

APPEALS PANEL – 26 AUGUST 2009

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 09/09, LAND OF 18 AND 20 MILTON GROVE, 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 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 Development Control consultation on ENQ/09/15737

Appendix 4 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. 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 09/09 relating to land of 18 and 20 Milton Grove, New Milton with, or without, amendment.

For Further Information Please Contact:

Jan Debnam
Committee Administrator

Tel: (023) 8028 5389

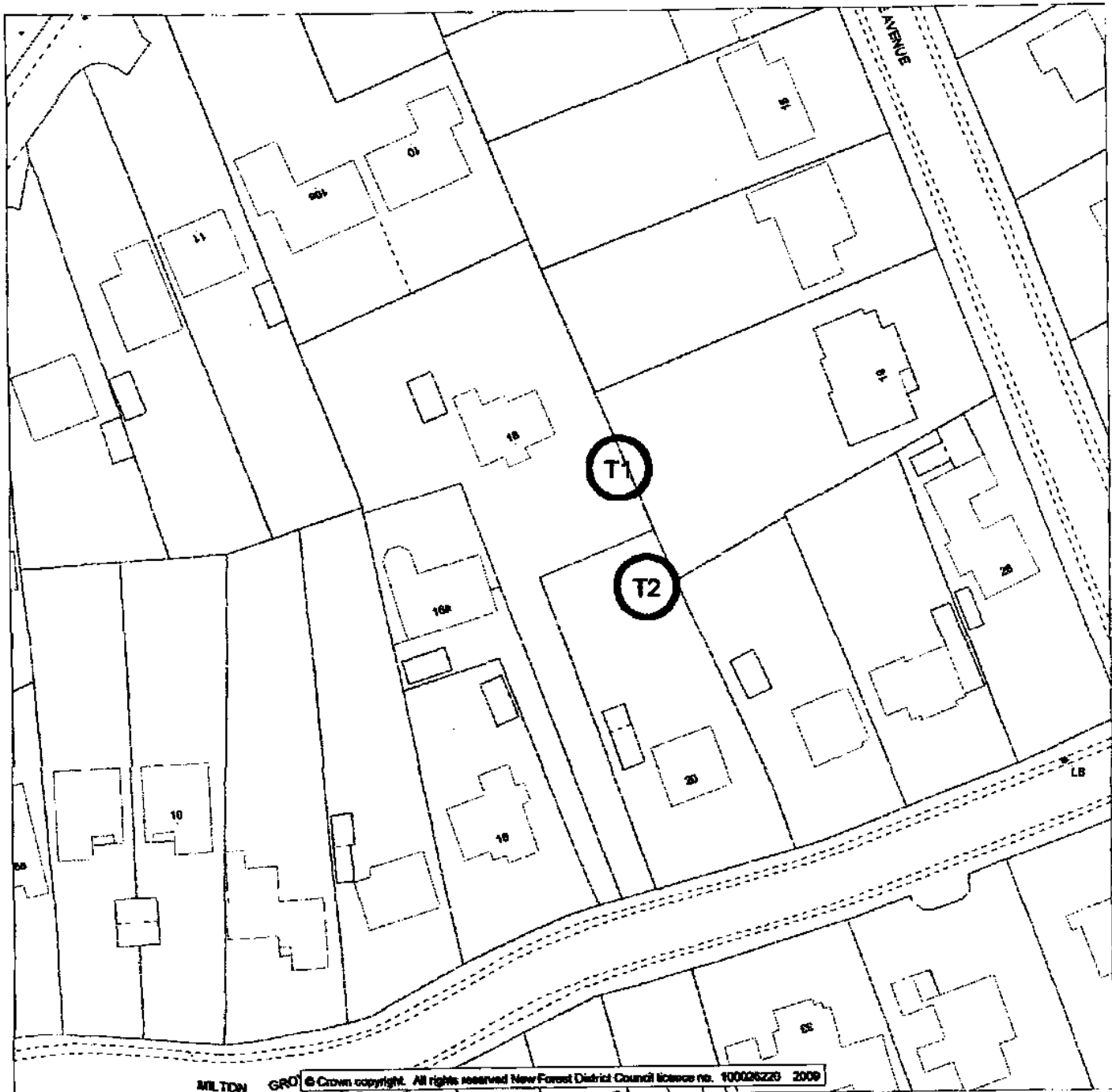
E-mail: jan.debnam@nfdc.gov.uk

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 09/09
Published documents

APPENDIX 1



Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 09/09

Approximate Scale: 1:750

Date Printed: 11/03/09

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



[Handwritten Signature]
 AN AUTHORISED SIGNATORY

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Monterey cypress	Eastern boundary of 18 Milton Grove, New Milton. As shown on plan.
T2	Ash (Multi stemmed)	Adjacent to the northern boundary of 20 Milton Grove, New Milton. As shown on plan.

