

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 11/14, LAND FOREST FRONT RECREATION GROUND, HYTHE

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 are made under Section 198 of the Town and Country Planning Act 1990 (the Act). The Act is supported by guidance issued by the Department for Communities and Local Government on 6 March 2014 entitled “Tree Preservation Orders and trees in conservation areas” (“the DCLG Guidance”).
- 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.
- 2.3 Where a Tree Preservation Order is made by a Park Authority officer, it has immediate provisional effect to protect the tree. This provisional effect will last for six months, or until the Order is confirmed by the planning authority, whichever is earlier.
- 2.4 The Order contains a schedule (which includes a map) specifying which tree or trees are protected by the Order.
- 2.5 Once the Order has been made, it is served, together with a Notice, on all persons with an interest in the land affected by the Order. It will also be made available for public inspection. 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. The Notice will state the reasons that the Order has been made, and will contain information about how objections or representations may be made in relation to the Order.
- 2.6 The procedure allows for written objections and representations to be made to the Authority.
- 2.7 Where an objection is made to the Order, in the first instance, the Tree Officers will contact the objector to see if their concerns can be resolved. If they cannot, then, in respect of trees outside the National Park area, the objection is referred to a meeting of this Council’s Appeals Panel for determination.

- 2.8 The Appeals Panel must consider any duly made objections and representations, and must decide whether to confirm the Tree Preservation Order, with or without modifications.

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 protect one or more individual trees, groups of trees or woodlands or, more rarely, refer to an area of land.
- 4.2 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 overall impact and quality of the group should merit protection.
- 4.4 A woodland order would protect woodland as a whole. 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. A woodland order would protect trees and saplings which are planted or grow naturally after the order is made.
- 4.5 An area designation can be used to protect trees dispersed over a specified area. It may protect all trees in that area, or only trees of a particular species. 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 individual or groups of trees.

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 Amenity value

This term is not defined in the Act, but the DCLG Guidance advises:

- Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public.
- There should be a reasonable degree of public benefit in the present or future.

- When assessing amenity value, the authority might take the following into consideration: -
 - i. **Visibility:** The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.
 - ii. **Individual, collective and wider impact:** Public visibility alone will not be sufficient to warrant an Order. The authority should also assess the particular importance of an individual tree, or groups of trees or woodlands by reference to its or their characteristics including: -
 - a. Size and form;
 - b. Future potential as an amenity;
 - c. Rarity, cultural or historic value;
 - d. Contribution to, and relationship with, the landscape; and
 - e. Contribution to the character or appearance of a conservation area.
 - iii. **Other factors:** Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an order.

5.3 Expediency

Again, this is not defined in the Act, but the DCLG Guidance is as follows:

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect the trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

6. THE EFFECT OF THE ORDER

- 6.1 Once the Order has been made, it is an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy the protected tree or trees without first gaining

consent from the Council through a tree works application, unless such works are covered by an exemption within the Act.

- 6.2 There is no fee for a tree works application. If consent is refused for tree works, the applicant has the right of appeal to the Secretary of State.

7. CONSIDERATION

- 7.1 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. Members should reach a decision, based on their own observations, any evidence presented, and any objections and representations made, whether it appears to them to be expedient in the interests of amenity to confirm the Order.

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

Appendix 1 The Tree Preservation Order.

Appendix 2 The report of the Council's Tree Officer, setting out all the issues (s)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

Appendix 4 The written representation from Hythe and Dibden Parish Council in support 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 Order. 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' owner.

- 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 Order.

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 (under the First Protocol of the European Convention on Human Rights) peacefully to enjoy his possessions. Such interference is capable of justification if it is 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 (under Article 8 of the European Convention on Human Rights) to respect for his private and family life and his home. Such interference is capable of justification if it is in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others.

12. RECOMMENDED:

- 12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 11/14 relating to land of Forest Front Recreation Ground, Hythe with, or without, amendment.

