

**OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER
36/08, LAND OF MEADOW VIEW, 12 SALISBURY ROAD, RINGWOOD****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 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 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, usually 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 amendment. If a decision on confirmation is not taken within this time, the Council is not prevented from confirming the Tree Preservation Order afterwards. But after 6 months the trees lose protection until confirmation.

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 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. 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 respect of 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 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.

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.

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 misjudged 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 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

Appendix 4 The response to the planning enquiry for the site.

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 respond to 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 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 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).

12. RECOMMENDED:

12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 36/08 relating to land of Meadow View, 12 Salisbury Road, Ringwood with, or without, amendment.

For Further Information Please Contact:

Jan Debnam
Committee Administrator

Tel: (023) 8028 5389

E-mail: jan.debnam@nfdc.gov.uk

Grainne O'Rourke
Head of Legal and Democratic Services.

Tel: (023) 8028 5285

E-mail: grainne.orourke@nfdc.gov.uk

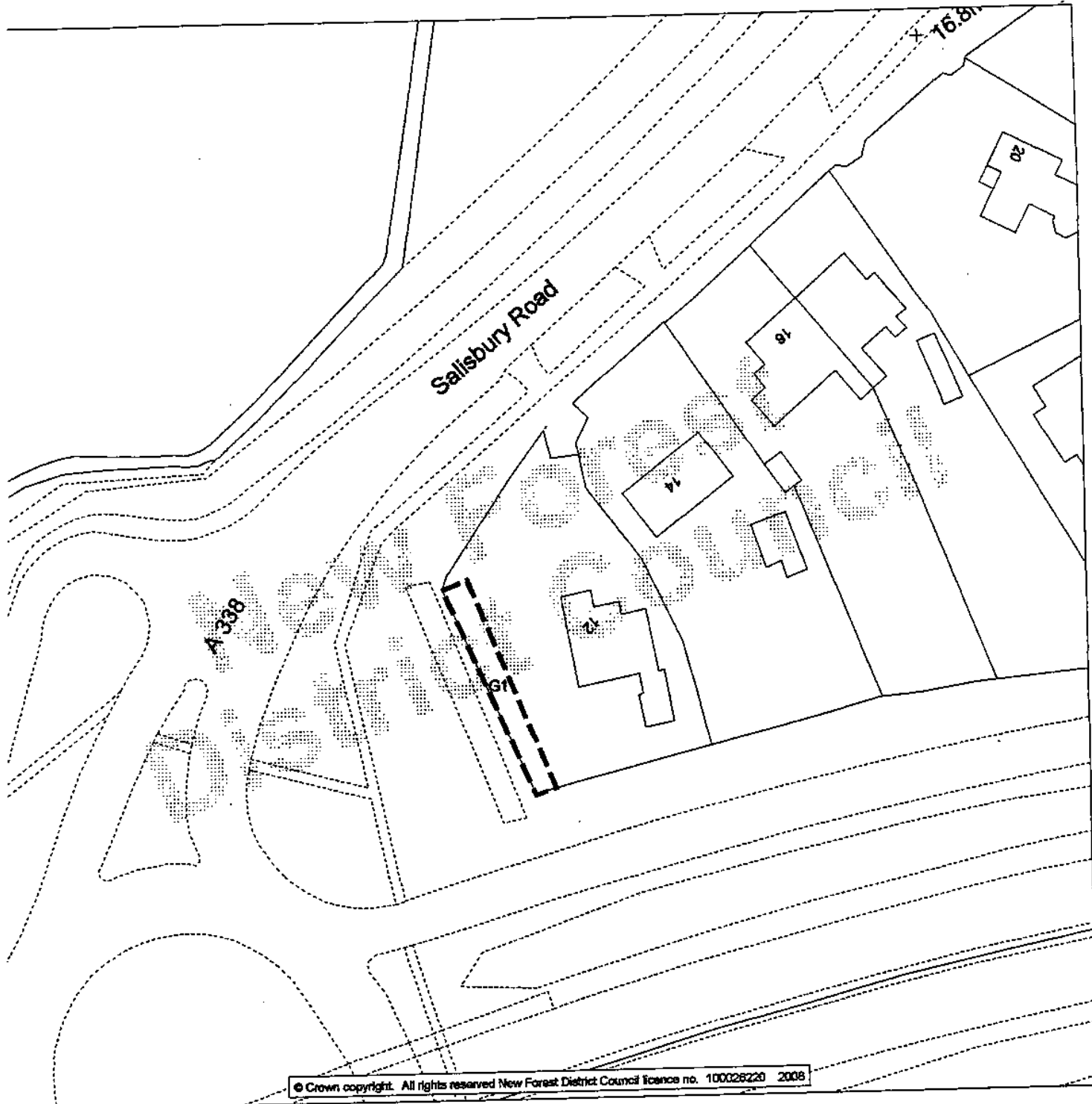
Background Papers:

