

NOTICE OF MEETING

Meeting: APPEALS PANEL

Date and Time: WEDNESDAY, 20 APRIL 2016, AT 10.00 AM*

Place: COUNCIL CHAMBER, TOWN HALL, LYMINGTON

Telephone enquiries to: Lyndhurst (023) 8028 5000
023 8028 5588 - ask for Jan Debnam
E-mail: jan.debnam@nfdc.gov.uk

PUBLIC PARTICIPATION:

*Members of the public may speak in accordance with the Council's public participation scheme:

- (a) immediately before the meeting starts, on items within the Panel's terms of reference which are not on the public agenda; and/or
 - (b) on individual items on the public agenda, when the Chairman calls that item.
- Speeches may not exceed three minutes. Anyone wishing to speak should contact the name and number shown above.

Bob Jackson
Chief Executive

Appletree Court, Lyndhurst, Hampshire. SO43 7PA
www.newforest.gov.uk

This Agenda is also available on audio tape, in Braille, large print and digital format

AGENDA

Apologies

1. ELECTION OF CHAIRMAN

To elect a Chairman for the meeting.

2. MINUTES

To confirm the minutes (including confidential minutes) of the meeting held on 21 December 2015 as a correct record.

3. DECLARATIONS OF INTEREST

To note any declarations of interest made by members in connection with an agenda item. The nature of the interest must also be specified.

Members are asked to discuss any possible interests with Democratic Services prior to the meeting.

4. TREE PRESERVATION ORDER NO 41/15 (Pages 7 - 30)

To consider objections to the making of Tree Preservation Order 41/15 relating to land of 21 Solent Avenue, Lymington.

5. ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT

To:	Councillors	Councillors
	A R Alvey W G Andrews Mrs A E McEvoy	D N Tungate C A Wise

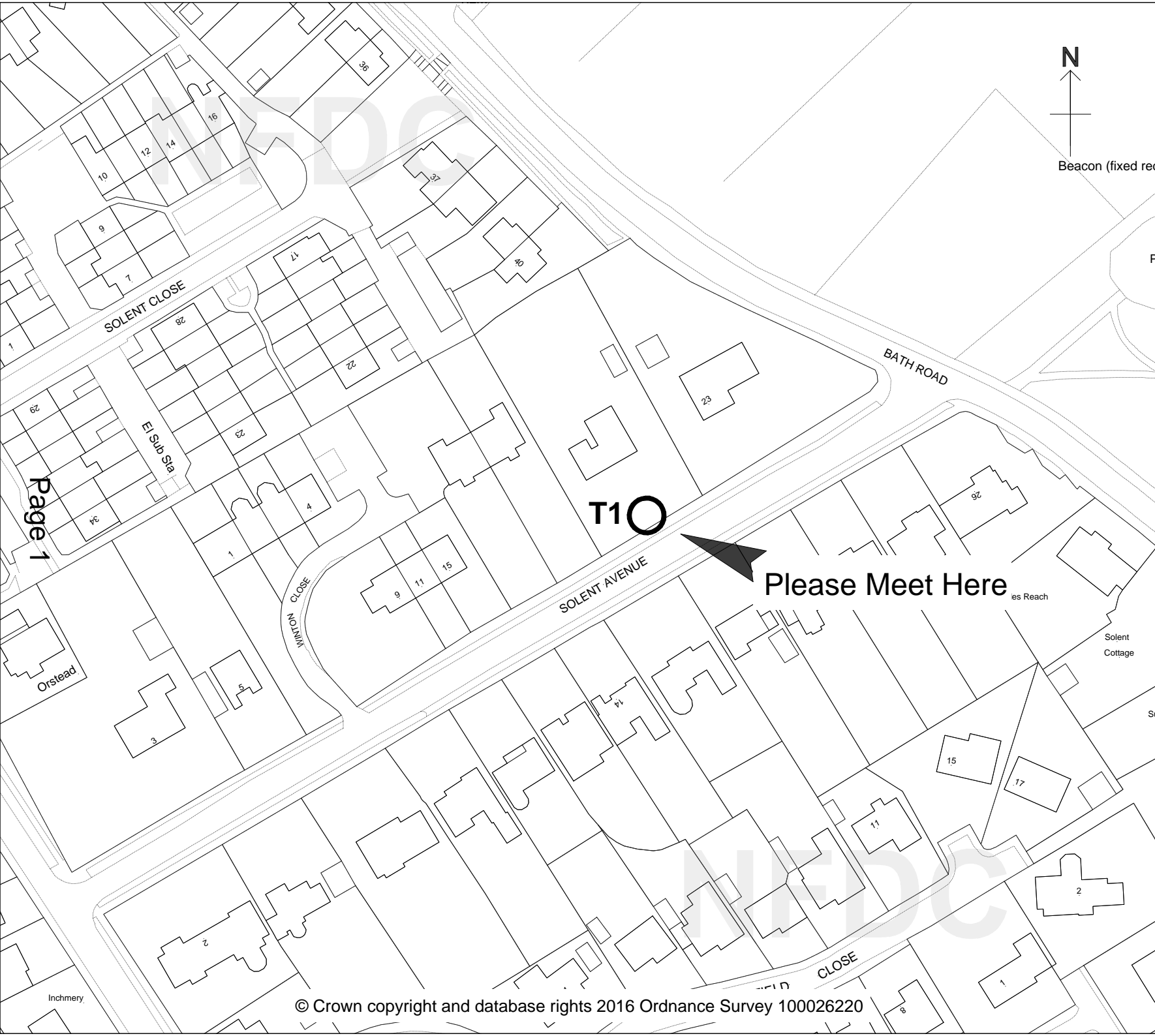
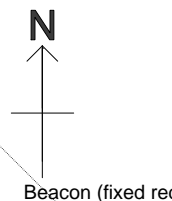