For Further Information Please Contact:

Jan Debnam
Committee Administrator
Tel: (023) 8028 5588
E-mail: jan.debnam@nfdc.gov.uk

Grainne O'Rourke
Head of Legal and Democratic Services.
Tel: (023) 8028 5588
E-mail: grainne.orourke@nfdc.gov.uk

Background Papers:

Attached Documents:
TPO 11/14
Published documents

APPENDIX 1

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER TPO/0011/14

Forest Front Recreation Ground, Hythe

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/0011/14 - Forest Front Recreation Ground, Hythe.

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 Twelfth day of June 2014

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	On recreation ground adjacent to 79 Elm Crescent as shown on plan
T2	Oak	On recreation land, adjacent to rear boundary of 75/77 Elm Crescent as shown on plan.

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
G1	Group comprising of 8 x Oak trees	Situated on recreation ground adjacent to 24 Holly Close - 81 Elm Crescent as shown on plan.
G2	Comprising of 5 x Oak trees.	On recreation ground adjacent to 45 - 61 Elm Crescent as shown on plan.

Woodlands (within a continuous green line on the map)

No. on Map	Description	Situation
None		



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Tree Preservation Order Plan





Town and Country Planning Act 1990

TPO Number: TPO/0011/14

Scale: 1:1500

Date Printed: 29/05/14

Key

-  Individual trees covered by TPO
-  Area of trees covered by TPO
-  Groups covered by TPO
-  Woodland of trees covered by TPO



**NEW FOREST
NATIONAL PARK**

AN AUTHORISED SIGNATORY

New Forest National Park Authority, Lymington Town Hall, Avenue Road, Lymington, SO41 9ZG
Tel: 01590 646600 Fax: 01590 646666

APPENDIX 2

OBJECTION TO TREE PRESERVATION ORDER NO. 11/14 Forest Front Recreation Ground, Hythe

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No.11/14 was made on 12th June 2014. The TPO is attached as Appendix 1 to Report A.
- 1.2 The Order was made following a request from New Forest District Council's Corporate Tree Officer. There have been repeated requests from residents living adjacent to these trees to have them pruned back or cut down. He had concerns that residents may resort to pruning or even felling these trees themselves.
- 1.3 The group of boundary trees was viewed by the tree officer and are considered to offer a good level of amenity. Their protection by a TPO was undertaken in order to prevent neighbouring properties carrying out unregulated work to these trees.

2 THE TREES

- 2.1 The Order protects 2 Groups, G1 comprising of 8 oak trees adjacent to Holly Close, G2 comprising of 5 oak trees adjacent to 45-61 Elm Crescent and 2 individual trees identified as T1 (adjacent to Elm Crescent garages) and T2 (adjacent to 75 and 77 Elm Crescent).
- 2.2 These trees form an important group and part of the boundary between the housing estate and public open space
- 2.3 The trees offer a good level of visual amenity being visible from Forest Front Recreation Ground, Holly Close and Elm Crescent.

3 THE OBJECTION

- 3.1 Two objections to the Order were received and are only related to an individual oak which is identified as T2 on the Order. One was from the residents of 77 Elm Crescent and the second was from their neighbour at 79 Elm Crescent. Copies of the objection letters are included in Appendix 3 to Report A
- 3.2 The grounds for objection may be summarised as:
 - The tree shades the gardens of the properties for significant parts of the day.

- Natural debris (acorns, leaves, sap and small twigs) from the trees fall into the gardens.
- Concerns about large branches falling from this tree and damaging property or hurting someone in the garden.
- No. 77 reports that children and young adults climb this tree and throw things into their garden.
- Bird mess, birds roosting or sitting in the tree excrete into the garden, this is a particular problem for no. 77 as a grandchild lives at the property who has multiple health problems. This resident is very concerned about the bird mess which could cause complications with his health problems.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 The majority of the concerns raised about this tree could be remedied by expert professional pruning which would not adversely affect its overall amenity. The crown could be pruned so that the overhang over the garden would be significantly reduced. This would reduce the amount of natural debris falling from the tree, the likelihood of large branches falling into the property and roosting opportunities for pigeons. An application for reasonable works to this tree would not be refused.
- 4.2 By confirming this Tree Preservation Order work carried out to these trees can be controlled and will give the local planning authority the opportunity to make recommendations on managing this tree and the others appropriately in order to maintain the health and amenity of the trees which are part of an important boundary group.

