

## APPEALS PANEL – 2 SEPTEMBER 2010

### **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 11/10, LAND OF 305 SALISBURY ROAD, TOTTON, SO40 3LZ.**

#### **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 11/10 relating to land of 305 Salisbury Road, Totton with, or without, amendment.

**For Further Information Please Contact:**

Jan Debnam  
Committee Administrator  
Tel: (023) 8028 5389  
E-mail: [jan.debnam@nfdc.gov.uk](mailto: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](mailto:grainne.orourke@nfdc.gov.uk)

**Background Papers:**

Attached Documents:  
TPO 11/10  
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	Adjacent to the western boundary of 305 Salisbury Road, Totton. 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: 11/10

Approximate Scale: 1:750

Date Printed: 30/04/10

Chris Elliott  
 Head of Planning and Transportation  
 New Forest District Council  
 Appletree Court  
 Lyndhurst  
 SO43 7PA

### 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



**New Forest**  
 DISTRICT COUNCIL

AN AUTHORISED SIGNATURE

# **APPENDIX 2**

## **OBJECTION TO TREE PRESERVATION ORDER NO 11/10**

**Land of 305 Salisbury Road, Totton**

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

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

- 1.1 Tree Preservation Order (TPO) 11/10 was served on 5 May 2010 and protects a mature oak tree (T1) sited within the rear garden of 305 Salisbury Road, Totton. A copy of the TPO site plan and first schedule are attached in Appendix 1 to Report B.
- 1.2 The TPO was made following a telephone conversation with a Mrs Randall, the owner of 305 Salisbury Road, Totton on 22 May 2010. Mrs Randall requested that the TPO should be made as an adjacent property in Shakespeare Drive was on the market for sale and she was concerned that future pressure for development from any perspective purchaser of that site may harm the tree.
- 1.3 The Council's Tree Officer inspected the oak tree and concluded that it made a positive contribution to the landscape of the immediate and surrounding area.
- 1.4 One letter objecting to the making of the TPO was received on the 17 June 2010 from a Mr and Mrs Percival of 303 Salisbury Road, Totton. A copy of this letter is attached as Appendix 3 to Report B.

#### **2 THE TREE**

- 2.1 The tree in question is an oak tree, T1, located within the rear garden of 305 Salisbury Road, Totton. At the time of inspection the tree appeared in a good physiological and structural condition with no major defects to note from ground level. The tree has in excess of 60 years safe useful life expectancy.
- 2.2 The oak tree, T1, is positioned some 27m away from 303 Salisbury Road, Totton. The tree offers a good level of visual amenity to the immediate and surrounding areas, as it can be seen from a number of public vantage points outside of the site.

#### **3 THE OBJECTIONS**

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

The grounds for objection include:

- The tree blocks afternoon sun from the garden.
- Issues with leaf fall.
- Concerns over the tree's management and safety.
- The tree is not suited to its position.

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

- 4.1 The oak tree is situated to the east of the objector's rear garden and therefore blocks late evening sunlight only. This has been the case for a number of years and can only be expected when living in proximity to such a tree.
- 4.2 The oak tree is deciduous and therefore it will drop leaves during autumn months. This is a seasonal issue and can be expected when living near to trees. The removal of fallen leaf litter is considered part of one's property maintenance and would not merit any form of tree works to alleviate it.
- 4.3 The oak tree was inspected from ground level by the Council's Tree Officer before the TPO was served. At the time of that inspection the oak appeared in a good overall condition with no major defects that would question its safety.
- 4.4 The oak tree is approx 27m away from the nearest dwelling within the vicinity. This is an entirely acceptable separation between a dwelling and a mature oak to co-exist safely.

