

APPEALS PANEL – 28 FEBRUARY 2012

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 22/11, LAND OF GRAYANVAL, RINGWOOD ROAD, BRANSGORE

1. INTRODUCTION

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

2. BACKGROUND

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

3. CRITERIA FOR MAKING A TREE PRESERVATION ORDER

3.1 A local planning authority may make an Order if it appears to them to be:

“expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”.

4. TYPES OF TREE PRESERVATION ORDER

4.1 The Tree Preservation Order may specify one or more individual trees, groups of trees, woodlands or, more rarely, refer to an area of land.

4.2 As a general rule, an individually specified tree must meet the criteria for protection in its own right.

4.3 A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The value of the group as a whole may be greater than that of the individual trees.

4.4 A woodland order would be imposed over a more significant area of trees, where it is not practical, or indeed perhaps even desirable, to survey or specify individual trees or groups of trees. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. In general terms a woodland will be a significant area of trees, that will not be interspersed with buildings.

4.5 An area designation covers all the trees, of whatever species, within a designated area of land, and these may well be interspersed among a number of domestic curtilages and around buildings. An area order may well be introduced, as a holding measure, until a proper survey can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individuals or groups of trees. This process has been underway in this District, with the review of a number of older area orders that were imposed some years ago in response to proposed significant development. An area order is a legitimate tool for the protection of trees. It is not grounds for an objection that the order is an area order.

5. THE ROLE OF THE PANEL

5.1 While objectors may object on any grounds, the decision about confirmation of the Order should be confined to the test set out in 3.1 above.

5.2 The Secretary of State advises that it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

5.3 **Amenity value**

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

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

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

5.4 **Expediency**

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

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

6. **THE EFFECT OF THE ORDER**

- 6.1 Once the TPO has been made, it is an offence to do any works to the protected tree or trees without first gaining consent from the Council through a tree work application unless such works are covered by an exemption within the Act. In this respect of the Local Planning Authority consent is not required for cutting down or carrying out works on trees which are dead, dying or dangerous, or so far as may be necessary to prevent or abate a nuisance. Great care should be exercised by individuals seeking to take advantage of an exemption because if it is wrongly misjudged offences may be committed. There is no fee charged for making a Tree Work Application.
- 6.2 If consent is refused, the applicant has the right of appeal to the Secretary of State.

7. CONSIDERATION

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

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

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

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

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

Members will hear oral evidence at the hearing, in support of these written representations. The procedure to be followed at the hearing is attached to the agenda.

8. FINANCIAL IMPLICATIONS

8.1 There are some modest administrative costs associated with the actual process of serving and confirming the TPO. There are more significant costs associated with the need to respond to any Tree Work Applications to do works (lopping, topping or felling) see 8.3 below. The officers will normally visit the site and give advice on potential works to the trees.

8.2 The Council does not become liable for any of the costs of maintaining the tree or trees. That remains the responsibility of the trees' owners.

8.3 TPOs make provision for the payment by the Local Planning Authority of compensation for loss or damage caused or incurred as a result of:

(1) their refusal of any consent under the TPO, or

(2) their grant of a consent subject to conditions.

To ascertain whether someone is entitled to compensation in any particular case it is necessary to refer to the TPO in question. It is especially important to note that the compensation provisions of TPOs made on or after 2 August 1999 differ substantially from the compensation provisions of TPOs made before that date.

TPOs made before 2 August 1999

Under the terms of a TPO made before 2 August 1999 anyone who suffers loss or damage is entitled to claim compensation unless an article 5 certificate has been issued by the Local Planning Authority.

TPOs made on or after 2 August 1999

In deciding an application for consent under a TPO made on or after 2 August 1999 the Local Planning Authority cannot issue an article 5 certificate. There is a general right to compensation. However, the TPO includes provisions which are intended to limit the Local Planning Authority's liability to a fair and reasonable extent, and so the general right to compensation is subject to the following exceptions:

- (1) no claim for compensation can be made if the loss or damage incurred amounts to less than £500;
- (2) no compensation is payable for loss of development value or other diminution in the value of the land. 'Development Value' means an increase in value attributed to the prospect of developing land, including clearing it;
- (3) no compensation is payable for loss or damage which, bearing in mind the reasons given for the application for consent (and any documents submitted in support of those reasons), was not reasonably foreseeable when the application was decided;
- (4) no compensation is payable to a person for loss or damage which was (i) reasonably foreseeable by that person, and (ii) attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent; and
- (5) no compensation is payable for costs incurred in bringing an appeal to the Secretary of State against the Local Planning Authority's decision to refuse consent or grant it subject to conditions.