Attached Documents:

TPO 36/08

Published documents

APPENDIX 1



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 36/08

Approximate Scale: 1:750

Date Printed: 06.10.2008

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

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
None		

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

Reference on map	Description	Situation
None		

Groups of trees (within a broken black line on the map)

Reference on map	Description (including number of trees in the group)	Situation
G1	9 Pine trees	Located adjacent to the western boundary of Meadow View, 12 Salisbury Road, Ringwood. As shown on plan.

Woodlands (within a continuous black line on the map)

Reference on map	Description	Situation
None		

APPENDIX 2

**OBJECTION TO TREE PRESERVATION ORDER NO. 36/08
LAND OF MEADOW WAY, 12 SALISBURY ROAD, RINGWOOD.**

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.36/08 was made on 14 October 2008. The TPO plan and first schedule are attached as Appendix 1 to Report B. The Order protects a group (G1) of 9 pine trees situated adjacent to the western boundary of Meadow View, 12 Salisbury Road, Ringwood, Hants
- 1.2 The TPO was made as a result of the submission of a planning enquiry (Ref: Enq-08-14596) to erect a 3 bay detached garage partially within the Root Protection Area (RPA) of a number of the pine trees within the group, in doing so threatening their long term retention. Comments made on this planning enquiry can be found in Appendix 4 of Report B.
- 1.3 The Council's Tree Officer inspected the pine trees, which are clearly visible to the public and make a positive contribution to the landscape of the immediate and surrounding area. It is considered that the potential damage to their roots would result in the premature loss of trees within the group which would be to the detriment of the amenities of the area. As such it was considered to be expedient to protect the tree via a TPO.
- 1.4 Mrs Martin, the co-owner of Meadow View, 12 Salisbury Road, Ringwood wrote to the Council objecting to the making of the TPO on 20 October 2008.
- 1.5 Both Council's Senior Tree Officer and Corporate Tree Manager met with Mr and Mrs Martin on site (31.12.2008) and discussed the objections raised to the making of the Order.

2 THE TREES

- 2.1 The trees in question are mature pines located along the western boundary of Meadow View, 12 Salisbury Road, Ringwood, Hants.
- 2.2 From a ground level inspection the trees are in a good physiological and structural condition, exhibiting no major defects that would necessitate the requirement for a further inspection or question the trees' safety.
- 2.3 The trees offer a high level of visual amenity to the immediate and surrounding areas and can be clearly seen by the public from vantage

points. The trees are particularly prominent from the A338/A31 Ringwood roundabout.

3 THE OBJECTION

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

The grounds for objection are:

- It is unclear which trees are covered by the Tree Preservation Order
- The pines are now far too tall and no longer perform the function they were planted for, namely noise reduction.
- The trees' canopies are too tall and restrict sunlight entering the garden
- The trees pose a risk to the property and my family
- Tree roots are damaging the drive
- Placing a TPO on the trees will inevitably incur additional costs to us.
- The Council had no interest in the trees prior to the submission of a planning enquiry.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 Since the Order was originally made the trees have been tagged to clearly identify which are protected and which are not. Although unknown, it is considered unlikely that the trees' sole purpose was to shield noise from the property, as an ultimately smaller tree species would have been more suitable. The TPO would not prevent the owners inter-planting a shrubbier plant to act as a more effective noise barrier. Due to the trees' orientation, sunlight into the garden will be restricted for a portion of the day. However their prominence and high level of visual amenity is why the trees are suitable candidates for inclusion within a TPO.
- 4.2 Following a detailed ground level inspection of the trees it was evident that a number of them held a significant amount of dead branches within their canopies. It was also evident that some branches had become dislodged and fallen from a number of the trees. This situation has occurred due to the lack of any maintenance of the trees for many years. The TPO does not prevent the removal of deadwood and in such cases a tree work application would not be required, due to the works being exempt of the TPO under section 198 (6) (b) of the Town and Country Planning Act 1990.
- 4.3 The submission of a tree works application is free of charge, and the Tree team will generally be available to give unbiased, professional advice as to the best way to manage the trees.
- 4.4 With regards to the cracks within the drive surface, whether these cracks are caused wholly or partially by the trees is open for debate. The drive surface is however believed to be the original surface which may have cracked over time and due to use.

- 4.5 These trees were not protected up until the time the planning enquiry was submitted. The vast proportion of TPO's made by Local Authorities including this Council are as a result of a planning enquiries or applications.

