

APPEALS PANEL – 18 NOVEMBER 2008

## **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 17/08**

### **LAND OF 19 CHESTNUT AVENUE, BARTON ON SEA, NEW MILTON**

#### **1. 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. 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 making of 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 procedure allows objections and representations to be made to the Council, in writing, within 28 days of the Order and its corresponding documentation being served on those affected by it. 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 try to 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 should decide whether or not to confirm the Order, with or without modification. If a decision on confirmation is not taken within this time, the Council is not prevented from confirming the Tree Preservation Order afterwards. However the trees lose protection in the intervening period until the Order is confirmed.

### 3. 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. TYPES OF TREE PRESERVATION ORDER

- 4.1 The Tree Preservation Order may protect one or more individually specified 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 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 or around a number of domestic curtilages and 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. THE ROLE OF THE PANEL

- 5.1 While objectors may object on any grounds, the decision about confirmation of the Order should be confined to the test set out in 3.1 above.
- 5.2 The Secretary of State advises that it would be inappropriate to make a TPO in specifying a tree which is dead, dying or dangerous.
- 5.3 **Amenity value**  
This term is not defined in the Act, but there is guidance in the Blue Book. In summary the guidance advises:

- 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 arise from their intrinsic beauty; from 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.

As a general rule, officers will only consider protecting a tree where they are satisfied that it has a safe further 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.

## 6. **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 through a tree work application unless such works are covered by an exemption within the Act. In this respect of the Local Planning Authority consent is not required for cutting down or carrying out works on trees which are dead, dying or dangerous, or so far as may be necessary to prevent or abate a nuisance. Great care should be exercised by individuals seeking to take advantage of an exemption because if it is wrongly interpreted, or the work is carried out improperly, offences may be committed. 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. CONSIDERATION

7.1 Members are requested to form a view, based on the evidence before them, whether it appears to them to be expedient in the interests of amenity to confirm the TPO taking into account the above guidance. 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 site plan from the Order, which specifies all the trees protected.

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

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

**Appendix 4** Comments made on the trees in relation to planning application 91495

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. FINANCIAL IMPLICATIONS

8.1 There are some modest administrative costs associated with the actual process of serving and confirming the TPO. There are more significant costs associated with the need to consider any Tree Work Applications to do works (lopping, topping or felling) see 8.3 below. 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 TPOs make provision for the payment by the Local Planning Authority of compensation for loss or damage caused or incurred as a result of:

(1) their refusal of any consent sought under the TPO, or

(2) their grant of a consent subject to conditions.

To ascertain whether someone is entitled to compensation in any particular case it is necessary to refer to the TPO in question. It is especially important to note that the compensation provisions of TPOs made on or after 2 August 1999 differ substantially from the compensation provisions of TPOs made before that date.

### **TPOs made before 2 August 1999**

Under the terms of a TPO made before 2 August 1999 anyone who suffers loss or damage is entitled to claim compensation unless an article 5 certificate has been issued by the Local Planning Authority.

### **TPOs made on or after 2 August 1999**

In deciding an application for consent under a TPO made on or after 2 August 1999 the Local Planning Authority cannot issue an article 5 certificate. There is a general right to compensation. However, the TPO includes provisions which are intended to limit the Local Planning Authority's liability to a fair and reasonable extent, and so the general right to compensation is subject to the following exceptions:

- (1) no claim for compensation can be made if the loss or damage incurred amounts to less than £500;
- (2) no compensation is payable for loss of development value or other diminution in the value of the land. 'Development Value' means an increase in value attributed to the prospect of developing land, including clearing it;
- (3) no compensation is payable for loss or damage which, bearing in mind the reasons given for the application for consent (and any documents submitted in support of those reasons), was not reasonably foreseeable when the application was decided;
- (4) no compensation is payable to a person for loss or damage which was (i) reasonably foreseeable by that person, and (ii) attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent; and
- (5) no compensation is payable for costs incurred in bringing an appeal to the Secretary of State against the Local Planning Authority's decision to refuse consent or grant it subject to conditions.

## **9. ENVIRONMENTAL IMPLICATIONS**

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

## **10. CRIME AND DISORDER IMPLICATIONS**

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

## **11. 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 of the Human Rights Act 1998 as being in the public interest (the amenity value of the tree).

