

APPEALS PANEL – 23 MARCH 2010

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 30/09, LAND CAP TERNAY AND SHALIMAR, LIME WALK, DIBDEN PURLIEU

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 Written representations from any supporters 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 30/09] relating to land of Cap Ternay and Shalimar, Lime Walk, Dibden Purlieu with, or without, amendment.

For Further Information Please Contact:

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Background Papers:

Attached Documents:

TPO 30/09

Published documents

APPENDIX 1

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Oak (Tag 0912)	Western boundary of Cap Ternay, Lime Walk, Dibden Purlieu. As shown on plan.
T2	Oak (Tag 0913)	Western boundary of Cap Ternay, Lime Walk, Dibden Purlieu. As shown on plan.
T3	Oak (Tag 0914)	Centrally within the rear garden of Shalimar, Lime Walk, Dibden Purlieu. As shown on plan.
T4	Oak (Twin stemmed. Tag 0915)	Northern boundary of Shalimar, Lime Walk, Dibden Purlieu. As shown on plan.
T5	Oak (Twin stemmed. Tag 0916)	Northern boundary of Shalimar, Lime Walk, Dibden Purlieu. As shown on plan.
T6	Hornbeam (Tag 0917)	Southern boundary of Shalimar, Lime Walk, Dibden Purlieu. As shown on plan.
T7	Hornbeam (Multi-stemmed. Tag 0925)	Southern boundary of Cap Ternay, Lime Walk, Dibden Purlieu. 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	Situation
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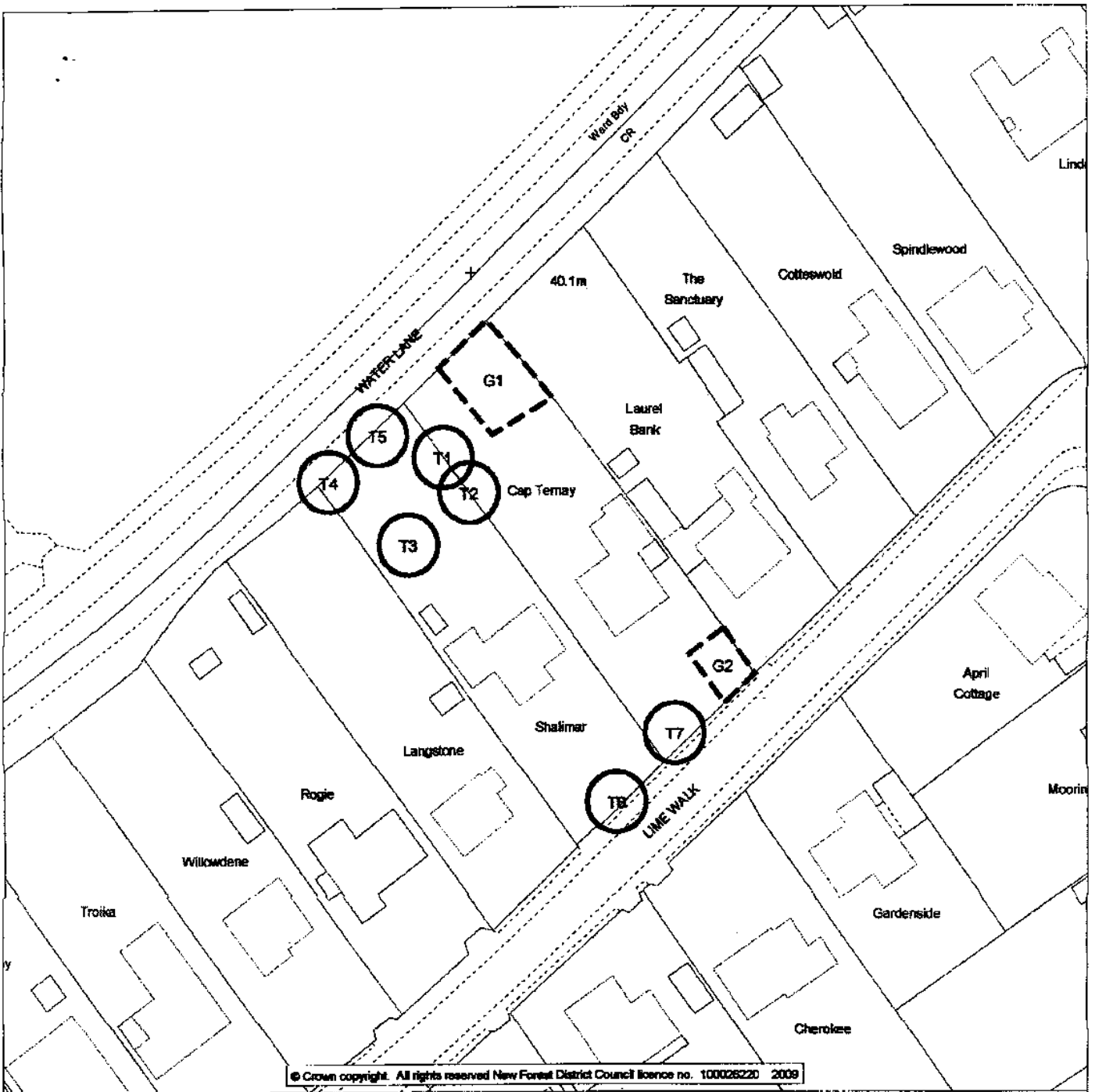
trees in the group)