New Forest
DISTRICT COUNCIL

www.newforest.gov.uk
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TPO HEARING
TPO/0041/15

Land of
21 Solent Avenue
Lymington
SO41 3SD



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Agenda Annex

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**NEW FOREST DISTRICT COUNCIL
DETERMINING TREE PRESERVATION ORDERS WHERE OBJECTIONS TO THE
ORDER HAVE BEEN MADE**

Procedure at the Appeals Panel for Tree Preservation Orders

1. INTRODUCTION

- 1.1 Regulations oblige local authorities to take into consideration any duly made objections before deciding whether to confirm a Tree Preservation Order. A duly made objection must be sent to the Council in writing. Whether this objection is made by letter or by e-mail it will be considered to be a public document that is open to inspection on the file and may, in the event of an Appeal, be published in full.
- 1.2 At New Forest District Council, objections are considered by a Panel drawn from the Appeals Committee.
- 1.3 Meetings of the Appeals Panel are formal meetings of the Council. The Panel is supported by a legal advisor and a Committee Administrator. The Panel will consider all the evidence that has been submitted in respect of the Order. All of the evidence and representations received are published and in the public domain.
- 1.4 The Appeals Panel will hear the cases put forward objecting to the making of the Order and also in support of confirming the Order. The Members of the Panel will balance the evidence before them, in the light of the statutory constraints and guidance that apply.
- 1.5 The process is designed to be as open as possible and to make it as easy as possible for objectors and supporters of the Order to represent their point of view. They may therefore choose to have someone with them for support; or have their case presented by a friend, relative or professional advisor; and they may call such professional advisors as they feel necessary.

2. GUIDELINES FOR MEMBER ATTENDANCE

- 2.1 If a member of the Panel represents the area in which the contested Tree Preservation Order has been made as the local Ward Councillor, in accordance with the District Council's Code of Conduct, that Panel member must determine for themselves whether or not they have an interest within the terms of that Code and consequently whether they should take part in the decision making process.

3. SITE VISITS

- 3.1 Members meet on site before the meeting to view the tree(s) covered by the Order. The objector(s), arboriculturist, Local Ward Councillor(s) and a representative of the Parish or Town Council are also invited to the site visit. No discussion on the merits of the Order may take place at the site visit. The purpose of the visit is for Members to familiarise themselves with the site and the tree(s) and for the arboriculturist and the objector(s) to point out any features of the tree(s).

