

# NOTICE OF MEETING

<b>Meeting:</b>	<b>APPEALS PANEL</b>
<b>Date and Time:</b>	<b>THURSDAY, 9 FEBRUARY 2023, AT 10.30 AM*</b>
<b>Place:</b>	<b>COUNCIL CHAMBER - LYMINGTON TOWN HALL, AVENUE ROAD, LYMINGTON SO41 9ZG</b>
<b>Enquiries to:</b>	<b>E-mail: <a href="mailto:andy.rogers@nfdc.gov.uk">andy.rogers@nfdc.gov.uk</a> Andy Rogers</b>

**PLEASE NOTE:** The Hearing will be preceded by a visit to the site. Please meet at the place indicated on the attached plan, shown as Appendix 5, at 10.00am.

**Kate Ryan**  
**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. 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.

**3. OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER TPO 0013/22  
LAND OF 3-5 STANLEY ROAD, LYMINGTON, SO41 3SJ (Pages 5 - 46)**

To consider objections to the making of Tree Preservation Order 0013/22 relating to land of 3-5 Stanley Road, Lyminster, SO41 3SJ.

To:

**Councillors**

Mark Clark  
Keith Craze  
David Hawkins

**Councillors**

Alvin Reid  
Derek Tipp

**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.

## APPEALS PANEL – 9 FEBRUARY 2023

### **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER TPO 0013/22 LAND OF 3-5 STANLEY ROAD, LYMINGTON, SO41 3SJ**

#### **1. RECOMMENDED:**

- 1.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order TPO 0013/22 relating to land of 3-5 Stanley Road, Lyminster, SO41 3SJ with, or without, amendment.

#### **2. INTRODUCTION**

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

#### **3. BACKGROUND**

- 3.1 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”).
- 3.2 New Forest District Council is responsible for Tree matters within its area, as local planning authority. The National Park Authority remains responsible for tree matters within the confines of the National Park.
- 3.3 Where a Tree Preservation Order is made, 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.
- 3.4 The Order contains a schedule (which includes a map) specifying which tree or trees are protected by the Order.
- 3.5 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.
- 3.6 The procedure allows for written objections and representations to be made to the Authority.
- 3.7 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, the objection is referred to a meeting of the Council’s Appeals Panel for determination.
- 3.8 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.

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

4.1 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”.

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

5.1 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.

5.2 An individually specified tree must meet the criteria for protection in its own right.

5.3 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.

5.4 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.

5.5 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.

#### **6. THE ROLE OF THE PANEL**

6.1 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.

##### **6.2 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.

### 6.3 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.

## 7. THE EFFECT OF THE ORDER

- 7.1 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.
- 7.2 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.

## 8. CONSIDERATION

- 8.1 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.

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

- Appendix 1** The report of the Council's Tree Officer, setting out all the issues which should be taken into account, and making the case for confirming the Order.
- Appendix 2** The Tree Preservation Order (TPO)
- Appendix 3** Mrs Wild's letter of objection to the making of the TPO (Tree Owner)
- Appendix 4** The written representations from Mr Hayes in support of the TPO
- Appendix 5** Site Plan
- Appendix 6** Location Photos
- Appendix 7** TEMPO Tree evaluation

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.

## 9. FINANCIAL IMPLICATIONS

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.
- 9.5 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.

## **10. ENVIRONMENTAL IMPLICATIONS**

10.1 The trees must have significant value within their landscape to justify the confirmation of the Order.

## **11. CRIME AND DISORDER IMPLICATIONS**

11.1 There are no crime and disorder implications arising from this report.

## **12. OTHER IMPLICATIONS**

12.1 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).

12.2 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.