G1	3 Oaks (Tagged 0918, 0919 and 0920)	Northern boundary of Cap Ternay, Lime Walk, Dibden Purlieu. As shown on plan.
G2	2 Limes and 1 Oak (Tagged 0922, 0923 and 0924)	Southern boundary of Cap Ternay, Lime Walk, Dibden Purlieu. As shown on plan

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: 30/09

Approximate Scale: 1:750

Date Printed: 01/10/09

Chris Elliott
 Head of Planning and Transportation
 New Forest District Council
 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

APPENDIX 2

OBJECTION TO TREE PRESERVATION ORDER NO. 30/09

LAND OF CAP TERNAY AND SHALIMAR, LIME WALK, DIBDEN PURLIEU, HAMPSHIRE

REPORT OF COUNCIL'S TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) 30/09 was made on 5 October 2009 as a replacement for TPO 23/09, which was revoked due to errors in the plotting of the trees covered.
- 1.2 The plan and first schedule for TPO 30/09 are attached as Appendix 1 to Report A. The Order currently protects individual trees and groups of trees sited within the curtilages Cap Ternay and Shalimar, Lime Walk, Dibden Purlieu. The TPO was made following a written application from Mrs Newcombe of Cap Ternay, Lime Walk requesting trees located on the boundary of the two properties were considered for protection.
- 1.3 The Council's Tree Officer inspected the trees and concluded that the trees along the boundary between the two properties made a positive contribution to the landscape of the immediate and surrounding area. In addition it was felt that due to the quality and amenity of other trees within both sites it would be expedient for further trees to be included within an Order.

2 THE TREES

- 2.1 The trees in question are predominantly mature specimen oak, hornbeam and lime trees, located within the front and rear gardens of both properties. They individually and collectively add to the sylvan character of the immediate area and as such, offer a high level of visual amenity to the area.
- 2.2 From ground level inspection the trees appear to be structurally sound and normally vigorous with an excess of 10 years safe useful life remaining.

3 THE OBJECTIONS

- 3.1 Six letters objecting to the making of the TPO have been received, three from Mr Cunningham, one from Mrs Cunningham of Shalimar, Lime Walk and two letters from Mr Sawle of Laurel Bank, Lime Walk (Appendix 3 of Report A). Responses to these letters were sent (Appendix 3 of Report A).

The grounds for objection include:

- The TPO has been made purely on perceived risk as a result of boundary disputes.
- Trees within the TPO are not under threat.
- The use of a TPO is a breach of the Human Rights Act.

- The scoring of the tree evaluation sheet suggests the trees do not justify protection.
- The TPO unfairly targets the homeowner
- The TPO prevents the ability to maintain the trees as seen fit.
- The trees are under good management.
- The trees have not been correctly assessed and would not meet the criteria for protection.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 A number of trees have been placed under threat. Following site meetings with Mr Cunningham it was established that it was the desired intention to fell oak trees located on the boundary with Cap Ternay in order to erect a boundary fence. This is clearly stated in the letter from Mr Cunningham to Mrs Newcombe. A copy can be found in Appendix 4 of Report A. As stated in paragraph 2.1 it is considered that both Tap Ternay and Shalimar hold a number of important mature trees within their grounds which offer a high level of amenity to the area. In the interest of expediency and to assure their future presence, these trees have been included within the TPO.
- 4.2 The use of the TEMPO tree evaluation was used to assess the trees subject of the original Tree Preservation Order (TPO 23/09). Since then this form is no longer in use and an alternative method is being looked into. TEMPO was not used to assess the merits of the trees subject of TPO 30/09. All the trees included within the TPO can be clearly seen from either Water Lane or Lime Walk and as such offer a high level of visual amenity and contribute to the overall setting of the area.
- 4.3 The trees covered by the TPO are in a generally good condition, in as much as they are healthy, appear normally vigorous - based on leaf size and shoot extension - and from a ground level inspection appear to be structurally sound. The TPO does not prevent the tree owners from maintaining their trees. However a Tree Work Application would have to be submitted and formal consent gained. There is no cost incurred by the applicant for this submission. Furthermore; free, impartial advice can be sought from the Authority's tree section as to the best way to manage the trees should the applicant wish to.

5 CONCLUSION

- 5.1 The trees are a feature of the area and are located along with others in the immediate area in a prominent position. After due consideration of the objection received, it is felt that the trees should remain the subject of the Tree Preservation Order.

6 RECOMMENDATION

- 6.1 It is recommended that TPO 30/09 is confirmed without amendment.

For Further Information Please Contact:

Andrew Douglas
Senior Arboricultural Officer
Tel: (023) 8028 5205
E-mail andrew.douglas@nfdc.gov.uk

Background Papers:

Tree Preservation Order No. 30/09

APPENDIX 3

Environmental Design

Manager: Neil Williamson

MR ALEXANDER T S CUNNINGHAM
SHALIMAR
LIME WALK
DIBDEN PURLIEU
SOUTHAMPTON
SO45 4RA

My Ref: TPO 30/09

17 November 2009

Dear Mr Cunningham

TPO 30/09

In response to your letter of objection to the making of TPO 30/09 dated 11th November 2009.

