



APPEALS PANEL – 30 NOVEMBER 2012

**OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER  
18/12, LAND OF 6 BARTON COURT AVENUE, BARTON ON SEA, NEW  
MILTON**

**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 she considers should be taken into account, and making the case for confirming the Order.
- Appendix 3** The written representation from the objector 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 18/12 relating to land of 6 Barton Court Avenue, Barton on Sea, New Milton with, or without, amendment.

**For Further Information Please Contact:**

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**Background Papers:**

Attached Documents:  
TPO 18/12  
Published documents

# **APPENDIX 1**

**SCHEDULE**  
Specification of trees

**Trees specified individually**

(encircled in black on the plan)

Reference on map	Description	Situation
T1	Oak	Situated on the western boundary of 6 Barton Court Avenue, as shown on plan.

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**Trees specified by reference to an area**

(within a dotted black line on the plan)

Reference on map	Description	Situation
None		

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**Groups of trees**

(within a broken black line on the plan)

Reference on map	Description	Situation
None		

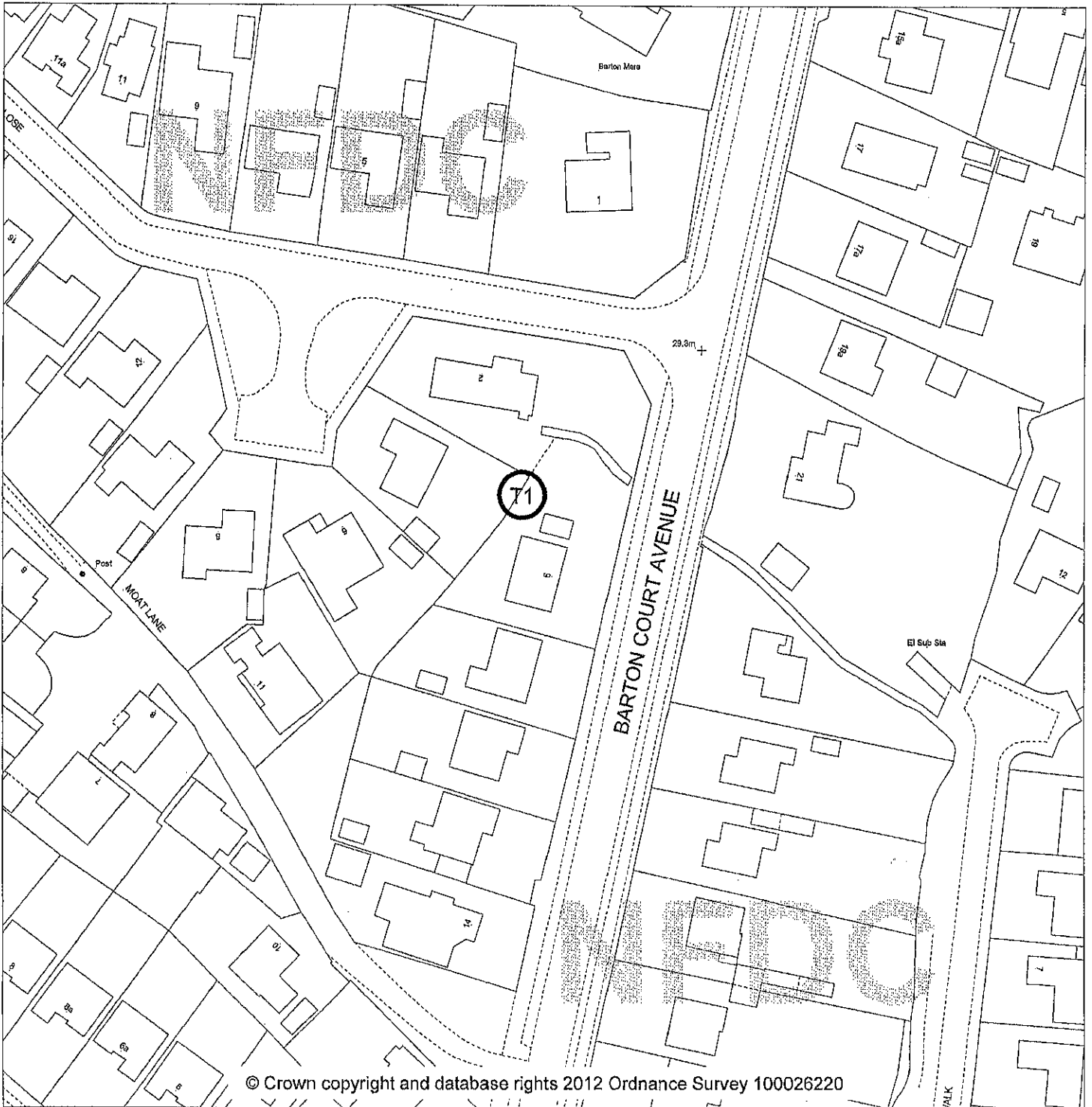
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**Woodlands**

