

## NOTICE OF MEETING

**Meeting:** APPEALS PANEL

**Date and Time:** TUESDAY, 9 OCTOBER 2018, AT 10.30 AM\*

**Place:** THE COUNCIL CHAMBER, THE TOWN HALL, AVENUE ROAD, LYMINGTON

**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, in accordance with the defined procedure that is attached. Anyone wishing to speak should contact the name and number shown above.

**PLEASE NOTE:** The Hearing will be preceded by a visit to the site. Please meet at the place indicated on the attached plan at 10.00 a.m.

**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 13 March 2018 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.17/18 (Pages 3 - 54)**

To consider objections to the making of Tree Preservation Order 17/18 relating to land of north of Torreyana Gardens, Pennington, Lymington.

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

To:	Councillors	Councillors
	A R Alvey Mrs D E Andrews Ms L C Ford	A T Glass C A Wise

**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.

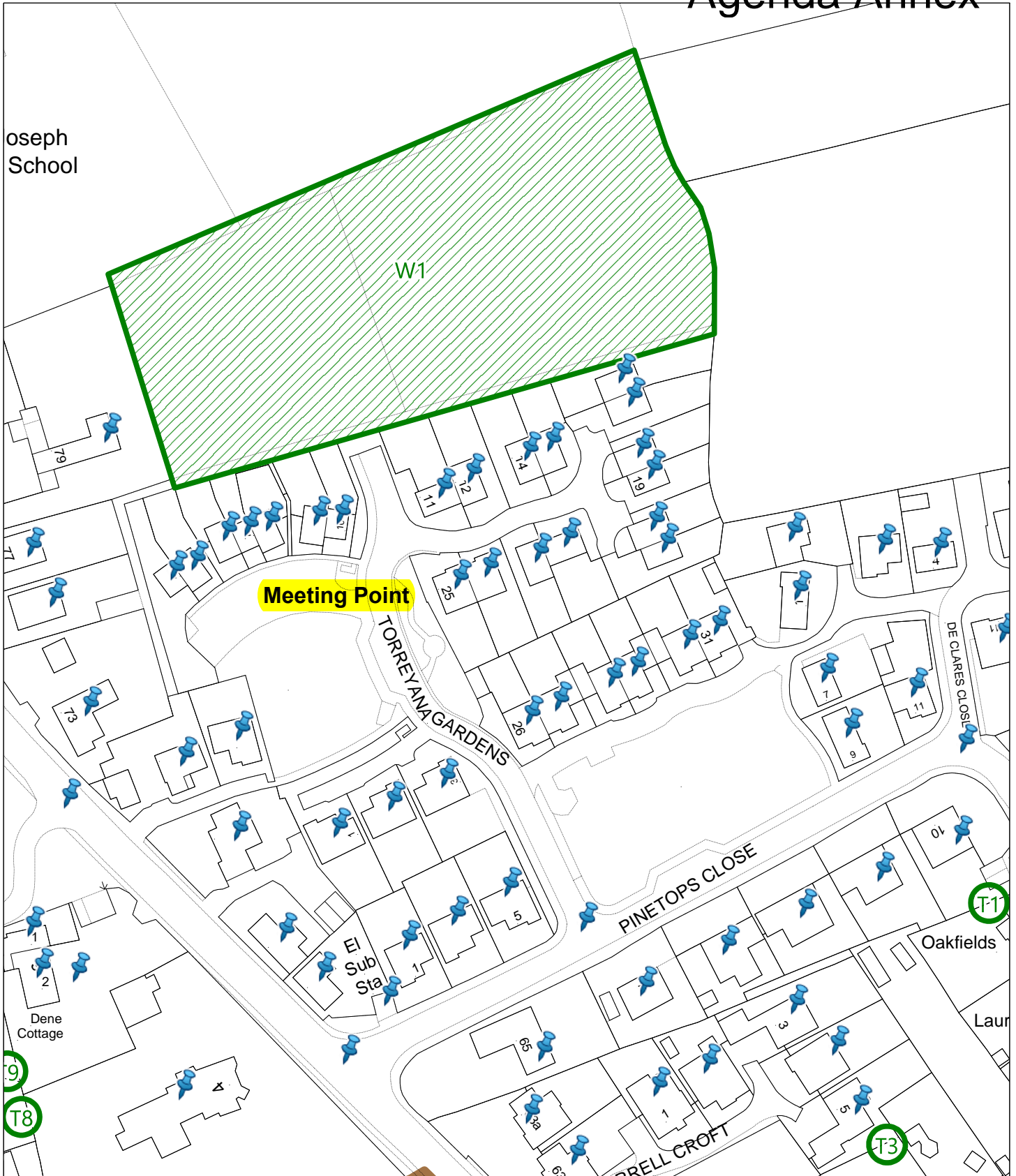
- 4.5 The decision of the Panel will be conveyed in writing to the objector(s) and all other persons originally served with a copy of the Order as soon as possible following the meeting.

**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/Cttee/JMD/Appeals Panel/TPO Procedure Revised 1107.doc)  
(11/07)

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Joseph School



**NEW FOREST  
NATIONAL PARK**

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

Tel: 01590 646600  
Fax: 01590 646666

Date: 28/09/2018

[ENTER TITLE]



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## APPEALS PANEL – 9 OCTOBER 2018

### **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 17/19, LAND TO THE NORTH OF TORREYANA GARDENS, PENNINGTON**

#### **1. INTRODUCTION**

- 1.1 This meeting of an Appeals Panel has been convened to hear an objection to the making of a Tree Preservation Order.

#### **2. BACKGROUND**

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

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

### **3. CRITERIA FOR MAKING A TREE PRESERVATION ORDER**

- 3.1 A local planning authority may make an Order if it appears to them to be:
- “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”.

### **4. TYPES OF TREE PRESERVATION ORDER**

- 4.1 The Tree Preservation Order may protect one or more individual trees, groups of trees or woodlands or, more rarely, refer to an area of land.
- 4.2 An individually specified tree must meet the criteria for protection in its own right.
- 4.3 A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The overall impact and quality of the group should merit protection.
- 4.4 A woodland order would protect woodland as a whole. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. A woodland order would protect trees and saplings which are planted or grow naturally after the order is made.
- 4.5 An area designation can be used to protect trees dispersed over a specified area. It may protect all trees in that area, or only trees of a particular species. An area order may well be introduced as a holding measure, until a proper survey can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individual or groups of trees.

### **5. THE ROLE OF THE PANEL**

- 5.1 While objectors may object on any grounds, the decision about confirmation of the Order should be confined to the test set out in 3.1 above.

#### **5.2 Amenity value**

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

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

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

### 5.3 Expediency

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

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

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

## 6. THE EFFECT OF THE ORDER

- 6.1 Once the Order has been made, it is an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy the protected tree or trees without first gaining consent from the Council through a tree works application, unless such works are covered by an exemption within the Act.

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

## **7. CONSIDERATION**

- 7.1 Members will have visited the site immediately prior to the formal hearing, to allow them to acquaint themselves with the characteristics of the tree or trees within the context of the surrounding landscape. Members should reach a decision, based on their own observations, any evidence presented, and any objections and representations made, whether it appears to them to be expedient in the interests of amenity to confirm the Order.

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

**Appendix 1** The Tree Preservation Order.

**Appendix 2** The report of the Council's Tree Officer, setting out all the issues (s)he considers should be taken into account, and making the case for confirming the Order.

**Appendix 3** The written representations from the objectors to the making of the Order

**Appendix 4** 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 17/18 relating to land to the north of Torreyana Gardens, Pennington with, or without, amendment.

### **For Further Information Please Contact:**

Jan Debnam  
Committee Administrator  
Tel: (023) 8028 5588  
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 17/18  
Published documents

# **APPENDIX 1**

## TOWN AND COUNTRY PLANNING ACT 1990

### TREE PRESERVATION ORDER TPO/0017/18 Land to the north of Torreyana Gardens, Pennington

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/0017/18 - Land to the north of Torreyana Gardens, Pennington.

#### 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 fourteenth day of May 2018

Signed on behalf of the New Forest National Park Authority

Authorised by the Authority to sign in that behalf



## **SCHEDULE**

### **SPECIFICATION OF TREES TPO/0017/18**

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

Reference on map	Description	Situation
None		

#### **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		

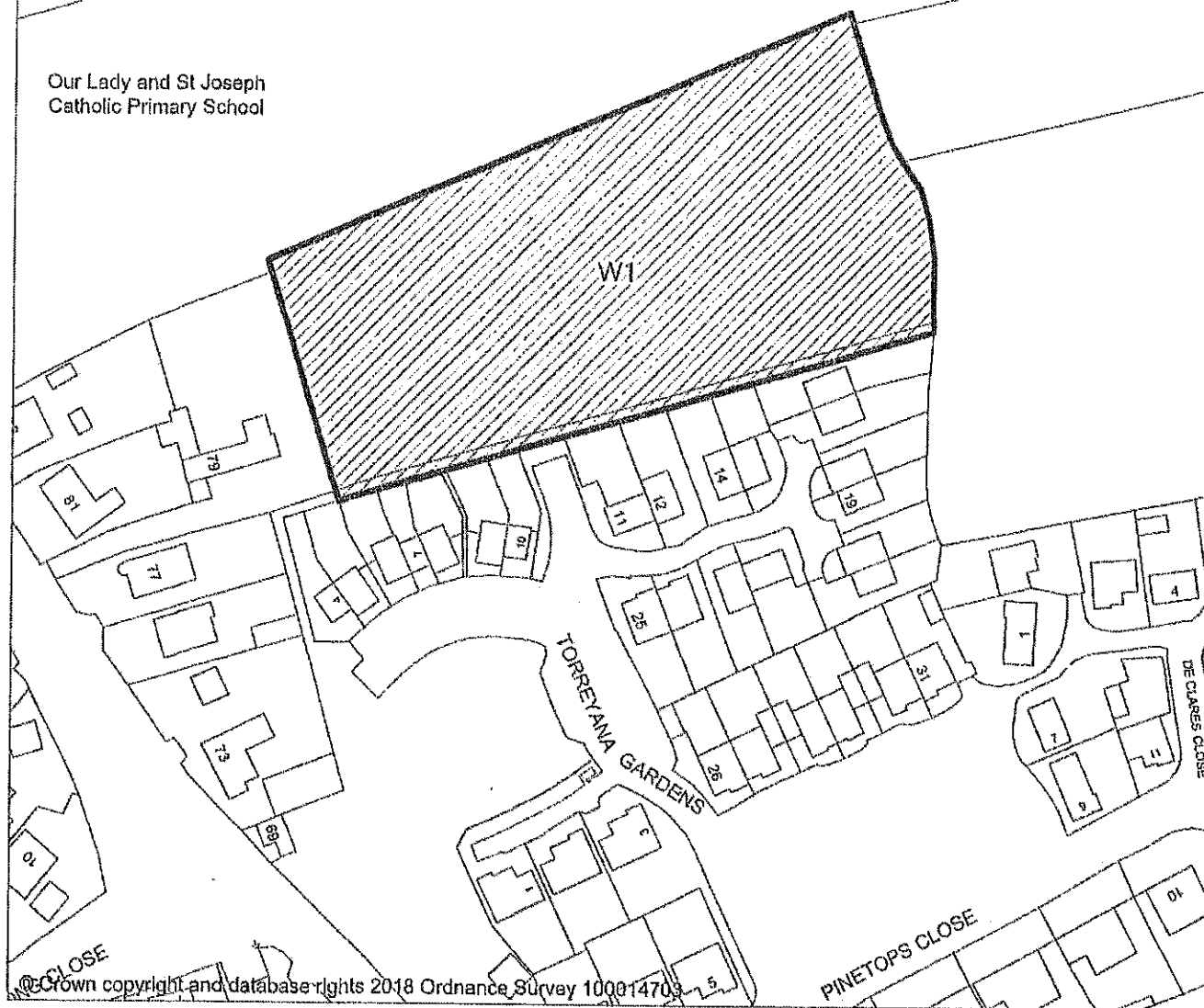
#### **Groups of trees** (within a broken black line on the Plan attached to this order)