I have discussed the matter with Andrew Douglas, Senior Arboricultural Officer for NFDC, and can confirm the trees have been protected as it was felt that they were under threat from premature removal; specifically trees T1 and T2. In such circumstances it is also prudent to assess other trees within the area affected by the Order, which in this case has indeed been done.

I understand you are aware that we convene a Tree Preservation Appeals Panel when objections - which have been received within the allotted time frames - cannot be addressed. The purpose of this panel is to assess the merit, based principally on the trees amenity, of the Order. It is also to hear any reasons why the Order should or should not be confirmed.

I suggest that this appeal process is the appropriate mechanism for considering your concerns about the making of this particular order.

Yours sincerely

Chris Elliott
Head of Planning & Transportation

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Shalimar - Lime Walk - Dibden Purlieu – Southampton - SO45 4RA

Mr. C. Elliott
Head of Planning & Transportation
New Forest District Council
Appletree Court
Lyndhurst



9th November 2009

Dear Mr Elliott /Mr A Douglas.

Re. TPOs 23/09 & 30/09. I wish to appeal against these orders. I am aware TPO 23/09 has been revoked but they are linked and I would like to make clear the sequence of events re. the above, to you and the appeal panel.

1. We have lived at Shalimar, Lime Walk since 1975, neighbours with Constance Newcombe Brian & Shaun, namely her 2 sons. Brian is now in Australia & Shaun is wheelchair dependent, but lives locally. Constance has become more housebound over recent years & has not been able to go out in her garden. My husband has re fixed fence panels for her that have blown down in bad weather. She would have been unaware of the state of her fence at the top of the garden, this being the reason we wanted to speak with her. Our various attempts were rejected, although it was mid summer, daylight, & from her window she can see everyone who walks up the drive We went to see Constance but she choose not to answer the door, she does not respond to a telephone call so we wrote a letter to her, & said we would wait for a reply from her. A few weeks later Shaun telephoned us, could he come & see us re the fence, on visiting he understood the problem & said he would speak with mum, she loves trees but one looks like a dead stick, the others are heavily covered in ivy. He was surprised how they had grown & were straddling the boundary.

2. Following the above explanation this is what followed.

- a) Arriving home Sat pm to find card in the letter box stating recorded delivery to be collected
- b) Within the hour 2 neighbours from properties either side of Shalimar & Capternay came with TPO's they had received stating the trees in our garden had TPO's put on them. WHY?
- c) We collected our copy Monday am & telephoned NFDC to try & get an explanation, as the form said we could do. We are told only the officer who made the order can do this, & he is not here today. We said we were shocked at receiving this order & would like to discuss this today. Finally they agreed to see us. We met Mr Luddington & a lady member off staff, at 3pm, they were courteous but said they could tell us nothing they had no access to the folder only the officer who made the order could do this (how absurd, what would have happened if he had been involved in a road traffic accident and was hospitalized?) We did note what had been documented in the file concerning that telephone call when we visited NFDC offices.
- d) The next morning Mr Douglas telephoned as to what was our concern, I told him we were 'shocked' at receiving this, & asked the reason a TPO had been issued, after a long spiel he stated there were not many trees in Cap Ternay worth a TPO. Why was that relevant to us? He arranged to visit us that morning in his busy schedule, but made it very clear he did not want any aggressive behaviour from Mr. Cunningham. The reason this was said is now very clear to us, having seen the copy of the letter, which we sent to Constance Newcombe & which she had embellished with many untruths & false accusations about us & our actions, & forwarded to NFDC, & whatever verbal statements she has made when speaking with your officer.
- e) **His judgement was highly coloured before he met us.**
- f) We went into our garden & immediately he said I put my hands up I have got this wrong, why was this? May be all done in haste on information from some other person which was incorrect. He was going to revoke this TPO & make a new one and would certainly include other trees in our garden, this response does not seem appropriate remembering the 3 trees in question on the boundary between the 2 properties were the only consideration, & we would never have had any work done before hearing from Constance Newcombe & her comments as stated in the letter to her. Never was there or would there have been any expedient action. His attitude was abrasive & self important as to what he could do, & he told us the lady next door was disabled & defenceless & we were strong and healthy. After his tour in the back garden he went to the front of the house decided he would include another tree.
- g) The other comments re the 1st & 2nd TPOs you have already received from us.

Yours sincerely

Marie Cunningham

Shalimar – Lime Walk – Dibden Purlieu – Southampton – SO45 4RA

12th November 2009

Mr. C. Elliott
Head of Planning & Transportation
Appletree Court
Lyndhurst

Dear Mr. Elliott

Enclosed is a copy of my appeal against TPO 30/09, which you authorised and signed on 30th September 2009. I am sending my formal appeal as you requested to Mr. Douglas, but I would be grateful if you would take a second look at the order for two reasons.