5 CONCLUSION

- 5.1 While the trees have not been managed by the previous owners of the property or to date by the current owners they are a valued feature of the area and are located in an extremely prominent position. The submission of a planning enquiry, whether unwittingly or not, placed a number of trees within the group under threat from premature removal. In doing so the trees were brought to the attention of the Council and after due consideration protected to ensure they were retained for the future.

6 RECOMMENDATION

- 6.1 It is recommended that TPO 36/08 is confirmed with modification to the 1st Schedule to include the individual tree tag numbers.

Further Information:

Andrew Douglas
Senior Arboricultural Officer

Telephone: 02380 285205

Background Papers:

Tree Preservation Order No. 36/08

APPENDIX 3

Ms L Beckett
Tree Team
Appletree Court
Lyndhurst
SO43 7PA



Meadow View
12 Salisbury Road
Ringwood
Hampshire
BH24 1AS
20th October 2008

Dear Ms Beckett
TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER NO: 36/08
LAND OF MEADOW VIEW, 12 SALISBURY ROAD, RINGWOOD in
HAMPSHIRE

I would like to formally declare my objection to this preservation order being placed on "9 pine trees located adjacent to the western boundary" of my property.

Firstly, it is not clear from the diagram which specific 9 pine trees fall under the preservation order. (There are more than 9 pine trees on the western boundary). Other pine trees on the southern boundary and trees both, outside and inside, the western boundary, for some inexplicable reason have not been deemed "to enhance the amenity of the area and make a contribution to the surrounding landscape" so have not been placed under such a strict order.

All the pine trees on the western boundary are now extremely tall and no longer perform the function they were presumably planted for, namely noise reduction from the A31 and A338. Their canopies are far too high and stop a lot of sunlight entering the garden.

The sheer height, and age of the trees mean that at some point in the (near) future they could pose a risk to my property, vehicles and, more importantly, my family's lives. We frequently experience high winds blowing across the plain from the Ringwood forest and branches regularly fall from the trees. Indeed one of the trees leans at quite a precarious angle towards the house and cars. In the two years we have lived at Meadow View we have had to replace the television aerial twice, because it has been damaged by strong winds. It is only a matter of time before one of the trees is brought down by these same winds.

Their roots are beginning to uproot the drive and we will soon need to incur a large expense in re-surfacing the drive.

It was our intention, in the near future to replace these trees with smaller, more manageable trees, which would form an effective sound barrier to the traffic noise and allow more light to enter the garden, hence giving ALL plants within the garden a chance to flourish.

We have no neighbours overlooking that side of the house, indeed, no property (other than an electricity sub-station, which hardly "enhances the amenity of the area" itself) is visible from that aspect of the property. So I fail to understand who would benefit from these trees being "preserved".

It is not that I have any great desires to remove the trees, I simply object to the unnecessary expense we will inevitably incur by having such restrictions placed on these trees by the council placing a preservation order on them.

I feel some-what victimised that as a result of a perfectly innocent enquiry to the council, they feel the need to place such an order on trees, which they clearly had no interest in previously.

Yours sincerely

Wendy Martin

APPENDIX 4

Development Control Consultations

Record No:	17060
Application no:	14596/ENQ
Site:	Meadow View, 12 Salisbury Road, Ringwood
Plan no:	Proposed site plan
Date:	7/10/08
Planning Officer:	Richard Natt
Tree Officer:	Liz Beckett

Comment:

Situated on the western boundary of the property are a group of 9 mature, Scot's pine trees. They are all in reasonable condition and offer a very high level of amenity. To ensure that these trees are appropriately considered as part of any future planning proposal these trees have been protected by tree preservation order TPO: 36/08.

This does not mean that it is not feasible for the proposed garage to be erected. However, it does mean that proper consideration is given to the siting of the garage in regard to the root protection area of the trees.

Should a full planning application be submitted it must be accompanied by an arboricultural report as per BS5837; 2005: "Trees in relation to construction".

Recommendation: No objection subject to condition.

Condition:

Before development commences (including demolition and any other preparatory works) a scheme for the protection of the retained **protected trees** shall be submitted to and approved in writing by the Local Planning Authority, in accordance with BS5837:2005. Such a scheme shall include details of:

- o Tree root protection.
- o Foundation type.
- o Phasing of works.

Such measures where specified, shall be erected prior to any other site operations and at least 1 working day's notice shall be given to the Local Planning Authority that it has been erected.

Reason: To ensure the enhancement of the development by the retention of existing trees and natural features during the construction phase in accordance with Policy DW-E8 of the New Forest District Local Plan First Alteration.