



APPEALS PANEL: 22 NOVEMBER 2005

**OBJECTION TO THE MAKING OF TREE PRESERVATION
ORDER 37/05 - LAND OF AND ADJACENT TO HARTLANDS,
SILVER STREET, SWAY**

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 37/05 land of and adjacent to Hartlands, Silver Street, Sway with, or without, amendment.

For further information contact:

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Background Papers:

Attached

APPENDIX 1

SCHEDULE 1**TPO 37/05****SPECIFICATION OF TREES**

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

No. on Map	Description	Situation
T1	Oak	On or adjacent to the boundary between Harlands and Woodlands on the road frontage

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

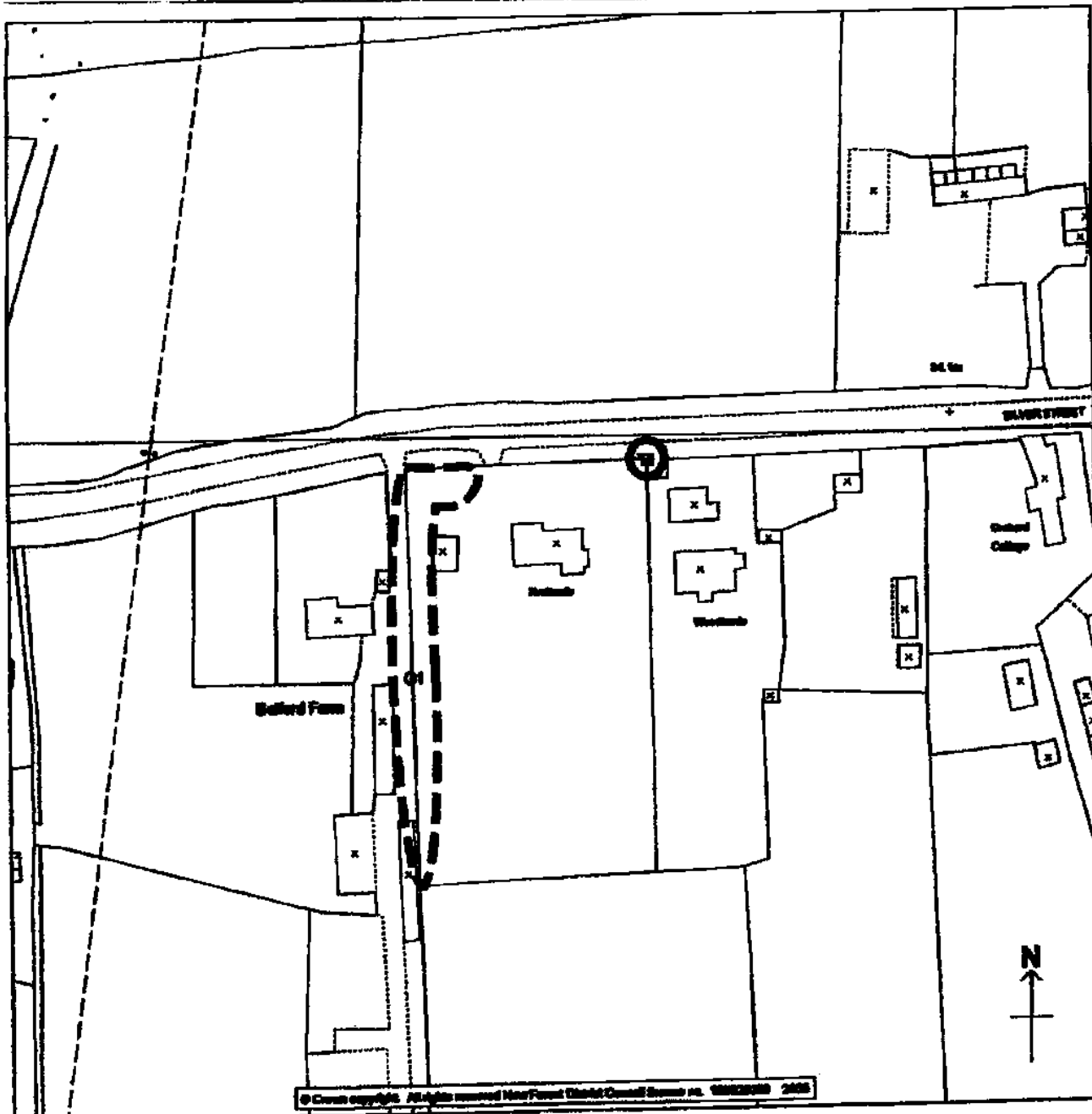
No. on Map	Description	Situation
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**Groups of Trees
(within a broken black line on the map)**

No. on Map	Description	Situation
G1	14 x Oak	Thirteen trees on or adjacent to the boundary between Harlands and Bedford Farm and a fourteenth on the road frontage

**Woodlands
(within a continuous black line on the map)**

No. on Map	Description	Situation
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Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 37/05

Approximate Scale: 1:1250

Date Printed: 06/07/2005

W John Ward BSc, MCD, MBA, MRTPI, MRAGP
 Head of Policy, Design & Information
 Community Services Directorate
 Applied Coast
 Lyndhurst
 SO43 7PA

