

APPEALS PANEL – 4 JANUARY 2013

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 24.12, LAND OF VILLAGE MEWS, VICARAGE ROAD, MARCHWOOD

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 Tree Preservation 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 24/12 relating to land of Village Mews, Vicarage Road, Marchwood with, or without, amendment.

For Further Information Please Contact:

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Background Papers:

Attached Documents:
TPO 24/12
Published documents

APPENDIX 1

Town and Country Planning Act 1990

TREE PRESERVATION ORDER NO. 24/12

LAND OF VILLAGE MEWS, VICARAGE ROAD, MARCHWOOD, IN HAMPSHIRE 2012

The New Forest District Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as Tree Preservation Order No. 24/12 LAND OF VILLAGE MEWS, VICARAGE ROAD, MARCHWOOD, IN HAMPSHIRE 2012.

Interpretation

- 2.- (1) In this Order "the authority" means the New Forest District Council
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

- 3.- (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall-
 - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of, any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this Tenth day of October 2012

Signed on behalf of the New Forest District Council

Authorised by the Council to sign in that behalf



SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the plan)

Reference on map	Description	Situation
T1	Beech	On grass verge immediately to the north of the main entrance to Village Mews. As shown on plan
T2	Birch	Adjacent to the southern side of main entrance to Village Mews. As shown on plan
T3	Oak	Located adjacent to the front boundary of site opposite 2 Village Mews. As shown on plan.
T4	Oak	Within car parking area adjacent to the site's north western boundary. As shown on plan.

Trees specified by reference to an area

(within a dotted black line on the plan)

Reference on map	Description	Situation
None		

Groups of trees

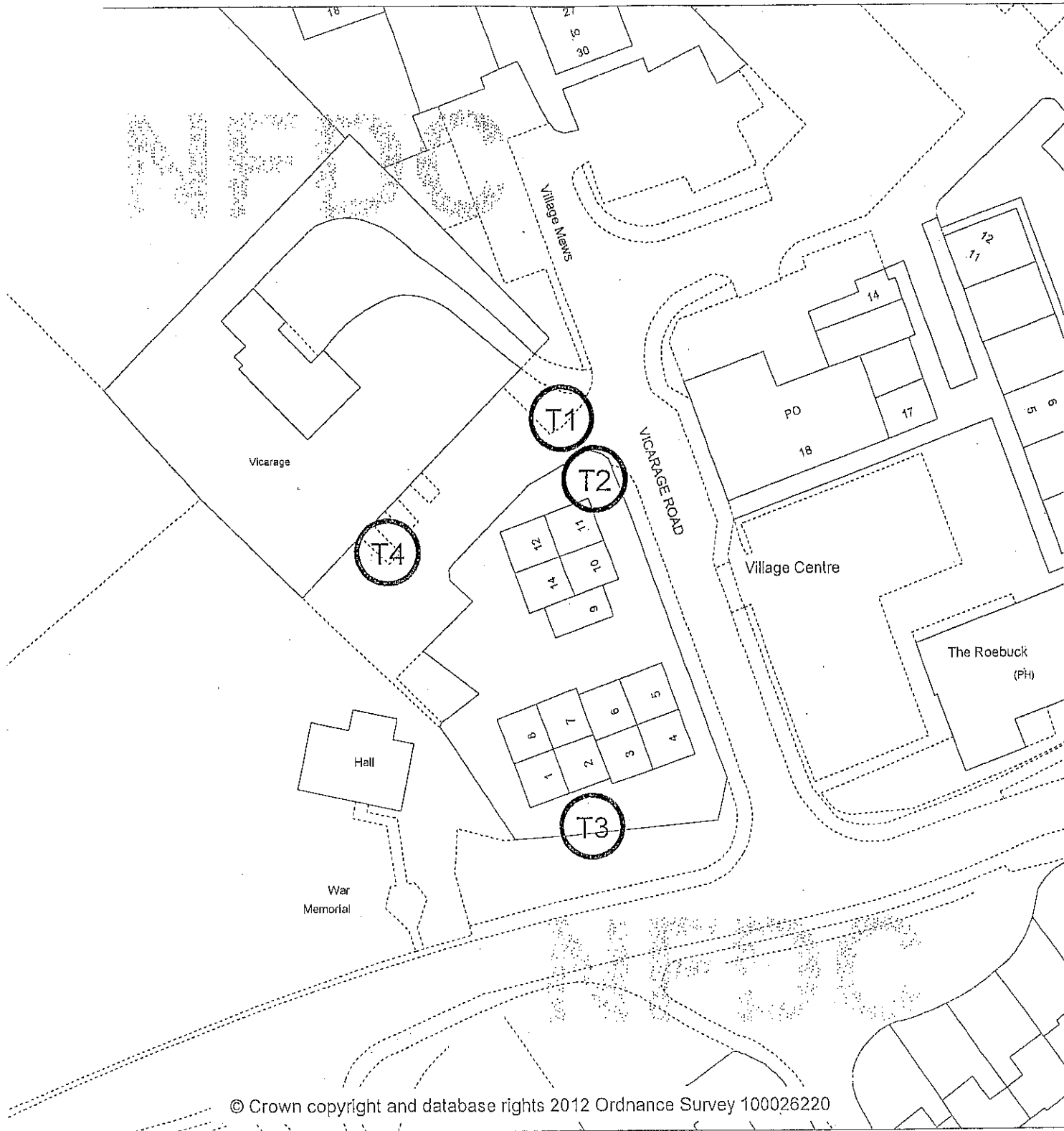
(within a broken black line on the plan)