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 of the First Protocol).

**12. RECOMMENDED:**

12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 17/08 relating to land of 19 Chestnut Avenue, Barton-on-Sea, New Milton, Hampshire with, or without, modification.

**For Further Information Please Contact:**

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**Background Papers:**

Attached Documents:

TPO 17/08

Published documents

# **APPENDIX 1**

**SCHEDULE 1**

**TPO 17/08**

**SPECIFICATION OF TREES**

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

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Holm Oak	North eastern boundary of 19 Chestnut Avenue, Barton-on-Sea. 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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## Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 17/08

Approximate Scale: 1:750

Date Printed: 27/06/08

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



*Warren Obenke*  
 AN AUTHORISED SIGNATORY

# **APPENDIX 2**

**OBJECTION TO TREE PRESERVATION ORDER NO. 17/08  
LAND OF 19 CHESTNUT AVENUE, BARTON-ON-SEA**

**REPORT OF COUNCIL TREE OFFICER**

**1 TREE PRESERVATION ORDER HISTORY**

- 1.1 Tree Preservation Order (TPO) No. 17/08 was made on 27 June 2008. The TPO plan and first schedule are attached as Appendix 1 to Report B. The Order protects a single Holm Oak tree situated on the north eastern boundary of 19 Chestnut Avenue, Barton-on-sea.
- 1.2 The TPO was made as a direct replacement for TPO 01/08 which was made as a result of the submission of a planning application (Ref: 91495) to erect a 1<sup>st</sup> floor extension on top of the existing attached garage, convert the existing garage into a residential room and construct a detached single garage. The proposed garage would have been sited within the Root Protective Area (RPA) of the Holm Oak and as such cause root damage to the tree, threatening it's long term retention. Comments made on this planning application can be found in Appendix 4 to Report B.
- 1.3 The Council's Tree Officer inspected the Holm Oak which is clearly visible from public viewpoints and makes a positive contribution to the landscape of the immediate and surrounding area. It is considered that the tree's 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 Mr S Woodley the owner of 19 Chestnut Avenue, Barton-on-sea wrote to the Council objecting to the making of the TPO on 28 July 2008. Unfortunately a procedural error was indentified with TPO 01/08 and it was decided to start the process again to allow everyone involved full opportunity to make representations. Mr Woodley has resubmitted his objection in response to the new Order.
- 1.5 The Council's Tree Officers have not met with Mr Woodley to discuss the objections raised to the making of the current Order (TPO 17/08) as an informal site meeting had previously been held in respect of the original Order TPO 01/08 to attempt to resolve identical objections, unfortunately without success.

**2 THE TREE**

- 2.1 The tree in question is a mature Holm Oak (*Quercus ilex*), situated on the north eastern boundary of 19 Chestnut Avenue, Barton-on-sea.
- 2.2 The tree is 16m in height and has a stem diameter of 1000mm in diameter.

- 2.3 From a ground level inspection the tree is in a good physiological and structural condition, exhibiting no defects that would necessitate the requirement for a further inspection or question the trees safety.
- 2.4 The tree offers a good level of visual amenity to the immediate and surrounding areas and can be clearly seen by the public from numerous vantage points including Chestnut Avenue and Uplands Avenue.

### **3 THE OBJECTION**

A copy of the objection is included in Appendix 3 to Report B.

The grounds for objection are:

- The tree attracts a large number of pigeons that foul the surrounding area under the tree's canopy, causing a detrimental effect on human health.
- The tree roots are cracking the driveway and the public walkway is lifting.
- Complaints received from a neighbouring property in relation to pigeon excrement.

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

- 4.1 Trees and birds are synonymous with each other. The Holm Oak is a mature tree which provides, along with other trees in the area, a valuable habitat for birds. Therefore the presence of avian species such as pigeons is to be expected. The presence of birds in a residential area can give rise to issues such as bird detritus. However a request for the removal of a tree due to birds perching in its canopy is not a sufficient or justified reason. While bird droppings on the drive or on a car parked below a tree can be an annoyance, it is not unexpected and certainly is not an isolated incidence. A decoy raptor bird has been installed within the tree's crown, it is believed in an attempt to reduce the incidence of birds using the tree. This appears to have been ineffective. However the decoy bird could be repositioned within the tree in an attempt for it to have more impact and be more effective. Removing bird detritus is a relatively simple procedure and its presence will be vastly reduced after periods of rainfall or indeed after washing a car in the drive.
- 4.2 Detritus, if left for long periods of time, can become an issue. However this is not reason alone to fell the Holm Oak. Detritus can be cleaned away quite simply by using soapy warm water which will also disinfect the area or a pressure washer when washing the car and should be considered as routine house maintenance work.
- 4.3 Cracks in the surface of the drive are evident but whether these are caused wholly or partially by the tree is debateable. The drive surface

is not believed to be the original surface but may have cracked over time and due to use.