4. OBJECTION MEETING

- 4.1 The Chairman will explain that this is a procedure adopted by the Council for determining objections to Tree Preservation Orders.
- 4.2 The procedure for the meeting will be as follows:-
1. The objector(s) will explain the reasons for objection. They may expand on their written objection and may call any expert witnesses. They may also choose to have their case presented on their behalf by a friend or a professional advisor. They may also have a friend or other supporter with them for the hearing.
 2. The Council's arboriculturist may ask questions of the objector(s) or their representatives.
 3. Members of the Panel may ask questions of the objector(s).
 4. Supporters of the objector(s) may be heard, following the same procedure as in 1, 2 and 3.
 5. The Council's arboriculturist will put the case for preservation.
 6. The objector(s) may ask questions of the arboriculturist.
 7. Members of the Panel may ask questions of the arboriculturist.
 8. The supporter(s) of the Order may be heard. They may ask questions of the objector(s) and the arboriculturist. The supporters of the order may also choose to have their case presented on their behalf by a friend or a professional advisor. They may also have a friend or other supporter with them for the hearing.
 9. The local member may be heard.
 10. The Town or Parish Council may be heard.
 11. Members of the Panel may ask questions of the supporter(s).
 12. The arboriculturist may sum up.
 13. The objector(s) may sum up.
- 4.3 At the conclusion of the objection meeting the Chairman will declare the hearing closed.
- 4.4 The Panel will then discuss the matter on the basis of the evidence that has been presented to it. No additional information will be sought once the hearing has been closed. The press and public may remain while the decision is made.

- 4.5 The decision of the Panel will be conveyed in writing to the objector(s) and all other persons originally served with a copy of the Order as soon as possible following the meeting.

PLEASE NOTE: ALL REPRESENTATIONS THAT ARE TO BE TAKEN INTO ACCOUNT IN HEARING AN APPEAL WILL BE PUBLISHED IN FULL IN ACCORDANCE WITH THE COUNCIL'S NORMAL PROCEDURES FOR PUBLISHING DOCUMENTS FOR MEETINGS.

(Auth-ad/Ctee/JMD/Appeals Panel/TPO Procedure Revised 1107.doc)
(11/07)

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APPEALS PANEL – 20 APRIL 2016

OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 41/15, LAND OF 21 SOLENT AVENUE, 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 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

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 41/15 relating to land 21 Solent Avenue, Lymington 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
Executive Head Governance and Regulation.
Tel: (023) 8028 5588
E-mail: grainne.orourke@nfdc.gov.uk

Background Papers:

Attached Documents:
TPO 41/15
Published documents

APPENDIX 1

**OBJECTION TO TREE PRESERVATION ORDER NO. 41/15
LAND OF 21 SOLENT AVENUE, LYMINGTON.**

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order (TPO) No. 41/15 was made on 9TH December 2015. The TPO plan and first schedule are attached as Appendix 2 to the report.
- 1.2 On the 2nd December 2015 the New Forest National Park Authority received a written request to protect the Beech tree subject to this TPO as there was concern over the tree's future management following a change of ownership.
- 1.3 On the 3rd December 2015 the site was inspected and the Beech tree was subsequently protected by TPO.

2 THE TREES

- 2.1 The Order protects an individual Beech tree.
- 2.2 The tree is situated adjacent to the front boundary of 21 Solent Avenue and is a prominent feature of the street.

3 THE OBJECTION

- 3.1 A copy of the objection letters are included in Appendix 3 to the report.

The grounds for objection is that:

- There is no expediency for making the TPO.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 The objector's Tree Consultant asserts that the tree is under no threat of removal or damaging pruning work and therefore it is not expedient to make a TPO. The expediency considered as reasonable to make the TPO was the change in ownership. Subsequent to that the property owner, Mr Hutchinson, contacted the Tree Officer, Liz Beckett and informed her that it was his intention to extend the property. It was then considered that maintaining the TPO was reasonable to ensure that the tree was duly considered should development take place at this site.
- 4.2 A further letter dated 18/1/16 submitted by the objector's Tree Consultant sought to rebuff comments made by the Tree Officer in response to their objection. These rebuttal comments centred on a change of ownership

and possible development activity not, in the opinion, of the consultant being reasonable grounds for making TPOs. The precautionary approach adopted to making the TPO due a to a change of ownership in this particular instance is considered reasonable as per this section of Planning Practice Guidance:

“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.

Revision date: 06 03 2014”

- 4.3 Furthermore, it is the Tree Officer’s experience that NFDC Planning Officer’s will not condition tree protection conditions where trees are not protected by TPO or by virtue of growing within a conservation area.

5 SUPPORT

No letters of support have been received

6 CONCLUSION

The Beech tree is a large, mature tree in a prominent position it positively contributes to the character of the area and provides a good level of public amenity. A recent change in ownership and the potential for redevelopment of the site are considered as reasonable grounds for the TPO to be maintained.