#### **5 CONCLUSION**

- 5.1 TPO 11/10 protects a mature oak tree, T1, within the rear garden of 305 Salisbury Road, Totton.
- 5.2 The Order was made following concerns raised by the owner of the tree regarding future pressure from prospective purchasers of an adjacent dwelling in Shakespeare Drive, and potential development.
- 5.3 Following an initial site visit by the Council's Tree Officer, it was evident that the oak tree offered a good level of public amenity to the immediate and surrounding area.
- 5.4 At the time of inspection, the oak tree T1 appeared in a good physiological and structural condition with no major defects being noted from ground level.
- 5.5 The tree can be seen from a number of public vantage points and contributes positively to the immediate and surrounding area.

#### **6 RECOMMENDATION**

- 6.1 It is recommended that TPO 11/10 is confirmed without modification.

#### **For Further Information Please Contact:**

Andrew Douglas  
Senior Arboricultural Officer  
Tel: (023) 8028 5328  
E-mail [andrew.luddington@nfdc.gov.uk](mailto:andrew.luddington@nfdc.gov.uk)

#### **Background Papers:**

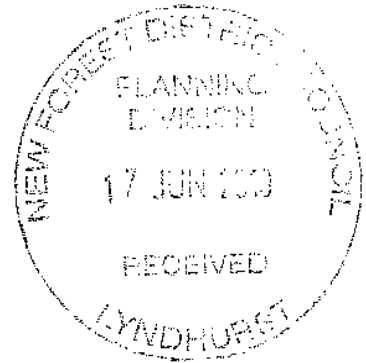
Tree Preservation Order No. 11/10

# **APPENDIX 3**

COPY

303 Salisbury  
Road  
Totton  
Southampton  
SO40 3LZ  
15/06/10

Tree preservation  
order no 10/11  
Land 305 Salisbury  
Road Totton.



Dear Sir or Madam.

We are writing  
to object to the tree preservation  
order on the tree above.

The reasons being.

- 1 The tree blocks the afternoon sun from our garden for several hours.
- 2 The amount of foliage which falls in our garden causes the grass to die.
- 3 As we are aware the tree is not cared for, and should it fall through disease it could damage our property.

4 If and when new neighbours purchase the property I am sure they will not want most of their garden shaded by the tree, and we will be going through this process again to lift the order.

5 Where the garden of 305 is unkept under the tree the brambles grow ~~through~~ our hedge and have damaged the trampoline and have scratched the children many times, despite constant pruning from us. In the 14 years we have lived next door the tree has gradually taken more and more light from our garden.

The tree is beautiful but is not suited to its position. Such as wood or a field

it is surrounded by houses  
and as it gets older it is  
going to cause problems  
for the houses around it.

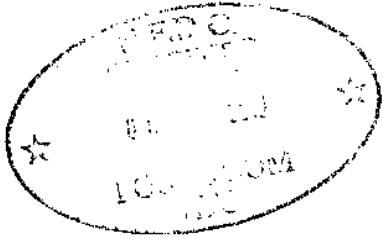
Yours Faithfully

IAN PERCIVAL

SUSAN PERCIVAL



# **APPENDIX 4**



Lea Hurst  
305 Salisbury Road  
Totton  
SO40 3LZ

5/8/2010

**Tree Preservation Order No. 11/10  
Land of Lea Hurst, 305 Salisbury Road, Totton**

**Statement by Mrs. Edith Randall**

I am the owner and occupier of the house and garden at 305 Salisbury Road, Totton, which was built circa 1928 to the order of my late parents, Mr. Frank Woodhams and his wife Ada.

Part of this land includes a well-established and thriving oak tree which is indeed likely to be the only oak remaining in this part of town. Earlier this year it was inspected by a member of the New Forest District Council's Tree Team, who declared it to be a very healthy specimen of its kind.

To my knowledge the tree is at least 50 years old. When the house was occupied by my parents, my son Michael was allowed by his grandfather to plant a sprouting acorn at the bottom of the garden, which has now grown into a mature tree.

The removal of this tree would provide no benefit to local residents and would lead to a loss of privacy and amenity for a number of properties.

Edith M. F. Randall  
(Hon. Alderman, H. C. C.)