

APPEALS PANEL – 19 OCTOBER 2009

## **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 17/09, LAND OF 12 PARK ROAD, FORDINGBRIDGE.**

### **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

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 17/09 relating to land of 12 Park Road, Fordingbridge with, or without, amendment.

**For Further Information Please Contact:**

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**Background Papers:**

Attached Documents:  
TPO 17/09  
Published documents

# **APPENDIX 1**

**SCHEDULE 1**

**SPECIFICATION OF TREES**

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

Reference on map	Description	Situation
T1	Yew	North eastern boundary of 12 Park Road, Fordingbridge. 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		





## Tree Preservation Order Plan

**Town and Country Planning Act 1990**

**T.P.O Number: 17/09**

**Approximate Scale: 1:750**

**Date Printed: 30/04/09**

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



AN AUTHORISED SIGNATORY

# **APPENDIX 2**

## **OBJECTION TO TREE PRESERVATION ORDER NO. 17/09**

### **LAND OF 12 PARK ROAD, FORDINGBRIDGE, HAMPSHIRE**

#### **REPORT OF COUNCIL'S TREE OFFICER**

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

- 1.1 Tree Preservation Order (TPO) 17/09 was made on 6 May 2009. The TPO plan and first schedule are attached as Appendix 1 to Report B. The Order protects one individual tree, T1, a yew, which is situated adjacent to the northern boundary of 12 Park Road, Fordingbridge, Hants
- 1.2 The TPO was made following an enquiry, made by the owners, which resulted in a site meeting to discuss appropriate levels of tree work. From that meeting it became apparent that the tree was under threat and required protection.
- 1.3 One letter objecting to the making of the TPO has been received, from Mr and Mrs J Douglas of 9 Alexander Road, Fordingbridge.
- 1.4 The Council's Senior Tree Officer met with Mrs Douglas and Ms P Diamond, another neighbour, on 12 May 2009 when the objections raised were discussed.

#### **2 THE TREE**

- 2.1 The tree in question is a mature yew situated adjacent to the northern boundary of 12 Park Road, Fordingbridge. From a ground level inspection the yew appears to be in a good condition, normally vigorous and of good form. Due to its location, the tree overhangs the very bottom portions of the gardens of 9 Alexander Road, 7 Alexander Road, and 10 Park Road. However the rear gardens are between 22m and 25m long, with the maximum overhang by the tree being at 9 Alexandra Road and amounting to some 4m.
- 2.2 The tree offers a good level of visual amenity to the immediate and surrounding areas, and can be seen from public vantage points, as well as by the residents of the Alexander Road, Park Road, Salisbury Road and Whitsbury Road square.

#### **3 THE OBJECTION**

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

The grounds for objection to the Yew include:

- The Yew has neither amenity value nor is it under threat.
- The tree is not fully visible from a public place
- It has no intrinsic beauty

- It has never been properly managed and maintained
- It is not in keeping with its surroundings
- It makes an oversized and disproportionate contribution to the landscape
- The tree is not an important wildlife habitat
- The making of the TPO is not expedient in the interests of amenity.

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

- 4.1 As stated in paragraph 1.4 of this statement, a meeting was held at the request of Ms P Diamond, one of the neighbours. Ms Diamond has subsequently chosen not to submit any objection to the TPO. The principle concerns that she raised related to the level of shade cast by the tree, and the perceived risk of toxic fruit.
- 4.2 The Yew is a mature specimen tree of some 15 metres in height and 10m in total spread and is estimated to be between 100 – 150yrs old. Due to its size, the tree is clearly visible to residents of the Alexander Road, Park Road, Salisbury Road and Whitsbury Road square and can be seen from numerous public vantage points. At the site meeting the Objector indicated that a reduction of some 30% was expected.
- 4.3 The level of work suggested at the meeting held on 12 May 2009 involved significantly reducing the tree in size. The tree is an extremely good, mature yew. Although the crown is minimally asymmetrical (primarily as a result of lack of maintenance from the Alexander Road side) the tree has a well proportioned crown and makes an important contribution to the setting of the area.
- 4.4 There is no record of the trees' historical management, as up until now the tree has not been protected. The TPO has not been served to prevent the tree being managed, but to ensure any proposed work is properly considered, reasonable, and not of detriment to the tree's health, form and contribution to the area.
- 4.5 Yew trees are regularly grown in residential areas and indeed properties are often named after them. Yew tree fruit and leaves are poisonous, if eaten in quantity. Horses and other herbivores are affected, however we are not aware of any poisonings which have been fatal to humans. The Independent newspaper did write an article in 2007 and referenced an American study covering a 9 year period which took place in the mid nineties where, out of 7,269 cases of poisoning, there were no fatalities. In fact there were no adverse effects in 92.5 per cent of cases, minor effects in 7 per cent, moderate effects in 30 people and life-threatening effects in just four.
- 4.6 Mature trees growing in residential areas, such as this yew, add to the setting and overall character of an area, and therefore its presence is considered entirely appropriate.
- 4.7 The tree offers a good level of amenity and has been placed under threat (be that present or future) and therefore the test of expediency in making the Order has been satisfied.

#### **5 CONCLUSION**

- 5.1 The tree is a feature of the area and is located in a prominent position. After due consideration of the objection received it is felt that the Yew tree should remain the subject of the Tree Preservation Order.

