



APPEALS PANEL: 2 JUNE 2005.

**OBJECTION TO THE MAKING OF TREE PRESERVATION
ORDER 8/05
LAND OF 6 COPSE AVENUE NEW MILTON.**

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

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 8/05 relating to land of 6 Copse Avenue, New Milton, with, or without, amendment.

For further information contact:

Jan Debnam, Committee Administrator
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Julia Mutlow, Solicitor
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Background Papers:

Attached

APPENDIX 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Monterey Cypress	Near the rear boundary of the rear garden
T2	Moneterey Cypress	Rear garden near the boundary with 12 Copse Road
T3	Cypress	West of the house near the boundary with 4 Copse Avenue
T4	Cypress	Front garden near the boundary with the road and with 4 Copse Avenue
T5	Tulip Tree	Front garden near the road frontage

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

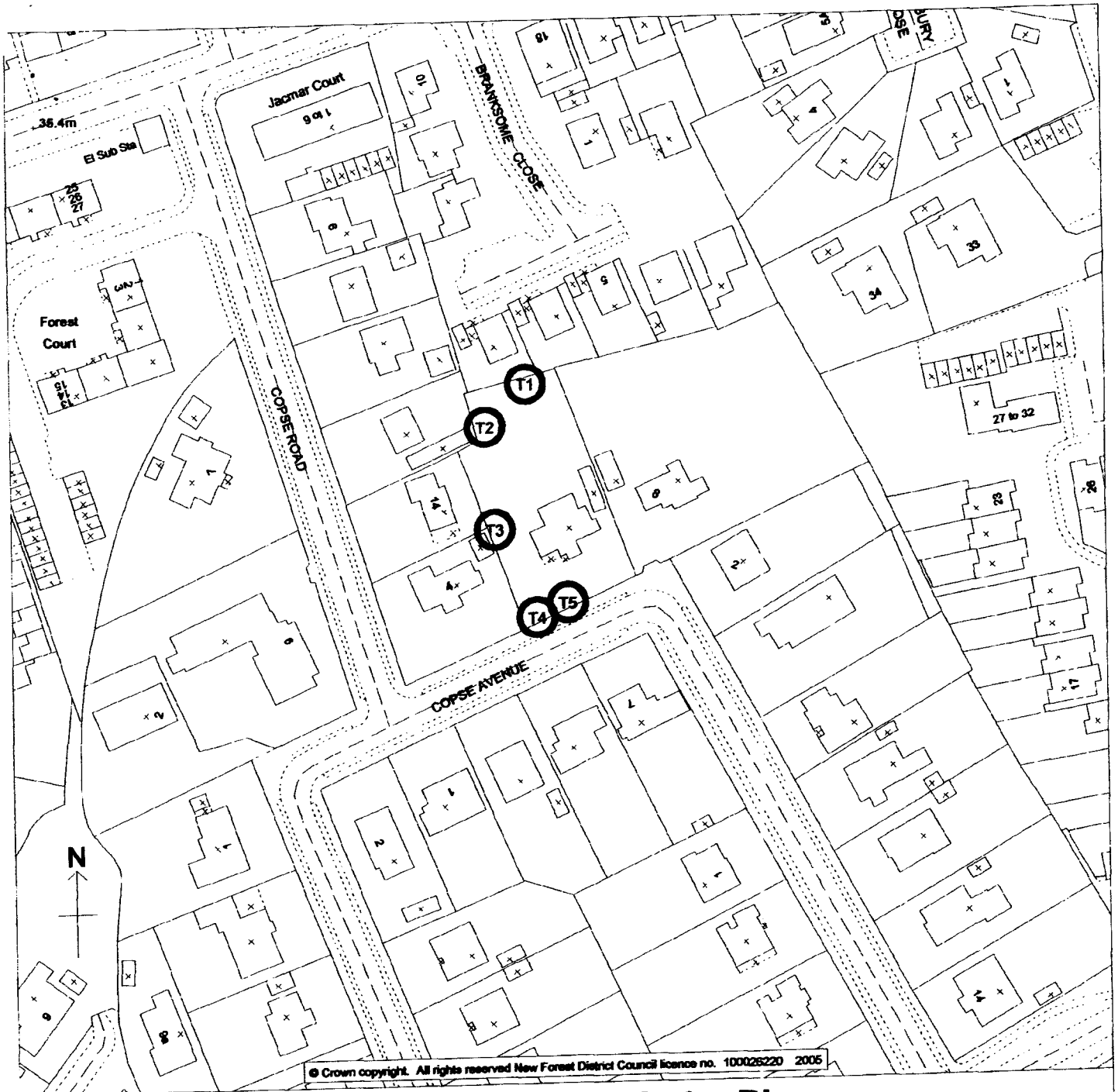
No. on Map	Description	Situation
None		

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		



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Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 8/05

