



**APPEALS PANEL: 15 APRIL 2008**

**OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER  
54/07**

**Land of 34 Studley Avenue, Holbury.**

**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 54/07, Land of 34 Studley Avenue, Holbury with, or without, modifications.

### **For further information contact:**

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### **Background Papers:**

Attached

## **APPENDIX 1**



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## Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 54/07

Approximate Scale: 1:750

Date Printed: 31/10/07

Martin Devine  
 Assistant Director of Leisure Services  
 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



*Neil Williams*  
 AN AUTHORISED SIGNATORY

**SCHEDULE 1**

**TPO 54/07**

**SPECIFICATION OF TREES**

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

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Oak	Front garden of 34 Studley Avenue, Holbury, Hampshire as shown on plan

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

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
None		

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**Groups of trees**

(within a broken black line on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
None		

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**Woodlands**

(within a continuous black line on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
None		

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## **APPENDIX 2**

## **APPEALS PANEL MEETING – 15 APRIL 2008**

### **OBJECTION TO TREE PRESERVATION ORDER NO. 54/07 LAND OF 34 Studley Avenue, Holbury**

#### **REPORT OF COUNCIL TREE OFFICER**

##### **1. TREE PRESERVATION ORDER HISTORY**

- 1.1 Tree Preservation Order (TPO) No.54/07 was made on 31 October 2007. The TPO plan and first schedule are attached as Appendix 1 to Report A. The Order protects a single Oak tree in the front garden of 34 Studley Avenue, Holbury
- 1.2 The TPO was made after the tree had been inspected following notification to the Tree Team from a local resident that the tree was likely to be felled.
- 1.3 The Council's Tree Officer inspected the Oak tree which was clearly visible to the public and made a positive contribution to the surrounding area. It was considered that its premature removal would be to the detriment of the area and as such it was considered to be expedient to protect the tree via a TPO.
- 1.4 Miss J Ballesisario of 34 Studley Avenue, Holbury wrote to the Council objecting to the making of the TPO on 22 November 2007. Four further pro-forma objections were received from local residents citing the size of the tree in relation to the front garden of 34 Studley Avenue and concerns for the drainage system.
- 1.5 The Council's Tree Officer telephoned Miss Ballesisario and organised a site meeting to be held on Saturday on 1 December 2007 in order to attempt to resolve her objection. That meeting was cancelled at Miss Ballesisario's request.

##### **2. THE TREE**

- 2.1 The tree in question is an Oak (*Quercus rubra*). It stands in the front garden of 34 Studley Avenue, Holbury.
- 2.2 The tree is approximately 17m in height with a stem of some 500 – 650mm diameter.
- 2.3 From ground level inspection the tree appears to be structurally sound, of good health and normal vigour.
- 2.4 The tree offers an extremely high level of visual amenity to the immediate and surrounding areas and can be clearly seen by the public from numerous vantage points including Studley Avenue, Broadley Close, Depedene Close, Holbury Drive.

### **3. THE OBJECTION**

- 3.1 A copy of the objections and associated correspondence is included as Appendix 3.

The grounds for objection, are:

- The tree's size is out of proportion to the land on which it resides
- The tree roots are lifting the driveway
- There are cracks in the house which are exacerbated by the tree.
- The tree could be removed and a more suitable replacement planted in its place.
- The tree may damage the drainage system

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

- 4.1 The Council's Tree Officer does not consider the current or potential height and spread of the tree to be too big for the neighbourhood. Larger mature trees add valuable height and scale to the urban landscape, providing a verdant counterfoil to harsh building outlines and an intrinsic visual amenity in their own right. The size of the tree can be restricted where appropriate by judicious pruning without detriment to its health or amenity.
- 4.2 Cracks to the drive are evident. Whether these are caused in entirety or in part by the tree is debateable, although it is considered that the tree is likely to have contributed to the cracking of this concrete surface.
- 4.3 There are numerous reasons a property could experience cracking, particularly hairline cracking. Absolutely no evidence has been submitted to the Council that the tree is implicated in any way to the cracking experienced at 34 Studley Avenue.
- 4.4 The tree makes an important and positive contribution to the setting and character of the area. No other tree of its size is present within the development which amplifies its importance. Felling a mature tree, be it an Oak or not, and replacing it with another smaller more preferred tree as suggested is considered to be too simplistic. It is because of its size that tree is so important. As suggested in section 4.1 '*The size of the tree can be restricted where appropriate by judicious pruning*'
- 4.5 Tree roots can occupy drains, but it is unusual that tree roots will be the cause of initial failure. In most instances tree roots will take advantage of already failed drain unions. Again absolutely no evidence has been submitted by the objectors that the tree has or may affect the drainage system.

