

## NOTICE OF MEETING

**Meeting:** APPEALS PANEL

**Date and Time:** TUESDAY, 22 AUGUST 2017, AT 2.30 PM\*

**Place:** THE BRADBURY ROOM, APPLETREE COURT,  
LYNDHURST

**Telephone enquiries to:** Lyndhurst (023) 8028 5000  
023 8028 5588 - ask for Jan Debnam  
E-mail: [jan.debnam@nfdc.gov.uk](mailto: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](http://www.newforest.gov.uk)

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

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## AGENDA

### **Apologies**

#### **1. ELECTION OF CHAIRMAN**

To elect a Chairman for the meeting.

#### **2. MINUTES**

To confirm the minutes of the meeting held on 20 April 2016 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. 21/17 - LAND OF 36 ALDER HILL DRIVE, TOTTON (Pages 7 - 46)**

To consider objections to the making of Tree Preservation Order 21/17 relating to land of 36 Alder Hill Drive, Totton.

**5. ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT**

<b>To:</b>	<b>Councillors</b>	<b>Councillors</b>
	A R Alvey A T Glass N S Penman	D B Tipp D N Tungate



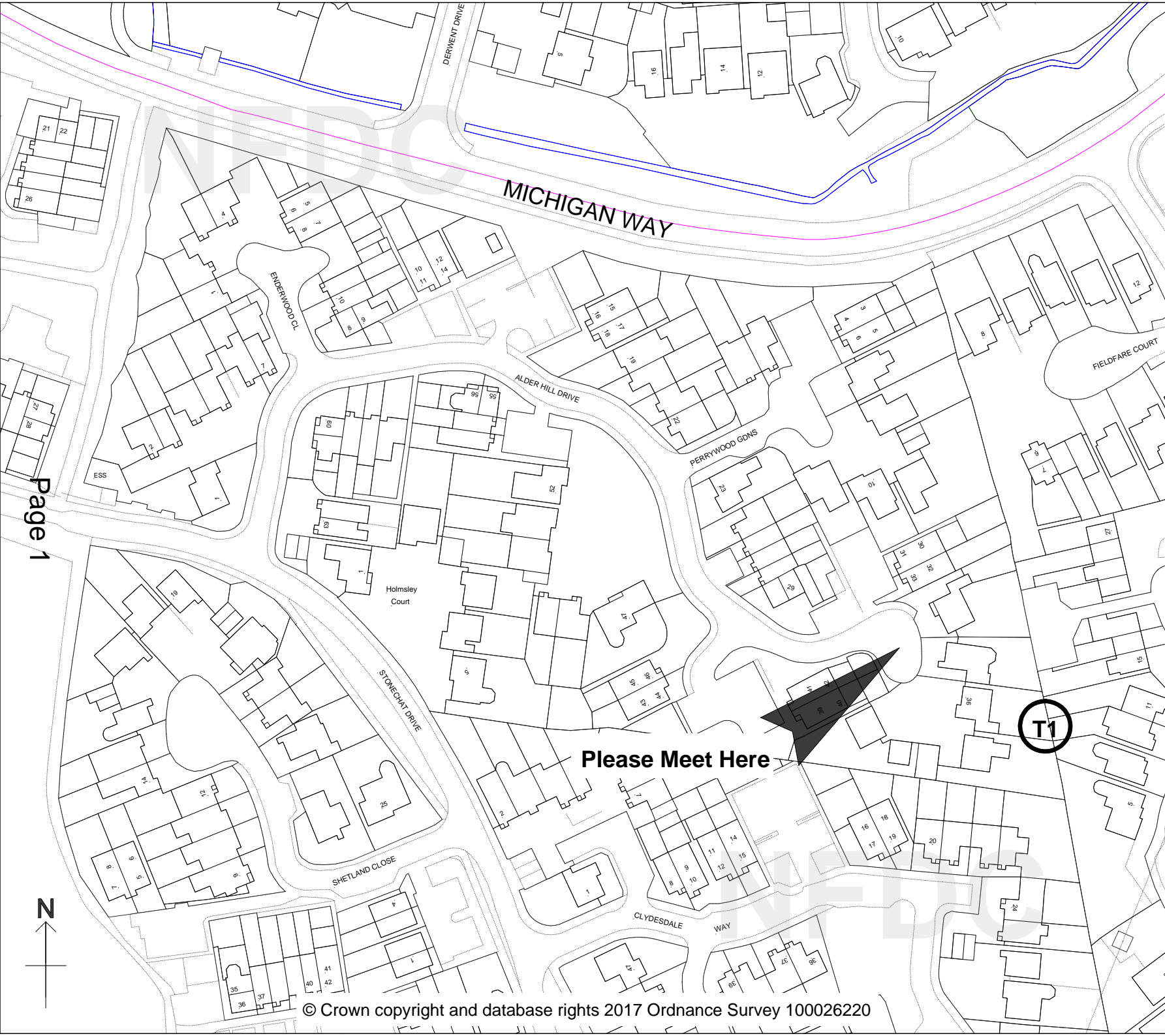
# New Forest

DISTRICT COUNCIL

Tel: 023 8028 5000  
www.newforest.gov.uk

## Tree Preservation Order TPO/0021/17

Alder Hill Drive  
Totton  
SO40 8JB



Page 1



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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 – 22 AUGUST 2017

### **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 21/17, LAND OF 36 ALDER HILL DRIVE, TOTTON**

#### **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, together with the Tree Officer's response.

**Appendix 4** Written representations from any supporters 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 21/17 relating to land of 36 Alder Hill Drive, Totton with, or without, amendment.

### For Further Information Please Contact:

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E-mail: [jan.debnam@nfdc.gov.uk](mailto:jan.debnam@nfdc.gov.uk)

Grainne O'Rourke  
Executive Head Governance and Regulation.  
Tel: (023) 8028 5588  
E-mail: [grainne.orourke@nfdc.gov.uk](mailto:grainne.orourke@nfdc.gov.uk)

### Background Papers:

Attached Documents:  
TPO 21/17  
Published documents

# **APPENDIX 1**

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TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER TPO/0021/17

LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB

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/0021/17 - LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB.

**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 April 2017

Signed on behalf of the New Forest National Park Authority

Authorised by the Authority to sign in that behalf

**SCHEDULE**

**SPECIFICATION OF TREES  
TPO/0021/17**