Key

Individual Trees Covered by TPO

Area of Trees Covered by TPO

Groups of Trees Covered by TPO

Woodland of Trees Covered by TPO

Trees Noted but not Worthy of Preservation



New Forest
 DISTRICT COUNCIL

 AN AUTHORISED SIGNATORY

APPENDIX 2

TPO 37705 LAND OF HARTLANDS, SILVER STREET, SWAY

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- # 1.1 Tree Preservation Order (TPO) No.37/05 was made on 6 July 2005. The TPO plan and first schedule are attached as Appendix 1. The Order protects one individual Oak and one group of trees comprising fourteen Oaks.
- 1.2 The Order was served following an application for consent to extend a garage in the front garden, in close proximity to trees included in the group of fourteen Oaks. The Council's Tree Officer had concerns that the proposal might cause unacceptable injury to tree roots and/or bring pressure for pruning.
- 1.3 Mr and Mrs Ansell, the owners, objected to the Order on 15 July. A subsequent meeting on 2nd August failed to resolve the objection.
- # 1.4 The objection and associated correspondence is attached as Appendix 3.
- 1.5 Consent to extend the garage was refused on grounds of its size, prominent position and threat to trees on 7 July 2005. Mr and Mrs Ansell appealed against this decision and the appeal was upheld.

2. THE TREES

- 2.1 The trees in question are all mature English Oak. The tree listed individually stands on or adjacent to the boundary between Woodlands and Hartlands on the Silver Street frontage. The fourteen Oaks within the group form a line on or adjacent to the western boundary.
- 2.2 The trees vary in height between approximately 10m and 18m with stem diameters of 350mm-1000mm. They are in reasonable condition although one tree in the group adjacent to the road frontage has exhibited symptoms of low vigour, as evidenced by dead wood within the canopy and somewhat sparse foliage in comparison to the surrounding trees.
- 2.3 The trees are visible from Silver Street.

3. THE OBJECTION

- 3.1 The grounds for the objection are:
- The trees are just some of perhaps hundreds along Silver Street. If the trees require TPO protection a TPO should be drawn up for others, such as the 'Three Bells' public house or Gordleton Mill.

- The trees were not under threat from foundations of the proposed garage. A drainage ditch runs along the boundary and roots will therefore be at some depth. The existing garage has not caused any harm to the adjacent trees.
- One tree within the group, on the road frontage, is a poor misshapen specimen. Its position is such that it is particularly not threatened by the garage.
- There is no reason for the inclusion of the Oak T1 in the Order. It is no more under threat than other trees in Silver Street.

4. OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 There are essentially two objections to this Order. Firstly that the trees are not under threat and secondly, that one specimen is in such poor condition that it does not merit inclusion in a TPO. The amenity value of all but this last tree has not been questioned.
- 4.2 Consent to extend the garage has been given at appeal and, as a condition, foundation construction has been designed to minimise damage to roots. Any perceived threat from construction activity is no longer relevant to this TPO.
- 4.3 Mr and Mrs Ansell value the trees and do not wish them removed or harmed. However, the presence of the existing and extended garages, may result in the desire for pruning works, either from the Ansell's or from future occupants, for pruning works that might not otherwise have been thought necessary. The TPO will allow the District Council to ensure such works are not overly detrimental to the health or appearance of the trees.
- 4.4 The majority of trees included in this Order are not affected by the garages. However, it is common practice when serving a TPO, to include all those trees of sufficient merit. This avoids the administratively unwieldy and undesirable situation of having several TPOs affecting a single property being made as and when circumstances dictate.
- 4.5 One tree in the group by the road frontage is showing signs of low vigour. It nevertheless constitutes an integral part of the group and its condition is not sufficiently poor to preclude its inclusion in the TPO. If it were to decline it may become exempt from the Order but its inclusion is appropriate at this time.

Further Information:

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

Background Papers:

Tree Preservation Order No. 37/05
Associated correspondence

APPENDIX 3

Mr and Mrs Ansell
Hartlands
Silver Street
Sway
Lymington
Hants
SO41 6DF

My ref: JH/TPO 37/05
Your ref:
3 August 2005

Dear Mr and Mrs Ansell,

TREE PRESERVATION ORDER 37/05

Thank you for meeting me yesterday to discuss your objection to the above Tree Preservation Order (TPO). As agreed, I write now to summarise our discussion and the points raised, including the potential threat to the trees from a proposed extension to your garage, the condition of one tree on the road frontage and the ownership of Oak T1 of the TPO.

I explained that I considered it expedient to serve the Order because I was concerned that the proposed garage extension may cause excessive damage to the roots of at least one tree. Other trees were included in the Order to avoid the need for further TPOs on the same property in future, even though there is no current threat. It is undesirable and administratively unwieldy to have a number of TPOs affecting one property.

You stated that you did not believe the trees were threatened by the extension, that you had no intention of removing trees and that in fact you valued their presence. I suggested that the potential for damage to tree roots can only be estimated without careful hand excavation to reveal any roots present. You commented that the existing garage had been built for a number of years on conventional strip foundations and that there were no apparent symptoms of harm to the Oak trees. I agreed that was certainly the case but could not accept that this guaranteed that further building will not cause excessive damage.