5 SUPPORT

No letters of support have been received

6 CONCLUSION

The oak tree offers a good level of visual amenity and the TPO does not preclude sound arboricultural management. It does ensure that no unnecessary or inappropriate work is undertaken which could compromise the trees' health and visual amenity value.

7 RECOMMENDATION

It is recommended that TPO 11/14 is confirmed without modification.

Further Information:

Hannah Chalmers
Tree Officer
Telephone: 01590 646674

Background Papers:

Tree Preservation Order No. 11/14

APPENDIX 3



Hythe
Southampton
Hampshire
SO45 3pa

To whom it may concern,

We are writing to object to the preservation order being put on the tree behind our house "77 Elm Crescent."

Our main objections are....

① we have no sunlight after a certain time unless we are stood by our back door as the tree is so over grown it blocks the Sun,

② We have to clean all our grandsons toys, swimming pool & other items ^{every day} due to the birds mess & tree debris ie leaves, twigs & other stuff.

Birds mess is highly Contagious and my [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As I've said my grandchildren live with me and [REDACTED]

[REDACTED]

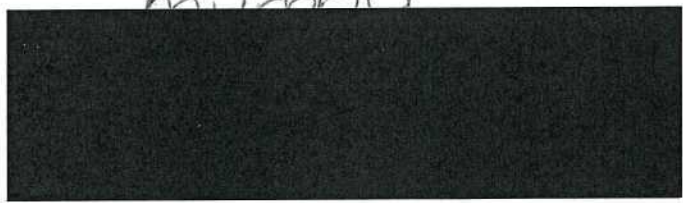
③ We have had independent tree surgeons out to look at the tree and each one has the big branches will end up falling down & potentially smashing our fences and anything that we have in our garden.

④ children from netley view play park use it as a climbing frame and even late teens/adults do & they like to use it to throw bottles & other items into our garden.

We have only ever asked
to trim it right back, never
to cut it down, how would
you feel if you had no sun
light, had to clean your
grandchildrens toys every
day & night or the fear of
tree branches falling in the
gerden or even falling on to
the people you love the
most.

I hope you can agree with
us on the matter.

Thankyou very much
maeion & Gary
murray



[REDACTED]
Hythe
Hampshire
SO45 3PG

To

Whom it may concern.

I object to the tree preservation order being put on the tree behind 77/79 elm Crescent.

I love being in the garden when I'm not at work but I only get Saturday & Sunday of so ~~after~~ I like to plant new stuff & tend to the flowers I already have but I have to be out there early as possible as sun ~~disappears~~ ^{disappear}, I also have to clean the stuff from the

trees.

I have a cat and have to be careful what is in the garden.

I have spoken to mr & mrs murphy about the issue & concerns and I agree that although it would be nice not to have the tree there it has to be but please can you at least trim it right back.

Thankyou



mrs

I asked mrs murphy to write this letter for me as im at work everyday, I told her to what to write and I have signed it.

APPENDIX 4



HYTHE AND DIBDEN PARISH COUNCIL

The Grove, 25 St. John's Street, Hythe, Hampshire SO45 6BZ

Serving the communities of Dibden, Dibden Purlieu and Hythe

DAVID SHIMPE Clerk to the Council

Tel: (023) 8084 1411

Fax: (023) 8084 2181

email: Marcus.kendall@btconnect.com

Jan Debnam
Committee Administrator
Appletree Court
Lyndhurst
Hampshire
SO43 7PA

03/11/2014

L1/1/mk

Dear Jan Debnam

Tree Preservation Order 11/14

Land of Forest Front Recreation Ground Hythe

In regard to your letter JMD/JA/TPO/11/14, unfortunately due to the meeting cycle of the Parish Council, we are unable to submit the views of the Parish Councillors. However I have spoken with the Chairman of the Parish Councils Planning Committee and he is of the opinion that these trees are of high importance and should be protected.

If I can be of any further assistance please contact me using the above details.

Yours sincerely

Marcus Kendall