In signing this order you stated that you had carefully observed the Human Rights Act, that the order was necessary in the public interest and that the action of the NFDC was proportionate to the overall aim, which implies that you had carefully considered the contents of the order you signed. As the original order had to be revoked this is understandable, but when you read the content of my appeal you will see that I consider the assessment criteria used to justify the order is open to serious doubt (see section 1). Hence the reason I ask you should again look at the content of the order.

Also, Mr. Douglas wrote to us on 14th August (copy enclosed) stating “that trees within our garden were under threat from premature removal”. Having spoken to him by telephone on 3rd November he acknowledged that the trees he had in mind were those straddling the boundary between ourselves and Cap Terney and committed himself to putting this in writing to me. You will see from my appeal in section 3 that we consider this is misrepresentation affecting the integrity of character of my wife and myself. For us to summarily take these trees down would be an invasion of her property and something we would not consider without there being agreement. Therefore I ask you that on behalf of the NFDC this misrepresentation is quickly withdrawn. To help make life a little easier I am enclosing a copy of our letter to Mrs. Newcombe on June of this year.

I trust you will be able to bring some sanity to this rather tangled situation.

Yours sincerely

Alex Cunningham



Reasons for Annulling TPO 30/09 of 5th October 2009

Introduction

TPO 30/9 has to be considered in relation to TPO23/09 since the compilation of the earlier TPO in June 2009 was flawed and had to be discarded within 5 days of issue. However, TPO 30/09 is based upon the matters arising from TPO 23/09 and hence the files relating to this TPO must be read in conjunction with those of 30/09 to get the full picture. Examination of file on TPO 30/9 explains that the new TPO results from errors in the positioning of trees in TPO 23/09 and gives no more than the standard blurb of what you can do and what you cannot do and also listing the trees that are in the new order and their position. However trees situated in front of the two houses are now added while two trees in Cap Ternay house are removed, one close to my adjoining boundary and one on the opposite boundary of Cap Ternay, but no scoring has been undertaken and I can only assume that the scores which would pertain to 30/09 are the same as in 23/09.

Also, of concern to us is the way in an 84 year old woman has been able to persuade the NFDC into issuing a TPO based on what appeared to us to be an emotionally verbal response (see TPO file 23/09) and followed up by what was probably a fairly extended visit by your senior arboriculturist, who appears to us to have given weight to her social and mobility problems rather than assessing the trees on their merits. The result was a bizarre selection of trees included in the TPO to enable it to have viability, an example being the inclusion of some trees located on the edge of Water Lane (see section 2). Our reasons for appealing against the TPO are set out below. In the latter part of section 4 we discuss how the situation could be amicably resolved without the need for a TPO and ask the Appeal Panel to give careful consideration to the suggested way forward.

1. Assessment Criteria and Scoring Detail

Examination of the 23/09 file by me and Mrs. Cunningham on 4th November showed that the scoring, used to justify the order is open to serious doubt.

As you are aware the procedure has 3 strands, namely Amenity, Expediency Assessment and Decision Guide. Amenity had 4 sub groups, *suitability* scored at 3, *longevity* at 1, *public visibility* at 3 and providing the foregoing three have accumulated 7 or more points *other factors* scored at 1 making a gross total of 8 points. For the scoring to continue under Expediency Assessment a total of 9 points must have been achieved, to qualify. As this total is only 8 we should go to the final criteria, which is Decision Guide. Under the guide lines for this a scoring of between 7 and 10 does not merit a TPO. However, your official persisted (I consider wrongly) in adding 5 points under Expediency Assessment indicating that there was a known threat bringing the total to 13. A point score of 11 to 13 thereby 'justifying' a TPO. As we had asked Mrs. Newcombe to consider the trees coming down a score of 2 (perceived threat) which I regard as adequate, would have given a total score of 10. Under the NFDC criteria scores of 7 to 10 do not merit a TPO.

2. Unsatisfactory Selection in Tree-line adjoining Water Lane

This affects trees T4 & T5. The order has been made to protect the visual amenity of the area as they are considered to make a substantial contribution to the surrounding landscape. These two trees are part of a line mainly of oaks stretching from the junction with North Road to the house "Marlins" in an easterly direction for some 400 metres. If this visual amenity needs protecting then the whole line of trees ought to be made the subject of a TPO, rather than the 20 metres or so envisaged in the order and, encompassing within that 20 metres stretch, the 2 trees of that line in my garden (T4 & T5).