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
None		

Woodlands (within a continuous black line on the map)

Reference on map	Description	Situation
None		

APPENDIX 2

OBJECTION TO TREE PRESERVATION ORDER NO. 09/09 LAND OF 18 AND 20 MILTON GROVE, NEW MILTON, HANTS

REPORT OF COUNCIL'S TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) 09/09 was made on 18 March 2009. The TPO plan and first schedule are attached as Appendix 1 to Report B. The Order protects two individual trees, T1 a Monterey Cypress situated adjacent to the eastern boundary of 18 Milton Grove, and T2 an Ash situated adjacent to northern boundary of 18 Milton Grove, New Milton, Hants
- 1.2 The TPO was made as a result of the submission of a planning enquiry (Ref: ENQ/09/15737) to erect a detached bungalow in the grounds of 18 Milton Grove. Comments made on this planning enquiry can be found in Appendix 3 to Report B.
- 1.3 While assessing the planning enquiry the Council's Tree Officer decided that, due to the condition of the tree and the potential for re-development of 18 Milton Grove, the Monterey Cypress should be protected as a precautionary measure against its removal or inappropriate trimming. The Ash tree was also included due to its location within 20 Milton Grove. At the time of the visit another substantial Cedar tree located along the shared boundary with 18 was in the process of being dismantled. The trees are clearly visible to the public and make a positive contribution to the landscape of the immediate and surrounding area. It is considered that their potential premature loss would be of detriment to the area. As such it was considered to be expedient to protect the trees through a TPO.
- 1.4 Three letters objecting to the making of the TPO have been received from Mrs Fisher of 17 Hale Avenue, Mr Elliott of 19 Hale Avenue and Mr Tyler of 20 Milton Grove, New Milton.
- 1.5 The Council's Senior Tree Officer met with Mrs Fisher and Mr and Mrs Elliott on site (02.07.2009) and discussed the objections raised to the making of the Order.

2 THE TREES

- 2.1 The trees in question are a mature Monterey Cypress situated adjacent to the eastern boundary of 18 Milton Grove and an Ash situated adjacent to northern boundary of 18 Milton Grove, New Milton, Hants
- 2.2 From a ground level inspection the trees are in a generally good condition. The Monterey Cypress has not been managed for some

considerable time and would benefit from some tree surgery work being undertaken. Suitable works would include crown cleaning, ivy banding and the reduction of over extended branch ends. The Ash tree is exhibiting no major defects that would necessitate the requirement for a further inspection or question the tree's safety.

- 2.3 The trees offer a good/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 Milton Grove, Hale Avenue and Waverley Road.

3 THE OBJECTION

Copies of the objection letters are included as Appendix 4 of Report B.

The grounds for objection to the Monterey Cypress are:

- The Monterey Cypress (Macrocarpa) is unsafe and vulnerable to high winds and is top heavy.
- The tree is unsuitable for a residential area and does not contribute to the surrounding landscape in a positive way.
- The shade created by the tree (Monterey Cypress) hinders growth in nearby gardens
- TPO's should only be made on trees in suitable locations
- Tree roots are damaging the adjacent house (18 Milton Grove)

The grounds for objecting to the Ash are:

- The TPO will stop the tree from being maintained
- I will not be able to grow fruit and vegetables as I wish, the TPO poses an arboreal infringement
- Will the Council take responsibility for damages to the greenhouse or for the tree should it fail?

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

The Monterey Cypress

- 4.1 Since the Order was originally made the tree has been closely inspected and while the tree is not in perfect condition, with suitable management its condition can be simply and successfully addressed. The TPO does not prevent suitable tree works being carried out. However the submission of a Tree Works Application, which incurs no cost, would be required and consent granted before any works can be undertaken.
- 4.2 As will be noted when the site visit is undertaken, it is not unusual to find Monterey Cypress in residential gardens. There is a similar tree located within the rear of the house opposite, 10 Hale Avenue.
- 4.3 During the recent site meeting which took place at both 17 and 19 Hale Avenue at 2.30 p.m., no shade was created by the tree in the

garden of 17. The garden of 19 was shaded but this was exacerbated by the style of garden, being of an informal and well stocked nature. A large portion of shade was created by ivy growing up the tree's main stem.

- 4.4 It is felt that the tree is growing in a suitable location, and the gardens are sufficiently large to support such a tree.
- 4.5 The suggestion that the tree is damaging 18 Milton Grove is unfounded and purely speculative. No evidence has been put forward to support the claim that the tree is the cause, in any part, of any damage experienced at 18 Milton Grove.