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
W1	Woodland including all trees of whatsoever species	Situated to the north of Torreyana Gardens, as shown on plan

Our Lady and St Joseph  
Catholic Primary School



## Tree Preservation Order Plan





Town and Country Planning Act 1990

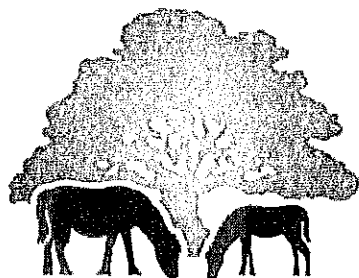
TPO Number: TPO/0017/18

Scale: 1:1250

Date Printed: 14/05/18

### 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/0017/18 Land to the north of Torreyana Gardens, Pennington

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 AUTHORIZED SIGNATORY

Date:

14/5/18

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# APPENDIX 2

## OBJECTION TO TREE PRESERVATION ORDER TPO/0017/18

## LAND TO THE NORTH OF TORREYANA GARDENS, PENNINGTON

### REPORT OF THE NATIONAL PARK AUTHORITY TREE OFFICER

#### 1. TREE PRESERVATION ORDER HISTORY

- 1.1 Tree Preservation Order TPO/0017/18 was made on 23<sup>rd</sup> April 2018. The order consists of a single Woodland feature situated to the north of the new housing development of Torreyana Gardens. (**Appendix 1**)

#### 2.

- 2.1 The Order was made in response to concerns raised by members of the NFDC planning/policy team (**Appendices 2(a) and 2(b)**) as the parcel of land in question was/is being promoted for development. It was therefore considered expedient in the interest of current and future amenity to make and serve a TPO.

- 2.2 One objection has been received from:-

- Mr Spooner of SJA Trees Arboricultural Planning Consultants

- 2.3 In response to this objection Mr Spooner was e-mailed suggesting that ordinarily any comments indicating concern about the confirmation of an Order should be accompanied by a Tree Survey to support this position and that we would look at confirming the order in due course. Mr Spooner's response to this can be seen in **Appendix 3**. Following on from this the authority responded and provided clarification as to why the Authority felt it was expedient to make a TPO, why the woodland designation has been used and why we feel that the woodland provides a high level of public amenity

#### 3. THE TREES

- 3.1 Several mature Oak trees are situated on the eastern boundary of the site with the remaining trees consisting of young and semi mature Oak trees with Ash, Blackthorn and Hawthorn noted throughout. The density of tree cover gradually reduces towards the western side of the site.
- 3.2 The average height of the trees at present is circa 5-10 m tall with an average stem diameter of 15-20 cm. Species such as Oak and Ash have the potential to increase significantly in both height and spread therefore the amenity value of these trees can only increase as the woodland matures.

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

- 3.1 Mr Spooner objected to the Order on 7th June 2018 (**Appendix 3**)
- 3.2 Mr Spooner's grounds for objection were made within his letter under the following headings:
- The area covered by this TPO does not have significant amenity value
  - There is no expedience in making this TPO
  - Inappropriateness in the use of a 'Woodland' designation

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

- 4.1 **The area covered by this TPO does not have significant amenity value**
- 4.2 The trees provide a prominent backdrop to the newly completed Torreyana Gardens/Pinetops development and have significant amenity value for 16 new units that back on to this area. This area of green space also helps soften the development. (**Photos 1 – 7**)
- 4.3 Several properties accessed off of Ramley Road to the west also have clear views over this wooded area.
- 4.4 The trees have significant amenity value when viewed from the public footpath to the north of the site and contributes to the verdant character of the path and adjacent land. (**Photo 8**)

- 4.5 **There is no expediency in making this TPO**

The land in question is owned by Wates developments Ltd and has been promoted for development. A Tree Preservation Order was previously drafted in response to a development enquiry. This piece of land was consequently not considered suitable for development and the tree were therefore not under threat.

An objection towards this Tree Preservation Order reinforces the expediency of its creation.

Mr Spooner suggests that his client is a responsible land owner and would not fell trees needlessly. It is unclear from this statement as to why an objection has been lodged if this is the case.

- 4.6 **Inappropriateness in the use of a 'Woodland' designation**

The use of a woodland designation is the most suitable option at this time when administering the TPO. It provides protection for all trees of whatsoever species of any age. The authority is of the opinion that this is a developing woodland with significant amenity value.

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

- 5.1 1 photo and letter of support were submitted on the 19<sup>th</sup> July 2018 (**Photo 10 and Appendix 8**)

## **6.0 CONCLUSION:**

- 6.1 The Authority's Tree Officer takes the view that the protected woodland makes a positive contribution to public amenity and the character of the area. The amenity value that the trees provide can only increase in time as the trees and woodland matures. The change in use of the adjacent land through potential future development will result in an even greater amenity value than woodland already provides. This is an important asset to the local area and could be incorporated into any future development plans that may be approved.

## **7.0 RECOMMENDATION:**

- 7.1 For the above reasons it is recommended that Tree Preservation Order TPO/17/18 be confirmed without modification.

For further information contact:

James Palmer  
Tree Officer, New Forest National Park Authority  
Tel: 01590 646677  
E-mail: [james.palmer@newforestnpa.gov.uk](mailto:james.palmer@newforestnpa.gov.uk)



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**Subject:** FW: Tree Work/felling to the north of Lymington

**From:** Richard Payne <[Richard.Payne@NFDC.gov.uk](mailto:Richard.Payne@NFDC.gov.uk)>  
**Sent:** 28 March 2018 09:07  
**To:** James Palmer <[James.Palmer@newforestnpa.gov.uk](mailto:James.Palmer@newforestnpa.gov.uk)>  
**Subject:** RE: Tree Work/felling to the north of Lymington

Thanks James. First paragraph – thanks for checking.

Second paragraph, yes the recent development leaves room for an access and I understand the land is now promoted for development. I asked Liz to draft a TPO but we put it on hold back at the time of the development because the area seemed to be in no longer in danger. I am a little worried that the trees might be in danger again as the land is being promoted for development (though we are not seeking it in the new local plan at the moment). That is why I asked for the TPO to be served if the trees are still of value (originally I saw them as a future amenity especially seeking play area amongst the trees, and a softer rural edge for the recent Penny Farthing development. The road layout was intended to head north and might take out the odd one or two trees but the essence of the group could be embraced by development designs as long as the owner hadn't clear felled to clear any obstruction to planning or dwelling numbers.

Regards

Richard

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**From:** James Palmer [<mailto:James.Palmer@newforestnpa.gov.uk>]  
**Sent:** 27 March 2018 13:45  
**To:** Richard Payne  
**Cc:** Nik Gruber  
**Subject:** RE: Tree Work/felling to the north of Lymington

Good afternoon Richard,

I have been out today to investigate large scale tree removal along/near the Yaldhurst Lane area to north of Lymington. I had a good walk around the area and there was no suggestion of any recent or historic large scale tree removal. I spoke to the owners of Cowley Farm and Haybarn which are situated off of Cowley Road and the owners of Yaldhurst Farm House which is situated off of Yaldhurst Lane. The owners were not aware that any tree felling had taken place recently or since they had lived there?

I also popped by to look at the piece of land to the north of the Pennyfarthings Pinetops development. The maturing woodland provides significant amenity to the local area, school and residents of the new development, do you know if this is a potential site for further development? The road layout of the now Torreyana Gardens suggests they may have intention to develop it as the road comes to a dead end bordering that site. Do you know if this has been considered?