3. Misconception of my Integrity re Care of Trees

Firstly considering TPO 23/09 on which the present TPO (30/09) is based. In a letter dated 14th August 2009 ref. ADOU/23/09 the NFDC states "trees within your garden were under threat from premature removal". In a conversation with your appointed officer on 3rd November 09 this person accepted he had no proof that trees T6, T7 & T8 were under threat of removal, but alleged that trees T3, T4 & T5 were under threat, because he had seen a letter we wrote to our neighbour. In fact the letter asked her to *consider* the cutting down of the trees to facilitate an orderly erection of the boundary fence between our two properties. The existing fence is attached across to our wood shed and both the wood shed and fencing are in a very poor state. This idea that we would arbitrarily cut down trees T3, T4 & T5 in order TPO23/09 constitutes a misrepresentation by the NFDC which impugns the integrity of myself and my wife. We would not enter Cap Ternay to cut down trees in that garden nor would we cut down trees on the fence line without securing an agreed way forward. It is important that this misrepresentation is withdrawn (I will be writing to Mr. Elliott before 14th November to ask for an apology and withdrawal) as this has become the received wisdom and it is now accepted by Brenda Smith, the local councillor, that I am "trigger happy" and no trees in my garden are safe from the woodman's axe. Therefore all the trees in my garden are now being made subject to a TPO (T3, T4, T5, & T6), paraphrasing the substance of her visit to me on 20th October 09. I am no more likely than anyone else to cut a tree down and if there is such a threat to trees in the area then your official ought to be investigating all the trees, which he claims he has not time to do. His argument concerning us is ridiculous. Excluded from this list above are T1 & T2. T2 most definitely straddles the boundary between the two properties and T1 is more likely to be just inside the garden of Cap Ternay I have no interest in groups G1 & G2 and see no merit in T7.

4. Lack of Requirement for TPO 30/09

Examining the files it we have discovered that there is a points system to determine how likely trees are to fall within the scope of a TPO. As we have now established that there is no threat of premature removal to trees T3 to T6 in Shalimar, as Mrs Newcombe loves her trees and never prunes or enhances them in this way, there is no threat to T7 or G1 or G2 and providing NFDC withdraws its misrepresentation on our integrity there will be

an insufficient number of points to trigger a TPO under your own criteria. Looking at the situation in this light provides the possibility an amicable solution to the installation and location of a boundary fence without the need for a TPO. From the correspondence on TPO 23/09 dated 26th June Mrs Newcombe did give copy of our letter containing some untrue comments by her regarding ourselves to your official when he visited in mid June. Also when your official visited us on 30th June he assured us that a fence could be installed without the need for taking the trees down. Since that visit I have consulted with New Forest Fencing and they are able to install an approximately 13 metre length of 6 foot high close board fencing beginning 1.8 metres from the back fence on Water Lane to 1.8 metres beyond the trunk of tree T2. If, when your official visited Mrs Newcombe in mid June, he had taken the trouble to then come and see us and explain with his knowledge of these things how the problems can be overcome then this could have been resolved in a friendly way (obviously at that stage he had seen our letter). I am including a copy of the letter we put through her letter box after two attempts to speak to Mrs Newcombe personally and I do not think its tone is unfriendly. Moreover, we did not say we were going to cut trees down, we asked her to consider this option and made it clear we were waiting to hear from her. The offer to pay for this fence by us still stands within the criteria set out above.

Conclusions

1. We would ask you to reconsider the scoring of the trees (see section 1 above) in light of fact it does not meet the criteria of the NFDC and, if you consider it does, then I need an adequate explanation oh how that decision has been reached.
2. It is important for your official to explain which trees are under threat and his evidence for coming to that conclusion and why in those circumstances he has added 4 other trees in my garden to the TPO.
3. This communication is my written appeal against TPO 30/09.

12th November 2009.

Shalimar : Lime Walk : Dibden Purlieu : Southampton : SO45 4RA

Telephone

Dear Constance

As you are aware we would like to have come and talked with you on Saturday 23rd May or as we then suggested, with Shaun on your behalf since we understand you did not feel up to discussing the fence and related issues with us then.

We tried again to make contact with you on Tuesday 26th May knowing that Shaun had been to see you following our Saturday 23rd May request, but received no response. Hence we are now writing to you in the hope that this line of contact might be easier for you.

Our wood shed at the top Water Lane end of our garden is in need of serious repair, ie the back is rotting away and the roof keeps being damaged by falling branches, often dead, from the trees above.

The fence between your garden and ours at the Water Lane end is now almost non-existent: one panel surviving at the top end and the next secure panel, second down from the large tree. This whole area will be unfenced when the wood shed is taken down in the very near future

In view of this, we consider this is the time to have the three trees astride the boundary taken down and have a new 6 foot high fence (same height as existing panels) from the good panel at the Water Lane end to this second panel close to the large oak tree.

Recalling that some time ago you were willing for one of these trees to be taken down provided we paid the cost, we assume that providing we pay for the trees to be removed and the new fencing erected which we will do, this proposal should not be a problem.

We look forward to hearing from you soon.

Yours sincerely

Marie and Alex

Planning & Transportation

Head of Service: Chris Elliott

Environmental Design

Manager: Neil Williamson

((2;C,1))

MR ALEXANDER T S CUNNINGHAM
SHALIMAR
LIME WALK
DIBDEN PURLIEU
SOUTHAMPTON
SO45 4RA

My Ref: ADOU/23/09

14 August 2009

Dear Mr Cunningham

RE: TREE PRESERVATION ORDER 23/09

I write in response to your and your wife's letters dated the 4th August 2009. While I understand that you both have a number of issues you wish to have addressed, I am not at this time proposing to give extensive answers. The reason for this is two fold. Firstly, at our meeting on the 30th June 2009, held at your home, we discussed a number of the issues raised in these letters. More importantly, as we discussed at that meeting, and as both myself and Mr Luddington agreed with you, we are proposing to revoke this current Tree Preservation Order (23/09) due to its inaccuracy, and make a completely new replacement TPO.