(within a continuous black line on the plan)

Reference on map	Description	Situation
None		





**New Forest**  
DISTRICT COUNCIL

Chris Elliott  
Head of Planning and Transportation

## Tree Preservation Order Plan

Town and Country Planning Act 1990

**TPO Number:** 18/12

**Approximate Scale:** 1:1000

**Date Printed:** 8/6/12

### 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

# **APPENDIX 2**

**OBJECTION TO TREE PRESERVATION ORDER NO. 18/12  
LAND OF 6 BARTON COURT AVENUE, BARTON ON SEA.**

**REPORT OF COUNCIL TREE OFFICER**

**1 TREE PRESERVATION ORDER HISTORY**

- 1.1 Tree Preservation Order (TPO) No.18/12 was made on 12<sup>th</sup> June 2012. The TPO plan and first schedule are attached as Appendix 1 to Report A. The Order protects an individual Oak tree situated on the rear boundary of 6 Barton Court Avenue, Barton on Sea.
- 1.2 The TPO was made as a result of the Council receiving a letter from the owner of 6 Barton Court Avenue. In the letter she stated concerns about her neighbour's intention to either remove the tree or undertake work that she felt would have an adverse effect on the tree's health and amenity. The letter is attached as Appendix 2.
- 1.3 The Council's Tree Officer inspected the tree on the 7<sup>th</sup> June 2012 and determined that the tree merited protection by TPO.

**2 THE TREE**

- 2.1 The TPO was served on an individual Oak.
- 2.2 From a ground level inspection the tree appeared to be in good physiological and structural condition, exhibiting no defects that would necessitate secondary investigation or give rise to concerns regarding its safety. The tree has been crown reduced historically. Small diameter tertiary branches are in close proximity to the roof of 6 Barton Court Avenue.
- 2.3 The tree offers a good level of amenity and is important to the area's character.

**3 THE OBJECTION**

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

The grounds for objection include:

- The tree's position means that it has very little public amenity.
- If the tree increases in size it will be out of scale with its surroundings and will have an adverse effect on its companion shrubs and plants.
- Branches are touching the roof of 6 Barton Court Avenue and the tree is causing moss to grow on the roof.
- The tree may have the potential to affect the garage's foundations.
- A main sewer runs close to the tree and should the tree damage the sewer it may cause flooding.