7 RECOMMENDATION

It is recommended that TPO: 41/15 is confirmed without modification.

Further Information:

Hannah Chalmers
Tree Officer
Telephone: 01590 646674

Background Papers:

Tree Preservation Order No. 41/15

APPENDIX 2

**TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER TPO/0041/15
LAND OF 21 SOLENT AVENUE, 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/0041/15 - LAND OF 21 SOLENT AVENUE, 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 Ninth day of December 2015
Signed on behalf of the New Forest National Park Authority

Authorised by the Authority to sign in that behalf

SCHEDULE

**SPECIFICATION OF TREES
TPO/0041/15**

Trees specified individually
(encircled in black on the Plan attached to this order)

Reference on map	Description	Situation
T1	Beech	Situated in the front garden of 21 Solent Avenue, Lymington, as shown on plan.

Trees specified by reference to an area
(within a dotted black line on the Plan attached to this order)

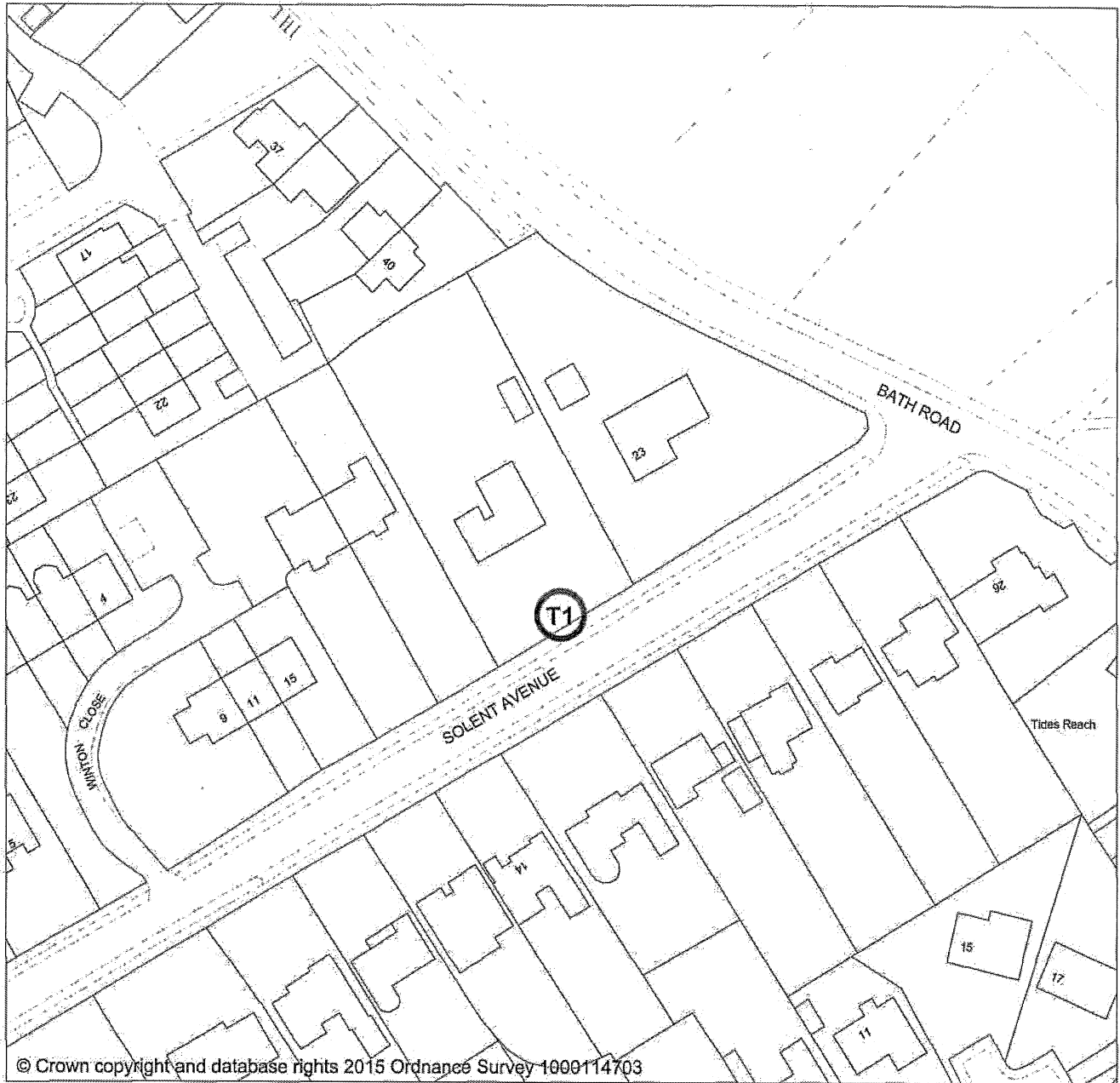
Reference on map	Description	Situation
None		