Thanks Richard

James

James Palmer  
Tree Officer  
01590 64 6677

**Subject:**

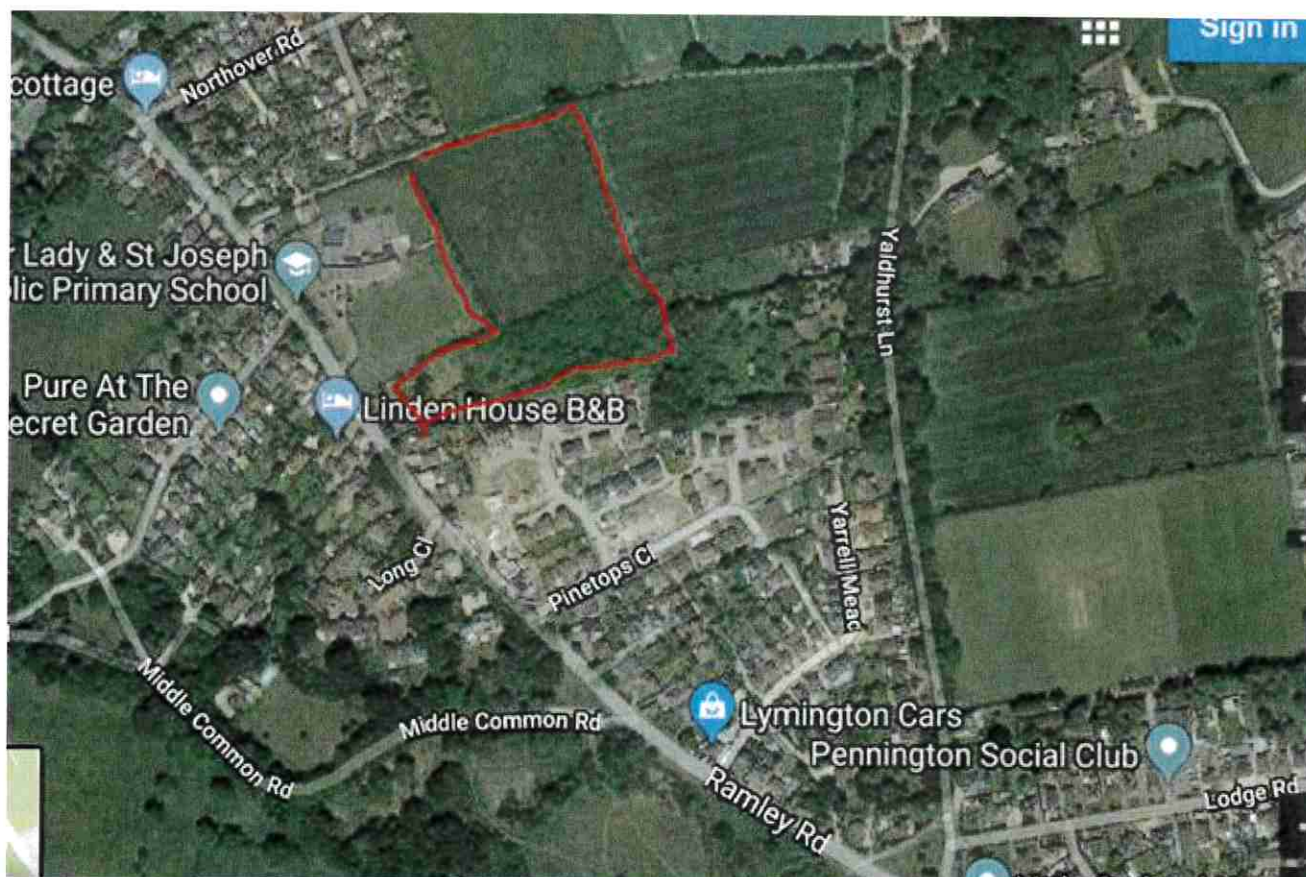
FW: Tree Preservation Order TPO/0017/18

**From:** Mark Williams <Mark.Williams@NFDC.gov.uk>**Sent:** 18 July 2018 16:01**To:** Richard Payne <Richard.Payne@NFDC.gov.uk>; James Palmer <James.Palmer@newforestnpa.gov.uk>**Cc:** Louise Evans <Louise.Evans@NFDC.gov.uk>; Nik Gruber <Nik.Gruber@newforestnpa.gov.uk>**Subject:** RE: Tree Preservation Order TPO/0017/18

James,

The land in question is strong Green Belt and would remain such based on our recently published draft LP. Whilst it has been promoted for development there is no realistic prospect of receiving a consent for housing if an application was submitted, unless we chose to support it as an affordable housing exception site. The latter has had some discussion and town council interest, so should a blanket TPO not be appropriate we would still favour individual TPOs to be made where justified.

Regards

**Mark Williams**

Principal Policy Planner

Planning Policy

New Forest District Council

Tel: 023 8028 5588

[mark.williams@nfdc.gov.uk](mailto:mark.williams@nfdc.gov.uk)[newforest.gov.uk](http://newforest.gov.uk)



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**From:** Richard Payne  
**Sent:** 18 July 2018 09:24  
**To:** 'James Palmer'  
**Cc:** Louise Evans; Mark Williams; 'Nik Gruber'  
**Subject:** RE: Tree Preservation Order TPO/0017/18

This layout proposal is not a plan I am familiar with.

The trees were ear marked for retention and protection during consideration of the last local plan. However, I did intend for some land (the western end of the site) to be available for development and land to the east to contain public open space and natural play amongst the trees if any development did come forward. Certainly the trees should be a major part of our negotiation on this site but might be better as an identified group or even individual trees once any objector/applicant has supplied a survey. The site has none of the other attributes of a woodland such that I would think it more appropriate to consider it otherwise but we have a statutory duty to consider the protection of these trees in considering any new development and a TPO is the only tool at our disposal.

Regards

**Richard Payne**

Team Leader - Environmental Design

New Forest District Council

Tel: **023 8028 5588**

[richard.payne@nfdc.gov.uk](mailto:richard.payne@nfdc.gov.uk)

[newforest.gov.uk](http://newforest.gov.uk)

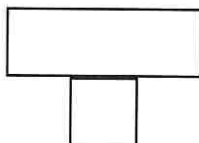
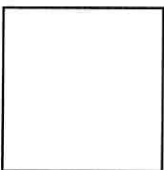


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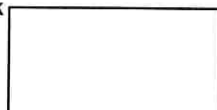
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Authority**

Lymington Town Hall  
Avenue Road  
Lymington



## TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

## SURVEY DATA SHEET &amp; DECISION GUIDE

Date: 23/4/18	Surveyor: James Palmer
<b>Tree details</b> TPO Ref (if applicable): — Tree/Group No: Species: Mixed Woodland Owner (if known): — Location: North of Torreyana Gardens	

## REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

**Part 1: Amenity assessment****a) Condition & suitability for TPO**

- |                          |                         |
|--------------------------|-------------------------|
| 5) Good                  | Highly suitable         |
| 3) Fair/satisfactory     | Suitable                |
| 1) Poor                  | Unlikely to be suitable |
| 0) Dead/dying/dangerous* | Unsuitable              |

## Score &amp; Notes

5

\* Relates to existing context and is intended to apply to severe irremediable defects only

**b) Retention span (in years) & suitability for TPO**

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

## Score &amp; Notes

5

\* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

**c) Relative public visibility & suitability for TPO**

Consider realistic potential for future visibility with changed land use

- |   |                     |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees  | Highly suitable     |
| 4) Large trees, or medium trees clearly visible to the public       | Suitable            |
| 3) Medium trees, or large trees with limited view only              | Suitable            |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable     |
| 1) Trees not visible to the public, regardless of size              | Probably unsuitable |

## Score &amp; Notes

4

**d) Other factors**

Trees must have accrued 7 or more points (with no zero score) to qualify

- |  |   |
|--|---|
| 5) Principal components of formal arboricultural features, or veteran trees                    | Score & Notes woodland<br>feature, important for<br>cohesion. |
| 4) Tree groups, or principal members of groups important for their cohesion                    |   |
| 3) Trees with identifiable historic, commemorative or habitat importance                       |   |
| 2) Trees of particularly good form, especially if rare or unusual                              |   |
| 1) Trees with none of the above additional redeeming features (inc. those of indifferent form) |   |
| -1) Trees with poor form or which are generally unsuitable for their location                  |   |

**Part 2: Expediency assessment**

Trees must have accrued 10 or more points to qualify

- |   |  |
|---|--|
| 5) Immediate threat to tree inc. s.211 Notice | Score & Notes Potential development<br>site. |
| 3) Foreseeable threat to tree                 |  |
| 2) Perceived threat to tree                   |  |
| 1) Precautionary only                         |  |

## Score &amp; Notes

3

**Part 3: Decision guide**

- |       |                       |
|-------|-----------------------|
| Any 0 | Do not apply TPO      |
| 1-6   | TPO indefensible      |
| 7-11  | Does not merit TPO    |
| 12-15 | TPO defensible        |
| 16+   | Definitely merits TPO |

## Add Scores for Total:

21

## Decision:

Make TPO.



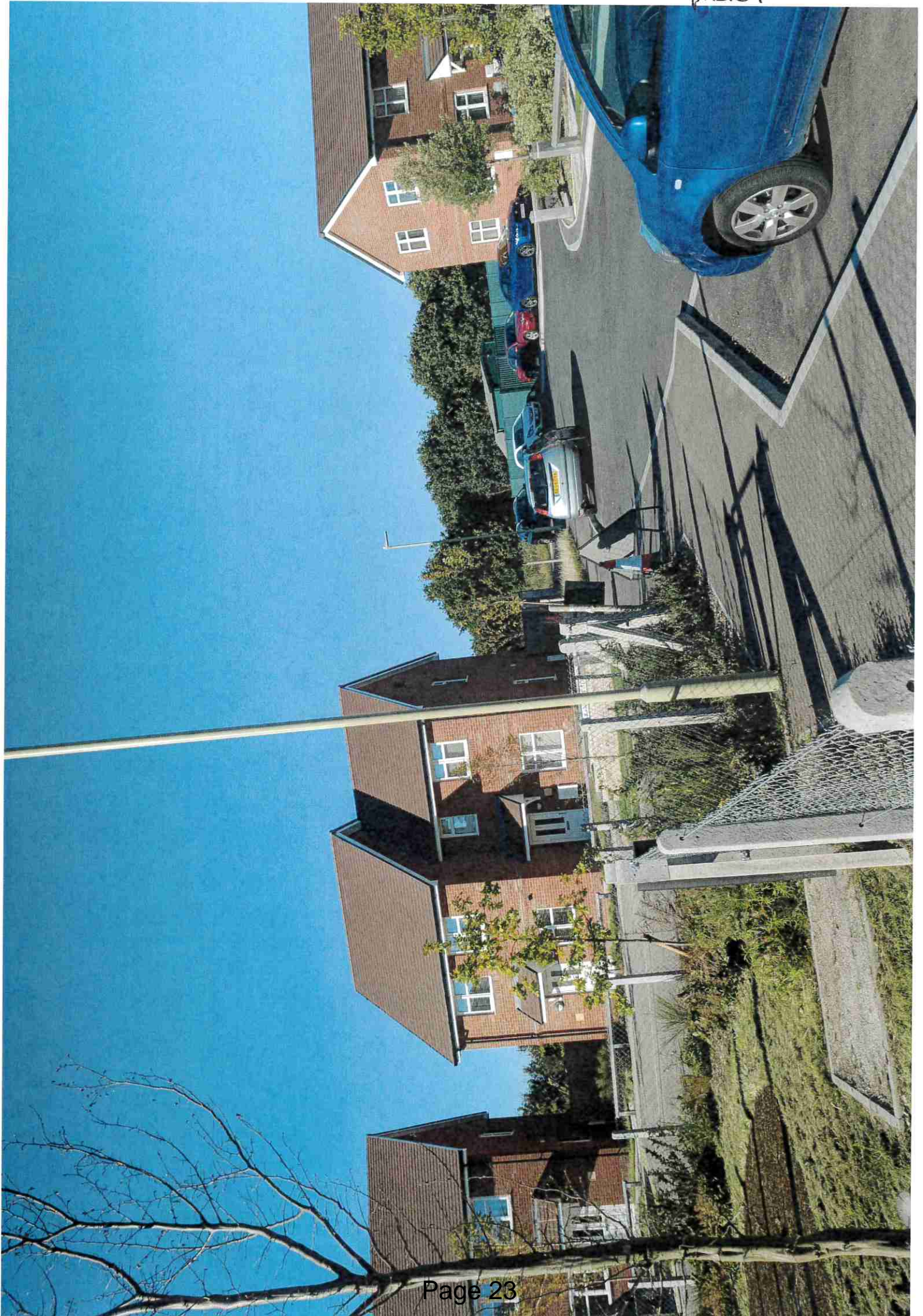
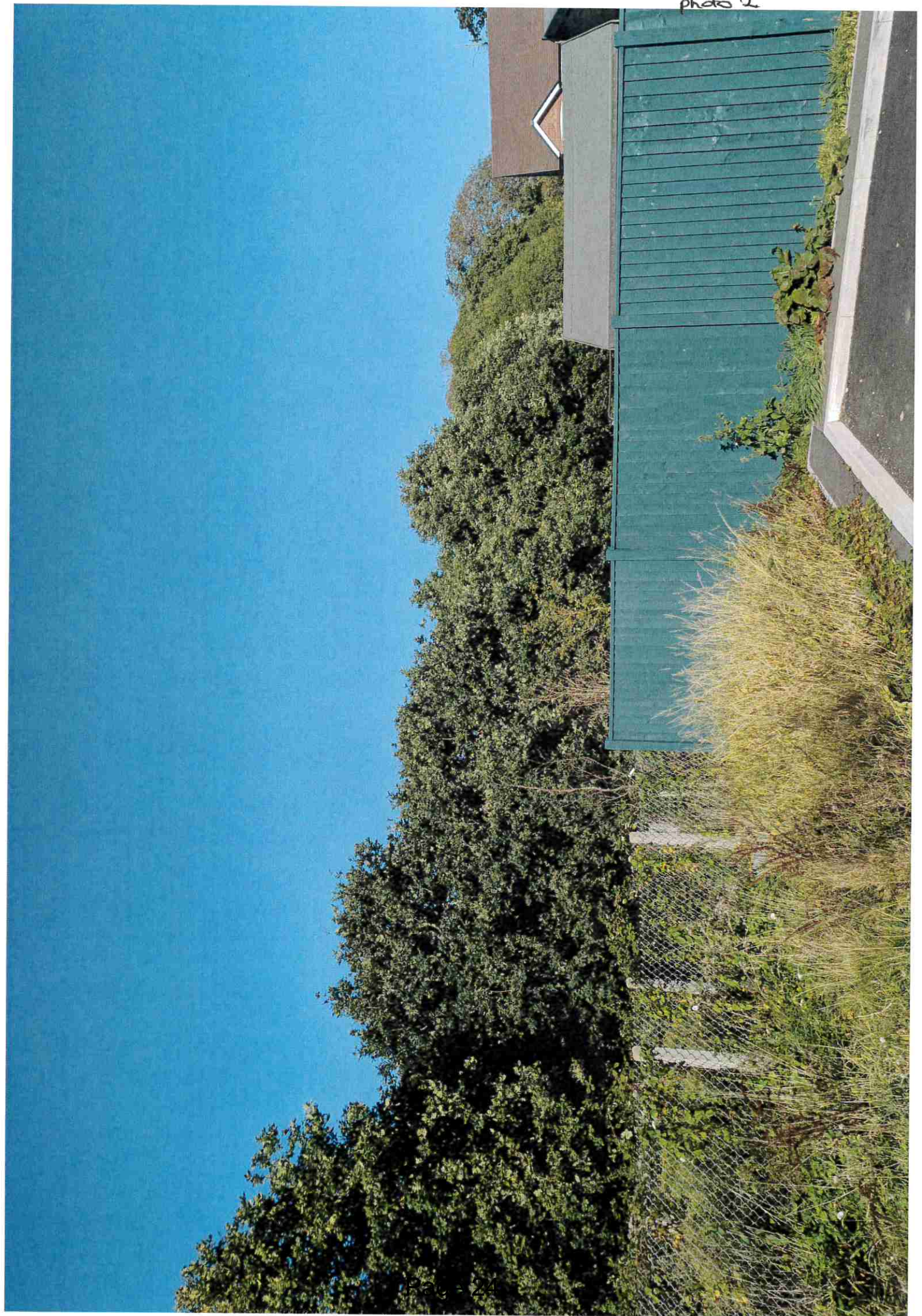