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

Reference on map	Description	Situation
T1	Oak tree	Situated in rear garden of 36 Alder Hill Drive, close to southern boundary, 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		



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### Tree Preservation Order Plan





Town and Country Planning Act 1990

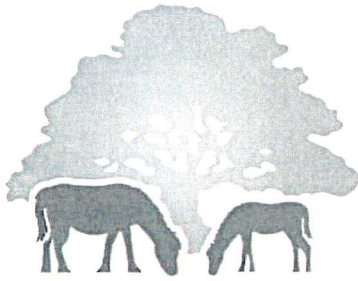
TPO Number: TPO/0021/17

Scale: 1:1000

Date Printed: 11/04/17

### 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 646800 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/0021/17 LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB

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:

11/4/17

# **APPENDIX 2**

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**APPEALS PANEL – 22 AUGUST 2017**

**OBJECTION TO TREE PRESERVATION ORDER TPO/0021/17  
LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB  
REPORT OF THE NATIONAL PARK AUTHORITY TREE OFFICER**

**1. TREE PRESERVATION ORDER HISTORY**

- 1.1 Tree Preservation Order TPO/0021/17 was made on 11<sup>th</sup> April 2017. The Order protects one individual Oak tree situated in the rear garden of 36 Alder Hill Drive, Totton.
- 1.2 The Order was made following a request from an individual to consider protecting the tree as the owner of the property was intending to fell it.
- 1.3 The Authority's Tree Officer visited the site on 11<sup>th</sup> April 2017. It was considered that the tree makes a positive contribution to the visual amenity of this area of Totton.
- 1.4 Three objections have been received:-
  - Mr & Mrs Farminer, the owners of 36 Alder Hill Drive the property affected by the TPO, submitted an objection to the TPO dated 1<sup>st</sup> May 2017 and 16<sup>th</sup> June 2017.
  - Ms Kempsey the owner of 35 Alder Hill Road, a neighbour to the tree, submitted an objection to the TPO dated 19<sup>th</sup> April 2017.
  - Mr O'Prey owner of 7 Lapwing Drive, Totton submitted an objection dated 17<sup>th</sup> April 2017.
- 1.5 On 5<sup>th</sup> June 2017, the Authority's Tree Officer met Mrs Farminer, to discuss their concerns. The Authority's Tree Officer discussed the tree at length and suggested various management options that could be taken to prune the tree to reduce its dominance to the rear garden and the property. It was also noted and agreed on site that at the time of the meeting the tree was in good structural and physiological health.
- 1.6 Following letters of response to Ms Kempsey and Mr O'Prey dated 6<sup>th</sup> June 2017, a deadline was set asking them to confirm whether they wished the matter to be put before the Objections Panel. No further correspondence has been received from either of these two objectors.