Approximate Scale: 1250

Date Printed: 1st March 2005

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

Key

Individual Trees Covered by TPO

Area of Trees Covered by TPO

Groups of Trees Covered by TPO

Woodland of Trees Covered by TPO

Trees Noted but not Worthy of Preservation



New Forest
 DISTRICT COUNCIL

[Handwritten Signature]
 AN AUTHORISED SIGNATORY

**OBJECTION TO TREE PRESERVATION ORDER NO. 8/05
LAND OF 6 COPSE AVENUE, NEW MILTON**

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- 1.1 # Tree Preservation Order (TPO) No. 8/05 was made on 1st March 2005. The TPO plan and first schedule are attached as Appendix 1 to report B. The Order protects two Monterey Cypress, two Cypress and a single Tulip tree within the front and rear gardens of 6 Copse Avenue, New Milton.
- 1.2 The Order was made to replace TPO 83/04 which was an 'area' Order protecting all trees on the property. This Order had been made as an emergency measure when Williams Lester Architects made an informal application for development of the property. Williams Lester Architects are agents known to have acted for Pennyfarthing Homes Ltd who had acquired the neighbouring property, 8 Copse Avenue, for development, and where some thirty trees had been killed by ring-barking prior to the submission of a planning application. Although it was not known who ring-barked the trees at 8 Copse Avenue it was considered expedient to serve a temporary emergency 'area' TPO at No. 6. The Order was therefore served the day after Development Control consulted the Tree Team about potential development.
- 1.3 The owner of 6 Copse Avenue, Dr Barker, requested a meeting to discuss the emergency TPO and met the Council's Tree Officer on 14 September 2004. The intention to alter the Order to protect only specific trees was explained. Dr Barker raised no objections and explained that he had not yet agreed to sell his property.
- 1.4 Mrs B Lane of 7 Branksome Close wrote objecting to the inclusion of one tree on 15 September 2004. At a subsequent meeting with the Council's Tree Officer Mrs Lane indicated that pruning might overcome her objection but that she would like the exact nature and extent of pruning that would be permitted to be explained in writing.
- 1.5 Ms S Rogers of 6 Branksome Close emailed on 10 October objecting to the inclusion of the same tree in the TPO. Mrs Rogers does not live permanently at the property and it was some time before a meeting with the Council's Tree Officer could be arranged. At the meeting it transpired that Mrs Rogers' concerns could not be allayed and, in view of the time that had lapsed, it was decided to revoke TPO 83/04 and to replace it with TPO 8/05, thereby allowing more time to consider the objections.
- # Copies of relevant correspondence are included as Appendix 3 to Report B.

2. THE MONTEREY CYPRESS TREE (T1)

- 2.1 Both objectors object to the inclusion in the TPO of a single Monterey Cypress (T1 of the TPO).
- 2.2 The tree is approximately 16m in height with multiple stems arising from approximately 1.5-2.0m. The canopy spreads extensively over 7 Branksome Close and to some extent over 6 Branksome Close.
- 2.3 The tree appears to be in a sound condition, with no significant defects.
- 2.4 The tree can be clearly seen by the public from Branksome Close and Copse Avenue.

3. THE OBJECTIONS

- # A copy of the objections and associated correspondence is included as Appendix 2
- 3.1 Mrs Lane's and Ms Rogers' grounds for the objection can be summarised as follows:
 - It is costly to cut back overhanging branches.
 - There are dead branches at the top of the tree.
 - A crack appeared in the rear wall of 7 Branksome Close in 1991. This was repaired and it re-appeared in 1999.
 - The tree causes loss of light.
 - The TPO is an ill thought out response to the loss of trees at 8 Copse Avenue.
The tree is an eyesore and threat to 6 and 7 Branksome Close.
 - Previous owners' neglect of the tree has led to it growing out of control.
 - Branches have fallen from the tree causing a threat to the bungalows and fear to the residents.

4. OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 Pruning to a greater extent than previously, without detriment to public amenity, is possible. This would reduce the required frequency of pruning needed to alleviate problems to residents of Branksome Close and thus reduce the cost of maintenance.
- 4.2 Dead branches can be removed from the tree. Consent is not required for this work.
- 4.3 Cracks in buildings can be caused by many things. In the event that the tree was, on the balance of probabilities, found to be a principal cause, consideration would be given to granting consent for removal. The Council would normally require a certain level of relevant evidence, which would include monitoring building movement patterns over at least a year, before consenting to the removal of a tree of substantial public benefit.