In your letter you question what is visual amenity. Visual amenity is an established view which is attractive, desirable and viewed in part or whole by the public from public vantage points. The trees covered by the current TPO individually and together add to the overall visual amenity of the area.

→ You also enquire why the trees were selected for protecting. There are two reasons, which we covered at our meeting. One, trees within your garden were under threat from premature removal and two, other trees within your grounds justified inclusion due to their prominence.

With regards to second hand information, may I suggest that should Mrs Newcomb wish to object to the TPO, she is perfectly entitled to do so. To date however I have only received correspondence from Mrs Newcomb supporting the TPO.

I have today left a message on your telephone answer machine wanting to arrange another meeting at your property, as agreed to re-assess the trees and accurately plot them. As I am in the immediate area on Thursday the 20th August I was hoping that a afternoon visit could be arranged. Please let me know if this is convenient for yourself.

I look forward to hearing from you.

Yours sincerely

Andrew Douglas
Senior Arboricultural Officer

Tel: 023 8028 5205
Fax: (023) 8028 5223
Email: andrew.douglas@nfdc.gov.uk



Disability Helpline
01425 656096

Minicom/Text: 023 8028 5416

Appletree Court, Beaulieu Road,
Lyndhurst, The New Forest SO43 7PA

T: 023 8028 5000
DX 123010 Lyndhurst 2
www.newforest.gov.uk

Mr F W Sawle
Laurel Bank
Lime Walk
Dibden Pulieu
Hythe, Southampton
SO45 4RA

Our Ref: CJE/TPO 23+30/9
Your Ref:

17 December 2009

Dear Mr Sawle

TREE PRESERVATION ORDERS 23/09 AND 30/09

I refer to your letter dated 29th November 2009 and I apologise for the delay in replying.

As you may be aware there is an appeal mechanism for anyone who is dissatisfied with a Tree Preservation Order made by New Forest District Council. This requires that when objections are received to a Preservation Order an Appeals Panel of Councillors is convened to hear the case. Any objectors to the order are allowed to address this Panel and they will make the final decision as to whether or not a Tree Preservation Order is confirmed. In this case I understand that the panel is likely to be convened in February 2010 as it must take place within 6 months of the date of the making of the order.

I am briefed that the trees, the subject of the order, do meet the amenity criteria which are required and that there is or was evidence of a threat to some of the trees which are comprised within it. The points you make in your letter are valid objections and the process for dealing with them will be through the Appeal Panel hearing which I have described. The elected Councillors who sit on this Panel will then decide whether or not to confirm the Tree Preservation Orders having heard all of the relevant arguments. You will be sent further details of the Appeal Panel at the appropriate time.

I regret that I cannot assist you further at the present time.

Yours sincerely,

Chris Elliott
Head of Planning and Transportation

Tel: 023 8028 5310
Fax: 023 8028 5223
Email: chris.elliott@nfdc.gov.uk

6 months - early April amenity of the neighbors.

LAUREL BANK, LIME WALK, DIBDEN PURLIEU, HYTHE,
SOUTHAMPTON. SO45 4RA

29th November 2009.

FOR THE ATTENTION OF MR. CHRIS ELLIOTT

Your ref ADOU/MAC/23/09 & 30/09

Dear Sir,

Town & Country Planning (Trees) Regulations 1999 – Tree Preservation Orders No. 30/09 and 23/09

Land of Cap Ternay and Shalimar, Lime Walk, Dibden Purlieu

I refer to your letter of the 17th instant, and apologise for the delay in replying due to my presence in France.

May I remind you that the points that I made in my letter of objections were summarised as follows:-

1. That the allegations made by Mrs. Newcomb amount to an allegation of Harassment, which should be dealt with under the most relevant and appropriate legislation, and not by the use of a TPO. It should be remembered that in her notes Mrs Newcomb records the fact that the advice from the Tree Team was, "Don't be bullied" "Remember they are YOUR TREES".
2. That Mr. Douglas failed to take full account of the general principles of Natural Justice in carrying out his investigations
3. That the Council is under an obligation to ensure that the most relevant and appropriate advice is given and that any action taken by it, is also taken under the most relevant and appropriate legislation. I would suggest that to fail to do so breaches its obligations under the Human Rights Act.
4. That the use of the TPO in the circumstances of this case is inappropriate and in breach of the Human Rights Act.
5. That the scoring in the Council's own Tree Evaluation Data Survey reveals that this case does not merit a TPO and that therefore the TPO should be revoked forthwith.
6. That the group of trees is not within the meaning of the Act.
7. That there is no evidence using the balance of probabilities that there is ANY risk to the trees that the TPO seeks to protect.

I am sure that upon reflection you will agree that your letter fails entirely to deal with the points raised in my letter of objection and that the points made are able to be dealt with you.

In the circumstances, I would be grateful if you would let me know your comments in relation to the individual points raised.

Yours faithfully,

F.W. Sawle, Esq.,

LAUREL BANK, LIME WALK, DIBDEN PURLIEU, HYTHE,
SOUTHAMPTON, SO45 4RA

11th November 2009.