photo 2





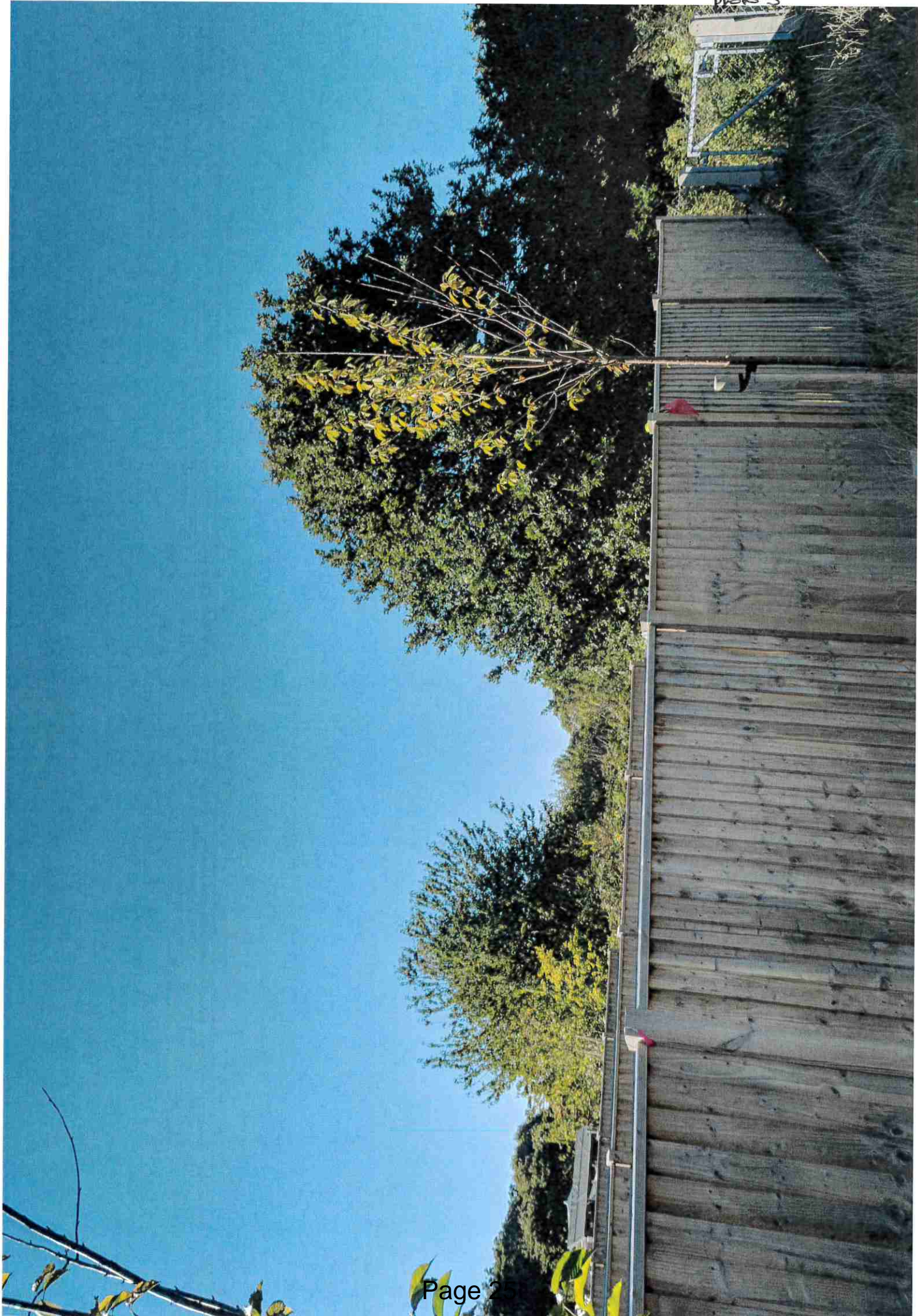
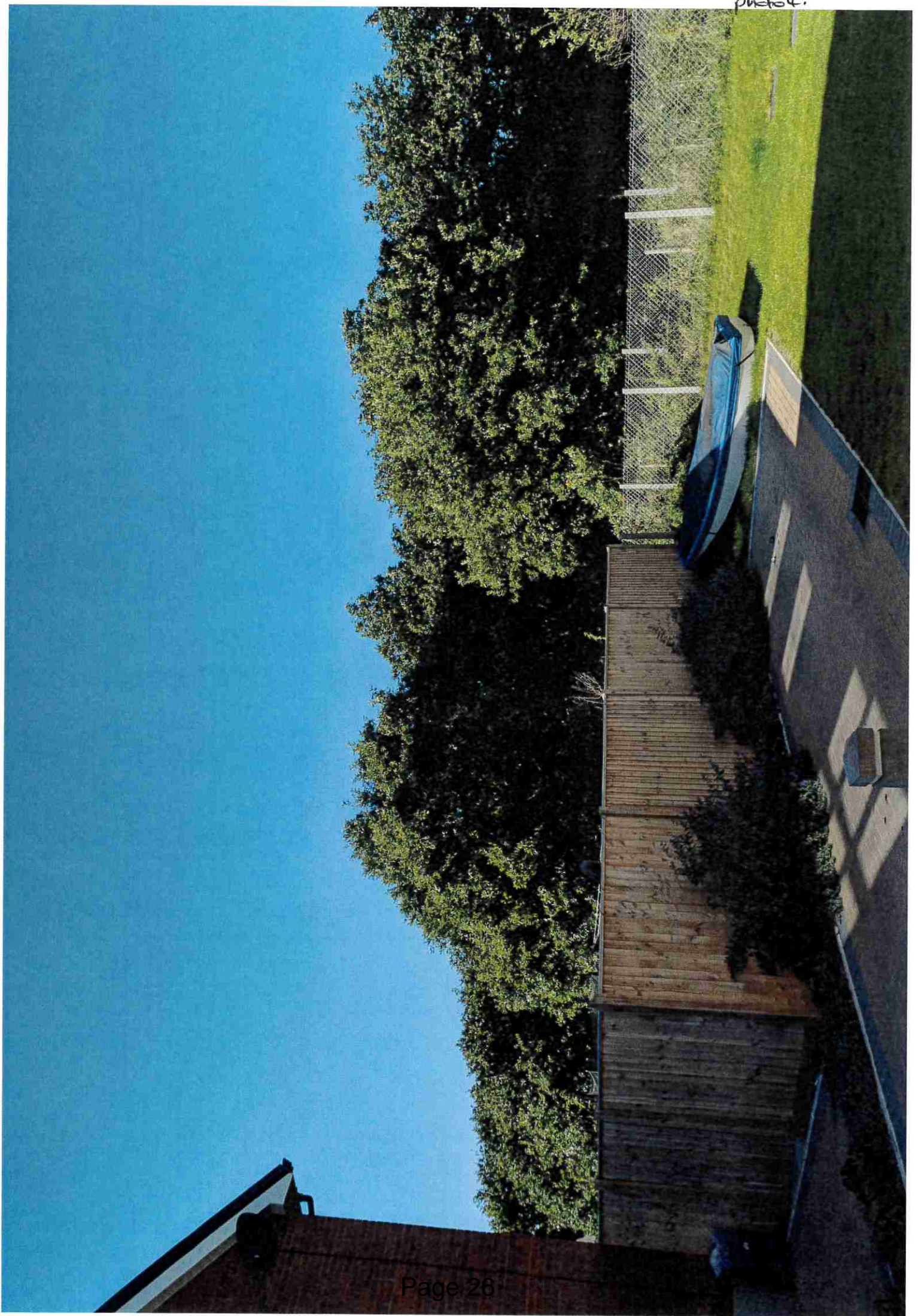
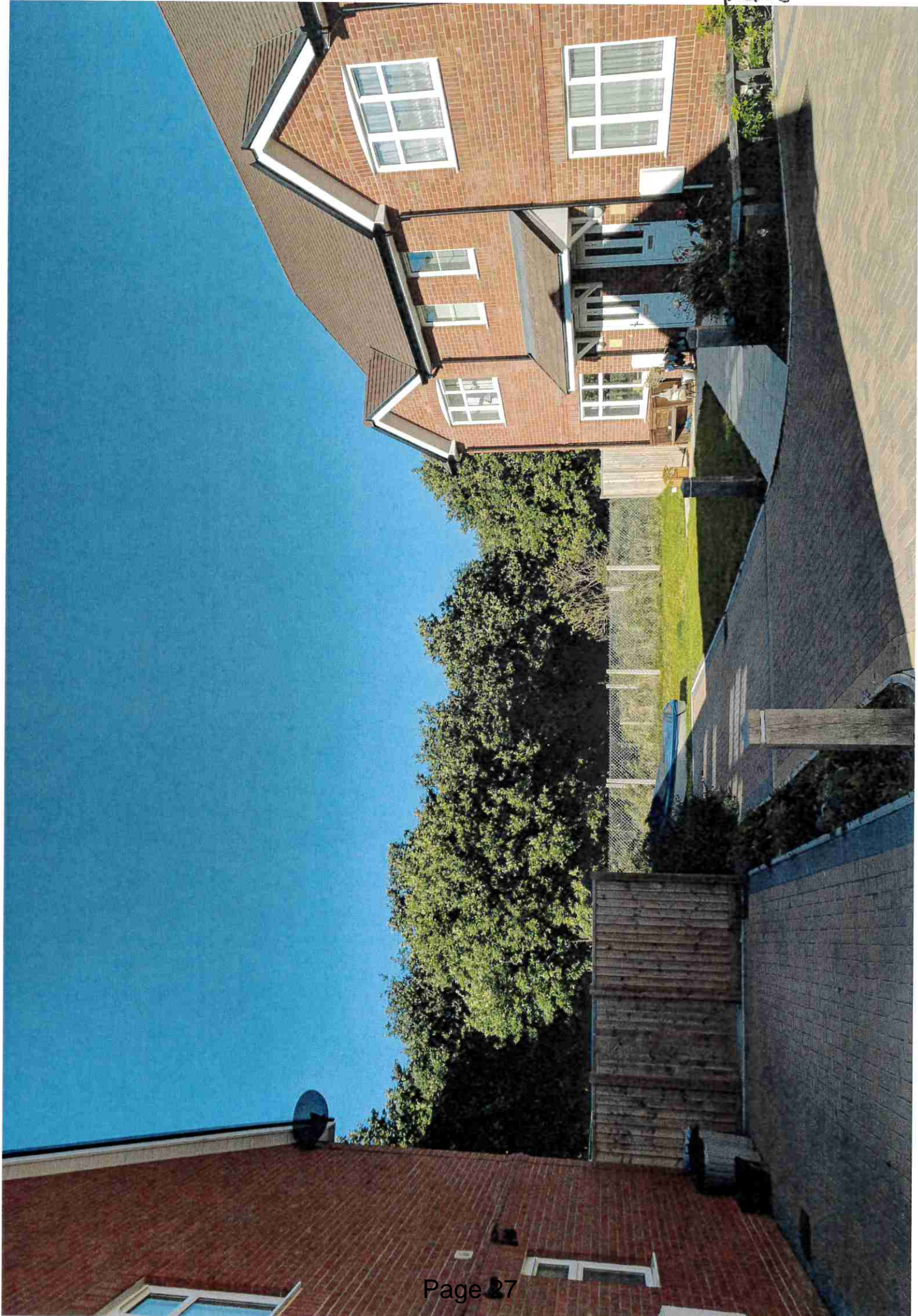