**2. THE TREE**

- 2.1 The Oak tree is situated close to the rear boundary of 36 Alder Hill Drive, with some encroachment of the crown into neighbouring gardens in Alder Hill Drive and Lapwing Drive to the rear. The tree's is 18 m tall with a crown spread of 10m and is considered as mature.

- 2.2 The physiological condition of the tree is good. The tree has been both crown lifted and crown thinned in the past.
- 2.3 The tree is clearly visible from Alder Hill Drive and Lapwing Drive where it forms an attractive verdant backdrop to the houses.

### **3. OBJECTIONS TO THE ORDER**

3.1 Mr & Mrs Farminer wrote objecting to the Order on 1<sup>st</sup> May and 16<sup>th</sup> June 2017.

3.2 Mr and Mrs Farminer grounds for objection are as follows:

- They purchased the property in December 2016 on the understanding that the tree was not protected by a Tree Preservation Order.
- The protected tree is on private property and is not fully visible from a public vantage point.
- They had discussed with their neighbours about removing the tree and they all welcomed the removal of the tree.
- The tree is too large and has become unmanageable.
- They are concerned about the safety of their two young children, stating debris is often falling from the tree.
- Concerned about damage to their property caused by falling branches or debris in particular in relation to a glass roofed conservatory at the rear.
- The tree increases the maintenance costs for maintaining the property in window cleaner and gutter clearing costs.
- The tree as caused damage to the rear boundary fence.
- Roosting pigeons in the tree are defecating in the garden causing damage to outdoor furniture and a health hazard to their family.
- The tree is too close to their house and could cause major damage to their property should it fail.
- Mature oak trees are too large to be within suburban rear gardens.

3.3 Ms Kempsey objected to the TPO by letter dated 19<sup>th</sup> April 2017.

3.4 Ms Kempsey's grounds for objection are as follows:

- The tree blocks light to her garden.
- The tree is damaging her next door neighbour's fence.
- Removal of the oak tree would not adversely affect the amenity of the area.

3.5 Mr O'Prey objected to the TPO by letter dated 17<sup>th</sup> April 2017.

3.6 Mr O'Prey's grounds for objection are as follows;

- The tree is too large for the modest sized garden it is in.

### **4. COMMENTS ON THE GROUNDS FOR OBJECTION**

- 4.1 The mature oak tree, at the time of inspection on the 5<sup>th</sup> June 2017, was in good structural and physiological condition. No defects were noted that would necessitate secondary investigation or raise concerns that the tree is not safe to retain. The tree is therefore not considered to pose a hazard to their homes or users of the garden.



- 4.2 Although the tree was not protected at the time Mr & Mrs Farminer purchased the property there is no legislation or guarantee that the tree would not be protected in the future.
- 4.3 It is true that the interface between the ground level and the tree's lower stem is not visible from a public vantage point. However, the tree's crown is visible and arguably provides the most value in terms of creating a verdant backdrop to houses on Alder Hill Drive and Lapwing Drive in what is a built-up area.
- 4.4 Although some neighbours supported the tree owner in their plan to remove the tree at least one neighbour did not agree and asked the Local Planning Authority to consider placing formal protection on the tree.
- 4.5 The imposition of the TPO does not prevent future management and during the site meeting the Local Authority's Tree Officer had discussed with Mrs Farminer various pruning operations such as a 2m crown reduction which would alleviate some of the objector's concerns.
- 4.6 The costs that the objector has stated that they will incur due to the presence of the tree are similar to the costs of general maintenance of any property with or without trees in close proximity.
- 4.7 Whilst on site the Local Authority's Tree Officer did not note that there was any current obvious damage caused by the tree to the rear boundary fence. Any future damage can be repaired with minor alterations to the fence.

