

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 34/13, LAND OF 30 SAMBER CLOSE, 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 Tree matters throughout the New Forest District are dealt with by the New Forest National Park Authority, with the Park Authority acting on this Council's behalf outside the Park area. The Park Authority, in common with the practice previously adopted by 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 Authority 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 Authority, in writing, within 28 days of the Order and corresponding documentation being served on those affected by it. The Authority 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, in respect of trees outside the Park area, the objection is referred to a meeting of this Council's 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 Authority or 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 Authority or 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 Local Planning Authority 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 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 lop, top or fell the trees as the officers will normally visit the site and give advice on the potential work.

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 The Town and Country Planning (Tree Preservation) (England) Regulations 2012 provide that a person will be entitled to receive compensation from the Local Planning Authority for loss or damage caused or incurred in consequence of: -

- (a) The refusal of any consent required under the Regulations;
- (b) The grant of any such consent subject to conditions;
- (c) The refusal of any consent, agreement or approval required under such a condition.

8.4 A claim to compensation cannot be made where: -

- (a) More than 12 months have elapsed since the Local Planning Authority's decision (or, if the decision has been appealed to the Secretary of State, from the date of determination of the appeal);
- (b) The amount of the claim would be less than £500.

8.5 Compensation is NOT payable: -

- (a) For loss of development value or other diminution in the value of the land. 'Development value' means an increase in value attributable to the prospect of developing land, including the clearing of land;
- (b) For loss or damage which, having regard to the application made, and the documents and particulars accompanying the application, was not reasonably foreseeable when consent was refused, or was granted subject to conditions;
- (c) For loss or damage which was (i) reasonably foreseeable by the person seeking compensation, and (ii) attributable to that person's failure to take reasonable steps to avert the loss or damage, or to mitigate its extent;
- (d) For costs incurred in appealing to the Secretary of State against the refusal of any consent required under the Regulations, or the grant of such consent 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 34/13 relating to land of 30 Samber Close, Lyvington with, or without, amendment.

For Further Information Please Contact:

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Background Papers:

Attached Documents:
TPO 34/13
Published documents

APPENDIX 1

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER TPO/0034/13

LAND OF 30 SAMBER CLOSE, LYMINGTON

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

Anyone wishing to undertake works to trees protected by TPO should apply in writing to the Authority clearly identifying the tree(s) and the work intended. A decision will usually be issued within six weeks. Application forms are obtainable from the Authority's website.

Citation

1. This Order may be cited as the TPO/0034/13 - LAND OF 30 SAMBER CLOSE, LYMINGTON.

Interpretation

2. (1) In this Order "the authority" means the New Forest National Park Authority.

(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, uprooting, 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 Nineteenth day of September 2013

Signed on behalf of the ~~New~~ Forest National Park Authority

.....
Authorised by the Authority to sign in that behalf

SCHEDULE

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

No. on Map	Description	Situation
T1	Oak	Situated in the rear garden of 30 Samber Close, as shown on plan.

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

No. on Map	Description	Situation
None		

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

No. on Map	Description	Situation
None		

Woodlands (within a continuous black line on the map)

No. on Map	Description	Situation
None		



Tree Preservation Order Plan

Town and Country Planning Act 1990

TPO Number: TPO:0034/13

Scale: 1:1000

Date Printed: 18:09:13

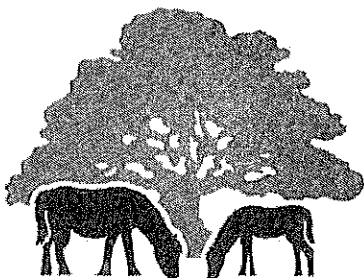
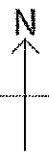
Key



Individual Trees Covered by TPO



Trees Noted but not Worthy of Preservation



**NEW FOREST
NATIONAL PARK**

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SO41 9ZG

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AN AUTHORISED SIGNATORY

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APPENDIX 2

**OBJECTION TO TREE PRESERVATION ORDER NO. 34/13
LAND OF: 30 Samber Close, Lymington**

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.34/13 was made on 19th September 2013. The plan and Order are attached as Appendix 1 to Report A.
- 1.2 On the 5th September 2013 the tree's owner contacted the New Forest National Park Authority to determine the protection status of an Oak in their garden.
- 1.3 On 18/9/13 the tree was inspected and was considered to offer a good level of amenity and its protection via TPO was required to ensure that the tree was not prematurely removed or subject to unsympathetic tree work.