- 4.4 The footpath is understood to be under the control of Hampshire County Council. The footpath has lifted in the area immediately adjacent to the tree's main stem but outside of the property's boundary. This damage caused by the tree is as a result of it growing over the years. Repair works were noted to the footpath surface but further surface damage is to be expected. Again this is not an isolated case. Many of the trees along Chestnut Avenue which are in the ownership of Hampshire County Council have caused similar damage. The redressing of the surface appears to be a continuing process and will address any potential trip hazards on the path.
- 4.5 Although not evidenced, complaints to the objector from neighbouring properties owners have been raised with regards to the issue of detritus. However as mentioned above, birds are synonymous with trees and unfortunately the area immediately below the tree can be affected by bird faeces. However, cleaning the infected surfaces should be a routine household consideration and expected. It is noted that no objections were raised from any of the neighbouring properties at the time the TPO was served.

## **5 RECOMMENDATION**

- 5.1 It is recommended that TPO 17/08 is confirmed without modification.

### **Further Information:**

Andy Luddington  
Arboricultural Officer

Telephone: 02380 285328

### **Background Papers:**

Tree Preservation Order No. 17/08

# **APPENDIX 3**

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

19 Chestnut Avenue  
Barton-on Sea  
New Milton  
BH25 7BQ



15 February 2008

Dear Sir,

Ref: TPO 01/08 - 22 January 2008 - Holm Oak  
Land of 19 Chestnut Avenue, Barton-on-Sea, New Milton

I have received notification of the above TPO inviting comments and objections. I wish to object to the TPO being confirmed, as I need to either remove or drastically reduce the size of this tree for the following reasons.

- 1) The main problem with the tree is that it attracts large numbers of pigeons. These pigeons cause excessive fouling of the surrounding areas with their excrement.  
I have been advised that this excrement can be detrimental to human health, particularly in those suffering from chest problems and asthma. My young son suffers badly with asthma and has also had pneumonia. (Medical history available if required.)
- 2) The secondary problem with the tree is the physical damage it is causing to the surrounding area. The paving on my drive is now cracked and the tarmac outside on the public walkway is lifting.
- 3) I have had complaints from my neighbours about this tree in respect of the pigeon excrement on their property.

I would be grateful if you would take account of the above objections and not confirm the TPO.