## **5. SUPPORT FOR THE ORDER**

- 5.1 One email of support has been received from a local resident.

## **6.0 CONCLUSION:**

- 6.1 The Authority's Tree Officer takes the view that the protected Oak tree makes a positive contribution to public amenity the character of the area.

## **7.0 RECOMMENDATION**

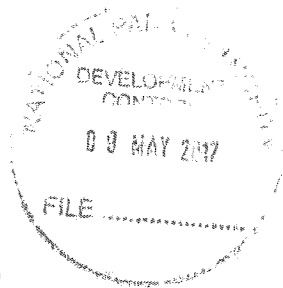
- 7.1 For the above reasons it is recommended that Tree Preservation Order 21/17 be confirmed without modification.

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# **APPENDIX 3**

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Drive



36 Alder Hill

Totton  
Southampton  
SO40 8JB

01/05/2017

To whom it may concern,

Ref – TPO/0021/17 36 Alder Hill Drive, SO40 8JB

We received your letter dated 11/04/2017 with regards to the notification of the Tree Preservation Order that has been put on the oak tree in our back garden. To say that we were devastated at this news would be an understatement.

We completed on the sale of our property on 09/12/2016 after initially viewing the house when it was for sale in July and August. We committed to the purchase and put an offer in when not once but twice I called New Forest District Council who confirmed to me that there was not a TPO on the oak tree in the back garden and there would not be in the future. The estate agent Fox and Sons also called the council and spoke to the same person that I did and they to were advised that there was not a preservation order on the tree. This was also confirmed on the local land search carried out by our Solicitor.

If had been advised correctly and honestly that there was going to be a TPO placed on the tree we would not have made an offer of £347,000.00 and tied us financially down to this house for the coming years.

In January this year we appointed a tree surgeon to quote us for removing the tree, we have this quote in writing but unfortunately we could not afford the quote at the time due to other financial commitments that came and took priority. I am sure you will appreciate how frustrated we are now and of the timing of your letter.

We have read and discussed the guide enclosed in your letter regarding TPO's, we would like to make the comments below regarding the tree on our land and hope that these will be taken into consideration before the TPO is confirmed;

- We are unclear as to specifically what amenity benefits this particular tree has to the local area. There is nothing convenient or beneficial about it in its current location, centered at the back of our garden, directly impacting and effecting 7/8 surrounding properties. Your letter states 'It is considered that premature removal or extensive pruning of the tree(s) would result in the loss of an amenity to the local environment' can this please be explained further?
- Why now? Why has a TPO been put on the tree now?
- There are many Oak and other trees around and if we were walking on

many of the wooded pathways in this area or in a woodland nearby we could understand the TPO however this is in a back garden, not a wooded area, around wooded walk ways or in the forest. This is a residential area.

- When I called the local authority to check for a TPO I was advised that the trees all along the boarder line of the properties to the left and the right of our property had TPO's apart from ours yet our neighbours have recently had theres removed.
- We have discussed at length and in detail with our neighbours to the side and the back of our property their views with regards to the TPO on the tree, there were no objections with regards to removing the tree in fact they welcomed the prospect of the tree being removed and the benefitts this would have on their properties. I hope that they have noted their comments and written to the local authority. We would be happy to collate some information and put it together and get our neighbours to sign any documents.
- The tree is unmanageable; we would be more than happy to plant smaller, more manageable trees in its place
- We are parents of a 4 and nearly 2 year old, the large garden was one of the main details that attracted us to the property and the potential the garden had. At the moment we do not consider it to be child friendly. As in comment 5 the tree is unmanageable, there are constant falling twigs and small braches coming off the tree and landing on the floor. Twice my son has had small branches fall on him without causing more than a shock and a scratch however this is not the worst case scenario and the thought of my child laying down enjoying the garden for debris or a branch to fall on either one of them is extremely upsetting and worrying for us. The tree also creates a lot of small debris; it is hard and impacts my children running around in bare feet or socks enjoying the garden.
- There is a glass roofed conservatory on the back of the property which is currently being used as a playroom, this wasn't a concern when we purchased the property because we initially wanted to remove the tree however again it is extremely concerning that a branch or debris could potentially fall and cause major injury, is terrifying.
- We were aware that the previous owners paid a local window cleaner to come and clean the windows and conservatory and clean and clear the guttering every 4/6 weeks at the back of the property, we have spoken to this gentleman since purchasing the property and have continued with his services due to the mess, guttering blockages and impacts the tree is already having, we can only imagine the mess in Autum when the leaves start to fall. This service is costing us around £170.00 per annum, this does not include cleaning of the patio areas and upkeep/ treatment of the grass. When we purchased the property this was not something that we took into account financially.
- We believe that the tree has caused damage to the structural positioning of the fence along the back of our garden, the fence is currently leaning on our neighbours shed. As the tree continues to move and grow this is a financial implication that we would have to take

