree will enable Novastead to improve and enhance the whole of the area at the rear of Upton House.

I hope the above points will be taken into consideration.

Yours sincerely



Derek Waterman

Miss S Carter
Artisan
51 Salisbury Street
Fordingbridge
Hants
SP6 1AB

My ref: BRW/ET/TPO 82/04
Your ref:

30 September 2004

Dear Miss Carter

**TREE PRESERVATION ORDER NO: 82/04
LAND OF UPTON HOUSE, SALISBURY STREET, FORDINGBRIDGE**

Further to your recent letter regarding your objections to the above Tree Preservation Order.

We can confirm that your letter has been passed onto our Appeals Panel and you will receive details of the procedure for considering your objection in the near future.

Yours faithfully

Elsie Tilburn
Tree Team Leader

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

170
82/04

ANUSAN
51 Salisbury Street
Fordingbridge
Hampshire
SP16 4BS
01425 655593

Dear Sir/Madam,

- Re the preservation order no. 82/04
- I would like to see the tree removed on the following grounds:
1. Parking for clients has been a problem as our business has increased and more space is needed for clients and staff.
 2. Many of our clients have followed us from a Beaumont salon and do not know the area or want to purchase a parking card.
 3. There are more tenants in the flats above who need their cars parked on the premises.
 4. The tree continually drops a sugary substance which ruins the paintwork of vehicles parked underneath.
 5. The drain gets blocked with falling leaves.
- Yours Sincerely
ANUSAN CARTER

Upton Cottage
Green Lane
Fordingbridge
Hampshire
SP6 1HT

Head of Policy, Planning & Information
New Forest District Council
Appletree Court
Lyndhurst
SO43 7PA

29th September 2004

Dear Sir/Madam

Re: Felling of Sycamore – 2004/473

I write to agree to the proposed felling of the sycamore at the rear of Upton House, Salisbury Street. My reasons are in the interest of improving road safety; to support small local businesses and to enable another sycamore to grow unhindered.

Currently pedestrians, many infirm, elderly or walking with young children, are forced into the narrow but busy road to get round the tree, on their way to the central business district of the town. It has also become apparent due to the number of near misses that motorists have their view blocked by the girth of the tree when manoeuvring out of existing shop spaces.

The felling of the tree will enable the local hairdressing salon and carpet shop to create extra car spaces right next to their shops. This can only be a good thing in making their premises more accessible to those with a limited mobility. This is particularly relevant as under the Disability Discrimination Act, Part III; the final right of access to goods, facilities and services will come into force on 1st Oct 2004.

Finally, in my garden grows another sycamore of approximately the same age and height as the one in question. (The branches of both trees virtually touch.) The removal of the proposed tree would, I understand, provide an opportunity for the other sycamore to flourish, as there would be less competition for water and nutrients. It would also provide an alternative roost for the local bird life.

I hope the points I have raised will be viewed favourably when the panel come to make their decision.

Yours faithfully,

COPY of letter sent.

Melanie J. Tregenza.

ARTISAN
51 Salisbury Street
Fordingbridge
Hampshire
SP6 1AB

01425 655593
26th October 2004

Dear Sir/ Madam,

I am writing in support of the appeal against the refusal of permission to remove the Sycamore tree at the rear of Upton House, at the above address.

I run a hairdressing business in one of the shop units at Upton House and feel that the tree is unsightly, damaging to property and intrusive.

Following the introduction of parking charges in the New Forest District, my clients wish more than ever to use the facilities at the rear of the salon. This is becoming increasingly difficult with illegal parking by other shoppers. Added to this there is an increase in demand as my business grows and I need to provide space for employees. There are also more tenants occupying the flats above the shops who need off road parking.

The tree itself is not unusual or of any particular aesthetic value. In fact, the leaves drip a terrible sticky sap all through the summer which ruins the paintwork of any vehicle near it, and in the autumn and winter, the leaves clog the drains. I would have thought that the root system would have potentially damaging effects on drainage and other infrastructure and know that most insurance companies do not advise having such a large tree so close to buildings.

I understand that the New Forest is an area of outstanding beauty and would not wish to see any plants removed unnecessarily, however, I believe that it has been proposed that a replacement tree is planted and hope that this would be an acceptable compromise to you.

Yours sincerely
Susan Carter

APPENDIX 4

76 Allen Water Drive
Fordingbridge
Hampshire SP6 1RE

Phone: (01425) 656462

Email: cgdennis@btinternet.com

29 September 2004



Head of Policy Plans and Information
New Forest District Council
Appletree Court
Lyndhurst
Hampshire SO43 7PA

Dear Sir/Madam

re: Tree work application 2004/473
Proposal: Fell 1 Sycamore
In planter box on Green Lane at the rear of Upton House, Salisbury Street, Fordingbridge.

I am writing to comment on this application.

The tree is described in the application as being in a "planter box". This is misleading, suggesting a small tree in a wooden tub. In fact, the tree is clearly older than the parking spaces around it, and has been left surrounded by a small patch of soil with a brick surround. Currently this area is overgrown with brambles and other plants: tidying it up would be an easier way to improve the access for parked cars.

The applicant's desire for more parking space and to avoid the nuisance from sap dropped by the tree is understandable, but cars are easily moved and cleaned; the tree is an almost permanent and much valued part of the environment of Fordingbridge.

I object most strongly to any proposal to fell this mature and healthy tree.

Yours faithfully

A handwritten signature in cursive script that reads "Chris Dennis".

Chris Dennis