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

Andy Rogers  
Democratic Services Officer  
Tel: (023) 8028 5070  
E-mail: [andy.rogers@nfdc.gov.uk](mailto:andy.rogers@nfdc.gov.uk)

### **Background Papers:**

Attached Documents:  
TPO 0013/22  
Published documents

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## APPEALS PANEL - 9 FEBRUARY 2023

**TREE PRESERVATION ORDER** TPO/0013/22

**Site** Land of 3 and 5 Stanley Road Lymington SO41 3SJ

**Proposal** To confirm Tree Preservation Order

**Objector** Owner: Mrs Wild

**Agent** Not applicable

## 1. SUMMARY OF MAIN ISSUES

The key issues are

1. The public amenity value of the tree and its value to the wider community.
2. The expediency to protect this tree

## 2. TREE PRESERVATION ORDER HISTORY

- The subject tree is situated in a residential garden of a domestic dwelling located on the north side of Stanley Road, Lymington. The Oak tree sits within the relatively large rear garden adjacent to the subject properties.
- The order was made in response to an enquiry from a member of the public, who notified the council that the properties were being advertised for sale as a potential development plot and was concerned that the Oak tree may be removed as a result.
- A TPO was made on 11th August 2022. **(Appendix 2.)**
- The owner of the site, Mrs Wild, put in writing her objections to the order.

## 3. The Tree

The Tree Preservation Order covers a single individual mature English oak. The tree is visible in part from the public highway, Stanley Road.

## 4. Objections to the Order

Mrs Wild put her objections in writing by letter of 1<sup>st</sup> September 2022 **(Appendix 3.)** and the main points are summarised below:

**Expediency:** With regard to the question of expediency being a reason to TPO the tree to prevent premature removal or extensive pruning.

There are no plans for removal of the tree, nor plans for any extensive pruning, and the tree has been in good management over the 54 years that the current owner has occupied the property. Although the property was tentatively marketed by a local

estate agent as a potential development plot, there is no immediate threat to the tree, based on a notification to fell. There is no foreseeable threat to the tree, based on an application for outline planning consent.

**Amenity:** In addressing the question of amenity of the tree as a reason for the TPO to avoid the loss of an amenity to the local environment. The first and most important factor when considering amenity as set out in government guidance is the “visibility”. The extent to which trees or woodlands can be seen by the public. The tree is almost entirely hidden from public view

**-size and form:** A fair assessment would be a Common Oak of small size and pollarded form.

**-future potential as an amenity:** Given that the tree’s almost entirely hidden location, and its small stature and requirement for regular trimming owing to its pollarded form, it is unlikely that its potential as an amenity will change in the future.

**-rarity, cultural or historic value;** The tree is thought to be a Common Oak, which is one of, if not the most common of trees found in the UK. So there is no rarity value. Culturally, the Common Oak is England’s national tree. Although its cultural representation doesn’t take on a pollarded form, the Common Oak can be said to hold a cultural value.

**-contribution to, and relationship with, the landscape:** As a low visibility, back garden tree, it provides an attractive garden reference point for the property owners but cannot be said to contribute much to the wider landscape.

**The Tree Evaluation Method for Preservation Orders (TEMPO)** is adopted by many local authorities in order to provide a fair and accountable assessment of trees. Different local authorities use slightly different versions of the TEMPO system. In researching this objection, a publicly available TEMPO procedure used by the NFDC could not be found

**Procedural:** Further objection is made on procedural grounds. Government guidance states that the LPA officer should visit the site of the tree or trees in question and consider whether or not a TPO is justified. In a telephone conversation with the son of the property owner, the NFDC Tree Officer stated that he visited the public pavement area outside the property, without entering the property. Given the tree’s near invisibility from that public area, it cannot be said that the Tree Officer “visited the site of the tree,” or was able to make a fair consideration of Amenity to determine “whether or not a TPO is justified.

## 5. COMMENTS ON THE GROUNDS FOR OBJECTION

- The plot was advertised for sale by a local estate agent as a potential development opportunity for 3 further dwellings within the site. It is not uncommon for sites with development potential which are sold for that purpose to incur the loss of trees which may be a constraint to the development.
- An initial site visit was made firstly to view the Oak tree from a public place to satisfy this aspect that it is visible from a public place prior to the order being made. The Oak tree can be seen from the public highway/footway so meets the requirement that it (or at least a part of it) is visible from a public place (**Appendix 6.**) It does not have a large crown due to previous pruning but is in good condition and could develop further crown dimensions adding to its visually amenity value. It has a considerable long term future retention potential if well cared for.