**6 RECOMMENDATION**

6.1 It is recommended that TPO 17/09 is confirmed without modification.

**For Further Information Please Contact:**

Andrew Douglas  
Senior Arboricultural Officer  
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**Background Papers:**

Tree Preservation Order No. 17/09

# **APPENDIX 3**

COPY

Mr and Mrs J Douglas  
9 Alexandra Road  
FORDINGBRIDGE  
Hampshire  
SP6 1EJ



Mr A Douglas  
Tree Team  
Apple Tree Court  
Lyndhurst  
SO43 7PA

14 Jun 09

Dear Mr Douglas,

**OBJECTION TO TPO 17/09 LAND OF 12 PARK ROAD FORDINGBRIDGE**

References:

- A. Your ADOU/MAC/17/09 dated 6 May 09.
- B. Tree Preservation Orders: A Guide to the Law and Good Practice (1994)

Further to Reference A, received by us on 9 May 09 we would like to submit a formal objection to the Tree Preservation order 17/09 that you have imposed on the tree on the North eastern boundary of 12 Park Road Fordingbridge, as shown on the plan contained in TPO 17/09. This objection, as requested, is submitted within the deadline of 17 Jun 09 as detailed in your letter.

Although authorities are not required to follow the advice given at Reference B, you have clearly stated that New Forest District Council abides by this guide. This guide, along with your own council Tree Preservation Orders leaflet, states that TPOs are made to protect trees for the enjoyment by all, and are usually made to protect trees that are known to be particularly under threat. We object to this TPO on the basis that this tree has neither amenity value nor is under threat - therefore imposing a TPO on it is against government guidance.

At Reference A you state that "the Order has been made in the interests of visual amenity of the area as the tree is considered to make a significant contribution to the surrounding landscape". We dispute that this tree is of amenity value for the following reasons (in accordance with Reference B Paragraph 3.2 - 3.5):

- The removal of this tree (not that this course of action has ever been muted by the owners) would not "have a significant impact on the local environment and its enjoyment by the public" he environment by the public because:
  - Public benefit cannot be derived from this tree, which is not fully visible from any public place. Reference B Paragraph 3.3 (1) states that the extent to which the trees can be seen by the general public will inform the LPA's assessment of whether its impact on the local environment is significant. If they cannot be seen, or are barely visible from a public place a TPO might only be justified in exceptional circumstance. In this case the tree is not fully visible from any public place i.e. from Alexandra Road, Park Road, Salisbury Road or Whitsbury Road. It is only partially visible when intrusively peering down the gap either side of our house and of number 12 Park Road, and can only be glimpsed (5%-10%, usually the top) from four other points between properties, again if

a member of the public was intrusively peering through a residents property (photos available on request). You have not specified or demonstrated "exceptional circumstances" in your justification for the TPO on the grounds of public benefit.

- The tree is not of intrinsic beauty.
  - The tree has never been properly managed and maintained and is not within keeping with the surroundings, making it an oversized and disproportionate contribution to the landscape.
  - The tree does not serve to screen an eyesore or future development.
  - The tree is not of a scarce variety.
  - The tree does not serve as an important wildlife habitat – there is a significant amount of vegetation in the residential area that provide equal habitats.
  - None of the immediate residents have declared that they consider the tree to be important to the landscape.
- Reference B Paragraph 3.3 (2) cites the need to consider Individual impact of the tree. In this case the tree has no value as a screen, is not rare and does not add to the value of a conservation area.
  - Reference B Paragraph 3.3 (3) cites the need to consider the wider impact of the tree. In this case the tree is particularly unsuitable in its surroundings – it is oversized, blocks the light in numerous gardens and drops poisonous debris into gardens in which animals and children play. There are a significant number of other trees in the area of more suitable size and in a managed condition.
  - Reference B Paragraph 3.4 suggests that it is unlikely to be expedient to make a TPO in respect of trees that are under good arboricultural management. You are fully aware that the owners of the tree and the adjoining neighbours have been attempting to bring the tree under good management by seeking advice from qualified tree surgeons as to the extent of pruning/down sizing that could be done to the tree whilst ensuring its survival and general appearance. The pure fact that the tree was not haphazardly pruned (which was wholly legal before the TPO was imposed) and that it was planned to be pruned by a qualified arboriculturalist demonstrates the intended good management to be employed with respect to this tree.

This objection is simply that the LPA's reasons for making the TPO within the regulation 3 notice, cannot be substantiated by them in accordance with the government guidance at Reference B, which the New Forest District Council claim to follow. Imposing a TPO in this case is unnecessary bureaucracy.

This TPO has not, as muted at Reference A been made for any other reason than that described above for which this objection is submitted and we hereby state that it is **not expedient in the interests of amenity to make a TPO on this tree.**

It is noted at Reference A that you have not made a TPO for the reason of protecting the tree because it is under threat. Therefore, at this time, we have not provided evidence to demonstrate that the tree is not under threat from us or our immediate neighbours however we are happy to supply copies of correspondence to support this statement if required and if the reasons for making the order were to be amended. We do not deny that we would like the tree pruned and properly managed in the future by a qualified tree surgeon, as agreed with our neighbours and the owner of the tree. Our reasons for wanting this is due to the excessive shading to our garden, the excessive poisonous debris that falls within our garden and the associated risk to our children and animals, and the fact that the tree is of a size that is out of proportion with the surroundings and is growing over one foot in radius/height per year. It is also of greater radius on the side facing our property than that of the owners (due to



unbalanced pruning by the tree owners of many years ago) and we would like to see the tree shaped correctly by a qualified tree surgeon, sympathetic to the tree - hence the reason for waiting over nine months to employ the correct person. The tree is not under threat from development plans/planning applications and it has not been subject to bad pruning. The confirmation of this TPO interferes with our rights to respect for our family life and home and restricts our rights and freedom.

**We request that you do not confirm the TPO without duly considering our objections and substantiating your assessment of the amenity value of the tree.**

Yours sincerely

Mr and Mrs James and Deborah Douglas