## 4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 Barton Court Avenue is a main thoroughfare that links New Milton to the coast. The road slopes north to south furthermore the tree is also set at a lower elevation than the property's front boundary. However, despite the fact that the tree is sited at a lower level than the front of the property, it is still clearly visible from Barton Court Avenue when viewed from either the north or south of the site. Furthermore, the tree can be viewed from Albany Close.
- 4.2 The tree has been crown reduced historically which has restricted the tree's current size as such its scale matches that of its surroundings. The tree preservation order does not preclude any future work being undertaken to the tree it means that work must first be agreed via a tree work application. Given the tree's historic management a modest crown reduction to contain the tree's size would not be unreasonable. The existing soft landscaping showed no ill-effect from the tree's presence.
- 4.3 Via a tree work application it is reasonable to allow branches to be reduced in order to increase the separation between the crown and adjacent structures. This would address concerns regarding proximity and would alter conditions to reduce moss accumulation.
- 4.4 Tree roots are often implicated in causing damage to foundations. Many factors must be taken into account before deciding whether a tree is the causal agent. Without supporting information on ground conditions, foundation type and evidence of the seasonality it is not possible to comment on the likelihood of damage to the garage's foundations.
- 4.5 Where services are in good condition trees are unlikely to cause them damage. The local water company are responsible for maintaining their assets.

## 5 CONCLUSION

The Oak offers a good level of visual amenity. The TPO does not preclude future management but ensures that any work that is undertaken does not compromise the tree's health and amenity value.

## 6 RECOMMENDATION

It is recommended that TPO 18/12 is confirmed without modification.

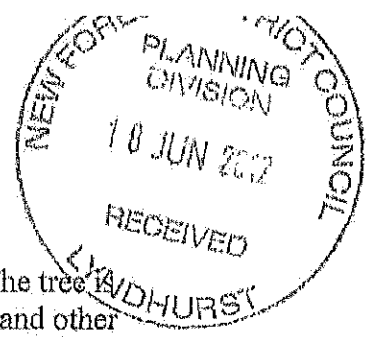
### Further Information:

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Arboricultural Officer  
Telephone: 01590 64667  
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### Background Papers:

Tree Preservation Order No. 33/11

# **APPENDIX 3**



Tree preservation order your ref/bec/mac/18/12

I wish to object to the tree preservation order for the following reasons. The tree situated in an enclosed environment in a dip and surrounded by properties and other trees so has very little public amenity. The tree is currently at the maximum size for its environment if allowed to grow and bigger it would have a detrimental effect on the amenity or the surrounding gardens and properties due to the restricted size of the gardens and proximity to the three surrounding properties.

I feel council needs to taking account balanced view of the overall enjoyment of the properties by the residents and wildlife which enjoy the open spaces around the tree.

The tree must not be allowed to get any bigger and could possibly have a slight reduction in size to keep it in proportion and maintain the right balance for the surrounding flora and fauna. This would keep the correct balance for everything to thrive. If allowed to get to big the tree will start to affect the surrounding environment for the smaller plants, bushes flowers and grass that the garden inhabitants rely on. At present every thing in harmony and there is a thriving balance to the ecosystem when the tree in kept to reasonably proportion and not allowed to grow too big at the expense of the lovely habitat rich surrounding gardens.

The tree already appears to be affecting the property in Barton Court Road touching the roof of the bungalow and garage and to be causing moss damage to the roof and guttering. If the tree was to grow it has the potential to affect the foundation of the garage.

The main sewer runs very close to this tree through the garden of 2 Albany Close if the roots were to compromise this, it has the potential to cause flooding. This could happen if the roots were to find any weakness in this sewer by seeking out moisture

Can I assume by enforcing a TPO the council pay for any future property damage caused by the tree?

4 Albany Close

COPY

# **APPENDIX 4**



6, Barton Court Avenue.  
Barton-on-Sea.  
New Milton  
Hants

Mr. Andrew Douglas  
New Forest Dist. Council  
Tree Preservation Dept  
BH25 4D.  
12/5/12

Dear Sir,

I have an oak tree in my garden which borders my neighbours. This is a perfectly good tree which is listed as being in my garden.

My neighbour is being insistent that this tree is to be removed, or at least cut back, which in my opinion would ruin the looks of the tree.

I would very much like to preserve my tree + therefore am applying for a Tree preservation order so that I may protect it from my neighbour's intention.

Please could you respond soonest  
Yours sincerely.