2 THE TREE

- 2.1 The Order protects an Oak situated on the rear, eastern boundary of 30 Samber Close.
- 2.2 From a ground level inspection the tree appeared to be in good physiological condition. The tree has been reduced historically and there is deadwood in the crown typical for a tree of this maturity. No defects were noted that would necessitate secondary investigation or give rise to concerns regarding the tree's safety.
- 2.3 The tree offers a good level of visual amenity to the immediate and surrounding area.

3 THE OBJECTION

- 3.1 Copies of the objection letters are included in Appendix 3.
- 3.2 The grounds for objection include:
 - The tree overhangs the objector's property.
 - The roots desiccate the soil which makes a portion of the garden difficult to cultivate.
 - The tree's leaves and acorns cause a nuisance in autumn.
 - The tree shades the objector's gardens
 - The objector is concerned that the tree poses a risk to their grandchildren when using a trampoline situated beneath the tree's crown.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 A number of the tree's lower lateral branches do overhang the rear, western boundary of the objector's property. Following the submission of the objection letters I met with both Mrs Mapes of 7 Kings Crescent and Mr Fugett of 9 Kings Crescent. During the site visit it was identified that shortening the tree's lowest lateral branches would be considered reasonable and should be sufficient to overcome concerns regarding overhanging branches.
- 4.2 It is true that trees take up significant quantities of water and their leaves intercept rain and therefore reduce the volume and rate of water that reaches the ground beneath their canopy. There are however many species of plant that are adapted to these conditions, such as woodland flora. The introduction of these plants could allow this area of the garden to become cultivated.
- 4.3 The seasonal loss of leaves and acorns is not considered reasonable grounds to justify the premature removal of an Oak that positively contributes to the area's amenity. The gathering and removal of leaves is considered as routine maintenance.
- 4.4 As the tree is situated adjacent to the objectors' western boundary it shades their garden for a comparatively brief period in the late afternoon and early evening. Their gardens have unobstructed daylight for the majority of the day. Reasonable tree work such as the shortening of lateral branches and the removal of epicormic growth from the stem would reduce the shading the tree causes and should go some way to overcome the objectors' concerns.
- 4.5 It was noted that there is deadwood in the tree's crown which, should it fall, could cause injury. This can be removed as an exception through a tree works application.

5 SUPPORT

No letters of support have been received

6 CONCLUSION

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

7 RECOMMENDATION

It is recommended that TPO 34/13 is confirmed without modification.

Further Information:

Liz Beckett
Arboricultural Officer
Telephone: 01590 646670

Background Papers:

Tree Preservation Order No. 34/13

APPENDIX 3

7, Kings Cres.
SO41 9AT
Oct 2013

Dear Mrs. Beckett,

I am writing
to object to the recent
T.P.O. (19.9.2013) put on an
oak tree at 30 Samber close.

Firstly I would like to say
that I am all in favour of
preserving trees etc but I feel
that each case should be
assessed separately.

The tree in question is
extremely large for such an
enclosed area and causes
many problems for neighbouring
properties, apart from taking a
huge amount of light.

My first concern is the
safety of my granddaughter (who
lives with us) as her trampoline

2.

is directly underneath heavy branches. we have had plenty of lighter branches fall and this concerns me greatly. Also we have a tremendous amount of acorns and leaves and buds which practically cover our garden and now we have a young dog which causes great concern as these things are highly toxic to him.

There are many other trees in close proximity which provide suitable habitat for birds etc and I really do support that but equally we deserve to enjoy our gardens with peace of mind.

Kind regards

TPO/34/13



Mr A Fugett
9. Kings Crescent
Lymington
Hants

My objection to the oak tree preservation at No 30 sameer close this tree partly overhangs my garden, & the roots suck the moisture out of the ground.

I can no longer cultivate this part of my garden, because nothing will grow.

In ~~August~~ ^{Autumn} when the leaves fall the southwest wind blows the leaves into my garden

I am 83 years old and find this very hard work cleaning them up.

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