



APPEALS PANEL – 9 JUNE 2014

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 46/13, LAND OF 18 ELLERY GROVE, 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 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's 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 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 46/13 relating to land of 18 Ellery Grove, Lymington, with or without, amendment.

For Further Information Please Contact:

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Background Papers:

Attached Documents:
TPO 46/13
Published documents

APPENDIX 1

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER TPO/0046/13

Land at 18 Ellery Grove, Lymington, SO41 9DX

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/0046/13 - Land at 18 Ellery Grove, Lymington, SO41 9DX.

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 Eleventh day of December 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 green on the map)

No. on Map	Description	Situation
T1	Oak	Within the rear garden of 18 Ellery Grove adjacent to the rear boundary

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

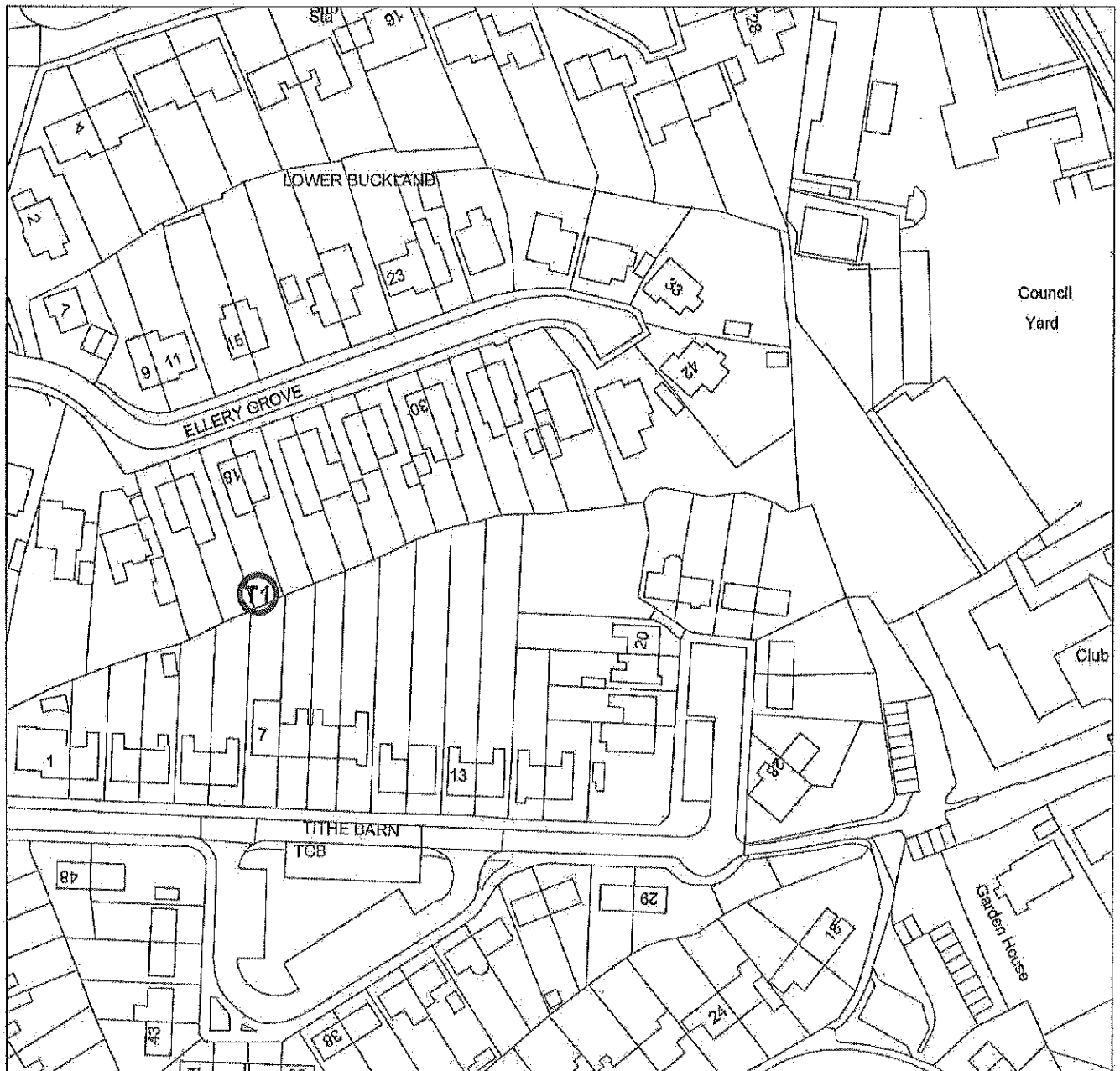
No. on Map	Description	Situation
None		

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

No. on Map	Description	Situation
None		

Woodlands (within a continuous green line on the map)