Reference on map	Description	Situation
None		

Woodlands

(within a continuous black line on the plan)

Reference on map	Description	Situation
None		



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Tree Preservation Order Plan

Town and Country Planning Act 1990

New Forest
DISTRICT COUNCIL

Chris Elliott
Head of Planning and Transportation

TPO Number: 24/12
Approximate Scale: 1:750
Date Printed: 28.08.2012

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

DATED 10 OCTOBER 2012

NEW FOREST DISTRICT COUNCIL

Town and Country Planning Act 1990

TREE PRESERVATION ORDER NO. 24/12

LAND OF VILLAGE MEWS, VICARAGE ROAD, MARCHWOOD, IN HAMPSHIRE 2012

Head of Legal and Democratic Services
New Forest District Council
Appletree Court
Beaulieu Road
Lyndhurst
Hampshire
S043 7PA

APPENDIX 2

OBJECTION TO TREE PRESERVATION ORDER NO. 24/12 LAND OF VILLAGE MEWS, VICARAGE ROAD, MARCHWOOD

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No. 24/12 was made on 10 October 2012. The TPO plan and first schedule are attached as Appendix 1 to Report A. The Order protects four individual trees, two Oaks and a Birch within the Village Mews development and a Beech situated in the verge to the front of the development.
- 1.2 The TPO was made as a number of mature oak trees located within the development's car park were extremely poorly cut without, it seemed, any prior consent been sought from the management company. These trees are now in such a poor condition that they should be completely removed.
- 1.3 The Council's Tree Officer inspected the trees and their companions and determined that the remaining trees offer a good level of amenity and their protection via a Tree Preservation was required in order to prevent a recurrence of unapproved tree works.

2 THE TREES

- 2.1 The TPO was served on four individuals, two Oaks, a Birch and a Beech.
- 2.2 From a ground level inspection the trees appeared to be in good physiological and structural condition, exhibiting no defects that would necessitate secondary investigation or give rise to concerns regarding their safety.
- 2.3 The trees offer a good level of visual amenity to the immediate and surrounding area.

3 THE OBJECTION

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

The grounds for objection include:

- The oak tree (T3) represents a Health and Safety issue.
- The tree restricts light levels entering the property.
- Leaves fall from the tree and block the gutters.
- The tree should be removed or tree works carried out to address the issues raised.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 The oak tree, T3, offers a good level of amenity and can be clearly seen from Vicarage Road. The tree is not in overly close proximity to the objector's property (2 Village Mews).
- 4.2 The reduction in the level of light entering the property is not solely caused by the oak (T3). A number of similar sized trees are located off-site, immediately to the south of the development, which may collectively contribute to the light issues referred to.
- 4.3 As is the case with all deciduous trees, leaves fall during the Autumn and Winter months and should be expected. The clearing of footpaths and gutters is therefore to be expected and is considered routine maintenance.
- 4.4 The TPO was made to prevent excessive and unsympathetic pruning or premature removal of the trees, as has clearly happened in the recent past. It seems perverse to remove a perfectly healthy tree when alternative work can be undertaken to address the stated concerns.

5 SUPPORT

No letters of support have been received

6 CONCLUSION

All four trees, including oak tree T3, offer a good level of visual amenity. The TPO does not preclude the cutting back of branches but ensures that any work that is undertaken does not compromise the trees' health and amenity value.

7 RECOMMENDATION

It is recommended that TPO 24/12 is confirmed without modification.

Further Information:

Liz Beckett
Arboricultural Officer

Telephone: 01590 646670

Background Papers:

Tree Preservation Order No. 24/12

APPENDIX 3

5 NOV 2012

Mr A Douglas
Tree Team
Appletree Court
Beaulieu Road
Lyndhurst
SO43 7PA

Carla Venton
2 Village Mews,
Vicarage Road,
Marchwood
SO40 4SX

1/11/2012

Dear Mr Douglas

Objection to tree preservation order 24/12 provisional order granted 10th October 2012.

I write as the owner of the property at the above address with regard to the tree preservation order 24/12. I would like to register an application to object to the tree preservation order and request that tree works be carried out.

The location of the tree is directly in front of my property and causes a number of issues and concerns for myself and other local residents.

Firstly, during the Autumn/Winter months the leaves which fall from this tree cover the only path access to my front door and that of some of the other residents, and despite regular sweeping, the path becomes extremely dangerous, particularly when it rains, and both myself and my partner have slipped and fallen over and believe this to be a health and safety issue.

The tree has also grown considerably and now over hangs my property which causes the only access for direct sunlight into my property to be blocked and I believe this to be against my basic human rights. Also, additional cost is incurred having to keep the internal lights on due to this.

Thirdly, especially at this time of year, the leaves from the tree collect and block the gutters on a regular basis and therefore a cost is incurred to have these safely removed.

I would therefore like to request, rather than the tree be preserved, that the tree is removed, and if not removed, I would strongly recommend that tree works are carried out to alleviate the above issues. There are a number of other trees close by and I do not feel it would be detrimental to the appearance of the local environment.

I would greatly appreciate this matter be treated with some urgency and I look forward to hearing from you soon. I may be contacted at the above address or on

Yours sincerely

Carla Venton