

APPEALS PANEL: 22 MARCH 2006.

**OBJECTION TO THE MAKING OF TREE PRESERVATION
ORDER 65/05
LAND ADJACENT TO 28-32 KINGSFIELD, RINGWOOD.**

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 believes 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 65/05 relating to land adjacent to 28-32 Kingsfield, Ringwood with, or without, amendment.

For further information contact:

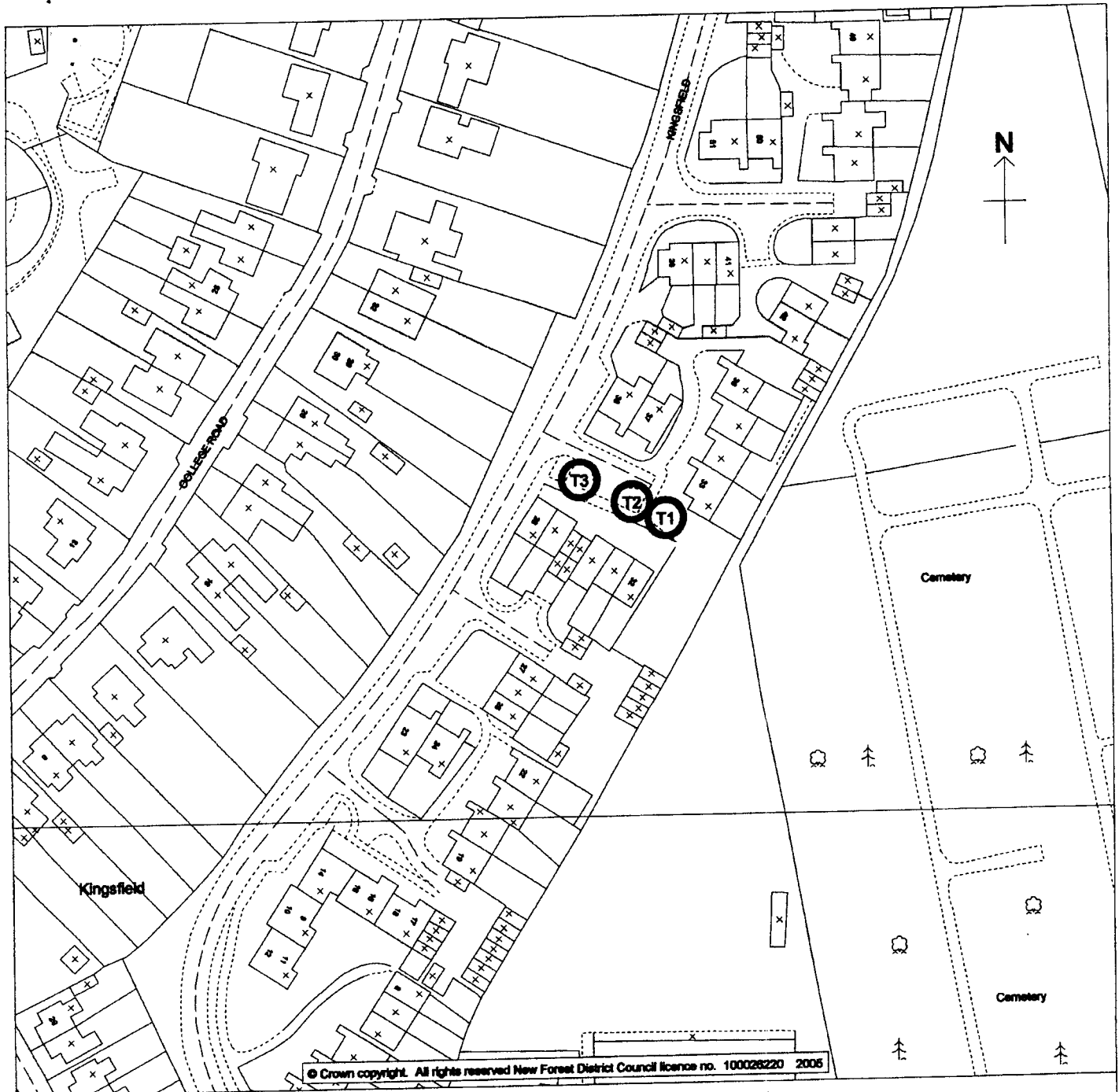
Jan Debnam, Committee Administrator
Tel: 023 8028 5389
e-mail: jan.debnam@nfdc.gov.uk