in to consideration when looking to renew the fencing in the garden.

- The oak tree attracts a high number of pigeons. There is bird poo all over the back garden, on the patio areas, on our children's play equipment, on our shed, when I hang my washing up to dry 6 times out of 10 washes there is bird crap on it and I have to wash it again. My daughter has also been pooped on. It is disgusting and unhygienic. Although wildlife and garden birds are lovely we do not encourage them in the garden because of this. We have also seen rats in the garden around the tree, it creates an environment that they like, we keep our bins in dustbins as to not attract them however we consistently see them. We are unsure how to treat them currently.
- Due to the constant bird poo and falling debris from the tree there is nowhere comfortably to sit through out the day or place our garden furniture. Bird poo is damaging to materials and as per the point above it is unhygienic.
- We are aware from talking to our new neighbours that the previous owners paid someone annually to come and treat the tree canopy as to stop it from being low, it is already to low and the height is concerning. Our previous property was in a wooded area in Southampton, Lordswood. We are only to aware of the dangers of falling oak trees and other large unmanageable trees into peoples homes, we were subject to damage to our own home because of this. Our weather is changing and is becoming unpredictable. We believe this tree is dangerous and is to close to peoples homes.
- We cannot stress enough how distressing this is to us and the prospect of having to live with this tree in our garden for the foreseeable future. When we purchased the property we were aware that there were some conservation areas around the Totton area but we was not aware that we were moving into the New Forest National Park?? The forest is on our doorstep and we respect it and have already been enjoying taking advantage of being so close however we don't want the forest in our back garden.

We hope you take into consideration all the points above and understand from a young family's point of view how much this impacts our quality of life and enjoying our garden at all times and seasons throughout the year. If you would like any further information from us please do not hesitate to contact us by letter or on email at

I have kept record of this letter and will be seeking advice from our solicitor should we not hear in due course the response and confirmation of the TPO.

Kind Regards

Mr and Mrs Farmer



36 Alder Hill Drive  
Totton  
Southampton  
SO40 8JB

16/06/2017

Dear Hannah,

Ref – TPO/0021/17 36 Alder Hill Drive, SO40 8JB

Thank you for visiting our home on 5th June and for your letter dated 06/06/17.

We have taken into account the points you have addressed in your letter but are not satisfied and would like our case to be heard by the TPO objections panel.

- Have you found the telephone conversations between myself and the officers/ administrators and estate agents and officers/ administrators advising us before we purchased the property that there was no tree preservation on the oak tree in the back garden?

- We would like to know the specific concerns of the resident that informed you the tree was under threat of removal?

- We dont feel that you have taken into consideration our concerns with regards to the points we raised about the maintenance of the tree and the impact it has on our family life and possible health and saftey risks to our children and property which is upsetting. The points you have raised with regards to reducing the the tips and reshaping the crown still do not address our concerns or resolve the issues

- You said on your visit that the tree is there and the TPO is because of public amenity 'it's looks pretty', it has nothing to do with the environment or any other reason. We have looked at the tree from various positions and argue that from an amenity point of view it would not be impacted if it was removed

- Yes, there is a corridor of trees running along the rear gardens of the properties on Alder Hill Drive, the tree in our back garden is by far the biggest and can be seen from various points, if it was to be reduced or removed it would no longer be visable therefore wouldnt impact public amenity. There is massive and already large gap in this corridor of trees next to our tree, this to can clearly be seen from various positions and again would like to point out that the removal of the tree would not impact amenity



- After discussing with surrounding neighbours, no objections or concerns were highlighted from anyone with regards to removing the tree that is in our back garden, that impacts our home and family life and that will impact us financially in the future.