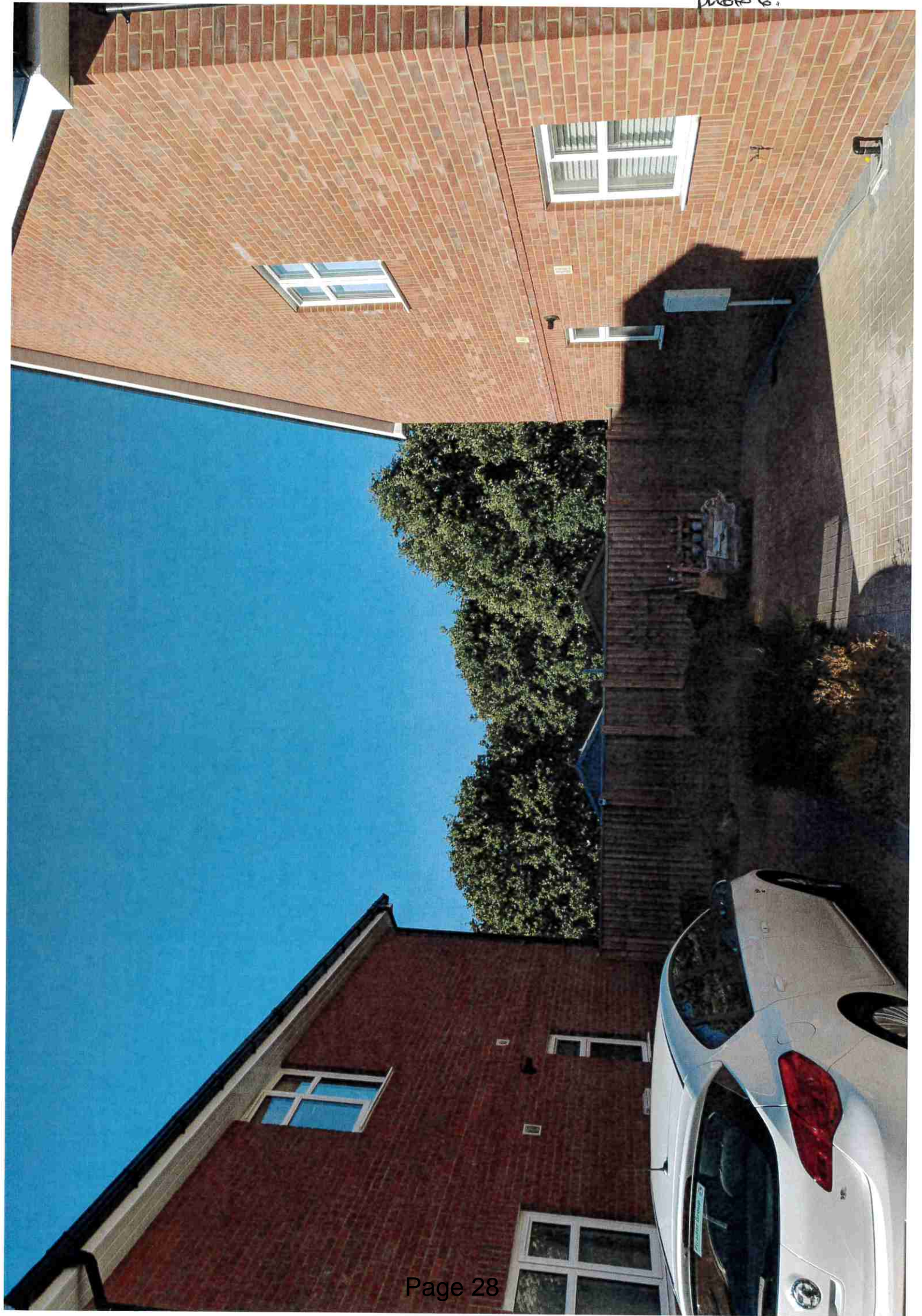
photo 4.

