- An order is made on a provisional basis for six months which allows such time for a more detailed site visit and where necessary closer inspection of the trees to be undertaken to confirm the tree is in such condition that a TPO could be justified.
- A TEMPO assessment was undertaken on the tree to evaluate its suitability for protection, and it confirmed that a TPO was defensible (**Appendix 7.**). The TEMPO method is a three-part system consisting of an amenity assessment, expediency assessment and decision guide. The first part being the amenity assessment is broken down into four sections a) Condition b) Retention span c) Relative public visibility and d) Other factors. The TEMPO system adds weight to justifying protection on the grounds of a perceived threat to a tree due to development potential. In this case the presence of the tree on a potential infill plot justifies the expediency of a TPO
- Although these factors alone would not warrant making an Order, an additional benefit of retaining trees in towns is increasing biodiversity and associated ecosystem service provision. Government guidance sets out that 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. Oak, as a species, are particularly valuable in terms of hosting more associated species and being long lived have the potential to provide benefits beyond the normal species range.

## 6. POLICIES

### Relevant Legislation

Town and Country Planning (Tree Preservation) (England) Regulations 2012

## 7. PLANNING HISTORY

None

## 8. PARISH / TOWN COUNCIL COMMENTS

### Lymington Town Council

No comments submitted

## 9. COUNCILLOR COMMENTS

None

## 10. CONSULTEE COMMENTS

None

## 11. REPRESENTATIONS RECEIVED

Representation received from Mr Hayes (requester of TPO) summarised as follows (full details within (**Appendix 4**):

1. This Oak tree is a highly visible tree in the landscape when seen from Stanley Road or the surrounding properties in Brook Road and Waterford Lane.
2. In a time of "Climate Emergency" trees (particularly native species) are of great importance.

3. There is no doubt that this tree being a native Oak adds a great deal to the biodiversity of the area. Birds such as Great Tits, Blue Tits, Robins, Blackbirds, Song and Mistle Thrushes, Great Spotted Woodpeckers and Nuthatches nest in the surrounding area and use the insects that feed on this tree as a source of food. Pipestrelle bats are evident around the tree in the summer and are probably using it as a summer roost.
4. There are no other trees in the very immediate vicinity protected by TPOs and as such this tree is important in removing pollutant particulates.
5. As stated above there are no other trees protected by TPOs in the area bounded by Stanley Road, Waterford Lane, Brook Road and Westfield Road. As such this tree is important for its use to offset the adverse impacts that development and environmental change can have in the urban setting.

## **12. RECOMMENDATIONS**

A local planning authority may only make a tree preservation order where it appears to the authority that it is expedient to protect a tree or woodland in the interests of amenity.

This Oak tree, in my opinion, provides a positive contribution to the amenity of the area and if the property was sold without the protection of this TPO there is a risk that the tree will be removed as it would be a constraint to development. Therefore, in the interest of public amenity it is expedient to confirm this Tree Preservation Order.

**For further information contact:**

**Barry Rivers**  
**Tree Officer (Planning)**  
**023 8028 5629**  
**barry.rivers@nfdc.gov.uk**

**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/0013/22 LAND OF 3 AND 5 STANLEY ROAD LYMINGTON

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

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

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

Signed 

Claire Upton-Brown  
Executive Head of Planning, Regeneration and Economy

Date: 11th August 2022



**TOWN AND COUNTRY PLANNING ACT 1990**

**TREE PRESERVATION ORDER TPO/0013/22**

**LAND OF 3 AND 5 STANLEY ROAD LYMINGTON**

The New Forest District Council, 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/0013/22 - LAND OF 3 AND 5 STANLEY ROAD LYMINGTON.

**Interpretation**

2. (1) In this Order "the authority" means the New Forest District Council.