9. ENVIRONMENTAL IMPLICATIONS

- 9.1 The trees must have significant value within their landscape to justify the confirmation of the TPO.

10. CRIME AND DISORDER IMPLICATIONS

- 10.1 There are no crime and disorder implications arising from this report.

11. OTHER IMPLICATIONS

- 11.1 The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy his possessions but it is capable of justification under Article 1 of the First Protocol as being in the public interest (the amenity value of the tree).

11.2 In so far as the trees are on or serve private residential property the making or confirmation of a Tree Preservation Order could interfere with the right of a person to respect for his family life and his home but is capable of justification as being in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8).

12. RECOMMENDED:

12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 22/11 relating to land of Grayanval, Ringwood Road, Bransgore with, or without, amendment.

For Further Information Please Contact:

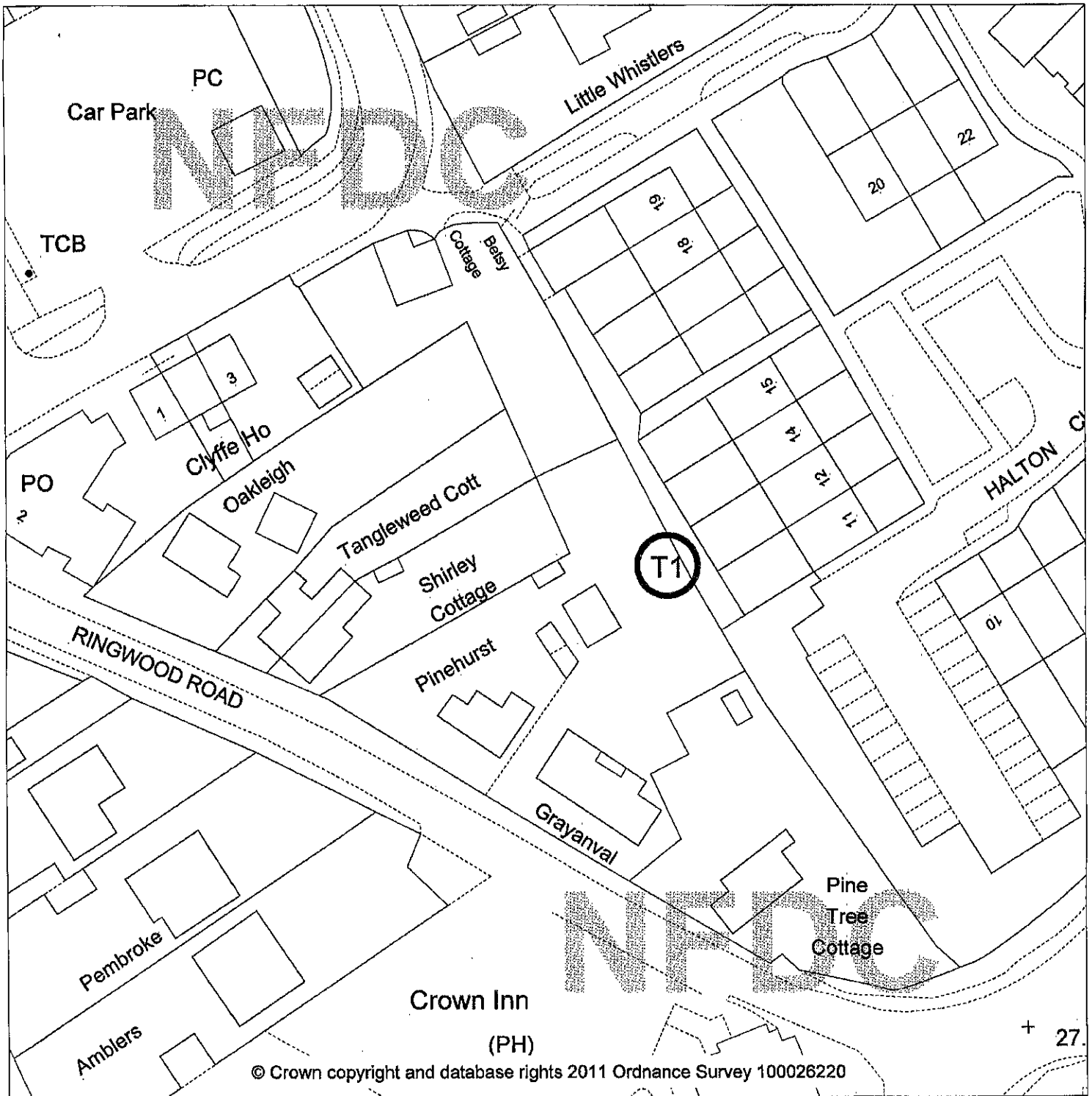
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Background Papers:

Attached Documents:
TPO 22/11
Published documents

APPENDIX 1



New Forest
DISTRICT COUNCIL

Chris Elliott
Head of Planning and Transportation

Tree Preservation Order Plan

Town and Country Planning Act 1990

TPO Number: 22/11

Approximate Scale: 1:750

Date Printed: 08.09.2011

Map 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

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Oak	Located on the eastern boundary of Grayanval, Ringwood Road, Bransgore. As shown on plan.

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

Reference on map	Description	Situation
None		

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

Reference on map	Description (including number of trees in the group)	Situation
None		

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
None		

APPENDIX 2

**OBJECTION TO TREE PRESERVATION ORDER NO. 22/11
LAND OF GRAYANVAL, RINGWOOD ROAD, BRANSGORE.**

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.22/11 was made on 9th September 2011. The TPO plan and first schedule are attached as Appendix 1 to Report A. The Order protects a single Oak tree situated on the northern boundary of Grayanval, Ringwood Road, Bransgore.
- 1.2 The TPO was made after the Council was informed by a contractor that they had been requested to fell the tree as it was implicated as a potential cause of excessive shade experienced at neighbouring properties.
- 1.3 The Council's Tree Officer inspected the Oak, which is clearly visible to the public and makes a positive contribution to the landscape of the immediate and surrounding area. It was considered that the tree's removal would be to the detriment of the area and as such it was considered to be expedient to protect the tree via a TPO.

2 THE TREE

- 2.1 The tree in question is a mature Oak (*Quercus spp*), situated on the northern boundary of Grayanval, Ringwood Road, Bransgore.
- 2.2 From a ground level inspection the tree appears in a good physiological and structural condition, exhibiting no major defects that would necessitate the requirement for a further inspection or question the tree's safety.
- 2.3 The tree offers a high level of visual amenity to the immediate and surrounding areas and can be clearly seen by the public from numerous vantage points, including along Ringwood Road.

3 THE OBJECTION

Copies of the objection letters and petition are included in Appendix 3 to Report A.

The grounds for objection include:

- The tree's preservation is to the detriment of the health and well being of neighbours
- The trees in the area depress the value of properties and increase the cost of their upkeep.
- The Council should not be inhibiting the removal of trees which are in unsuitable locations.

- The tree casts excessive, dense shade, severely affecting the well being of the affected residents.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 While the tree may possibly be a contributing to the shade experienced at Halton Close, other trees contribute equally, if not to a greater extent. This is especially so of the oak located adjacent to 11 Halton Close (T59 of TPO 61/99). It is not accepted that the removal of the oak protected by TPO 22/11 will add to the health and well being of the residents so significantly as to counteract the loss of amenity.
- 4.2 No evidence has been submitted which suggests that the trees in the area depress property values. Research suggests that the presence of trees actually do the opposite. Studies show that the value of properties in tree lined areas was estimated as being 6% higher by 'Urban Forest Values: Economic Benefits of Trees in Cities', Wolf K, University of Washington College of Forest Resources, Factsheet 29, 1998
- 4.3 While trees can create higher levels of property maintenance, principally created by falling debris (leaves, twigs and alike) this must be expected when purchasing a property.
- 4.4 The oak subject of the TPO is located on the eastern boundary of the affected properties and shade for a portion of the day can only be expected. The tree does not block sunlight from the properties for the full duration of the day. Other trees within the Halton Close development contribute to the light lost.