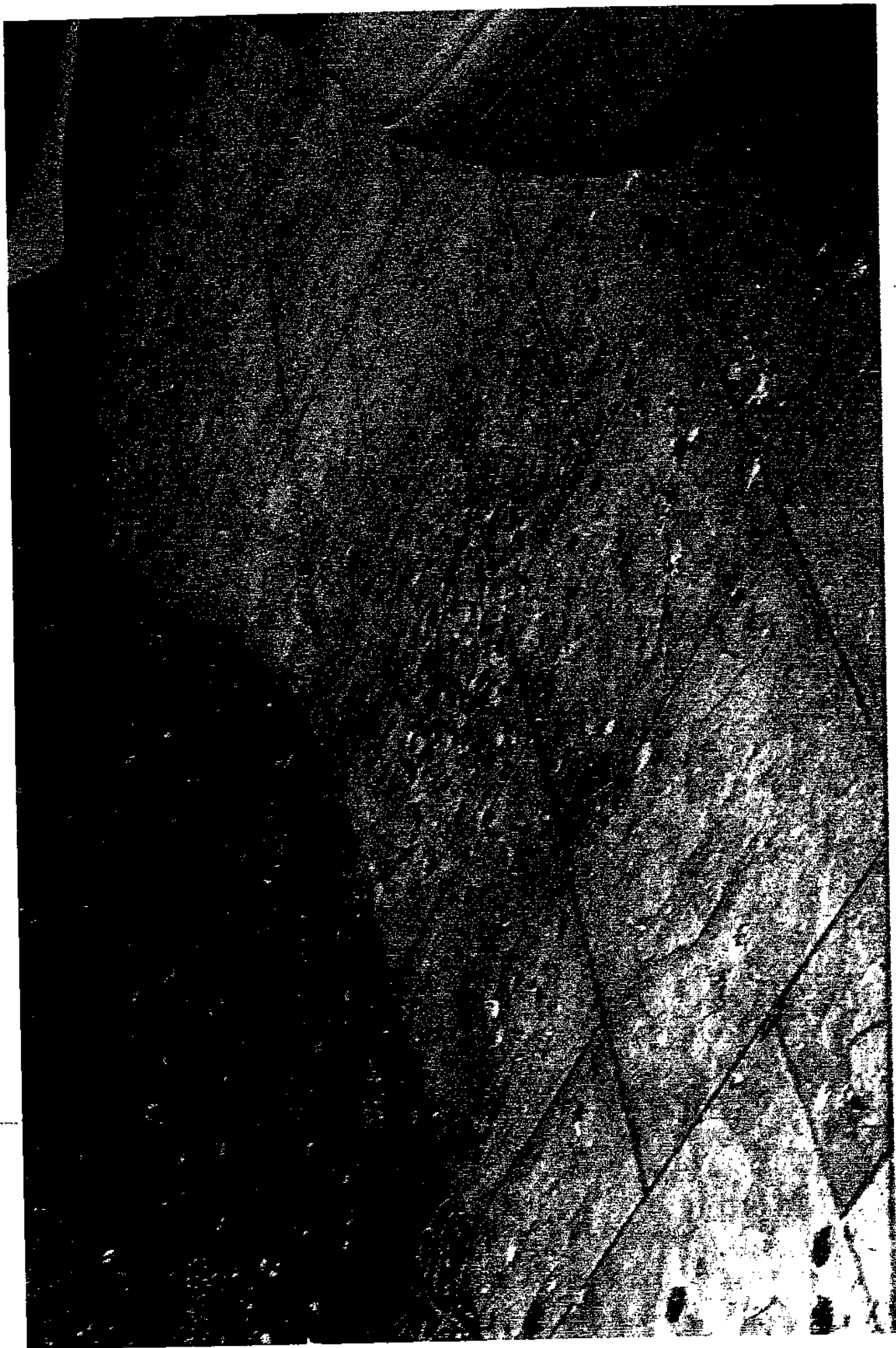
Yours sincerely

Stuart S Woodley