Julia Mutlow, Solicitor
Tel: 023 8028 5149
e-mail: julia.mutlow@nfdc.gov.uk

Background Papers:

Attached

APPENDIX 1



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 65/05

Approximate Scale: 1250

Date Printed: 10th November 2005

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



New Forest
 DISTRICT COUNCIL

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



W John Ward

AN AUTHORISED SIGNATORY

SCHEDULE 1

TPO 65/05

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Oak	Land at the front of 32 Kingsfield
T2	Oak	Land at the front of 30 - 31 Kingsfield
T3	Field Maple	Land at the front of 28 - 29 Kingsfield

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		

APPENDIX 2

APPEALS PANEL – 22 MARCH 2006

**OBJECTION TO TREE PRESERVATION ORDER NO. 65/05
LAND ADJACENT TO 28 – 32 KINGSFIELD, RINGWOOD**

REPORT OF COUNCIL TREE OFFICER

1. TREE PRESERVATION ORDER HISTORY

- 1.1 # Tree Preservation Order (TPO) No.65/05 was made on 10 October 2005. The TPO plan and first schedule are attached as Appendix 1 TO Report B. The Order currently protects two individual Oak trees and an individual Field Maple.
- 1.2 The Order was served following a telephone enquiry, on 9 October 2005, from a local tree surgeon who had been instructed to fell an Oak tree at the front of 32 Kingsfield and wished to know if it was protected by a TPO. Although there was no TPO in force at the time, it was noted from aerial photographs that the tree appeared to be a substantial specimen in a prominent location. A site inspection on the same day revealed three trees, two Oaks and a Field Maple, at the front of Nos. 28 – 32 Kingsfield that were considered to be of sufficient public benefit to merit inclusion in a TPO. Enquiry was made to the Highway Authority as to the ownership of the second Oak and Field Maple but the reply was not immediate and, because of the imminent threat to the first Oak, the Council's Tree Officer recommended that all three trees be included in an Order as a matter of urgency. TPO 65/05 was served the following day.
- 1.3 Hampshire County Council subsequently confirmed that the Oak T2 and Field Maple T3 are situated on highway maintained land. It is not usual practice for trees that are in control of a local authority to be made subject to a Tree Preservation Order and it is therefore proposed that these trees should be excluded from the Order upon confirmation.
- 1.4 Mrs M B Garlick of 31 Kingsfield objected to the inclusion of the Oak T1 in the Order on 23 November. The owner of the tree, Mr T Spender of Kingsfield, submitted a formal objection to the entire Order, but in particular the Oak T1, on 5 December. Subsequent correspondence and action to address the concerns raised have failed to resolve the objections.
- 1.5 # The objections and associated correspondence and file notes are attached as Appendix 3 to Report B.

2. THE TREES

- 2.1 The trees in question are two Oaks and one Field Maple.

- 2.2 They are mature specimens 10 – 15m in height with broad spreading canopies.
- 2.3 All the trees appear in a sound and healthy condition and have considerable life expectancies, in excess of 30 years.
- 2.4 The trees are visible from public vantage points in Kingsfield and from surrounding properties.

3. THE OBJECTIONS

3.1 The grounds for the objection are:

- The Oak T1 tree roots have damaged a water pipe to 31 Kingsfield, necessitating repairs. Leaks have occurred in the front garden of 32 Kingsfield which may be attributable to root damage to pipes. Removal of the tree would prevent a recurrence of such damage.
- The Oak T1 tree is of no particular merit. It is not a fine specimen and not pleasing to the eye. The obligation for Local Authorities to serve TPOs in the interests of amenity should first and foremost consider the amenity of those directly affected by the Order. Amenity can be defined as a useful feature as well as a pleasant one. The trees serve no useful purpose. Pleasantness can be achieved by planting more appropriate trees. Mr Spender will plant a replacement tree on land adjacent to No. 32 if Oak T1 is felled. Nobody in the immediate vicinity of the affected properties has expressed a wish for the trees to be retained.
- The majority of local homeowners consider the trees to have no amenity and be a significant encumbrance.
- The trees are too close to the properties in relation to their size and are out of keeping with the surrounding development.
- The trees are, or may, have impact on the structural integrity of the properties.
- Falling leaves block gutters and downpipes causing localised flooding ultimately undermining the structural integrity of the buildings.
- Wet and sometimes frozen fallen leaves are a hazard to parents and children using the footpath for journeys to and from Ringwood Secondary School and Ringwood Junior School.
- There is significant damage to nearby paths and manhole covers.
- Oak T1 is 'choked' with ivy. Ultimately this will kill the tree and in the event of its subsequent fall it would cause extensive damage.

4. OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 Repairs to the damaged water pipe at 31 Kingsfield were carried out by Aqua Care, who's operative, Mr Cooper, cited the tree roots as 'the most likely' cause. The District Council has made enquiries to this company as to the nature of the damage and repairs undertaken. A telephone response was received from a Mr Steven Haskell of Aqua Care who advised that their operative, Mr Cooper, had since left the company but that repairs had utilised pipework of a new flexible material that was not vulnerable to tree root damage. There is therefore no reason to believe that tree roots will cause future damage to the pipes. The leaks reported at No. 32 should be repaired in a similar manner in any case, if resulting from damage of a similar nature.
- 4.2 The merits of the trees is necessarily a subjective issue and one upon which Members must form an opinion. It is the Council Tree Officer's view that all 3 trees have a special amenity in this location and serve a useful purpose by their positive contribution to the local landscape, intrinsic beauty and importance to wildlife.
- 4.3 The District Council has received no additional representations for or against the TPO and so cannot comment on the assertion that the majority of local homeowners consider the trees to be an encumbrance. The degree to which the trees are an encumbrance or burden must be weighed against the benefits provided.
- 4.4 Precluding trees from protection on the basis of their size and proximity to buildings would set a precedent threatening many important trees throughout the District. Many potential conflicts with structures or the enjoyment of residents can be avoided or reduced by reasonable pruning.
- 4.5 Damage to the structural integrity of buildings by trees is generally caused to buildings constructed on inadequate foundations on shrinkable clay soils. No evidence has so far been submitted to demonstrate that such damage is occurring or is likely to occur. The District Council would give careful consideration to an application to fell any trees if supported by such evidence.
- 4.6 Falling leaves can be a nuisance, but this is common to all deciduous trees in residential areas. It is not considered sufficient justification for the removal of important trees. Blockage of gutters and drains can be avoided by regular clearance or by the fitting of mesh pipe guards or other products designed for the purpose.
- 4.7 Hazardous wet leaves on the footpath were reported to the Council's Cleansing Department who, it is understood, arranged for the paths to be swept.
- 4.8 Tree roots can cause occasional disruption to hard surfaces necessitating repairs and possibly root pruning. Repair very rarely requires removal of trees.

- 4.9 Ivy will not harm trees until so profuse that it effectively shades out the tree. This can be prevented by periodic severance of the ivy stems.

5. RECOMMENDATION

- 5.1 It is recommended that the Order be confirmed in respect of the Oak tree T1.
- 5.2 It is not usual practice to make TPOs on trees in the ownership or management of another Authority. It is therefore recommended that the Order be modified at confirmation to only include the Oak T1 since the Oak tree T2 and the Field Maple T3 are now known to be in the management of Hampshire Council as Highway Authority.

Further Information:

John Hearne
Arboriculturist

Telephone: 02380 285205

Background Papers:

Tree Preservation Order No. 65/05
Associated correspondence

APPENDIX 3

Mrs M B Garlick
31 Kingsfield
Ringwood
Hampshire
BH24 1PH

My ref: BRW/vmw/TPO 65/05
Your ref:

3 February 2006

Dear Mrs Garlick

**TOWN AND COUNTRY PLANNING ACT 1990
OBJECTION TO THE INCLUSION OF ONE OAK (T1) WITHIN TREE PRESERVATION
ORDER (TPO) 65/05
LAND ADJACENT TO 28-32 KINGSFIELD, RINGWOOD**

Thank you for your letter of 1 February with the attached letter from Edward S Brown and Sons dated 12 December 2005. In your letter you raise a number of points of concern as a result of the presence of the Oak tree (T1) which, for clarity in this response I will attempt to list below:

1. Letter from Edward S Brown and Sons, 12 December 2005, stating the tree could increase in size by 50%, is already shading the property and was an unreasonable choice of species for this position. Although mentioning 'root structure' the letter makes no mention of specific issues.