Groups of trees
(within a broken black line on the Plan attached to this order)

Reference on map	Description	Situation (including number of trees in the group)
None		

Woodlands
(within a continuous black line on the Plan attached to this order)

Reference on map	Description	Situation
None		



Tree Preservation Order Plan





Town and Country Planning Act 1990

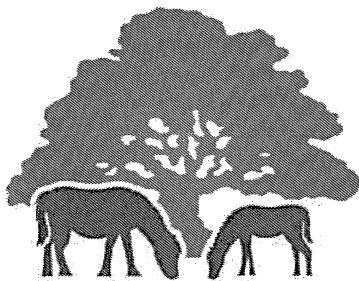
TPO Number: TPO/0041/15

Scale: 1:1000

Date Printed: 07/12/15

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**

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

HUMAN RIGHTS ACT 2000

I have been asked to exercise the power delegated to me by the Authority to make the following Tree Preservation Order:

TPO/0041/15 LAND OF 21 SOLENT AVENUE, LYMINGTON

Having considered the Tree Officer's reasons for making the TPO, I make the above TPO.

In coming to this decision, I have carefully considered Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998.

Whilst I recognise that the decision to make the TPO may interfere with the 2 aforementioned rights, I believe it is necessary to do so in the public interest (so that others can enjoy the considerable amenity value and benefits afforded by the tree(s) and likewise necessary for the protection of the rights and freedoms of others (i.e. the inhabitants of the area) to enjoy the tree(s) in their present settings. I also consider such action to be proportionate to the overall aim.

Signed:

An Authorised Signatory

Date: 9/12/15

APPENDIX 3

Mark Hinsley

Arboricultural Consultants Ltd.

MSc Res Man (Arb), OND (Arb), M.Arbor. A.

Established 1994



Reg. Office Address: Wessex House, Wimborne, Dorset, England BH21 1PB
Tel: 01202 840819 Email: enquiries@treeadvice.info

Company Reg. No. 07232825
VAT Reg. No. 730399627

Our Ref:MH/SolentAvenue21Lymington/TPO/4070

4th January 2016

The Chief Planning Officer
New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
SO41 9ZG

To whom it may concern

OBJECTION TO THE LAND OF 21 SOLENT AVENUE, LYMINGTON TREE PRESERVATION ORDER No. TPO/0041/15

On behalf of our client Mr Harry Hutchinson of 21 Solent Avenue, Lymington, SO41 3SD, we are writing to formally object to the making of the above referenced Tree Preservation Order (TPO) on a mature beech tree on our client's property.

Grounds for objection: The tree is under no threat of removal or damaging pruning, therefore it is not expedient to make a TPO in respect of it.

Our client recently purchased this dwelling. The beech tree is a large prominent feature in the front garden that could hardly be missed when viewing the property. The previous owner of the property, who also had no intention to harm this magnificent beech tree, actually requested a TPO whilst living in the house and was told by NFNPA that as the tree was under no threat it was not expedient to make an Order. Our client equally regards the tree as an asset and an enhancement to his quality of life, yet, with no consultation, he has been served with a TPO completely out of the blue. Surely the elected representatives of the people of Lymington who sit upon the NFNPA cannot be insensitive to the psychological blow that being treated in such a manner can have upon a family newly moved into a pleasant suburban street. It as if they have been immediately branded potential criminals simply because they have just moved into the area.

Whilst inspecting the tree for our clients and confirming that the tree needed no work on it at all, which is what they already suspected, we did notice that roots of the beech are causing some significant disruption to the public footway outside the boundary of 21 Solent Avenue. Can the NFNPA please confirm that in deciding to place a TPO on this beech tree they inspected the footway and determined that the retention of

Arboriculturalist: Alison Parish, BSc. Hons (Ecology), M.Hort. (RHS)
Arboriculturalist: John Christopher, FdScArb, HNC Building Studies
Technician: Rebecca Hinsley FdArt & Design
Support staff: Claire Perry, Teresa O'Neale

email: alisonparish@treeadvice.info
email: johnchristopher@treeadvice.info
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Page 2

these roots is not a hazard to pedestrians and in no way an unreasonable or negligent act on the part of the tree owner?