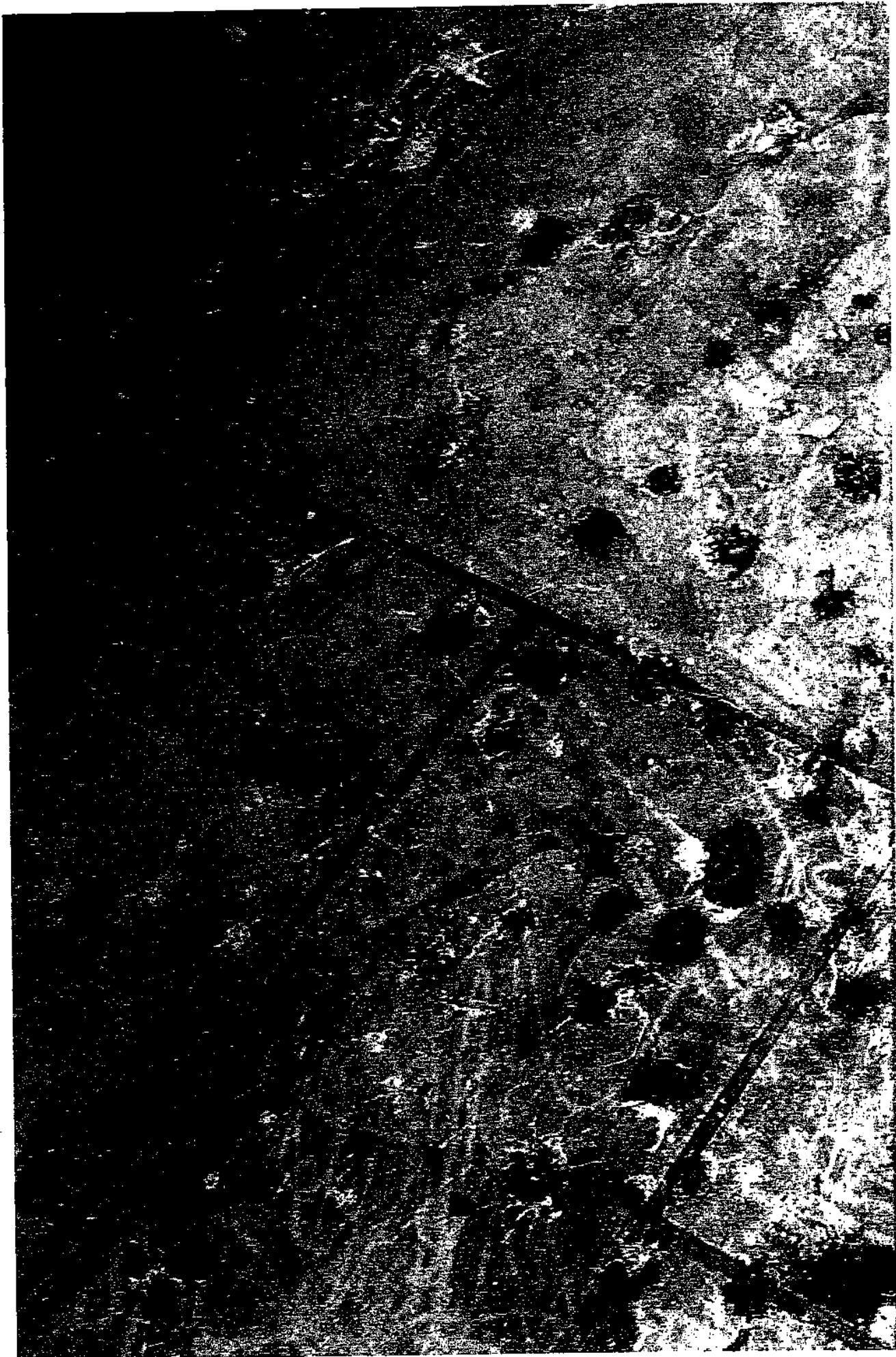
PS I enclose 5 photographs relating to the points raised above.