5 CONCLUSION

- 5.1 The oak tree is a specimen tree offering a good level of visual amenity to a wide area. While it is understood that the tree is a concern to the objectors, there is no indication from ground level that it is anything but healthy. While the tree may contribute to the loss of light experienced, it is not the principle cause.

6 RECOMMENDATION

- 6.1 It is recommended that TPO 01/08 is confirmed without modification.

Further Information:

Andrew Douglas
Senior Arboricultural Officer

Telephone: 02380 285588

Background Papers:

Tree Preservation Order No. 22/11

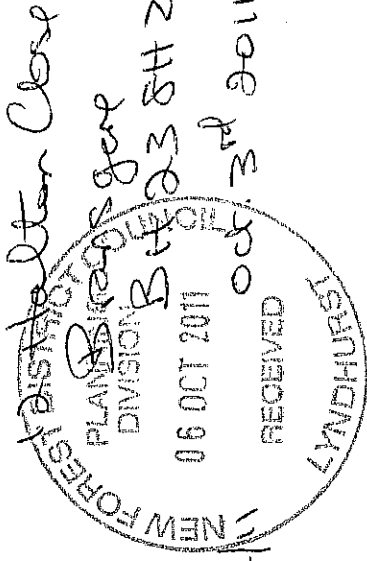
APPENDIX 3

both signed my petition which hopefully showed help my case.

Many Thanks
Sincerely,

V.A. L. G. (MS)

ps. Apparently the owners of Pinehurst are both very elderly - in poor health - I did not wish to bother them. The owner of Tanglewood signed before + Shirley Cottage is presently unoccupied.



Your ref:

ADU/mac/22/11

Dear Mr Douglas,

I enclose two

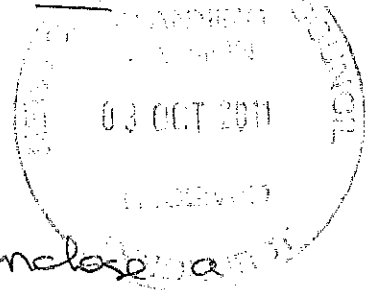
more signatures supporting my objection to the TPO 22/11 placed on the oak tree on the grounds of Grayanval, Ringwood Road, Bursledon.

Unfortunately the owners of Betsy Cottage + Pine Tree Cottage were away, or unavailable when I tried before. They have now

~~29~~ September
29/2011

Your REF.
ADOU/MAC/22/11

12, Halton Close
Bransgore
BH23 8TZ



Dear Mr Douglas,

I enclose a
petition in support of my
objection to the temporary
TPO (22/11) placed on the Oak
Tree in the grounds of
"Grayanval" Ringwood Road,
Bransgore.

This tree casts dense
shading over mine, + neighbouring
houses, + is seriously affecting
my well being.



I am appealing

to you to remove this
temporary TPO.

Yours Sincerely

(VIA LIGHTWOOD)

Please support my petition to the New Forest District Council regarding a Temporary Tree Preservation Order (22/11) recently placed on an oak tree in the grounds of "Grayanval" Ringwood Road Bransgore, after the owners had kindly agreed to its removal. This large tree casts extensive, dense shading over mine & neighbouring houses & gardens severely affecting the well being of the residents.

I support the above petition for the removal of the Temporary Tree Preservation Order (22/11)

Signature	Address	Signature	Address
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58 Signatures from addresses in

- Wotton Close
- Highwood Road,
- Crowzen Close
- Shackleton
- Kasehin Drive
- Woodlands Close
- Colborne Close.
- St. Marys Close
- Neacraft
- Betsy Lane
- Burley Road
- Derrit Lane
- Shurley Close
- Rosehill Close
- Benson Close

The petition may be viewed on the TPO file.

22/11

New Forest District Council,
Andrew Douglas, Senior Arboricultural Officer,
Appletree Ct.
Lyndhurst,
SO43 7PA
Hants.



17 Halton Close,
Bransgore,
BH23 8HZ

22nd September 2011

Dear Sir,

I am writing this on behalf of myself and two elderly neighbours at 16 Halton Close. They are aged 93 and 90, both incapacitated and one blind. This is obviously of great interest to them as if they have to sell quickly they might have a problem.