We feel that the impacts to us specifically are more important and are a higher priority than one concerned neighbours issues are with regards to how the tree looks in their opinion. We would be happy to discuss this with the panel or a local councillor in person should they wish to.

[REDACTED]

We look forward to hearing from the TPO objections panel.

Yours sincerely

[REDACTED]

Mr and Mrs Farminer

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Mr & Mrs Farminer  
36 Alder Hill Drive  
Totton  
Southampton  
SO40 8JB

06 June 2017

Dear Mr & Mrs Farminer

**Tree Preservation Order No: TPO/0021/17**  
**Site: LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB**

Thank you for taking the time to meet me. Further to my site visit on 5<sup>th</sup> June 2017. I can confirm that the oak tree that has been recently protected by the above Tree Preservation Order (TPO) is in good health and has no physiological or structural defects which would make this tree unsuitable for protection.

In your letter dated 1<sup>st</sup> May 2017 you raised a number of points objecting to the TPO and I will attempt to address each individual point in the following.

- Before purchasing the property you checked several times whether the tree was protected. It was confirmed to you that it was not so you proceeded with the purchase of the property. At the time you made your enquiry it was not protected and the information you were given was correct. I am concerned that you were told that 'there would not be (a TPO) in the future'. There is no record of this conversation on our systems but officers and administrative colleagues cannot state whether trees will or will not be protected in the future. If there is a tree with public amenity value and it is deemed under threat then there is every chance that it would be protected in the future.
- A concerned resident had contacted us and informed us that this oak tree was under threat of removal. When I visited Alder Hill Drive the tree was clearly visible from the highway and surrounding area. It was deemed that the tree had high amenity value and as it was threatened by removal it was deemed expedient that the tree was protected by a TPO therefore the Tree Preservation was made and duly served.
- You are correct that there is a group TPO on the tree in the rear gardens to the north of your property. This TPO was made in 1980 prior to the building of Alder hill Drive and the surrounding houses and roads the TPO plan still shows this area as open fields I suspect that your tree was supposed to have

**New Forest National Park Authority**  
LYMINGTON TOWN HALL, AVENUE ROAD, LYMINGTON SO41 9ZG  
Telephone 01590 646600 Fax 01590 646666

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been included in this TPO but when the plan was transferred from the paper format to a digital GIS system the tree in your garden and your neighbour's was missed.

- The tree in your neighbour's garden that has been recently removed. As we were not aware of this prior to the tree being removed and the tree was not protected at that time there is no further action the local planning authority can take.
- There is currently an approximate 3m clearance gap between the tips of the lateral branches and your conservatory. This gap could be increased further with a 2m reduction and re-shape of the crown this work would also help to reduce the amount of falling debris (leaves, acorns, catkins and perching area for pigeons) from the tree. Deadwood can also be removed during this operation.

I hope this clarifies why your oak tree was protected by a Tree Preservation Order and that I have addressed some of your concerns. If you wish to maintain your objection to this Tree Preservation Order please inform me in writing by 21<sup>st</sup> June 2017 and, as I explained yesterday, I will then arrange for your case to be heard by the TPO objections panel.

Yours sincerely

Hannah Chalmers  
Tree Officer  
Tel:  
Email: [trees@newforestnpa.gov.uk](mailto:trees@newforestnpa.gov.uk)

Please contact [trees@newforestnpa.gov.uk](mailto:trees@newforestnpa.gov.uk) (or 01590 646620) if you would like a copy of any paperwork in large print, Braille or any alternative language or format or if you are planning to visit Lymington Town Hall, Avenue Road, Lymington and have special requirements.

7 Lapwing Drive, Totton, Hants SO40 8UH

17 April 2017

Mr P Hocking  
Enforcement and Trees Manager  
New Forest National Park Authority  
Lymington Town Hall  
Avenue Road  
Lymington SO41 9ZG



Dear Mr Hocking

TREE PRESERVATION ORDER NO. TPO/0021/17  
SITE: LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB

Thank you for your letter of 11<sup>th</sup> April.