You also showed me the depth of the ditch running alongside the trees and suggested that any roots within your garden would consequently be growing at some depth. I accepted that the ditch has influenced rooting pattern and that that was a consideration when interpreting standard guidance on excavating close to trees. However, I took the view that roots would be likely to develop to exploit the moister and more aerated surface soil conditions.

The condition of the tree on your front boundary was discussed and I accepted that it showed less vitality than others in the group. Nevertheless I felt it merited inclusion in the TPO as part of the group and advised that the TPO would not prevent pruning or felling should the need arise from progressive decline.

It was unclear upon whose land tree T1 stood and we thought it might be a shared responsibility with your neighbour.

Finally, I advised that any Appeals Panel convened to consider your objection to the TPO would only consider the amenity value of the trees and that any restriction to building proposals would not be a consideration since planning permission overrides TPO protection. I suggested that the amenity value of the trees was readily apparent and that, since you did not dispute their value, you might consider withdrawing your objection. You were to give thought to the matter and advise me accordingly.

I hope you agree I have accurately reflected the issues raised and that I have made adequate reference to those points you specifically wished recorded. I look forward to hearing from you in due course.

Yours sincerely

John Heame
Arboriculturist

John Heame

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Hartlands
Silver Street
Sway
Lymington
Hants. SO41 6DF

Mr Hearne
The Tree Team
New Forest District Council
Community Services
Appletree Court
Lyndhurst
Hants. SO43 7PA



15th July 2005

Dear Mr Hearne,

RE: Tree Preservation Order No. 37/05 – Land of and adjacent Hartlands, Silver Street, Hordle

Further to the recent communication from NFDC dated 6th July 2005 advising that the above order took effect on a provisional basis on the 6th July 2005, please register the following objections to the Tree Preservation Order.

General Objections:

The area concerned in the T.P.O. forms part of a large area, along the line of Silver Street, which contains dozens (probably hundreds) of mature trees, with strong representation of oaks. The importance of trees in this area was recognised in a Hampshire County Council document dated March 1975, and the policies therein have been adequate for thirty years. If the trees require stronger protection a T.P.O. should be drawn up in respect of Silver Street between the "Three Bells" public house and Gordleton Mill.

The trees at Belmore Farm and Hartlands are not "particularly under threat". A drainage ditch runs along the boundary, and any roots on the east side of the trees in the Group G1 are therefore likely to be well below ground level. The garages which have been proposed at Hartlands (and which have twice been refused planning permission) do not constitute a "threat". Regard should be paid to the existing garage, permitted in December 1987 and built in 1988. From then until the present date no ill effects have been observed in the oak trees near (i.e. 3 metres) to the garage. There is no reason why the proposed garages should cause any harm to the trees.

Specific Objections:

- (i) The tree in Group G1 as a "fourteenth on the road frontage" is a poor, misshapen specimen, notably smaller than the 13 oaks in the main line. Because of its position on the road frontage, and as it is some 12 metres from the proposed garage, it is particularly lacking any "threat". If the Order is to be confirmed that tree should be excluded.
- (ii) Tree T1 is also on the road frontage, and close to a small but long standing building within the "Woodlands" curtilage. If that tree is thought to be "under threat", so is every other roadside tree along both frontages of Silver Street.

The Council has provided no specific reason for inclusion of Tree T1 in the Order, and it should be excluded.

It would be much appreciated if you would acknowledge receipt of this letter.

Yours sincerely,

S.K. & S.A. Ansell

Mr and Mrs Ansell
Hartlands
Silver Street
Sway
Lymington
Hants
SO41 6DF

My ref: JH/37/05
Your ref:
13 September 2005

Dear Mr and Mrs Ansell

TREE PRESERVATION ORDER 37/05

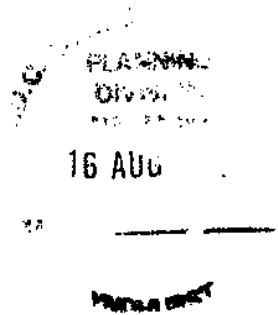
I acknowledge receipt of your letter dated 15 August 2005 in which you confirm your wish to maintain your objection to the above Tree Preservation Order.

You will be contacted shortly with a view to arranging a suitable date for an 'Appeal Panel' to be convened to consider your objection.

Yours sincerely

John Hearne
Arboriculturist

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15th August 2005

Dear Mr Hearne,

**RE: Tree Preservation Order No. 37/05
Land of and adjacent Hartlands, Silver Street, Hordle**

Thank you for your letter dated 3rd August following up our meeting on site and the points raised in our letter of objection dated 15th July 2005.

Having spoken with the consultant handling the appeal against the refusal of planning permission for the new garage, we understand that it is in our best interest that our objections to the proposed Tree Preservation Order remain.

It would be much appreciated if you could acknowledge receipt of this letter and we look forward to hearing from you.

Yours sincerely,

S.K. & S.A. Ansell