

APPEALS PANEL – 2 NOVEMBER 2010

## **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 13/10, LAND OF 42 WESTERN ROAD, LYMINGTON**

### **1. INTRODUCTION**

- 1.1 This meeting of an Appeals Panel has been convened to hear an objection to the making of a Tree Preservation Order.

### **2. BACKGROUND**

- 2.1 Tree Preservation Orders (TPOs, or Orders) are made under Sections 198, 199 and 201 of the Town and Country Planning Act 1990 (the Act). This legislation is supported by guidance issued by the Office of the Deputy Prime Minister on 17 April 2000 called “Tree Preservation Orders A Guide to the Law and Good Practice”. This is commonly referred to as the “Blue Book”.
- 2.2 This Council follows a procedure that ensures that as soon as an Order is made it gives immediate protection to the specified tree or trees. The owners and occupiers of the land on which the tree or trees are situated, together with all the owners and occupiers of the neighbouring properties, are served with a copy of the Order. Other parties told about the Order include the Town or Parish Council and District Council ward members. The Council may also choose to publicise the Order more widely.
- 2.3 The Order includes a schedule specifying the protected trees, and must also specify the reasons for protecting the trees. Normally this is on the grounds of their amenity value.
- 2.4 The procedure allows objections and representations to be made to the Council, in writing, within 28 days of the Order and corresponding documentation being served on those affected by it. The Council must have a procedure for considering those representations.
- 2.5 Where an objection is made to the Order, in the first instance, the Tree Officers will try to negotiate with the objector to see if it can be resolved. If it cannot, then the objection is referred to a meeting of the Appeals Panel for determination.
- 2.6 The Order, when first made, usually has a life of 6 months. Within that period of 6 months, the Council should decide whether or not to confirm the Order, with or without amendment. If a decision on confirmation is not taken within this time, the Council is not prevented from confirming the Tree Preservation Order afterwards. But after 6 months the trees lose protection until confirmation.

### **3. CRITERIA FOR MAKING A TREE PRESERVATION ORDER**

- 3.1 A local planning authority may make an Order if it appears to them to be:
- “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”.

### **4. TYPES OF TREE PRESERVATION ORDER**

- 4.1 The Tree Preservation Order may specify one or more individual trees, groups of trees, woodlands or, more rarely, refer to an area of land.
- 4.2 As a general rule, an individually specified tree must meet the criteria for protection in its own right.
- 4.3 A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The value of the group as a whole may be greater than that of the individual trees.
- 4.4 A woodland order would be imposed over a more significant area of trees, where it is not practical, or indeed perhaps even desirable, to survey or specify individual trees or groups of trees. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. In general terms a woodland will be a significant area of trees, that will not be interspersed with buildings.
- 4.5 An area designation covers all the trees, of whatever species, within a designated area of land, and these may well be interspersed among a number of domestic curtilages and around buildings. An area order may well be introduced, as a holding measure, until a proper survey can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individuals or groups of trees. This process has been underway in this District, with the review of a number of older area orders that were imposed some years ago in response to proposed significant development. An area order is a legitimate tool for the protection of trees. It is not grounds for an objection that the order is an area order.

### **5. THE ROLE OF THE PANEL**

- 5.1 While objectors may object on any grounds, the decision about confirmation of the Order should be confined to the test set out in 3.1 above.
- 5.2 The Secretary of State advises that it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

### 5.3 **Amenity value**

This term is not defined in the Act, but there is guidance in the Blue Book. In summary the guidance advises:

- TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- There must be a reasonable degree of public benefit. The trees, or part of them, should therefore normally be visible from a public place, such as a road or a footpath. Other trees may however also be included, if there is justification.
- The benefit may be present or future.
- The value of the tree or trees may be from their intrinsic beauty; for their contribution to the landscape; or the role they play in hiding an eyesore or future development.
- The value of trees may be enhanced if they are scarce.
- Other factors, such as their importance as a wildlife habitat, may be taken into account, but would not, alone, be sufficient to justify a TPO.

As a general rule, officers will only consider protecting a tree where they are satisfied that it has a safe life expectancy in excess of 10 years.

### 5.4 **Expediency**

Again, this is not defined in the Act, but some guidance is given in the Blue Book. In essence, the guidance says:

- It is not expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.
- It may be expedient to make a TPO if the local authority believes there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. It may be a general risk from development pressures.
- A precautionary TPO may also be considered appropriate to protect selected trees in advance, as it is not always possible to know about changes in property ownership and intentions to fell.