We look forward to your earliest reply.

Yours sincerely

Mark Hinsley. MSc.Res.Man(Arb.).OND(Arb.), M.Arbor.A.

cc Mr Harry Hutchinson

Arboriculturalist: Alison Parish, BSc. Hons (Ecology), M.Hort. (RHS)
Arboriculturalist: John Christopher, FdScArb, HNC Building Studies
Technician: Rebecca Hinsley FdArt & Design
Support staff: Claire Perry, Teresa O'Neale

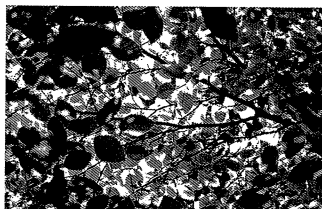
email: alisonparish@treeadvice.info
email: johnchristopher@treeadvice.info
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Mark Hinsley

Arboricultural Consultants Ltd.

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Company Reg. No. 07232825
VAT Reg. No. 730399627

Our Ref:MH/SolentAvenue21Lymington/TPO/4070

18th January 2016

The Chief Planning Officer
New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
S041 9ZG

FAO Liz Beckett – Tree Officer

OBJECTION TO THE LAND OF 21 SOLENT AVENUE, LYMINGTON TREE PRESERVATION ORDER No. TPO/0041/15

We are in receipt of your letter of the 13th January 2016 the contents of which we have read with some degree of concern. In your letter you clearly state the following relating to potential planning conditions:

“In order for a tree protection condition to be enforceable the subject tree should be protected by TPO or by virtue of growing within a conservation area.”

For your assistance we have transcribed below a section of the Circular Guidance relating to tree protection conditions:

CIRCULAR 11/95

Part 2

Trees

51. Section 197 of the Act places an express duty on the local planning authority, when granting planning permission, to ensure whenever appropriate that adequate conditions are imposed to secure the preservation or planting of trees, and that any necessary tree preservation orders are made under section 198 of the Act. When granting outline planning permission, the authority may consider it appropriate to

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impose a condition requiring the submission of particular details relating to trees to be retained on the site, such as their location in relation to the proposed development and their general state of health and stability. When granting detailed planning permission, conditions may be used to secure the protection of trees to be retained, for example by requiring the erection of fencing around trees during the course of development or restricting works which are likely to adversely affect them. The long-term protection of trees, however, should be secured by tree preservation orders rather than by condition; such orders may also be expedient for the temporary protection of existing trees until details of the reserved matters are submitted and it becomes clear whether there is a need to retain the trees.

Clearly the Government Circular advice does not agree with your position. The use of planning conditions for short term protection of trees during development is entirely acceptable and enforceable and Tree Preservation Orders are only required if the threat to the trees is considered to be long term.

You further state:

“A change of ownership, as has recently taken place at this address, is considered as a reasonable expediency to protect a prominent tree such as the subject Beech.”

This suggests that you consider any change of ownership to be all the excuse you need to make a TPO on any tree. However, the TPO guidance published by central government does not describe the process in such a casual manner:

What does ‘expedient’ mean in practice?

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 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.

As you can see above “it may sometimes be appropriate”, clearly the simple fact of ownership change is not enough to make the serving of a TPO immediately reasonable, much more weight is required before the use of a TPO may be a reasonable course of action.

On the back page of the TPO your Authority boldly quote Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. Yet it appears from your letter that, despite an objection being made, this TPO could be confirmed under delegated powers without even the safeguard of the objection being heard by the elected representatives of the people New Forest National Park. Perhaps you would care to explain how the Human Rights of our client are being protected by such an apparently unsafe process?

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I am afraid that your letter, far from addressing our clients concerns, has served only to increase them. A Tree Preservation Order is a heavy piece of legislation to impose upon a person's home. Such Orders should not be made lightly or without a very clear understanding of the reasons why they might be made, of without the ability to produce clear and sustainable reasons for their making when properly asked to do so.

In the light of the above and our original objection, in our view, at the very least, the decision to confirm this Order or not should be considered by an elected committee answerable to the people of the area.

If you require any further information at this stage please do not hesitate to contact us.

Yours sincerely



Mark Hinsley

cc Mr Hutchinson

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