NFDC Response – I am aware you have recently had some underground drains replaced which were allegedly damaged by the roots of the Oak tree T1. I further understand that this damage has now been remedied and therefore should not recur. Although having the potential to grow to a large size, the Oak tree could be contained in size with regular pruning to stop it becoming so large as to create a nuisance to adjacent properties in the future.

2. Would the New Forest District Council be prepared to incur costs of repairs to property caused by the Oak tree T1.

NFDC response – when a tree is made subject to statutory protection, either by TPO or other means, the tree owner remains responsible and liable for its safety and for its safe maintenance. If loss or damage occurs within a limited time following the council's refusal to grant consent for works, or where consent is conditional, the applicant can seek damages from the council. Further information about the compensation procedure is described in Section 9 of the Order.

Contd...

2

Mrs M B Garlick
3 February 2006

3. The pavements are now becoming distorted.

NFDC response – it may be that paving will need reinstating from time to time together with some minor root pruning, in order to alleviate the distortion of adjacent footpaths and highways. A copy of your letter and this response will be passed to the HCC Highways Authority for their attention in this matter.

4. The tree loses branches at any time of the year and is very dangerous to passing pedestrians.

NFDC response – dead wood and broken branches may be removed from a protected tree without the need to make specific written application or to wait for a response from the council. However the government guidance is that five days notice should be given before undertaking urgent works. An assessment of the tree by a competent tree work contractor, together with routine pruning every few years will reduce the risk of accidentally falling branches of a size that will cause injury or damage.

5. There are two other trees which, if left could enhance the road and give a rural appearance in any case.

NFDC response – at the time of his initial inspection to assess the trees for inclusion within a TPO, the council's tree officer considered that each of 3 trees makes a valuable contribution to the appearance of the area and that the premature loss of any one of these trees would be detrimental to that appearance. For these reasons it is considered appropriate to retain all three trees within the Order. However this is the issue that will be addressed by the Appeals Panel. Any difficulty for you in finding time to attend such a meeting will no doubt be taken into account along with the available dates for Members and the other objector in finally deciding the date for the meeting. In any case I will ensure that a copy of your letter and this response is placed on the Appeals Panel files for their reference and information.

Yours sincerely

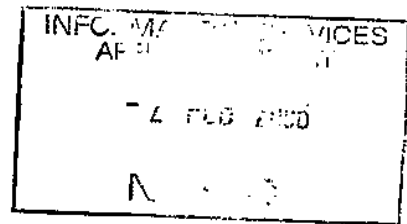
Bryan Wilson
Tree Group Leader

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

Copy to: Jan Debnam – Committee Administrator

**Mrs. Martine B. Garlick
31 Kingsfield,
RINGWOOD,
Hampshire,
BH24 1PH.**

**FAO Mr. Bryan Wilson,
Policy Design Information,
New Forest District Council,
Appletree Court,
Lyndhurst,
Hampshire,
SO43 7PA.**



1st February 2006

Dear Mr. Wilson,

**RE: TOWN & COUNTRY PLANNING ACT 1990
OBJECTION TO TREE PRESERVATION ORDER NO. 65/05
LAND ADJACENT TO 28 – 32 KINGSFIELD, RINGWOOD IN
HAMPSHIRE**

Further to our telephone conversation and subsequently your letter of 24th January 2006, I now enclose a copy of the letter which I have received from Edward Brown, the Tree Surgeon, this is self-explanatory, and I think adds to my concern about the tree in front of my property.

I appreciate that you deal with this sort of problem on a day to day basis, but when you are on the receiving end of a TPO perhaps it would be a little different, as you know my neighbour Mr. Timothy Spender is also keen to have this tree removed as it is causing neighbouring properties a worry and will continue to do so. The thing is, will New Forest District Council be prepared to incur any cost of repairs on property which has been caused by this tree, please bear in mind that the mains sewerage system for Kingsfield is within close proximity of the tree, bearing in mind I have had considerable expense because of it roots, pavements are now becoming distorted. The tree no longer is an asset to its surroundings particularly as it overshadows most of the houses within its vicinity as it has become very large in relation to the size of the houses close to it. It is also at any time of the year losing a lot of its branches, which in the circumstances is very dangerous to passing pedestrians (most of whom are very elderly) and walk with zimmer frames, is there not a danger of someone falling over one of these or branches falling on their heads, surely residents of Kingsfield don't deserve this sort of worry?