## 6. **THE EFFECT OF THE ORDER**

- 6.1 Once the TPO has been made, it is an offence to do any works to the protected tree or trees without first gaining consent from the Council through a tree work application unless such works are covered by an exemption within the Act. In this respect of the Local Planning Authority consent is not required for cutting down or carrying out works on trees which are dead, dying or dangerous, or so far as may

be necessary to prevent or abate a nuisance. Great care should be exercised by individuals seeking to take advantage of an exemption because if it is wrongly misjudged offences may be committed. There is no fee charged for making a Tree Work Application.

6.2 If consent is refused, the applicant has the right of appeal to the Secretary of State.

## 7. CONSIDERATION

7.1 Members are requested to form a view, based on the evidence before them, whether it appears to them to be expedient in the interests of amenity to confirm the TPO taking into account the above guidance. Members will have visited the site immediately prior to the formal hearing, to allow them to acquaint themselves with the characteristics of the tree or trees within the context of the surrounding landscape.

7.2 The written evidence that is attached to this report is as follows:

**Appendix 1** The schedule and map from the Order, which specifies all the trees protected.

**Appendix 2** The report of the Council's Tree Officer, setting out all the issues he considers should be taken into account, and making the case for confirming the Order.

**Appendix 3** The written representations from the objectors to the making of the Order

**Appendix 4** The Tree Officer's response to the development control consultation on planning application 10/95465

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 13/10 relating to land of 42 Western Road, Lymington with, or without, amendment.

### For Further Information Please Contact:

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### Background Papers:

Attached Documents:  
TPO 13/10  
Published documents

# **APPENDIX 1**

**SCHEDULE 1**

**SPECIFICATION OF TREES**

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

<b>Reference on map</b>	<b>Description</b>	<b>Situation</b>
T1	Ash	Situated within the rear garden of 42 Western Road, Lymington. As shown on plan.
T2	Ash	Situated within the rear garden of 42 Western Road, Lymington. As shown on plan.

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

<b>Reference on map</b>	<b>Description</b>	<b>Situation</b>
None		

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

<b>Reference on map</b>	<b>Description</b> (including number of trees in the group)	<b>Situation</b>
None		

**Woodlands**  
(within a continuous black line on the map)

<b>Reference on map</b>	<b>Description</b>	<b>Situation</b>
None		





## Tree Preservation Order Plan

Town and Country Planning Act 1990

T.P.O Number: 13/10

Approximate Scale: 1:750

Date Printed: 11/05/10

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



AN AUTHORISED SIGNATORY

# **APPENDIX 2**

## **OBJECTION TO TREE PRESERVATION ORDER NO 13/10**

**Land of 42 WESTERN ROAD, LYMINGTON, HANTS**

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

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

- 1.1 Tree Preservation Order (TPO) 13/10 was served on 13 May 2010 and protects two individual trees sited within the grounds of 42 Western Road, Lymington. A copy of the TPO site plan and first schedule are attached as Appendix 1 to Report B.
- 1.2 The TPO was made following the submission of a full planning application (ref 10/95465). The application was to construct a double garage with store to the rear of 44 Western Road, Lymington.
- 1.3 The Council's Tree Officer inspected the trees on the site in relation to the planning application and concluded that the proposed structure would compromise the health and safety of the two trees. It was considered that this would lead to the loss of these trees which would in turn be of detriment to the visual appearance of the local area as they made a positive contribution to the surrounding landscape. A copy of the officer's recommendation to Development Control is attached as Appendix 4 to Report B.
- 1.4 One letter objecting to the making of the TPO was received on the 9<sup>th</sup> June 2010 from a Mrs Sherring of 40 Western Road, Lymington. A copy of that letter is attached as Appendix 3 to Report B.

#### **2 THE TREES**

- 2.1 The trees in question are both Ash which, at the time of inspection appeared in a good physiological and structural condition and offered in excess of 20 years future life expectancy.
- 2.2 The trees offer a good level of visual amenity to the immediate and surrounding area, as they 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 were not there when the house was purchased in 1960
- The trees, along with an adjacent tree, have turned a productive vegetable garden into a container only garden.
- They will be unable to trim back branches

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

- 4.1 It can only be expected that situations change. The fact that the trees subject of this TPO were not planting or growing when the property was purchased, in 1960, should not be seen as a reason not to protect the trees now.
- 4.2 While it may be that the trees – along with others – have reduced the productivity of the vegetable garden, the presence of the trees has enhanced the area and added to its character. The trees have been placed under threat of premature removal due to the submission of the planning application and their retention is, in this instance desirable due to the contribution they make to the area.
- 4.3 The serving of the TPO does not prevent the owners of the trees or their neighbours from submitting a tree works application to the Council to carry out tree works. There is no charge for tree work applications.