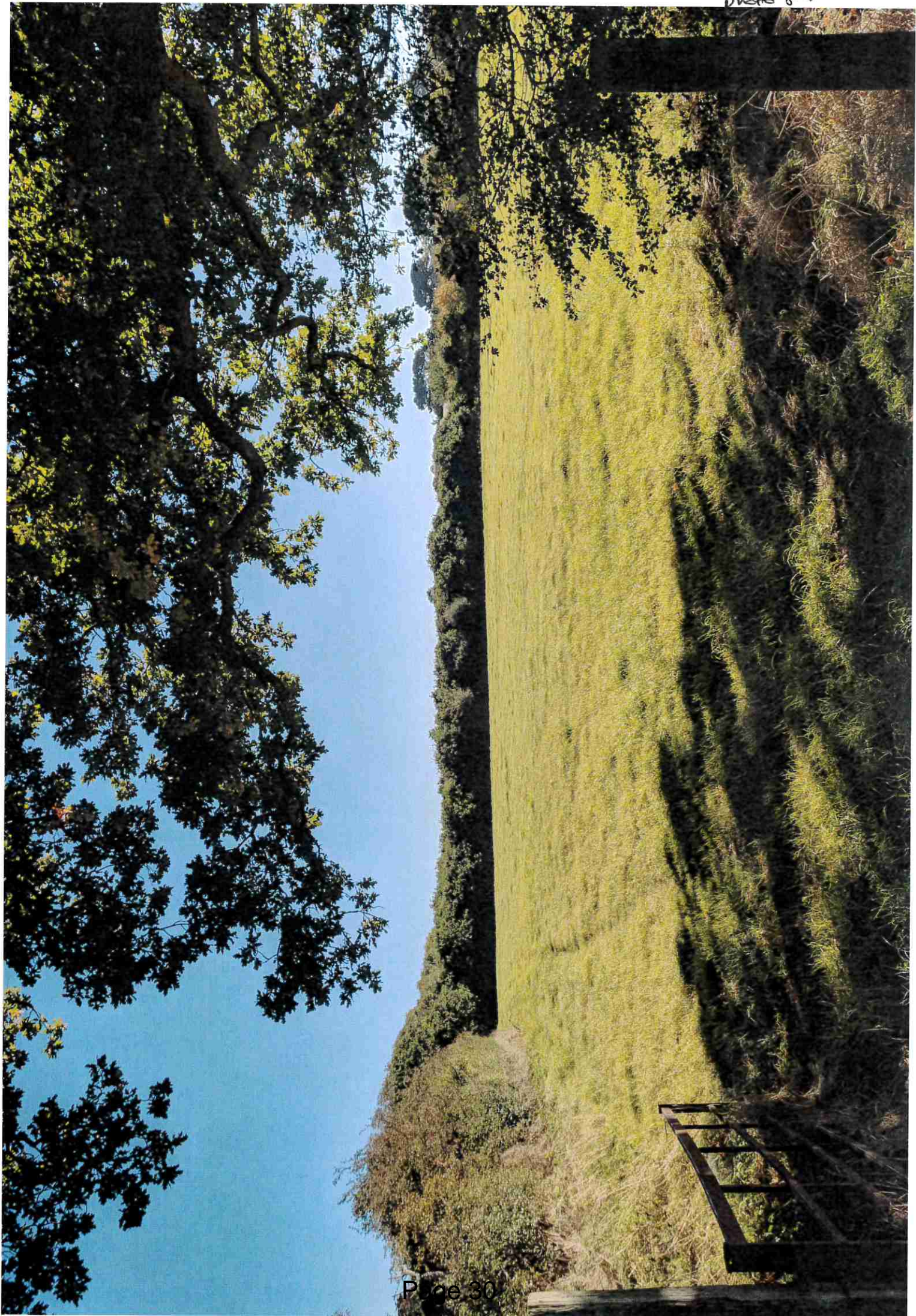
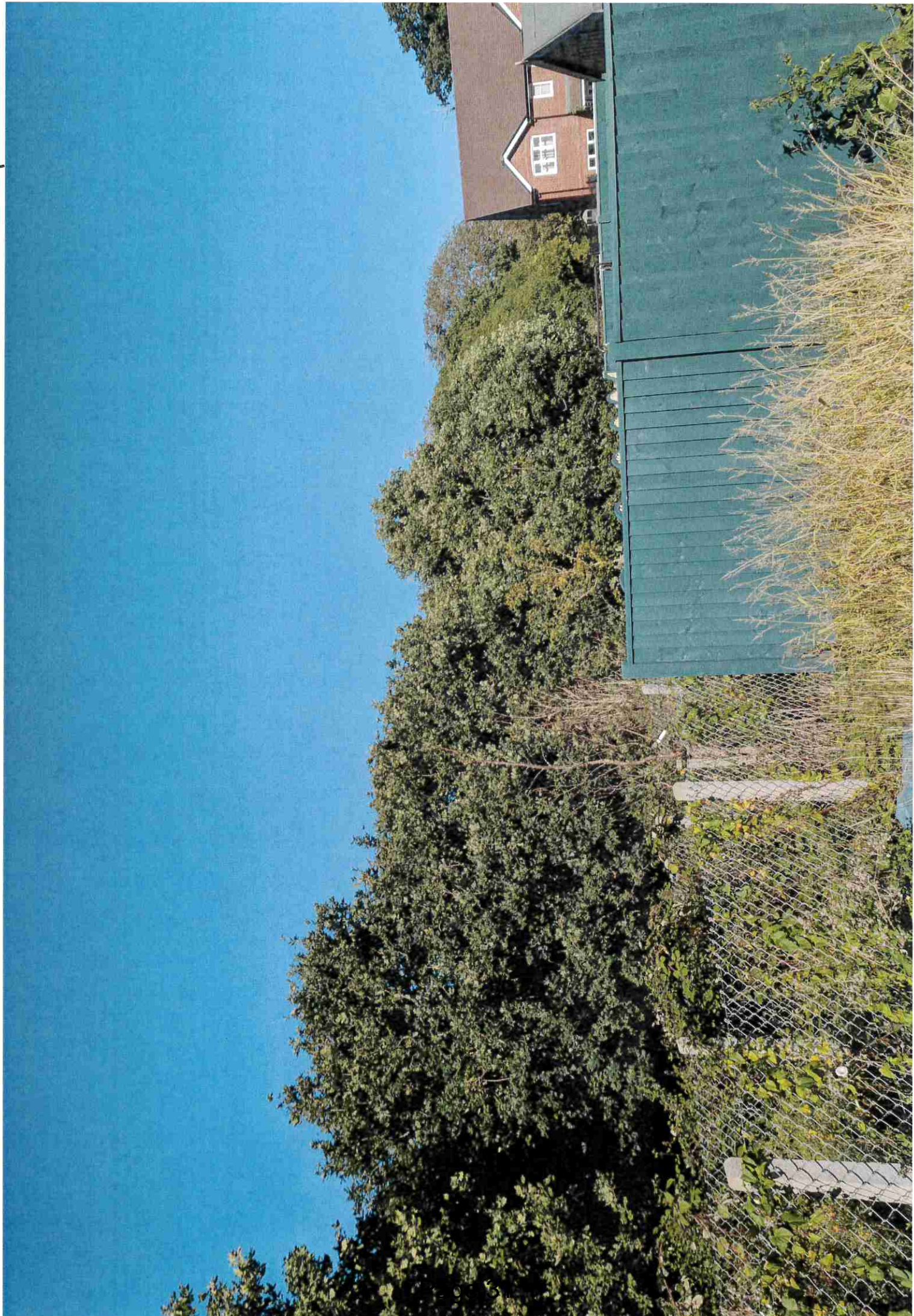




photo 9.





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# **APPENDIX 3**

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**From:** Frank Spooner <  
**Sent:** 03 July 2018 15:07  
**To:** James Palmer  
**Cc:** Nik Gruber  
**Subject:** RE: Tree Preservation Order TPO/0017/18, Land to the north of Torreyana Gardens, Pennington

Dear Mr Palmer,

Thank you for your email. However, I do not accept that the submission of a tree survey is a requirement when objecting to the making of a TPO; even if acting as an agent on behalf of a client. You (the NPA) have a duty to take into account 'duly made' objections.

I refer to **The Town And Country Planning (Tree Preservation)(England) Regulations 2012**; the **NPPG Tree Preservation Orders and trees in conservation areas**; and the judgement on **Wilkinson Properties Ltd. v Royal Borough of Kensington and Chelsea ([2010] EWHC 3274 (QB))**.

Your Regulation 5 notice, sent with the TPO when it was made, does not include any indication that a tree survey is a requirement of an objection – nor should it have done. Your Regulation 5 notice correctly states the date by which any comments must be received and that any comments must comply with Regulation 6 of the referenced Regulations.

You will be aware that Regulation 6, sent with every Regulation 5 notice, sets out the particulars for an objection to be 'duly made'. This Regulation states:

**"6.—(1) Subject to paragraph (2), objections and representations—**  
**(a) shall be made in writing and—**  
**(i) delivered to the authority not later than the date specified by them under regulation 5(2)(c); or**  
**(ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;**  
**(b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which such objections and representations are made; and**  
**(c) in the case of an objection, shall state the reasons for the objection."**

We submitted an objection, via email, on the 11<sup>th</sup> June 2018, our objection letter specified that we object to the creation of the woodland TPO and it gave the three reasons for our objection. Therefore, our objection has been 'duly made'.

The NPPG sets out (at Paragraph 034) that **'Before deciding whether to confirm an Order, the authority must take into account all 'duly made' objections'**.

Our objection has been duly made and you have a duty to take it into account. Not doing so simply because it does not include a tree survey would be contrary to the referenced Regulations.

As previously pointed out, and discussed in our recent telephone conversation, a duly made objection needs to be considered carefully and the decision on whether or not to confirm a TPO should be made by a committee. That is because, as the NPA you are the promotor and decision maker and there is an 'enhanced duty of fairness' (see referenced judgement) placed upon the decision maker. You mentioned in conversation that this role was fulfilled by a panel at the New Forest District Council (i.e. a different authority to the NPA); this would certainly satisfy that enhanced duty.



Therefore, I expect our objection to be taken as 'duly made' and that it will be considered carefully before the decision on whether or not to confirm the TPO is made in an 'even handed and open manner'.

I look forward to hearing confirmation from the NPA as to when our objection will be decided and what opportunity there is to attend the hearing/meeting.

Your sincerely,

Frank Spooner

**SJA**  
trees  
**ARBORICULTURAL PLANNING CONSULTANTS**  
Arboricultural Consultancy - Tree Surveys  
Planning & Development - Hazard & Safety  
Tree & Woodland Management - Expert Witnesses

Surrey:  
London:

E-mail: [f@sjatrees.co.uk](mailto:f@sjatrees.co.uk)

---

**From:** James Palmer <James.Palmer@newforestnpa.gov.uk>  
**Sent:** 03 July 2018 09:38  
**To:** Frank Spooner <frank@sjatrees.co.uk>  
**Cc:** Nik Gruber <Nik.Gruber@newforestnpa.gov.uk>  
**Subject:** RE: Tree Preservation Order TPO/0017/18, Land to the north of Torreyana Gardens, Pennington

Dear Mr Spooner,

I write further to your letter dated 7<sup>th</sup> June 2018.

In such circumstances where a client is represented we would have expected that any comments indicating concern about the confirmation of an Order be accompanied by a Tree Survey to support your position. In the absence of such information and evidence it is the Authority's intention to confirm the Order but should you wish to provide this I would request receipt within 14 days of the date of this email otherwise the Order will be confirmed without further consideration of modification.

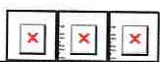
As you will appreciate, the confirmation of the Order does not in itself prohibit the sound arboriculture management of the trees concerned or the potential for some development at the site, subject of course to prior consideration by the Authority.

Yours Sincerely  
James Palmer

James Palmer  
Tree Officer  
01590 64 6677



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**New Forest National Park Authority**

To:

Frank Spooner

Dear Mr Spooner,

Thank you for your letter regarding Tree Preservation Order TPO/0017/18 dated 7<sup>th</sup> June 2018. My apologies for a delay in responding to you.

Please see the points below in response to the grounds of which your objection is based on:

**1. The area covered by this TPO does not have significant amenity value**

We are unable to accept this statement as these trees are a prominent sky line feature as illustrated in the photographs included within your letter. They can be clearly seen from numerous public vantage points, are a prominent backdrop and feature to the new development of Torreyana Gardens and has the support of local residents. Our Tree Evaluation Method for Preservation Orders (TEMPO) decision has recommended "Definitely merits TPO".

In your letter you suggest the trees currently have limited public amenity and that once matured will provide no greater amenity value due to the local Oak trees having supposedly squat form. I am not in agreement with this statement and being a local Tree Officer working in Lymington and Pennington I am not aware of or have ever noted predominantly 'squat' trees being found nor have you provided any further evidence that this is the case. These young or semi-mature Oak trees will only increase in height and spread as they mature and have in excess of 100 years safe useful life expectancy.

**2. There is no expediency in making the TPO**

This statement would contradict our understanding that the site is currently in the ownership of a developer and we have been provided with informal plans identifying the area for housing. We have received a response from New Forest District Council Planning Services confirming:- *"The land in question is strong Green Belt and would remain such based on our recently published draft LP. Whilst it has been promoted for development there is no realistic prospect of receiving a consent for housing if an application was submitted, unless we chose to support it as an affordable housing exception site. The latter has had some discussion and town council interest, so should a blanket TPO not be appropriate we would still favour individual TPOs to be made where justified."*

It is clear from the above that the making of a Tree Preservation Order on this site is very much expedient.

**3. Inappropriateness of a 'Woodland' designation**

We have considered both Individuals, Groups and Areas, all of which are inappropriate. The following extract taken from the NPPG also confirms the suitability of the use of a Woodland TPO on this site.

**"The woodland category's purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order."**

A woodland designation is in our opinion the most and only appropriate designation for this TPO. I am uncertain as to the relevance of the use of a woodland TPO within domestic gardens as no such garden features exist with the current site.