FOR THE ATTENTION OF MR. CHRIS ELLIOTT

Your ref ADOU/MAC/23/09 & 30/09

Dear Sir,

Town & Country Planning (Trees) Regulations 1999 – Tree Preservation Order No. 30/09

Land of Cap Ternay and Shalimar, Lime Walk, Dibden Purlieu

I am writing to you in connection with the above matter and further to my letter to you relating to TPO 23/09.

I note that your letter of the 5th October informs me that I can tell you if I object or wish to make comment in relation to this Tree Preservation Order.

I wish to give you notice that I wish to object to the making of this TPO, as I did with regard to the previous TPO 23/09.

I would refer you to the contents of my letter objecting to the making of TPO 23/09, and invite you to take the contents of that letter into account in relation to my objection to that TPO and also this TPO.

I note from your file in relation to TPO 23/09 that Mrs Newcomb wrote to your Arboriculturist asking for "a visit to inspect" her "beautiful trees", "perhaps with a view to a TPO on them."

I was informed by Mrs Newcomb's son, Shaun that his mother had simply sought advice and had not asked for a TPO order. The letter itself, however, does not specifically ask for a TPO to be made, but requests for a visit to inspect her beautiful trees perhaps with a view to a TPO on them.

The letter clearly refers to Mr & Mrs Cunningham harassing her over trees on the boundary between their respective gardens. This clearly indicates that the beautiful trees she sought advice about were the three trees T3, T4 & T5 referred to in TPO 23/09.

When Mr Douglas called to discuss this matter with my wife and I, he made it clear that the Cunningham's were threatening Mrs Newcomb and that the trees were in immediate danger. He justified the making of the TPO entirely on this "perceived risk".

I would draw attention to the fact that in her letter, Mrs. Newcomb does not say that there was any risk to her trees being cut down by the Cunningham's'.

Her letter talks about,

1. *"the worrying demands of her next door neighbours",*
2. *that she was "being harassed by these people",*
3. *that they were "coming round without warning",*
4. *they were, "knocking loudly at 7 pm",*
5. *"Upsetting my elderly dog",*
6. *"Alarming me".*
7. *and, finally, that she had not answered the door to them, as she "felt intimidated, & did not feel well enough to be bullied by the two of them."*

I wish to make it quite clear as I did at the time, to Mr. Douglas that these allegations in my view are completely and utterly without any foundation, and are quite extraordinarily libellous.

Mr & Mrs Cunningham are very nice people who any ordinary person would be only too pleased to have as neighbours. Both have served the local community in various ways and can only be described as caring and compassionate Neighbours who are held in high esteem.

They are most definitely not the characters that Mrs. Newcomb paints them to be.

It does seem that the opinion of those making judgments has been completely coloured by the statements and writings of Mrs. Newcomb, and amounts to what can only be described as a unwarranted, and unjustifiable continuation of a slur on Mr & Mrs Cunningham.

I note from the file that Mrs. Newcomb, having already spoken to the Tree Team, who told her, **"Don't be bullied, they are your trees"** wrote the letter referred to above and then asked for the Tree Team to call upon her as she had written the letter in a hurry and wanted to talk about it.

I can only conclude that at this meeting with Mr. Douglas, Mrs Newcomb must have made various and serious allegations against Mr & Mrs Cunningham and my wife and I, as issues not raised in her letter were attributed to both neighbouring families, when Mr Douglas called to see us.

In calling for and having had this additional meeting, she has taken the opportunity to colour the situation and gain the sympathy of Mr. Douglas in what is clearly a situation which relates to her disputes over the boundary. Mr Douglas told us that he knew of the dispute concerning the

boundary. It is clear from my previous letter, that by putting TPO's on the trees on or near the boundaries, Mr Douglas clearly took account of the boundary dispute issue. Mr Douglas clearly

does not know that the dispute over the boundary arose before I purchased the property in 1984, but was resolved some 10 years ago.

Mr Douglas also made it clear to us that in making the TPO's he had taken account of the fact that Mrs Newcomb was elderly, in poor health and unable to look after her property and garden.

I would suggest that it is outside of the Town and Country Planning (Trees) Regulations to take account of boundary disputes, age and well being, in making any decisions regarding Tree Preservations Orders.

I would suggest that if Mrs Newcomb had any complaint concerning being harassed by her neighbours, which she heavily relies upon both verbally and in writing, (as evidenced by her letter and the notes she made on the letter to her from Mr & Mrs Cunningham) then the appropriate legislation for her to deal with those complaints is the relevant Protection Against Harassment Act and NOT the inappropriate use of the Tree Preservation Order.

I would suggest that the Council needs to closely examine the evidence and facts and consider what is the most relevant act to deal with Mrs Newcomb's allegations, which in this case is clearly harassment, and that any use of a power under a different act, may in itself amount to a breach of the Human Rights Act in that it may not be "*proportionate to the overall aim.*" The certificate signed by Mr. Williamson needs to be considered in this respect.

In my previous letter, I indicated that Mr. Douglas has agreed that he has made a terrible mistake and it was his intention to have the order revoked. I note that the reason for the revocation of TPO no 23/09 is "errors in the positioning of the trees have come to light which makes the order invalid".