We have been distressed to hear that yet another TPO has been imposed on a tree on neighbouring property (TPO # 22/11 – Land of GRAYANVAL, Ringwood Rd. Bransgore). I write now to strongly object to that order. The tree in question has been trimmed in the past and I see no reason for its preservation to the detriment of the health and well being of the nearby residents.

“Whistlers” the estate on which I live, was built in 1975 (approx.), and many trees which were left in-situ should have been removed before planning permission was granted. Those trees have grown enormously in the past 35 years and now dominate many of the houses and their small gardens. This has happened with the collusion of the NFDC despite the annual tree inspections and the advice given by your department.

While the initial appearance of the estate is still very attractive, some of the large trees and their maintenance is depressing the value of the properties and increasing the cost of their upkeep. The council should not be inhibiting the removal or maintenance of trees that are clearly in unsuitable locations. The sale of several of the houses has already been blighted – as the residents get older more will find their property has devalued. This has already affected two elderly residents who could not sell their property and in the end had to take a large loss e.g. No's 19 and 22 Halton Close. No. 11 is in a similar position with an enormous Oak tree beside her house that towers over her garden keeping out the sunlight. She also has the Oak tree at Grayanval cutting off her light from the other side. Needless to say she is worried should she have to sell. The lady in question has already had two strokes.

When there is overhanging branches from a neighbour's, tree aren't we allowed to cut them back? If this is so why does it not apply to all trees?

We love our trees but not when they become too large and interfere with health and selling our houses. Many have had problems with drains and it always involves roots. This has been an ongoing problem over the years.

Yours sincerely,

New Forest District Council,
Andrew Douglas, Senior Arboricultural Officer,
Appletree Ct.
Lyndhurst,
SO43 7PA
Hants.

11 Halton Close,
Bransgore,
BH23 8HZ

22nd September 2011

Dear Sir,

Thank you for your telephone call in response to my letter 15th August. I was pleased to hear that some consideration was to be made regarding my request that the giant oak tree (TPO T59) should be trimmed substantially in order to decrease the way the branches trespass on my garden and house.

Since then I have been distressed to hear that yet another TPO has been imposed on a tree on neighbouring property (TPO # 22/11 – Land of GRAYANVAL, Ringwood Rd. Bransgore). I write now to strongly object to that order. The tree in question has been trimmed in the past and I see no reason for its preservation to the detriment of the health and well being of the nearby residents.

“Whistlers” the estate on which I live, was built in 1975 (approx.) and many trees which were left in-situ should have been removed before planning permission was granted. Those trees have grown enormously in the past 35+ years and now dominate many of the houses and their small gardens. This has happened with the collusion of the NFDC despite the annual tree inspections and the advice given by your department.

While the initial appearance of the estate is still very attractive, some of the large trees and their maintenance is depressing the value of the properties and increasing the cost of their upkeep. The council should not be inhibiting the removal or maintenance of trees that are clearly in unsuitable locations. The sale of several of the houses has already been blighted – as the residents get older more will find their property has devalued

I ask that you visit my home to see for yourself the extent to which TP59-Oak damages and dominates my property. The constantly falling branches and dirt, the clogged guttering, the risk of roof damage by squirrels are all a constant worry. After my recent strokes I am made well aware that I may have to consider selling the house to fund my future care. With the value being undermined by your restricting my ability to maintain it I am very afraid for the future.

Yours sincerely,

Barbara J. Challen

18 Halton Close
Bransgore
BH23 8HZ



19/09/2011

Tel::

e.mail

TPO No.22/11

*Land of Grayamsal.
Ringwood Rd.
Bransgore.*

Dear Sir,

I have moved to the above address only recently, however, the issue of the oak trees and this one in particular has already become apparent.

It would seem obvious that this tree and some others need either removing or severely trimming.

There are several of my neighbours who feel that their lives have been made a misery over lack of control of the oaks

I would add my support to any moves to have these trees controlled,

Yours Sincerely,

Peter K. Hood.

22/11

New Forest District Council,
Andrew Douglas, Senior Arboricultural Officer,
Appletree Ct.
Lyndhurst,
SO43 7PA
Hants.