**5. RECOMMENDATION**

5.1 It is recommended that TPO 54/07 is confirmed without modification.

**Further Information:**

Andrew Douglas  
Senior Arboricultural Officer

Telephone: 02380 285205

**Background Papers:**

Tree Preservation Order No. 54/04  
Associated correspondence

## **APPENDIX 3**

34 STUDLEY AVENUE  
HOLBURY  
SOUTHAMPTON  
HANTS  
SO45 2PP

MR A. DOUGLAS  
THE TREE TEAM  
NEW FOREST DISTRICT COUNCIL  
APPLETREE COURT  
LYNDHURST  
HANTS  
SO43 7PA

COPY

Ref ADOU/MAC/54/07

22<sup>TH</sup> November 2007

Dear Sir

I am writing to you concerning the Tree Preservation Order that you have decided to apply to the Oak tree in my garden. I have enclosed several letters of objection from my immediate neighbours and several photographs, as the tree is in summer and winter. Also some of the damage the root system has done outside the house.

The reason why I am objecting to the Tree Preservation Order is, as you can see from the photographs, is the size of tree to the size of land where it resides is completely out of proportion to the height and the width of boughs of the tree. My width of my front garden is 3.5m and is inadequate for the size of tree now growing there. The boughs not only reach over No. 36's garden and are not far off No. 38's.

There is damage also to my driveway in which the root system has lifted the concrete and cracking has occurred. The root system nearest the driveway is some 20-25cm in diameter.

Inside the house signs of structural damage are occurring with floor to ceiling hairline cracks appearing in the living room. Because of the clay subsoil and the amount of water the tree takes from the ground especially in the summer this is exacerbating the situation.

As you can see from the photographs of my garden that I am not one for "concreting over everything" and my brother Newton has run Lyndhurst

Landscaping and Maintenance for over 18yrs and on discussion with him we feel that a compromise could be reached. That the tree could be replaced with one that the height and width would be more in keeping with the size of plot.

I would like you to consider everything that I have put before you and the opinions of others living around me, thankyou.

Yours Sincerely

Miss J. Bellisario



Mr Douglas this is a reasonably accurate estimate of the width of the tree not how it has been indicated to me.



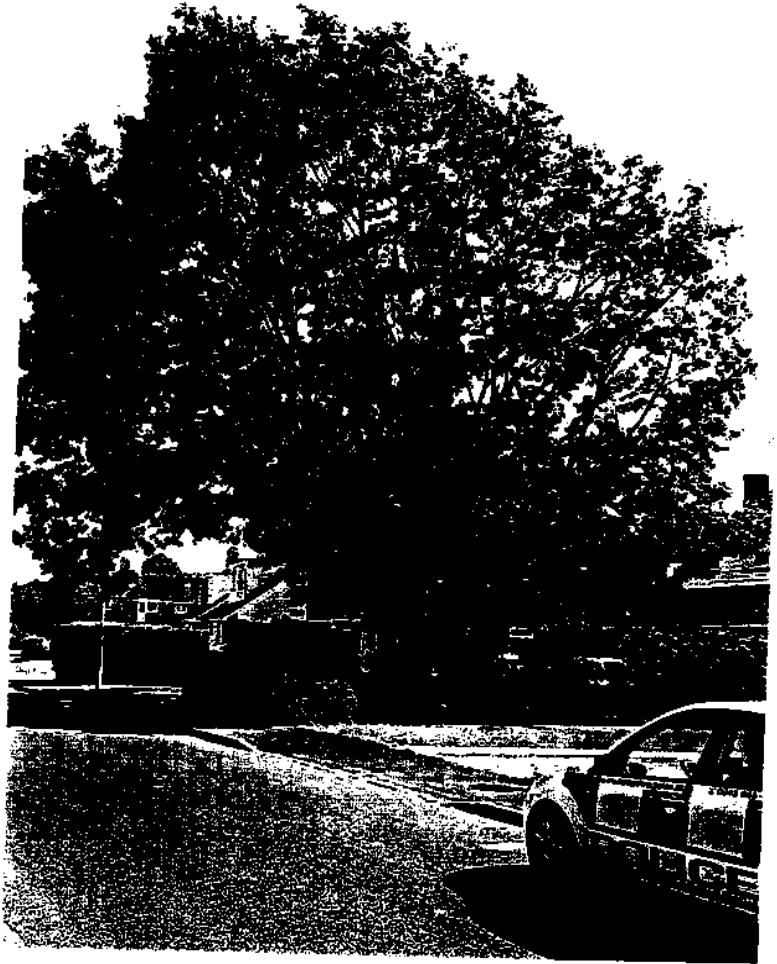
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COPY



COPY



54/07

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

COPY

14<sup>th</sup> November 2007

Dear Sir

I wish you to note my objection to the tree situated at 34 Studley Avenue, Holbury, of which you have decided to make the subject of a Tree Preservation Order. In my opinion the tree is sited in such a woefully small piece of land and close to several properties causing problems above ground and raising concerns for the drainage system below ground.

Yours faithfully

38 STUDLEY AVE  
HOLBURY  
SOUTHAMPTON  
SO45 2PP

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

COPY

14<sup>th</sup> November 2007

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Yours faithfully

The Tree Team  
New Forest District Council  
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Appletree Court  
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SO43 7PA

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Yours faithfully

MISS RUTH V NORTH  
36 STUDLEY AVENUE  
HOLBURY

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

COPY

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Yours faithfully

1 Broadway Cross  
Holbury  
Southampton  
Hants  
SO45 2PN.