- 4.4 There is no doubt that the tree causes significant shade to 6 and particularly 7 Branksome Close which have small gardens. If a number of mature Beech at 8 Copse Avenue had not been removed (see 1.2) it is probable that this tree would have been omitted from the Order for this reason. However, this specimen now provides the principal amenity provided by trees in the area and its importance is now much greater. The degree of shading can be reduced by pruning but it will still be substantial.
- 4.5 The original TPO was served as a matter of urgency following informal discussion of development of 6 Copse Avenue and following the loss of numerous trees at 8 Copse Avenue.
- 4.6 It is the Council Tree Officer's view that the Monterey Cypress (T1) is not an eyesore and, on the contrary, it provides a valuable amenity. The Tree Officer could see no evidence that the tree currently poses an unreasonable threat to the adjacent bungalows.
- 4.7 Pruning can reduce the risk of falling branches by the removal of weak, broken, crossing or rubbing branches and establishing a strong and well formed branch structure.

Further Information:

John Hearne
Arboriculturist

Telephone: 02380 285205

Background Papers:

Tree Preservation Order No. 10/04
Associated correspondence

APPENDIX 3



6 BRANKSOME CH

NEW MILTON

29 MARCH 2

Ref NEW FOREST DISTRICT COUNCIL
TPO No 8/05

Dear Sir

My objection to the Tree Preservation Order - Land of 6 Copse Avenue is made in three parts with specific reference to T1.

1. The potential damage to the property caused by the roots.
2. The danger from falling branches.
3. The eyesore it presents - far from being of amenity value - to the neighbouring property it is ugly and the size is inappropriate to the property.

Yours sincerely

G F J Rogers

New Forest District Council

Appleton Court

Lyndhurst

Hants. SO43 7PF.

TP0 83/04

Dear Sir

With reference to Tree Preservation Order 83/04 I would point out that one tree which is between 6 or 7 yards from my bungalow has already cost me £400 in cutting & clearing overhanging branches. One fell & hit the bedroom window & several have been blown down & destroyed plants.

Viewed from No. 7 it appears that the top of one of the trees has dead branches.

In 1991 a crack in the rear wall was

repaired & this had to be repaired again
in 1999. It was suggested that this
may have been caused by roots from the
tree. At present there is another small
crack.

These trees cause a loss of light in the
rear of the burglar & we added a "sun
room" to give us more light. However
despite requests our neighbour in Copse
Road has never made any attempt
to trim their trees, which now include
a very strong growing hybrid.

Yours faithfully

(Mrs)eryl Lane

This is to acknowledge receipt of your objection to Tree Preservation Order 83/04. As you say, the order was made in a hurry and it is intended that it will be amended prior to confirmation. I understand that my colleague, Mr. Hearne has already met the owner of No. 6 Copse Avenue, and a new plan will shortly be drawn up to include only those trees of special amenity value.

Meanwhile your comments are noted and will be placed on file for future reference.

Tree Team Reference: TPO 83/04

If a Tree Team reference number has been included in this message, please quote it in any future correspondence relating to this matter. Thank you.

Bryan Wilson
New Forest District Council
Tree Team Leader
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8 777 5327 [HPSN OnNet]
Fax: 023 80 285223
bryan.wilson@nfdc.gov.uk

From: christopher rocke [mailto:c.rocke@btopenworld.com]
Sent: 10 October 2004 19:10
To: pdl@nfdc.gov.uk
Subject: Tree Preservation Order 6 Copse Avenue New Milton

Objection to the tree preservation order proposed at 6 Copse Avenue New Milton from S.Rogers 6 Branksome Close New Milton

1. I consider this to be an ill thought out response to the failure to preserve the trees and shrubs at 8 Copse Avenue
The trees and shrubs that were felled at No 8 were a variety of deciduous and specimen shrub that over the years had been regularly maintained and managed keeping the area in good order. The councils response to place an order on the entire boundary of No 6 is ill considered. The boundary with No.6 Branksome Close consists of Leylandia or similar and an extremely tall and unmanaged pine. All would be better removed. Further down the hedge between 6 and 8 Copse Avenue is some random planting of pittosporum done at a time when the two owners were in dispute.
2. Previous owners of No.6 Copse Avenue refused to cooperate with the owners of property in Branksome Close and for 30 years the pine tree between No 6 Copse Avenue and No 7 Branksome Close has been an eyesore and a threat to both No 6 and No 7 Branksome Close. At least in recent years the current owner has gone some way to remove the most overhanging branches. With a preservation order on it this tree would threaten both bungalows once again as it grows out of control. Years of failing to manage it have led to its becoming oversized and overshadowing both bungalows.
3. I am told that it has been the cause of structural damage to No 7 and the repair to the property on two occasions

4. Branches falling from this tree have threatened both bungalows and been the cause of fear to both owners.

5. The extent of the tree has previously been almost overhanging the bungalow roof line.

6.No one has contacted me to make a site visit to the bungalow at the rear of No 6 Copse Avenue to view the effect of the trees. (01483 715206 notice required)

7.No 8 has now had selected groups of trees preserved which I welcome. This may be appropriate for No 6 to maintain the character of the area.

Sarah Rogers

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