11 Halton Close,
Bransgore,
BH23 8HZ

15th August 2011

Dear Sir,

Since the purchase of my home in 1994 the mature oak tree adjacent to my property (3/4 ft from the side of the house) has grown out of all proportion. It now completely dominates my house and garden, and in conjunction with another giant tree on an adjacent property, blocks out all the sun except for approximately half an hour each afternoon.

I am now in my late seventies and have suffered two strokes therefore I am looking to the future and considering downsizing and a possible move. Houses dominated by such a large tree are either not selling or offered at a very reduced price; see the enclosed letter I have received from a possible buyer.

I appreciate that a mature tree with a TPO order cannot and should not be felled, however it can and should be reduced to a manageable size before a major wind does considerable damage to this and surrounding properties. I have asked the Burley Road Management Company Ltd to get permission for the tree to be reduced but they insist that you have refused to consider it.

The tree not only blocks out all sun and light from the back of the house but it so constantly sheds leaves (in summer) and sizeable twigs (small branches) that I am concerned that it is under some form of stress. The branches stretch over the house and I am also concerned that squirrels will get into the roof.

I had the paving stones, which had all been heaved by the roots of the tree, re-laid some years ago but they constantly have to be pressure hosed to eradicate the sticky residue which also covers mine and other neighbours cars.

I respectfully ask that permission be given to thin the tree's crown and to shorten some of the branches that are stretched over my house and garden and nearby garages.

Yours sincerely,


Barbara J. Challer

c.c. Malcolm Greenhalgh – President, Burley Rd. Management Co. Ltd.

TPO N° 22/11
LAND OF GRAYANVAL, RINGWOOD RD.
BRANSGORE.

18. Halton Close
Bransgore.
BH23 8HZ

Dear Sir/Madam.

How on earth can a tree that didn't have a TPO on it suddenly have one put on it and how can it be more important than peoples welfare and pensioners at that.

The tree mentioned has caused certain neighbours grief for many years.

Having recently moved into Halton Close and next door to an OAK TREE in the garden with a TPO on it I now realise what a pain it is, lovely days sitting in the garden are marred by showers of sticky sap which plays havoc with garden furniture, windows & plants it's awful, so I know how my neighbours feel, and what chance now has the owner of the tree got to sell his house, which I understand is on the market, people are very wary of TPO's on trees.

Please re-think this barbaric decision and give people back their lives and some Sunshine.

A very concerned neighbour.

February 7th
2012.

12. HALTON CLOSE
Branstow,
BH238H2

Dear Ms Debnam,

Further to my objection to
TPO 22/11 I would like to add the
following comments.

Along with the huge oak
tree adjacent to Number 11
Halton Close (TPO 59) - this
tree (TPO 22/11) completely
blocks sun & light from my
house & garden. Except for
approx one hour a day (between
2.30 & 3.30) when the sun is
between the two trees.

As a result of this
my house is cold & dark. My
heating bills are a huge worry

as I only have a small pension to live on. I am very depressed & this is severely affecting my health. I have already mentioned the benefit of the sunlight to the immune system.

My garden is in almost permanent shade, & is damp - not a lot grows - it's dreary. There is no pleasure to sit out there during the Spring, Summer or Autumn months.

In the Autumn & winter the amount of fallen leaves is excessive, if I don't constantly clear them away there is a real danger of my slipping & falling over

when the leaves are wet. I
am obliged to carry rubbish
bags down to the end of
the garden for collection -
I cannot avoid the leaves!

Since September 2011 -
when the owner of Grayanval
agreed to the tree on his
land being felled I have
been on an emotional
roller coaster. Elated when
I thought that at last I
could lose one of the offending
trees, distraught when the
TPO was put on. ~~It~~ In October
the tree works application
was put onto TP 22/11 - once
again my spirits lifted -
only to be dashed again.

The application was refused.
In December I was informed
by neighbours that the tree
was to be felled - according
to the report in the New
Milton Advertiser.

Apparently a mistake??
I have done, & am doing,
whatever it takes to make
my life more comfortable &
less depressing. If all fails
I shall be obliged to
move home again & the
thought horrifies me!

Yours Sincerely

M. Lightwood.