I appreciate we all need to preserve our trees, but in this case this has become a nuisance to all who live near it, also the other two trees which would be left would continue to enhance the road and give a rural appearance in any case. If the NFDC is that worried why don't you replace the oak tree in question with another tree of a much less smaller size that would be within keeping with its surroundings and enhance the area and not be a constant danger to everyone.

I personally have already incurred considerable expense in this matter as you know, because of its roots and if I incur any further expense I shall be looking to the NFDC to pay the bill in question

I am returning the list of dates that I can attend this meeting, which now means me having to have time off work, which I don't get paid for.

Please bear in mind that we are the ones who have to live with these problems not yourselves, we bear the brunt of the problems with the worry of it, especially during high winds. **Please, please, think of the residents of Kingsfield, because we feel this tree is trouble and an accident is just waiting to happen.**

I await hearing from you with a date for a meeting of the Council's Appeal Panel to listen to what we have to say, surely it matters doesn't it? I can assure you I have great concerns about this tree and so do my neighbours, I wouldn't go to all this trouble if I wasn't extremely concerned. We are looking to you to help us out here.

Yours sincerely,

Mrs. Martine B. Garlick

Enc:

TREE SURGERY
—

TREE FELLING
—

WOOD CHIP
MULCH
—

FENCING

Edward S. Brown & Son

(FULLY INSURED)

Valley View . Cowpitts Lane . North Poulner . Ringwood . Hants.
BH24 3JX

Tel. (01425) 475855 & 472542 (Answerphone/Fax)
Mobile. (07860) 435915

TREE STUMPS
REMOVED
—

LAND CLEARANCE
—

LOGS
—

MINI EXCAVATIONS

Mrs Martine B. Garlick,
31, Kingsfield,
Ringwood,
Hants, BH24 1PH

Our ref: ESB/PAD

12th December, 2005

Copy
Brian [unclear] at N.F.D.C

Dear Madam,

A large oak tree that stands on the verge at the front of your property.

The tree has not fully matured and could increase in size by 50%.

It is already quite large for its position and it is not unreasonable to expect problems as a direct result of the increase in size.

Unfortunately this species was a poor selection for this location and apart from the root structure the tree is already causing considerable shading to the dwelling.

~~Yours faithfully,~~

Edward S. Brown

John Hearne

From: Anita Young
Sent: 08 December 2005 16:02
To: John Hearne
Subject: RE: Complaint from Mr T Spender, 32 Kingsfield, Ringwood, BH24 1HP

Hi John

I have passed a report to Don Faulkner our Depot supervisor at Ringwood, requesting a street clean of Kingsfield, to clear the leaf fall.

The ref number is CS564884

If I can be of further assistance, please do not hesitate to contact me.

Regards

Anita

Anita Young
Customer Service Supervisor
01590 646123
anita.young@nfdc.gov.uk

From: John Hearne
Sent: 08 December 2005 15:56
To: Customer Services Team
Subject: Complaint from Mr T Spender, 32 Kingsfield, Ringwood, BH24 1HP

I have received a letter from Mr Spender which includes a reference to the hazard posed to children and their parents walking to and from Ringwood Secondary School and Ringwood Junior School. The hazard is due to wet and sometimes frozen leaves falling from trees outside 28-32 Kingsfield.

Mr Spender is seeking to have one of the trees felled and, to assist consideration of his request, I would be grateful if I could be advised of any action taken.

John Hearne
New Forest District Council
Arboriculturist
Tel : 023 80 285205
8 777 5327 [HPSN OnNet]
Fax : 023 80 285223
john.hearne@nfdc.gov.uk

08/12/2005

Mr T Spender
32 Kingsfield
Ringwood
Hants
BH24 1PH

My ref: JH/TPO 65/05
Your ref:
8 December 2005

Dear Mr Spender

TREE PRESERVATION ORDER 65/05

I refer to your letter dated 5 December.