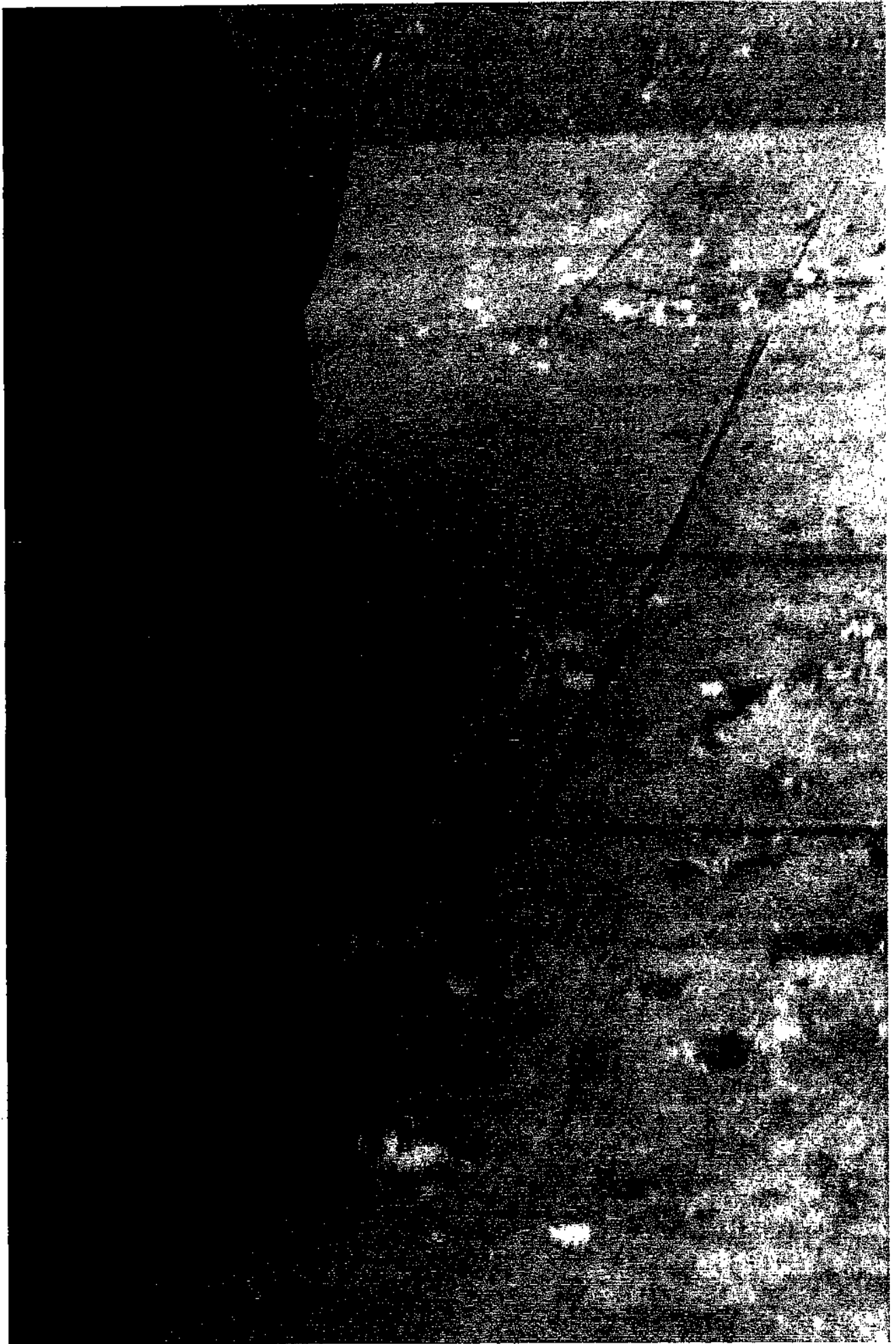












# **APPENDIX 4**

## Development Control Consultations

Record No:	16433
Application no:	91495
Site:	19 Chestnut Avenue, Barton on Sea, New Milton
Drawing no:	Avon Project Services P328/2
DC Officer:	Mr Brett Jackson
Date:	21 <sup>st</sup> January 2008

### Tree Comments

Located on the north eastern boundary of site is a mature Holm Oak offering a high level of public amenity value. The tree is considered an important landscape feature to the local area.

The proposal is to erect a first floor extension to the existing dwelling (no change to the existing footprint) and convert the existing garage into a family room. A new detached single garage to the east of the existing dwelling will then be erected.

The Holm Oak is now protected by Tree Preservation Order (TPO) 01/08 and is considered a material constraint to this proposal. No objection are raised to the proposed first floor extension and garage alterations to the existing house, however a scheme will need to be submitted, demonstrating how the Holm Oak will be protected in accordance with BS5837:2005, such a scheme shall also provide a site plan showing the location of the proposed storage and mixing areas.

Objections are raised to the juxtapositioning of the Holm Oak and the proposed detached garage. The Holm Oak has a Root Protection Area (RPA) of 452m<sup>2</sup>. The proposed garage will be within the RPA, although not shown on the drawing, alterations to the existing access, with the use of concrete, will reduce the rooting area of the tree further, this will ultimately lead to extensive root damage that will be of detriment to the tree's future health.

However, the erection of a lightweight garage on a pile and ring-beam foundation maybe possible, careful consideration must be taken over its positioning, at the furthest possible point away from the tree. The use of a Cellular Confinement System (CCS) should be used to ensure that the access is created **above ground** and therefore ensuring tree roots remain undamaged and continue to receive sufficient gaseous exchange and nutrients to ensure their future retention.

The applicant is advised to seek the professional advice from a suitably competent and experienced Arboricultural Consultant to address the tree constraints of the site.

**Recommendation: Refusal**

**Reason:** The proposed garage, by virtue of its location and alignment threaten the retention of an important mature tree protected by a Tree Preservation Order; the garage will result in damage and disturbance to the tree's root system, that will ultimately lead to the decline of the tree. Contrary to and Policy DW-E8 of the New Forest District Local Plan First Alteration.

Andy Luddington  
Arboricultural Officer