No. on Map	Description	Situation
None		



Tree Preservation Order Plan

Town and Country Planning Act 1990

TPO Number: TPO/0046/13

Scale: 1:1250

Date Printed: 10/12/13

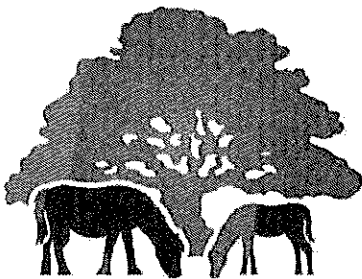
Key



Individual trees covered by TPO



Trees noted but not worthy of preservation



**NEW FOREST
NATIONAL PARK**

New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
SO41 9ZG

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AN AUTHORISED SIGNATORY

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APPENDIX 2

**OBJECTION TO TREE PRESERVATION ORDER NO. 46/13
LAND AT: 18 ELLERY GROVE, LYMINGTON**

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.43/13 was made on 11th December 2013. The TPO is attached as Appendix 1 to Report A.
- 1.2 The Order was made following an enquiry from a tree surgery contractor to determine the protection status of an Oak in the rear garden of 18 Ellery Grove that he had been asked to fell.
- 1.3 The Oak tree was viewed by tree officers and considered to offer a good level of amenity. Its protection by a TPO was required to ensure that the tree was not removed.

2 THE TREE

- 2.1 The Order protects a single Oak situated in the rear garden of 18 Ellery Grove, on its boundary with no. 16.
- 2.2 The tree grows on a steep bank. It was estimated to be 18-20m in height with a stem diameter of approximately 0.7m. The tree appeared to be in good physiological condition. No significant 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, being visible from Ellery Grove and surrounding properties.

3 THE OBJECTION

- 3.1 Two objections to the Order were received. One was from Mr Dear of 18 Ellery Grove and the second was from neighbours, Mr and Mrs King of 20 Ellery Grove. Copies of the objection letters are included in Appendix 3.
- 3.2 The grounds for objection may be summarised as:
 - Arrangements to remove the tree had been made before the TPO was served. Over the years approximately 8 large Oaks have been removed from rear gardens along Ellery Grove, one as recently as 2013. There have been no objections from surrounding houses.

- The tree is situated on a steep bank which is unstable, it leans towards the properties and is exposed to prevailing winds, causing anxiety. The bank at the rear of No. 20 only stabilised after the removal of trees and tall plants.
- The tree is situated at the rear of a small south west facing garden. It is over-bearing, causes shade and makes the gardens cold and damp throughout the year.
- There is no public access and interest is primarily from affected parties at 16, 18 and 20 Ellery Grove who share the same concerns. Neighbours at numbers 16 and 20 supported and agreed to contribute to the cost of removal.
- The dry soil prevents plant growth despite efforts over the years.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 The Authority has no record of previous tree removals at the rear of gardens in Ellery Grove as they were not protected by TPOs. It might be argued that a decline in tree cover increases the value of those trees that remain in this locality.
- 4.2 There is no evidence that the root plate of the tree has moved or is unstable. It is not unusual for trees to grow on banks and they adapt to the mechanical loading imposed upon them. The tree has recently been pruned, with consent, to reduce its height by approximately 5m, greatly reducing this mechanical loading. Roots have not been exposed by any erosion of the bank.
- 4.3 It is accepted that the tree was overly dominant of the adjacent small gardens. Following the objections to the Order the option to prune the tree was discussed with the owner, Mr Dear, and an application to lop the tree was invited. Consent to reduce the tree by approximately 5m was subsequently granted in March 2014 and the work has been carried out so that its dominance has now been greatly reduced.
- 4.4 The tree provides a positive public amenity when viewed from Ellery Grove.
- 4.5 Selection of suitable plant material and/or irrigation would overcome difficulties in establishing plants on the bank.

5 SUPPORT

- 5.1 No letters of support have been received

6 CONCLUSION

- 6.1 The Oak offers a good level of visual amenity but it had become unreasonably dominant of adjacent properties. Consent was accordingly granted to reduce its size - an operation that will require periodic repetition. Government guidance is that the higher the amenity value of a TPO tree and the greater the impact of its removal on the amenity of the area, the stronger the reasons needed to

remove it. It therefore follows that consideration should be given as to whether the public amenity provided by the tree outweighs the reasons given for objecting to the Order.

7 RECOMMENDATION

It is recommended that TPO 46/13 is confirmed without modification.