## **5 CONCLUSION**

- 5.1 TPO 13/10 protects two individual trees sited within the grounds of 42 Western Road, Lymington.
- 5.2 The Order was made following the submission of a planning application for the erection of garages and a store to the rear of 44 Western Road, Lymington within the root spread of the trees. Planning Permission, with associated tree conditions, has been granted and the presence of the TPO ensures those conditions are enforceable. Should the structure be built without the associated conditions it is likely that the trees would become potentially unsafe.
- 5.3 At the time of inspection, the trees subject to this TPO appeared in a good physiological and structural condition. The trees held in excess of 20 years life expectancy. No major defects were noted from ground level.
- 5.4 A letter objecting to the confirmation of the TPO was received on the 9<sup>th</sup> June 2010.
- 5.5 The trees offer a good level of visual amenity to the immediate and surrounding area, as they can be seen from a number of public vantage points outside of the site.
- 5.6 The premature loss of these trees will be detrimental to the visual appearance of the local area and therefore contrary to safeguard trees and natural features in accordance with Policy DW-E8 of the New Forest District Core Strategy.

## **6 RECOMMENDATION**

- 6.1 It is recommended that TPO 13/10 is confirmed without modification.

For Further Information Please Contact:

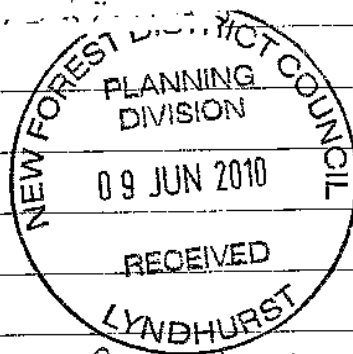
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**Background Papers:**

Tree Preservation Order No. 13/10

# **APPENDIX 3**

7.



40 Western Rd  
Lyrrington  
Hants  
SO41 9HL  
8.6.10

Dear Mr Luddington  
TREE PRESERVATION ORDER NO. 13/10  
dated 13<sup>th</sup> May 2010.

I feel some justification in objecting to the Tree Preservation Order on the trees at No. 42 adjacent to our property that affect us personally.

The trees were not there when we purchased our house in 1960. The larger of the two was planted as a sapling from the forest by Mrs Ann Beth, a previous owner.

The second self seeded.

These, combined with the oak at the bottom of our garden has turned a previously productive vegetable garden into a contained only garden through the absorption of water and nutrients. This we have come to accept, but what we strongly object to is not being able to trim back branches overhanging the clothes line erected in 1960 and a poly tunnel. The branches prove to be a pigeon roost for most of the year. I fail to see why the excellent rapport we have with our neighbours Oliver & Sarah cannot continue whereby either they or we trim the offending branches. A visit by you would be much appreciated.

Yours faithfully

Sherring

# **APPENDIX 4**



## Development Control Consultations

Record No:	18183
Application no:	10/95465 FUL
Site:	Western Heights, 44 Western Road, Lym
Drawing no:	Site Plan – Scale 1:500 dated Feb 2010
DC Officer:	Mrs H Stainer
Date:	11/05/10

### Tree Comments

Situated to the east of the application site are two mature Ash trees that offer a good level of public amenity value to the surrounding area. These trees are now the subject of a Tree Preservation Order.

The proposed double garage and store will be sited within the Root Protection Area of both Ash trees. The use of a conventional strip foundation is not suitable in this instance and will result in the severance of tree roots.

The construction of a garage and store in this location is considered feasible with the use of a specialist foundation type such as a pile and beam. In order to satisfy the current tree constraints of the site, further information is now required in the form of a site plan and cross sectional drawing that details the use of such specialist foundations.

**Recommendation: Approval with Conditions**

1. Prior to commencement of works (including site clearance and any other preparatory works) a site plan and cross sectional drawing shall be submitted detailing the use of the proposed foundation type for the garage and store. Such foundations must take into account the presence of the two Ash trees, protected by Tree Preservation Order 13/10, and will not result in the damage of tree roots.

**Reason:** To safeguard trees and natural features which are important to the visual amenities of the area, in accordance with Policy DW-E8 of the New Forest District Local Plan First Alteration.

Andy Luddington  
Arboricultural Officer