The Tree Preservation Order was made (in accordance with Government guidance) to protect the public amenity that the trees provide. I would assure you that it is not intended to prevent reasonable pruning works to abate nuisance or inconvenience, such as leaves in gutters that you mention. I would be more than happy to discuss possible pruning on site with you if you feel it would help.

I will raise the issue of hazard from slippery leaves to children and parents coming to and from the schools with the cleansing department.

I have contacted the company who undertook repairs to your neighbour's water supply and they have advised that a modern flexible plastic pipe was used and that it is not vulnerable to damage by future root expansion.

Please do not hesitate to contact me on the number given below if you would like to discuss these matters or if you would like me to meet you on site. In the mean time I will continue to progress your objection.

Yours sincerely

John Hearne
Arboriculturist

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

Mr T. Spender
32 Kingsfield
Ringwood
Hants
BH24 1PH

TRS/LP

JH/mac/TPO 65/05

5 December 2005

New Forest District Council
DX 123010
Lyndhurst 2

PLANNING
DIVISION
07 DEC 2005

Dear Sirs

Town and Country Planning Act 1990
Town and Country Planning (Trees) Regulations 1999
Tree Preservation Order No. 65/05
Land Adjacent to 28 - 32 Kingsfield, Ringwood in Hampshire

On behalf of my wife and I, who are the legal owners and occupiers of 32 Kingsfield, we acknowledge receipt of your notice stated 10 November 2005 advising of the provisional Tree Preservation Orders and the application of s.201 of the fore-mentioned Act. We enclose the completed form of requisition as to the identity of the owner occupiers.

I should be grateful if you would treat this as our formal objection to the imposition of the said Tree Preservation Orders in respect of each of the trees but in particular in relation to the tree referred to as "T1" on the plan appended to the Order, which is the tree situated on the land adjacent to 32 Kingsfield of which my wife and I are the legal owners.

The heart of our objection stems from an analysis of the constitution and functions of local government. New Forest District Council, as with all local authorities, is a corporation comprising an elected body of representatives. The Council is thus there to represent the inhabitants of the locality for which it is concerned and not to rule over them. The origins of local government can be traced back to the Poor Laws when in response to the peasants' revolt of the 16th Century, local administrations were afforded power from central government to address the problems being experienced by their inhabitants. Local government is there to serve the interests of its subjects.

With reference to the imposition of Tree Preservation Orders, the power conferred upon the local authority to facilitate the execution of its duties is one which derives from the obligation "in the interests of amenity" to make appropriate provision. The concept of amenity in this instance is in my submission first and foremost the amenity of those directly affected by the Order concerned. As far as I am aware there is not a single person in the immediate vicinity of the properties affected by the Tree Preservation Order who wishes to see the trees thereby protected retained. Indeed the

overwhelming majority of the local homeowners consider those trees to be no amenity at all and indeed for most a significant encumbrance. For the owners of properties 28 - 32 in particular the trees are a source of much concern in that they are far too close to the properties concerned given their size. If the Council cares to consider the development of Kingsfield at large, these three trees are entirely out of keeping with the rest of the development. All of the trees are within 10 metres of properties and as such cause all manner of problems. I understand that it is very possible that the imposition of these Tree Preservation Orders arises from an enquiry by the new owners of number 28 about the possibility of attending to, if not felling, the tree immediately outside which apparently is having significant impact upon the structural integrity of that property. More generally other adjoining owners have their properties adversely affected by these inappropriately large trees for such a location. Every autumn as the leaves fall gutters and downpipes are blocked, during heavy rainfall water overflows and the localised flooding ultimately has an effect of undermining the structural integrity of the properties concerned. The public footpath is traversed by whole hoards of parents and their children coming to and from both Ringwood Secondary School and Ringwood Junior School and they have to face not insignificant difficulties associated with wet and sometime frozen leaves which, understandably because of its limited resources, the local authority is unable to address.

What is of concern to me in particular is the potential structural damage that is being caused by tree "T1" on the land that I own. My wife and I have ourselves suffered water leaks in the front garden which is between our property and the tree concerned. More recently my immediate neighbour has expressed some concern that her huge water bill (for which she is metered) arises from a water leak which in all probability, or so she will say, was the result of tree root damage to the services.