My wife and I have lived here for 29 years since our house was built. We like oak trees and think that they should be preserved. However, the tree in question is not, we feel, "an amenity to the local environment" since we have watched it grow into the excessively large tree it is now.

It was, of course, in existence before the house at 36 Alder Hill Drive was built (and ours) but it is now at least twice the height of that house, and of adjacent houses. It lies on the boundary of 36 Alder Hill Drive and it is quite clear that were it to fall in any direction it would cause substantial damage to one or more of the surrounding houses, including our own. We feel that this oak tree is far too large for the modest sized garden in which it is situated and presents a potential danger as outlined above. I should add that the branches are themselves massive and if any were to fall, they could also cause damage.

We are not able to support a TPO, as we see this tree as a potential danger now.

Yours sincerely

[Redacted Signature]  
K P O'Prey (Mr)

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Mr K P O'Prey  
7 Lapwing Drive  
Totton  
Southampton  
SO40 8UH

06 June 2017

Dear Mr O'Prey

**Tree Preservation Order No: TPO/0021/17**  
**Site: LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB**

Thank you for your letter dated 11<sup>th</sup> April concerning the above Tree Preservation Order. I can confirm that the oak is in good health and has no physiological or structural defects which would make this tree unsuitable for protection.

In your letter you stated that you were concerned about the size of the tree in relation to its proximity to housing. The TPO does not prevent reasonable routine management and this local planning authority would have no objections to a sympathetic reduction and reshaping of the crown of the tree in the present or future.

I hope I have addressed your concern. If you wish to maintain your objection to this Tree Preservation Order please inform me in writing by 21<sup>st</sup> June 2017 and I will then arrange for your case to be heard by the TPO objections panel which is made up of local councillors who will then determine whether the TPO should be confirmed.

Yours sincerely

Hannah Chalmers  
Tree Officer  
Tel:  
Email: [trees@newforestnpa.gov.uk](mailto:trees@newforestnpa.gov.uk)

Please contact [trees@newforestnpa.gov.uk](mailto:trees@newforestnpa.gov.uk) (or 01590 646620) if you would like a copy of any paperwork in large print, Braille or any alternative language or format or if you are planning to visit Lymington Town Hall, Avenue Road, Lymington and have special requirements.

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35 Alder Hill Drive  
Totton  
SO40 8JB

New Forest National Park Authority  
2017

Lymington Town Hall

Avenue Road

Lymington

SO41 9ZG

19<sup>th</sup> April



Dear Sir/Madam,

I am writing regarding the Tree Preservation Order being considered for the land of 36 Alder Hill Drive. The tree is substantial and although it is beautiful we find the light it blocks has a negative effect on our garden and that of the immediate neighbours. We have a serious issue with growing grass as the leaves each year are impossible to keep on top of and the lack of light has meant our garden has now mainly turned to moss. We also have an issue with the growth of flowers, this has effected the number of insects which visit our garden. Every year my children and I hatch and release painted lady butterflies, but the lack of flowers we have been able to grow means we have never seen any return. The tree also has substantial roots and although this is not directly effecting our garden it is damaging the fence line along the back of next doors garden.

We have several other trees to help with drainage and health of the soil but these are not to the size of the large oak and so I do not feel we need such a large tree in proximity of all the local houses. I also feel even if it was not removed in the future there should be an option to at least lop it or control its growth somewhat.

I understand the importance of trees, I am a biologist and so appreciate the advantages they pose to an environment, but I also feel there would be a benefit to wildlife if the tree was at least controlled or decreased in size. Any removal of trees should be carefully considered but I feel in this case as long as a suitable alternative was planted in its place removal of this tree would not adversely affect the local area.

On another note if any part of the tree was damaged in strong winds its close proximity to a number of houses would mean it would do substantial damage and could be a danger. A smaller tree or reducing the size of the largest branches of the current tree would make it safer for the local community.