ARBORICULTURAL PLANNING CONSULTANTS

17 CROSS ROAD  
TADWORTH  
SURREY KT20 5ST

E- [REDACTED]

Principal: Simon R. M. Jones Dip. Arb. (RFS), F. Arbor. A.,  
Arboricultural Association Registered Consultant

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

7<sup>th</sup> June 2018

Our ref: SJA R6 18168-01

Dear Sir

Ref.: **TOWN & COUNTRY PLANNING, ENGLAND**  
**The Town and Country Planning (Tree Preservation) (England)**  
**Regulations 2012.**  
**New Forest National Park Authority Tree Preservation Order No: TPO**  
**0017/18, land to the north of Torreyana Gardens, Pennington.**  
**OBJECTION under Regulation 6.**

On behalf of my client, Wates Developments Ltd., I write to formally object to the imposition of the above Tree Preservation Order (TPO).

The TPO is a "woodland" order: 'including all trees of whatsoever species situated to the north of Torreyana Gardens as shown on the plan'. The grounds upon which the New Forest National Park Authority (hereinafter 'the NPA') have made the TPO were stated in the Regulation 3 notice as follows: "**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**".

I have visited the site and made the following observations of the site, the trees and the woodland the NPA has included in this TPO:

- much of the area is covered in self-sown young or semi-mature oak trees;
- the tree cover is denser to north and east, with a gradual transition the southern and eastern areas still open grassland being colonised by young oak trees;

- trees are squat in form - no more than 7m tall, with multiple stems per tree, strong proliferation of branches from low in their canopies, no strong leaders and apparently poor apical dominance;
- tree growth is almost a monoculture of oak with occasional ash, hawthorn and blackthorn on the margins, the oak trees are only competing with themselves (i.e. not competing with other faster growing pioneer species);
- there is an historic field boundary to east with mature oak trees, and there are other mature oaks in the vicinity that have a squat spreading form, typically no more than 18m in height;
- it appears the trees in this area are the offspring of the mature trees on the eastern boundary, and due to neglect of the paddock field the trees have spread west;
- in views from the northern edge of the adjacent field it is difficult to distinguish where this area ends, and other field boundary hedgerows begin – the trees within this area look like a hedgerow when viewed from anywhere outside the area with no impression of depth;
- from the north, the roof of a dwelling on the new Pinetops Close development beyond can be glimpsed through the east section where trees are sparser;
- views from further north (including much of the footpath between the fields) and the east are obscured by hedges, a few properties to the north may see a line of trees from first floor windows;
- trees are not tall enough for public views to west;
- some of the trees can be seen through gaps between the new dwellings to the south, but the area has the appearance of a mature hedgerow with no impression of depth; and
- there are no trees of arboricultural or landscape merit within the area covered by this new TPO;

This objection to the creation of the new woodland TPO is on the following grounds:

1. The area covered by this TPO does not have significant amenity value

The legislative framework for making TPOs comes from Section 198 of the Town and Country Planning Act 1990, as amended. Section 198(1) states "if it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an

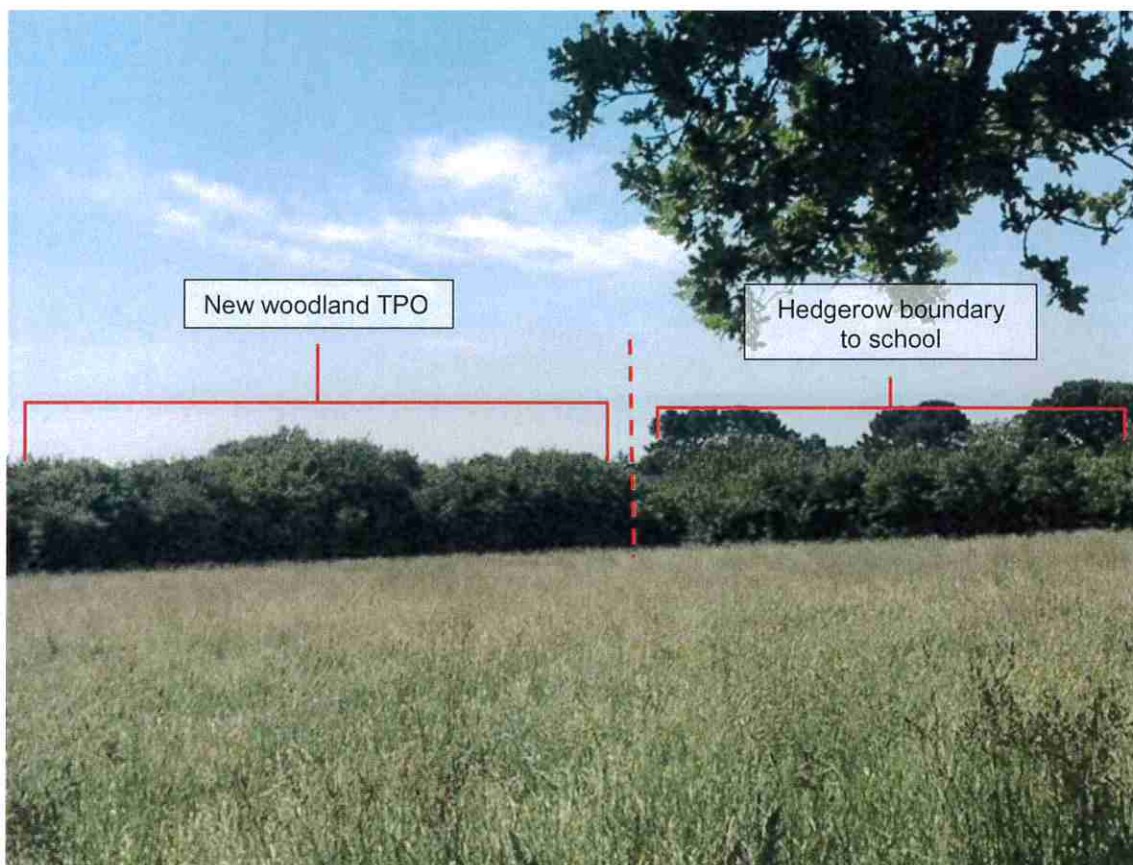
**order with respect to such trees, groups of trees or woodlands as may be specified in the order."**

The National Planning Policy Guidance (NPPG) for 'tree preservation orders and trees in conservation areas' is the definitive source for guidance on the creation and administering of TPOs by local authorities. A critical element of the guidance given by the NPPG is in response to "What does 'amenity' mean in practice?" the NPPG states: **"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".**

The NPA's reason for creating this woodland TPO is that its premature removal or pruning would result in the loss of amenity to the environment and falls short of including the words 'and its enjoyment by the public'.

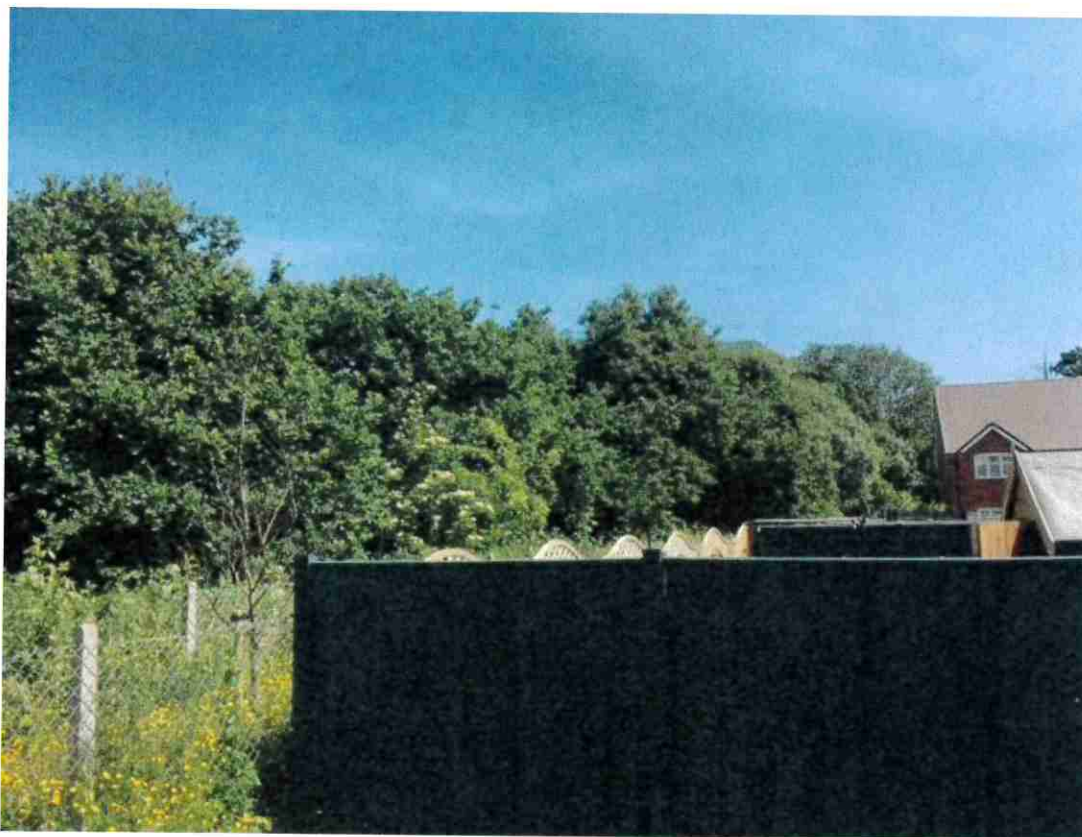
As set out in my observations above the public enjoyment of this wooded area is very limited. The tallest trees are not significantly more than 7m in height, there are no mature trees of arboricultural or landscape merit. Views of the wooded area from outside the area itself give the impression of a field boundary hedgerow that adjoins other field boundary hedgerows, as illustrated in **Photograph 1** below. Indeed, views of this area are less in keeping with the character and appearance of the local landscape because of the lack of any mature oak tree specimens therein.





**Photograph 1:** view from north looking towards south-west corner of adjacent field

Other field boundary hedges obscure views of the trees on this area from all but the most localised views to the north and east. The school, school boundary hedging and private properties obscure views from the west. The most public place from which the trees can be seen is to the south from the new development on Pinetops Close. However, the trees are not large and could easily be mistaken for an overgrown boundary hedgerow, as illustrated in **Photograph 2** below.



**Photograph 2: view from Pinetops Close looking east along the rear of the properties on this close**

Therefore, the trees in this area have very limited 'public' amenity value; the size and form of the trees are unremarkable; there are no rarity or historic factors to consider, and the trees do not contribute significantly to the landscape. Their removal would not have a significant impact on the character or appearance of the local area that could not quickly and easily be replaced by the retention of the outermost trees or the planting of boundary hedgerows that are allowed to grow to the height of the existing trees. Indeed, planting new hedgerows would even increase the diversity of species.

The most logical counter argument to this reason for objecting to the TPO is the future potential of this area as an amenity. However, as previously noted, the self-sown trees are of local provenance meaning their mature form is likely to mimic other mature trees in the area (which are squat and spreading). This could be attributed to the local environment being more wind exposed with high salinity, genetic predisposition, the composition and quality of the soil based on past and historic uses, a combination of these factors.