An inspection of the nearby paths and manhole covers shows significant movement as will appear in photographs which I will happily provide in due course. In common with many of the trees in the locality "T1" is at present being "choked" by a prolific ivy. It may not be in the immediate future but ultimately that will kill the tree and in that event its subsequent fall will undoubtedly cause untold damage to nearby properties. More importantly, however is the immediate damage that is being effected. I was asked and had agreed to fell "T1" and indeed had contractors instructed to do just that later this month.

In the alternative to my objection to the Tree Preservation Order in its totality, I would seek permission to fell the tree on my land because of the danger to existing services and the structure of nearby properties that that clearly and undeniably represents.

Returning to the issue of amenity the tree "T1" is, as I understand it, what is known as a ragged oak. It is not a fine specimen, it is not pleasing to the eye, it is not wanted by those affected by its presence. I would be more than willing as a condition of any permission that might be granted for the felling of "T1" be prepared to plant a more appropriate tree on the land adjacent to 32 Kingsfield. Indeed I had every intention of planting a small fruit tree on the land in question once the oak had been felled.

I am aware that others have already lodged objections to the imposition of the Tree Preservation Order and may I respectfully ask the Council when considering all of those objections to remind themselves that trees are not to be preserved per se but only in the interests of amenity. Amenity can be defined as a useful feature as well as a pleasant one. These trees serve no useful purpose. The pleasantness of place that is an alternative definition of amenity can be achieved by alternative, more appropriate trees less likely to impinge upon services and structure. With reference to my application herein to fell "T1" I would pray in aid of that application the fact that if I am prevented from felling the by virtue of the Tree Preservation Order there is a potential liability to adjoining owners that I may face which could otherwise have been avoided and for which I would necessarily have to seek compensation.

I would finally point out that strictly speaking the land adjacent to 32 Kingsfield upon which "T1" is situated is a separate legal title and no notices have been served on the owner as such of that land. The registered proprietor of the land concerned is in fact my wife Ann. For the purposes of this communication however, I am content to waive the strict requirement since clearly in our capacities as the owner occupiers of 32 Kingsfield itself we are fully aware of the imposition of the Tree Preservation Order.

Yours faithfully

Mr T. Spender

FILE NOTE – TPO 65/05

Telephone call from Steve Haskell of Aquacare, 30/11/05 4.25pm

Taken by Ann Caldwell

Employee Mr Cooper who carried out water supply repairs at Kingsfield, Ringwood, no longer works for Aquacare. The repair used a flexible pipe which should not be damaged by root expansion.

JH

Aqua Care
Knapp Mill
Mill Road
Christchurch
Dorset
BH23 2JY

My ref: JH/TPO 65/05
Your ref: P16660
28 November 2005

Dear Sirs

**WATER SUPPLY REPAIRS AT 31 KINGSFIELD, RINGWOOD – YOUR REFERENCE
P16660**

I write in reference to the above property where I understand you carried out repairs to drains on 14 December 2004.

The owner of the property wishes to fell a mature Oak tree which was identified by your Mr P Cooper as being the 'most likely cause' of the problem. The District Council considers that this tree has significant public benefit and has, accordingly, included it in a temporary Tree Preservation Order.

Before deciding whether or not to confirm the Order it would be very useful to know the precise nature of the damage that had occurred, the reasons for diagnosing the tree roots as the most likely cause and the nature of repairs undertaken. Please advise also if, in your opinion, the water supply pipes remain vulnerable to damage by future root activity and, if so, the estimated cost of effecting repairs in a manner not prone to damage by tree roots.

Yours sincerely

John Hearne
Arboriculturist

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

Cc Mrs Garlick

**Mrs. Martine B. Garlick
31 Kingsfield,
RINGWOOD,
Hampshire,
BH24 1PH.**

FAO Mr. J. Hearne,
Planning Department,
New Forest District Council,
Appletree Court,
Lyndhurst,
Hampshire,
SO43 7PA.