Thankyou for taking the time to read this letter

Kindest Regards



Katie Kempsey



Ms K Kempsey  
35 Alder Hill Drive  
Totton  
Southampton  
SO40 8JB

06 June 2017

Dear Ms Kempsey

**Tree Preservation Order No: TPO/0021/17**  
**Site: LAND OF 36 ALDER HILL DRIVE, TOTTON SO40 8JB**

Thank you for your letter dated 19<sup>th</sup> April concerning the above Tree Preservation Order. I can confirm that the oak is in good health and has no physiological or structural defects which would make this tree unsuitable for protection.

In your letter you raised a number of points objecting to the TPO and I will attempt to address each individual point in the following.

- You state that this tree is damaging the rear garden fence. When I visited the 35 Alder Hill Drive and looked at the tree in the rear garden I did not find any evidence that the tree was directly damaging the fence.
- The TPO does not prevent reasonable routine management and this local planning authority would have no objections to a sympathetic reduction and reshaping of the crown of the tree in the present or future.
- You dispute the amenity of this tree and that its removal would not adversely affect the local area. I disagree with this, as the tree is clearly visible from Alder Hill Drive and is part of a 'green corridor' of trees that run along the rear gardens of Alder Hill Drive. The loss of this tree would have a detrimental impact on the local amenity.

I hope this clarifies why the oak tree was protected by a Tree Preservation Order and that I have addressed your concerns. If you wish to maintain your objection to this Tree Preservation Order please inform me in writing by 21<sup>st</sup> June 2017 and I will then arrange for your case to be heard by the TPO objections panel which is made up of local councillors who will then determine whether the TPO should be confirmed.

Yours sincerely

Hannah Chalmers  
Tree Officer  
Tel:  
Email: [trees@newforestnpa.gov.uk](mailto:trees@newforestnpa.gov.uk)

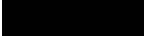
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# **APPENDIX 4**

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**From:**   
**To:** [Hannah Chalmers](#)  
**Subject:** TPO/0021/17 Quercus species in garden of 36 Alder Hill Drive, Totton, SOUTHAMPTON SO40 8JB  
**Date:** 09 July 2017 11:00:11

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Dear Hannah

Your email address was passed to me on 2017/04/04 by your colleague Hilary Short.

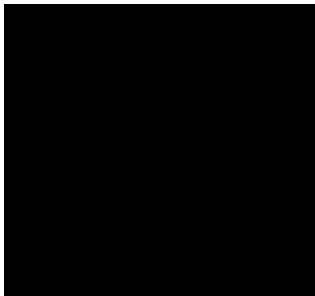
Thank you for acting to at least provide this beautiful Oak tree with a Stay of Execution. I note the various objections now in the Public Domain from the landowner Mr & Mrs Farminer, together with neighbour Mrs K Kempsey, and an adjoining landowner Mr K P O'Prey.

I am hoping that you will see fit to uphold your issuance of this TPO, given it appears the landowners are requesting a review by an Objections Panel. My 'specific concerns', mentioned in Mrs Farminer's letter of 2017/06/16, are that this mature Oak tree is in no different condition, nor in any different position in relation to domestic properties in the immediate area than similar local Oak trees which are protected by a TPO. Loss of healthy mature trees we I am sure both appreciate cannot in any sense be 'replaced' by replanting, which given the clear dislike of sylvan growth by two of the complainants, including the Farminers, would be unlikely to actually come to fruition, and over which I imagine you would have no legal influence. I have no objection to reasonable crown and / or height reduction, so long as it was done with your sanction under this TPO. You are of course perfectly well aware neither Wood Pigeons (*Columba palumbus*), nor Collared Doves (*Streptopelia decaocto*) are attracted to *Quercus* spp any more than any other common local tree, nor does the presence of *Quercus* have any bearing on the distribution of the Painted Lady (*Vanessa cardui*), its larval foodplant being nettles or thistles, not the Oak.

We are facing an imminent catastrophe to our national tree population with Ash dieback, which I read is estimated could kill 20% of of all UK trees by reducing the Ash population by 80 million trees. To wilfully kill a healthy Oak tree, estimated at 100years old (according to a friend who has studied very small scale local maps of a similar vintage), which with my limited knowledge appears to be a healthy and vigorous specimen, for in my opinion misplaced and spurious reasons, should be prevented at all costs. I trust you will therefore continue in your good work of protecting young mature Oak and other trees for our great great grandchildren to also enjoy.

Many thanks,

Best Regards



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