I have to say that it is disappointing and worrying that such basic errors were made and that the TPO was made without any check to make sure that they were valid. I have to say that in my mind it does not give me any confidence that no other errors have been made, nor does the fact that the TPO orders have been signed by two different officers. Had the second order been signed by the same officer, Mr Williamson, perhaps questions as to what had been wrong with the first order, and whether the second one was correct, may have been asked.

In this respect, I note the Tree Evaluation Survey Data Sheet dated 25 June. The condition and suitability score shows the trees to be "fair". The longevity score shows the trees as just suitable. The Relative public visibility and suitability for TPO is "just suitable", and the remaining redeeming factors score is 1 – trees with none of the above additional redeeming features.

The scoring marking appears in my view to fall in line with what Mr. Douglas said when he visited me, i.e. "*I don't know what you are worried about, Mrs Newcomb has very little in her garden worth putting Tree Preservation Orders on.*"

The resultant total score is therefore 8, which eliminates the Expediency Assessment at Part 2. As a result the Decision Guide at Part 3 indicates that this case does not merit a TPO.

You will recall earlier in this letter, that I referred to Mr. Douglas referring to a “perceived risk”. Using his own words, and assuming that the Expediency Assessment at Part 2 was relevant, then the

score would be 2, resulting in a total score of 10, which once again based on the Decision Guide at Part 3 indicates that this case would not merit a TPO.

I would also draw attention to the fact that in the original TPO, Mr Douglas sought to have a TPO placed on an Oak Tree T3, which has now been withdrawn, as he accepts that it is not suitable, and also on a Silver Birch T1, which also has been withdrawn. Why were they included in the first case? It does seem as if it was a knee jerk reaction to the situation, and not what should have been a carefully considered and professional decision.

The New order continues to relate to trees in the Cunningham’s garden, where there is no threat to the trees whatsoever, and would definitely, fail part 2 assessment for a TPO. The remaining trees are all in Mrs. Newcomb’s garden which again would fail part 2 assessment.

The New order refers to groups of Trees. The relevant trees, however, have been identified and are tagged accordingly. Why therefore, have they not marked on the plan individually? I do not believe that this is a “group of trees” within the meaning of the Act.

If the panel accept that Mrs Newcomb did ask *“for advice with perhaps a view to a TPO”*, then any such order should only relate to trees within the garden of Cap Ternay and should be subject to a full and proper assessment in line with the Councils’ own Tree Evaluation Survey and Data procedures.

In conclusion therefore, my objections in relation to the making of this current TPO can be summarised as follows:-

1. That the allegations made by Mrs. Newcomb amount to an allegation of Harassment, which should be dealt with under the most relevant and appropriate legislation, and not by the use of a TPO. It should be remembered that in her notes Mrs Newcomb records the fact that the advice from the Tree Team was, *“Don’t be bullied” “Remember they are YOUR TREES”*.
2. That Mr. Douglas failed to take full account of the general principles of Natural Justice in carrying out his investigations
3. That the Council is under an obligation to ensure that the most relevant and appropriate advice is given and that any action taken by it, is also taken under the most relevant and appropriate legislation. I would suggest that to fail to do so breaches its obligations under the Human Rights Act.
4. That the use of the TPO in the circumstances of this case is inappropriate and in breach of the Human Rights Act.
5. That the scoring in the Council’s own Tree Evaluation Data Survey reveals that this case does not merit a TPO and that therefore the TPO should be revoked forthwith.
6. That the group of trees is not within the meaning of the Act.
7. That there is no evidence using the balance of probabilities that there is ANY risk to the trees that the TPO seeks to protect.

If a decision is made that the TPO cannot be revoked, then I would ask that the matter be referred to an Appeals Panel, so that I can make further representations.

Yours faithfully,

F.W. Sawle

New Forest District Council,

Appletree Court,

Beaulieu Road,

Lyndhurst.

cc. Mr Andrew Douglas.

APPENDIX 4

Shalimar : Lime Walk : Dibden Purlieu : Southampton : SO45 4RA

Telephone

Dear Constance

As you are aware we would like to have come and talked with you on Saturday 23rd May or as we then suggested, with Shaun on your behalf since we understand you did not feel up to discussing the fence and related issues with us then.

We tried again to make contact with you on Tuesday 26th May knowing that Shaun had been to see you following our Saturday 23rd May request, but received no response. Hence we are now writing to you in the hope that this line of contact might be easier for you.

Our wood shed at the top Water Lane end of our garden is in need of serious repair, ie the back is rotting away and the roof keeps being damaged by falling branches, often dead, from the trees above.

The fence between your garden and ours at the Water Lane end is now almost non-existent: one panel surviving at the top end and the next secure panel, second down from the large tree. This whole area will be unfenced when the wood shed is taken down in the very near future

In view of this, we consider this is the time to have the three trees astride the boundary taken down and have a new 6 foot high fence (same height as existing panels) from the good panel at the Water Lane end to this second panel close to the large oak tree.

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We look forward to hearing from you soon.

Yours sincerely

Marie and Alex