The Ash

- 4.6 The TPO does not prevent the tree from being managed, however the submission of the Tree Works Application would be required and consent granted before any works are undertaken. There is no fee payable to submit the application.
- 4.7 The TPO will not prevent the continued successful production of fruit and vegetables in the garden, and does not pose an arboreal infringement, for the reasons stated above.
- 4.8 The Council is not responsible for the management of the Ash tree. Owning a TPO'd tree is similar to owning a Listed Building in that responsibility for its upkeep remains that of the landowner. Permission must be sought before tree works can commence, but submission of an application incurs no fee.

5 CONCLUSION

- 5.1 The trees are a valued feature of the area and are located in a prominent position. After due consideration of the objections received, along with the works observed at 20 Milton Grove, as referred to in section 1.3 above, it is felt that the both trees should remain protected through the Tree Preservation Order.

6 RECOMMENDATION

- 6.1 It is recommended that TPO 09/09 is confirmed without modification.

Further Information:

Andrew Douglas
Senior Arboricultural Officer

Telephone: 02380 285205

Background Papers:

Tree Preservation Order No. 09/09

APPENDIX 3

Development Control Consultations

Record No:	17368
Application no:	ENQ/09/15737 ENQ
Site:	18 Milton Grove, New Milton
Drawing no:	SK01 & SK02
DC Officer:	Mrs V Baxter
Date:	12/03/09

Tree Comments

Situated on the eastern boundary of the site is a mature Monterey cypress, offering a good level of public amenity value. Furthermore, an Ash, situated within the rear garden of 20 Milton Grove also offers a good level of amenity. Both trees have been made subject to Tree Preservation Order (TPO) 09/09. This is to ensure that the trees are fully considered as part of any future development on this site.

The proposal is to erect a dwelling on land severed to the west of the existing dwelling; using the existing drive as access and creating new associated car parking.

No objections are raised to the location of the proposed dwelling. There are no trees within this area that are worthy of being a material constraint to development.

Concerns are raised to the proposed car parking area, within the Root Protection Area (RPA) of the Monterey cypress and Ash to the east. A suitable above ground solution, such as a cellular confinement system, will be required in order to minimise damage to tree roots. Additionally, car parking underneath a Monterey cypress will create future pressure on the tree to be pruned or removed *due to falling debris and detritus on parked vehicles*. A *roofed car porch*, to protect the cars from falling debris and detritus is recommended, or further consideration to the location of the parking area should be done.

It is recommended that the applicant seeks the services of an Arboricultural Consultant in order to provide a full BS5837:2005 tree survey and Arboricultural Method Statement detailing how the onsite trees will be physically protected throughout development and a specification showing how the car parking area will be constructed, above ground, without damaging tree roots.

Recommendation: N/A

Andy Luddington
Arboricultural Officer

APPENDIX 4



20 Milton Grove,
NEW MILTON,
Hants
BH25 6HD

Messrs Caldwell /Luddington,
Tree Team
Appletree Court
Lyndhurst
Hants., SO43 7PA

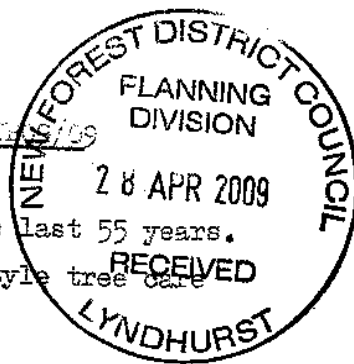
Your Ref.; ALUD/MAC/09/09

27th April, 2009

Dear Mr. Luddington,

The following is a reply to your letter of 16th March 2009 and constitutes an objection to Tree Preservation Order TP09/09, which I make on behalf of the owners of Tree T2 Schedule 1.

OBJECTION TO TREE PRESERVATION ORDER 15/09



My family have looked after tree T2 Schedule 1 for the last 55 years. In the same time, two examples of the council's "Amputee" style tree care are as in Diagrams 1 and 2 below, being

- 1) an oak tree outside No. 1 Milton Grove
- 2) a horse chestnut outside No.2a Milton Grove



Diagram 1

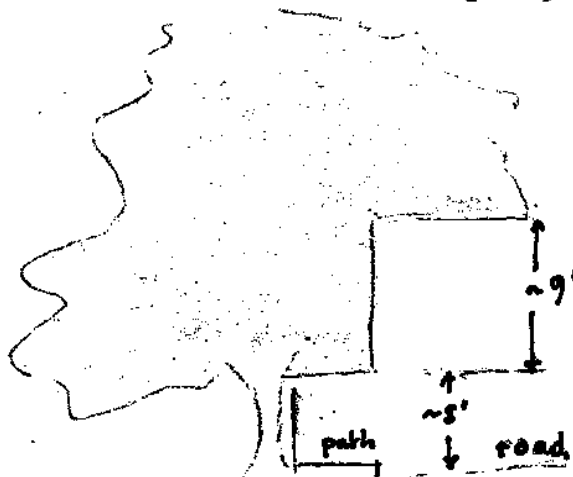


Diagram 2

In the past , I have even received a letter from the council reprimanding me for the profusion of "offending foliage" on a tree along our frontage. A tree non-offensive to the council appears as in Diagram 3 .