Further Information:

John Hearne
Arboricultural Officer
Telephone: 01590 646677

Background Papers:

Tree Preservation Order No. 46/13

APPENDIX 3

Scanned JH



WILLIAM T DEAR
18 Ellery Grove
Lymington
Hants
SO41 9DX

E.mail :

Mobile :

New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
Hants
SO41 9ZG

30 December 2013

TPO/0046/13

Dear Sirs,

I refer to the above provisional TPO, served on 11th December 2013,
and reply in accordance to the right to appeal as follows:

The proposed felling of the oak tree, subject to the above provisional
TPO, was to take place early December and at the time of arranging,
the council confirmed, that the tree was not subject to any TPO.

This in it self was not unusual, as over the years approx 8 large Oak trees
at the rear of gardens along Ellery grove have been felled, and 1 as
recently as early this year, for the same reasons as I am to outline in this
objection to the TPO.

1. Safety Concern

The rear of these south west facing gardens at Ellery Grove are based
on a large bank which has housed the trees over the years and does
so the oak tree at 18 Ellery Grove.

The bank itself has moved, and continually does so.

The tree in question drains any water from the earth of the bank making the soil fine and unstable.

With the tree being so large, this causes anxiety to myself and neighbours, particularly bearing in mind the unstable bank, together with the recent high winds, causing substantial local tree damage.

2. Landscape

In conversations it was pointed out that the tree is of interest ?

The tree is situated at the rear of a small south west facing garden.

There are adjacent gardens to myself as well as backing gardens of Tithe Barn.

There is no public access and therefore no interest except from the effected parties, being primarily those residents at 16,18 and 20 Ellery Grove.

These houses in question share the same concerns, that of having such an imposing, dominant tree within such a small gardened area.

The dry soil stops any plant growth on the bank despite efforts over the years.

The tree dominates and shades / blocks, all light to those south west facing gardens and houses due to the over reaching branches.

3. Collective support.

When considering the felling of this tree I consulted the neighbours on both sides whom were in full support and in fact are contributors to the cost of the tree removal.

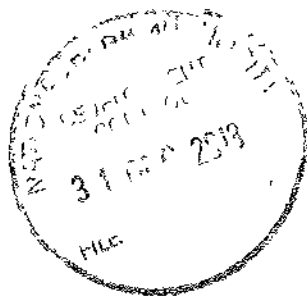
In summarising I feel that the views of those most effected here should be heard. The support of my immediate neighbours will be as my objection to the order I am sure, and in doing so we would ask that the appeal be considered and the order duly overturned.

Yours sincerely

William Dear

Mr J Hearne
The Tree Team
Lymington town hall
Avenue Road
Lymington
SO41 9ZG

Mr & Mrs N King
20 Ellery Grove
Lymington
SO41 9DX



31st December 2013

Delivered By Hand

Dear Mr Hearne,

TPO046/13

Further to your tree preservation order hand delivered on the 11th December 2013 I would like to confirm our objection to this order, the reasons for this objection are outlined in this letter.

I understand from Mr Dear of 18 Ellery Grove that the TPO was not issued as a result of a detailed inspection of the site and was a reaction to the contractor informing you of their intention to start work

Our objections to this TPO are as follows

- Precedent
 - There have been several trees of this size and nature all along Ellery Grove and all bar 2 of these trees have been removed. None were subject to any restrictions or TPO and at no time have there been any objections from surrounding houses.
 - Why you should suddenly deem this tree to be of special interest is very hard to understand given that it stands in a private garden and has been unloved for the 16 years that we have owned this address.

- Safety
 - The tree in question grows on a steep bank and is leaning towards 18 and 20 Ellery Grove. Given that the tree is south west of the houses and the prevailing wind is from the south west the houses are at great risk if the tree should come down
 - The tree itself may be in good health and strong but the bank that it grows on is not, the earth bank at the back of 20 Ellery grove has continued to move and collapse and although it may be claimed that the tree roots will stabilise the bank, I would argue that this is the case for low lying plants but not for such tall trees
 - The bank at the rear of 20 Ellery groves only became stable once we removed all the high standing plants and trees

- Environment

- You have claimed that removal or excessive pruning of this tree would be a loss of amenity to the local environment but we would argue the complete opposite.
- This tree is so large and over bearing with very small gardens adjacent that in full leaf it allows little or no light to the area. This loss of sun light means that the area around has remained cold and damp throughout the year, resulting in the gardens being incredibly wet. The lack of light makes it hard for other plants to develop
- You can see from the gardens that have removed their major tree that the gardens and local area are greatly enhanced by the extra light and have been turned in to well cared for and beautiful gardens.

Given that this tree is in private land surrounded by houses and at no time has anyone shown any interest or care for this tree, I find it very strange that it should now be considered a loss of amenity. It is also increasingly strange that you should wait until the day of work commencing to make such an order, given that enquires were made some months ago

Yours sincerely

Nigel & Alison King