Another observation was the lack of other competing or pioneer species that might drive these trees to grow taller and have more of an impact on the landscape. Oak is the dominant species here and there has been no need for any of the trees to grow taller than approximately 7m. Eventually it may develop into a stand of mature oak specimens, but this would take a very long time and the trees are not likely to attain the height or stature of other more inland or sheltered woodlands. Therefore, there is nothing to suggest that this wooded area would present a significant public amenity feature in the near or even medium-term future.

Another possible counter argument, and possibly the reason for the NPA's reason for making the TPO in the first place is the environmental and ecological benefit of a collection of oak trees on the outskirts of the New Forest National Park. However, environmental benefits are not sufficient justification for a TPO if there is no substantive public benefit.

As such, in the absence of significant public amenity value in the present or future confirmation of this TPO would not be justifiable.

## 2. There is no expediency in making this TPO

New Forest District Council adopted Part 2 of its Local Plan in April 2014 and this included allocation of small portions of Green Belt land for development, including LYM1 which included Pinetops Nursery. An application for development of this land (ref: 15/10290) followed shortly after and development of the site is now complete; or near completion. A clear feature of the LYM1 site and is visible on all plans is the future potential for connection to further development on land to the north (the site now covered by this TPO).

It is not clear at what time the NPA took over from New Forest District Council (the LPA) for the creation and administering of TPOs within the District area outside the National Park. But at no point was a TPO made on this site during the three years between allocating LYM1 and the most recent condition discharge decision notice for application ref: 15/10290, in December 2017. All this time it would have been clear from the approved plans that there was the potential for future development of the land to the north.



Subsequent to the LPA allocating LYM1 for development in its Local Plan, Lymington and Pennington Town Council (the TC) has been developing and consulting on a Neighbourhood Plan (NP). Part of the consultation process was the inclusion of a larger site known as 'Site D' for allocation for development. The area of interest in this letter is a sub-section of Site D known as 'Site D1' which consists of the wooded area covered by this new TPO; the field immediately to the north and access off Ramley Road (school land area used for the site would be compensated within Site D1. Consultation on the NP has now closed, and the decision was made in September 2017 not to include Site D in the NP and yet throughout this process, neither the LPA nor the NPA made a new TPO on any of the land within Site D or D1.

Therefore, it is not clear why the NPA now believes it is now expedient to make a TPO on this site when there has been evidence in the public realm that the land to the north of LYN1 could be allocated for development since 2014.

In fact, my client has owned this site (Site D1) since 1987 (an HR Land Registry search would prove this) and has been promoting it for development since the 1990s. Through ongoing discussions with the TC Site D1 is being promoted as an exception site in the TC's emerging NP. The exception site designation means allocation of 70% affordable housing, for local people, and the TC will be identifying a real need for this in the NP.

With such a long history of ownership and promotion for development, my client has had every opportunity to pre-emptively fell the trees on this site. However, this is against Wates' principles and to suggest now that **'premature removal or excessive pruning of the trees'** is a reason for making this TPO does not stand up to scrutiny.

In the more than 40 years of ownership my client has not removed trees from this site (unless there was a Duty of Care need to do so) it has demonstrated that it can be relied upon to be a responsible land owner and would not fell trees needlessly.

As responsible land owners, my clients will ensure that any development of the land takes full account of all existing trees and will retain and protect those that are of significance to the local landscape and of public amenity value. Wates has an extensive portfolio of sites where it has done exactly that; without any pre-emptive felling.

Clearly the promotion of the land for development, since the 1990s, and in the public domain since 2014 means there is the potential for trees to be removed on this site. Developing the site for use for affordable housing, where there is an identified need, will necessitate the use of the land covered by this provisional woodland TPO. Not using this land would render approximately 45% of the site un-developable and would inhibit the proposed access from Ramley Road to the west or Pinetops Close to the south making the development unviable.

This would have been clear to the LPA for a long time and has not elicited the creation of a TPO. As discussed in item 1 of this letter, the lack of public amenity value has meant the needs and benefits of the potential development have outweighed the creation of a TPO and it is not clear why one is now needed.

Therefore, there can be no expediency in the NFA confirming this TPO. Future communication between all parties (the LPA, NFA, TC, Wates and SJAtrees) will ensure that trees of arboricultural and landscape merit (and this includes the mature trees on or adjacent to this site not covered by the TPO) will be retained and protected as part of any forthcoming scheme without the need for a woodland TPO.

### 3. Inappropriateness of a 'Woodland' designation

The use of a woodland designation on this site is inappropriate.

The site is not Ancient Semi-Natural Woodland or Ancient Replanted Woodland, as shown on the Magic Maps website. A search of the old OS maps readily available on-line, has proven that the site has been devoid of trees for at least 150 years (although in 1867 there appears to be a line of trees along the southern boundary, none of which are still present).

Leaving the land fallow in recent years has allowed it to be colonised by trees, but to call it a woodland is stretching the definition. It is more accurately described as 'scrub', an intermediate stage between use of land other than as woodland (i.e. pasture, meadow, arable, habitation, quarries etc.) and 'recent secondary woodland'. Scrub composition is determined by soil type, available seed sources, and the condition of the land at the time it's use was abandoned.<sup>1</sup>

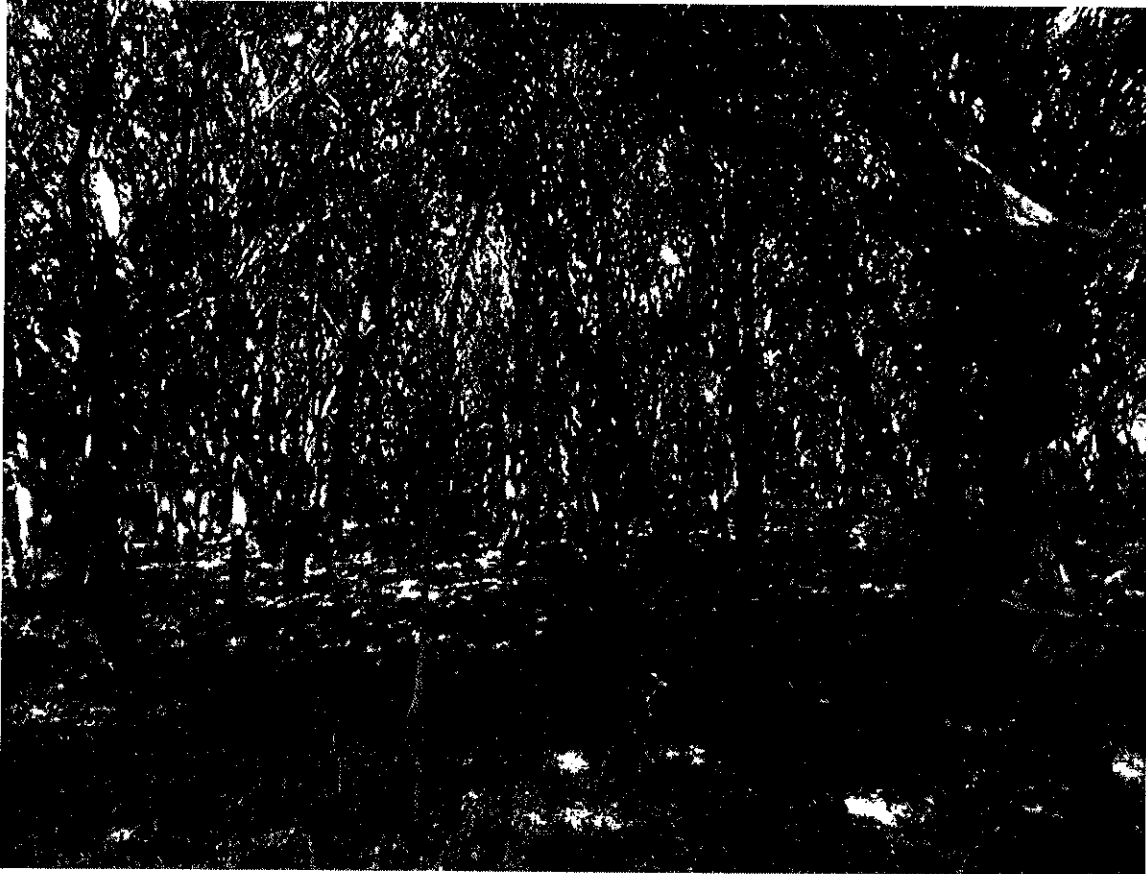
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<sup>1</sup> 'Woodland Conservation and Management' G. Peterken, Chapman and Hall (1993)

The fact this land is almost exclusively colonised by oak is an indication of the seed source; as I observed (with a row of mature oak trees on the east boundary). This and other environmental factors might also account for the lack of other pioneer species; although the use of the land prior to it being left might have altered the soil properties so that it favours only oak. Nevertheless, just because there are many oak trees on the site it does not alter the fact that it is scrub and not a woodland because of the size and form of the trees found here.

Succession from scrub to recent secondary woodland may take hundreds of years. One example of secondary succession given by Peterken (see footnote 1 on preceding page) is New Forest holly scrub succession to oak and then beech woodland which may take as little as 100 years if beech becomes established early or 200-300 if not (further emphasising the significance of seed sources).

In this instance the scrub is oak, and as the oak does not have to compete with holly, secondary woodland may develop from what is there now but only if the soil conditions are favourable will this happen quickly. I did not take any soil samples from the site but based on my observations of such prolific branch proliferation and multiple-stemmed forms of the trees present (see **photograph 3** below), it suggests that the previous use of the site left the soil unconducive to woodland development. It is inevitable, if left alone this area will develop into recent secondary woodland but a climax woodland on this site would take a very long time to form; probably several hundred years.



**Photograph 3: view from within the stand of oak trees showing significant branch proliferation and no strong leaders or apical dominance**

Development of the site, as is being promoted with a view to inclusion in the NP, would mean much of the area within the continuous black line on the TPO map would include private residential gardens. Whilst there is the potential for the retention of existing trees, where appropriate, using a woodland TPO to cover trees in small gardens would clearly be a misrepresentation. This is underlined by current NPPG, which states: "**It is unlikely to be appropriate to use the woodland classification in gardens.**"

I trust the above supplies you with sufficient information to detail my objection to the TPO on behalf of my client but if there is further information of clarification you require then please let me know.

Furthermore, I trust that not only will this objection be given careful consideration and that a decision on whether or not to confirm the TPO, or to confirm it in this form, will be done in an 'even-handed and open manner' as set out in the NPPG (section 5 -

under the heading 'How do local planning authorities confirm TPOs?'); bearing in mind that the NPA is both the proposer and judge in such decisions.

Yours sincerely

Frank Spooner

**SJAtrees**

**Associate Consultant**

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# APPENDIX 4

**From:** [Palmer, Dee](#)  
**To:** [Trees](#)  
**Subject:** TPO /0017/18 SREA ID W1  
**Date:** 19 July 2018 09:43:20

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Sir

In support of your tree preservation order I have attached photographs from my property and my neighbour of 'old' Oak trees – this would be devastating if they were to be taken down.

I hope this helps

Regards

DEE PALMER  
11 TORREYANA GARDENS  
PENNINGTON SO418QQ



plate 10













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