23rd November 2005

Dear Mr. Hearne,

**RE: TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER NO. 65/05
LAND ADJACENT TO 28 - 32 KINGSFIELD, RINGWOOD IN
HAMPSHIRE**

Further to my telephone conversation with you on Friday 18th November which was in response to your letter of 10th November 2005 with its enclosures I wish to **OBJECT** to the provisional TPO being made in relation to **T1** as shown on this plan. My reasons for objecting is that in the Autumn of last year I had to consult the Aqua Care branch of Bournemouth and West Hampshire Water Company regarding disruption of the water supply to my house, resulting in the need for a length of the water pipe to be replaced as described in the accompanying letter from Aqua Care dated 24.11.04 and the related invoice No. 40947, both of which speak for themselves.

As you will see, Aqua Care were of the opinion that the water pipe had been damaged by tree roots, which can only have been those of **T1** shown on the provisional TPO plan.

In the light of that event, it had been my intention, and that of my neighbour, the owner Mr. Timothy Spender of No. 32 Kingsfield, to remove the tree in order to prevent further damage to my (or his) water supply and other related services running near the tree roots.

In my view, the tree in question is of no particular merit, such as to justify a TPO and I therefore respectfully ask that it be removed from the original Order. If it is not, I

foresee that it will only be a question of time before its roots cause further damage to the services to this (and possibly neighbouring property, the repair of which I can ill afford).

Please acknowledge safe receipt of this letter and, if you would like to discuss the implications of it with me, I should be pleased to make a mutually convenient appointment to meet you on site.

Yours sincerely,

Mrs. Martine B. Garlick

Encs:

Bournemouth & West Hampshire Water Plc
 Registered Office: George Jessel House, Francis Avenue, Bournemouth, Dorset BH11 8NB
 Telephone: 01202 591111 Facsimile: 01202 597022
 VAT Registration Number 619 784 104
 Registered Number 2924312 (England)

INVOICE

NAME: MRS M GARLICK
 ADDRESS: 31 KINGSFIELD
 RINGWOOD
 HAMPSHIRE

INVOICE NO: [REDACTED]
 INVOICE DATE: 20/12/04
 OUR REF: [REDACTED]
 CUSTOMER NO: [REDACTED]

BH24 1PE

DESCRIPTION	PRICE	VAT%
RE: 31 KINGSFIELD, RINGWOOD RELAY WATER SERVICE AS PER OUR QUOTATION DATED 24 11 04 [REDACTED]	339.55	17.50

NET TOTAL	339.55
VAT	59.42
AMOUNT DUE	398.97
Payment due date	20/12/04



Aqua Care

Bournemouth & West Hampshire
WATER

Plumbing & Heating • Drainage • Property Maintenance • Underground Services

Customer Name Mrs GARLICK Account Address

Address 31, KINGSFIELD,

RINGWOOD

Post Code BH24 1PH

Telephone No:

Ticket No. 40947

Account No. WR1025981

Job Code Suplay

Description of Work	Tick Box	Comments	Cost	VAT
Rewasher Initial Tap		<i>Tree root damage to pipe most likely cause of problem.</i>		
Rewasher Additional Tap				
Rewasher Internal Stop Tap				
Rewasher Ball Valve				
Other Details				
Policy No				
Aqua Care Insurance Details		Job Description <u>SERVICE RELAY</u>		
Claim No				
Visit No				
Emergency	Yes/No	CUSTOMER AUTHORITY		
Engineer		Please carry out the work itemised at the price quoted and under the terms and conditions listed overleaf		
Date <u>14/12/04</u>		Signed		
Time: Start Finish		Name (PLEASE PRINT) <u>M. B. GARLICK</u>		
Total Time		Date <u>14/12/04</u>		
Payment method		Subject to the guarantees listed overleaf has the work been		
To be invoiced	<input checked="" type="checkbox"/>	carried out to your satisfaction? Yes/No...*		
Paid by cash		if not please detail		
Paid by Cheque			
Paid by Direct Debit		was the site left clean and tidy? ..*		
			Sub Total	
			VAT	
			TOTAL	

Telephone: 01202 59 11 00 Facsimile: 01202 44 46 17
Principle Office: Knapp Mill, Mill Road, Christchurch, Dorset BH23 2JY Registered No 2924312 (England)

REMIT TO: **Bournemouth & West Hampshire Water Plc**

Name:

Customer No.

Invoice No.

Amount Due

Date:

Cash

Cheque

£

If paying by credit, debit or witch card give your card number below

Card expiry date

If Switch Issue No.

Cardholders Name -- Please Print

Signature: _____

Date: _____