Diagram 3

Council-Preferred
Law-Abiding
Frontage Tree



In view of this and with respect to the tree preservation order received, I don't really need to be told by the council how to look after a tree, as Tree T2 Schedule 1 is now over 50 feet tall and 50 feet wide.

In fact it is nearly as wide as my garden. Forty years ago, I built a greenhouse near this tree, and now I am not able to grow tomatoes, etc unless I trim the branches back to let the sunlight into the greenhouse. Not being able to trim back Tree T2 would also affect the production of nearby fruit trees.

Also as I grow several types of vegetables in nearby plots, I find it necessary to trim its roots back regularly. I rely on these vegetables to eke out my meagre weekly earnings. They include Jerusalem artichokes, spinach, broad beans, runner beans and broccoli.

Do the council now wish to interfere with our enjoyment of our garden, and curtail our horticultural pleasures? The point of having a garden is to be able to grow what you prefer - not to be told by the council what you can grow in your own back yard.

Will the council be prepared to take on the responsibility of any damage caused by falls of timber on to my greenhouse?

Will the council be able to stock up my larder with fresh fruit and vegetables to replace that lost through excessive arboreal infringement?

Let those who profess to enjoy trees grow a few forest giants in their own back yard before dictating what other people should do in theirs.

By considering this order, the council is seeking to improve the amenity of the applicant, but is failing to consider the amenity of the owner of the tree whose responsibility is the care and maintenance costs. Would the applicant be prepared to foot the bill for any future maintenance?



July 1965 and have watched with considerable apprehension over the years the rate of growth and the size to which the tree has grown. When my house was built in 1934, a line of these trees was already in place as a border along the boundary between 20/22 Milton Grove; 18 Milton Grove and 9, 11, 15, 17 and 19 Hale Avenue. Over the years before I bought my house, all these trees had been cut down with the exception of three - T1, and one that was struck by lightning and disintegrated in 1970 and the last one blown down by the hurricane in 1987. The lower trunks of the trees cut down on the boundary of 17 and my property can still be seen.

A further objection to the tree is the inability to maintain the bottom part of my garden where the tree's size and spread of branches prevents adequate light penetrating.

The size and spread of the branches represents serious danger of breaking, bringing

Health and Safety provisions into consideration.

The new owners of No 18 Milton Grove showed my wife and I around their house (No 18) last Wednesday (3rd April) and it can be seen that the corner of the house nearest T1 has subsided, cracking the lintel over one window and opening the horizontal joints of brickwork. As there is no evidence of subsidence affecting any other property in this area, being generally level and not subject to any earth movement, the obvious reason is that the roots of T1 are affecting the structure of No 18.

To sum up - T1 is not a species of tree that should be present in close proximity to residential property and should be subject to a removal order rather than covered by a T.P.O.

I trust that your committee will view this letter of objection with sympathy and

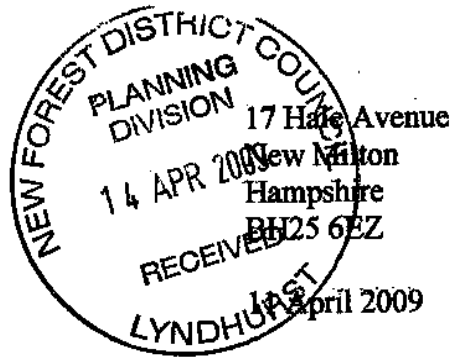
(3)

careful consideration of the valid facts.

Yours faithfully.

(4)

The Tree Team
New Forest District Council
Community Services
Appletree Court
LYNDHURST, SO43 7PA



Dear Mr Caldwell

Your ref: TPO 09/09 18/20 Milton Grove, New Milton

Thank you for your letter of 18 March 2009 regarding a notice of tree preservation order.

My property is affected by the tree preservation order 09/09 placed on tree T1 (a macrocarpa) and I wish to object to the order for the reasons stated below. I am also aware that my near neighbours do not support an order being placed on this tree.

Firstly, I believe that the tree is unsafe. In the past large branches have fallen and caused damage to a neighbour's fence, my hedge and my shed. The tree is very vulnerable to high winds because of its height and top-heavy shape. If it falls it would probably demolish one of the surrounding houses, with the possibility of loss of life.

Secondly, this tree does not enhance the area. The surrounding gardens have many mature ornamental trees. A macrocarpa is entirely unsuitable for a residential area such as this. It does not contribute to the surrounding landscape in any positive way. It is an unsightly and totally overwhelming eyesore and its heavy shade hinders growth in nearby gardens including my own.

The tree is not deserving of a tree preservation order.

Yours sincerely,

Mrs D Fisher