(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 11th day of August 2022

Signed on behalf of New Forest District Council



Authorised by the Authority to sign in that behalf

**SCHEDULE**

**SPECIFICATION OF TREES  
TPO/0013/22**

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

Reference on map	Description	Situation
T1	Oak	Situated to rear of 3 and 5 Stanley Road, as shown on plan



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# Tree Preservation Order Plan





Town and Country Planning Act 1990

TPO Number: TPO/0013/22

Scale: 1:1250

Date Printed: 10/08/22

## Key

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



**New Forest**  
DISTRICT COUNCIL

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



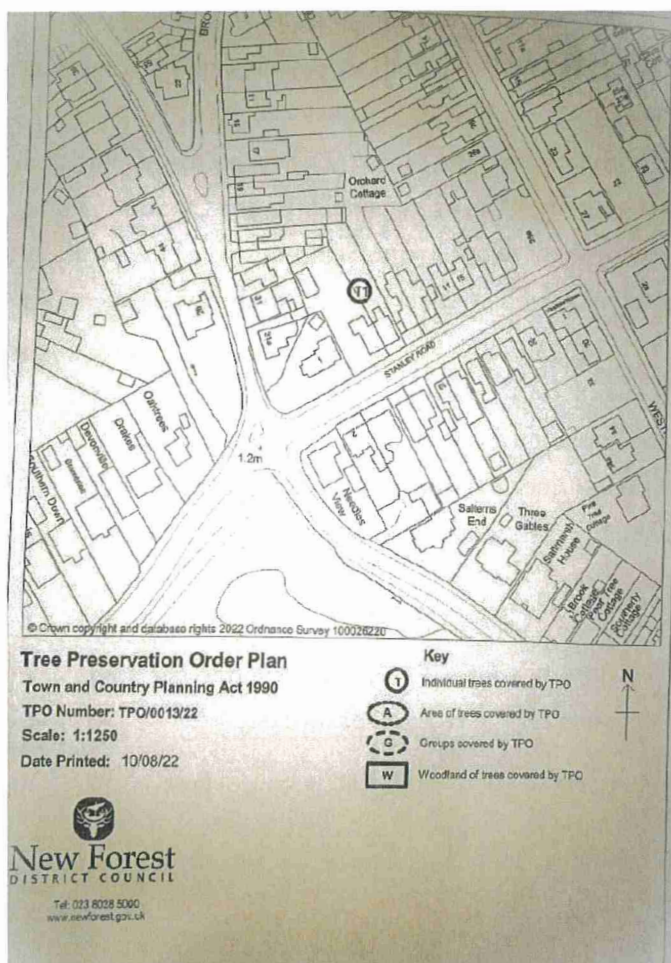
3/5 Stanley Road,  
Lymington,  
SO41 3SJ  
September 1<sup>st</sup> 2022

New Forest District Council,  
Appletree Court,  
Beaulieu Road,  
Lyndhurst, SO43 7PA

Objection to Tree Preservation Order **TPO/0013/22**  
3/5 Stanley Road, Lymington, Hampshire SO41 3SJ

**Background:**

The owner of 3/5 Stanley Road received notification on Tuesday, August 17<sup>th</sup>, 2022, that tree preservation order, **TPO/0013/22**, had been made on Thursday, August 11<sup>th</sup>, 2022, covering a small oak tree situated in the back garden of the property. The tree is identified as T1 on the attached TPO Plan.





The owner understands that the TPO has been made in accordance with section 198(1) of the Town and Country Planning Act 1990, which 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 owner of the property objects to **TPO/0013/22** on the following grounds:

### **1. Expedience and Amenity**

The reasons for making the TPO are stated in the letter from the NFDC as follows:

*The Authority has made this Tree Preservation Order because 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.*

#### **Expedience:**

Addressing the first part of the NFDC's given reason, "*[the] premature removal or extensive pruning of the tree,*" which essentially refers to Expedience:

There are no plans for removal of the tree, nor plans for any extensive pruning, and the tree has been in good management over the 54 years that the current owner has occupied the property. However, the owner does acknowledge that in June 2022, the property was tentatively marketed by a local estate agent as a potential development plot. The owner would like the Council to know that this marketing was speculative in nature, brought about by the death of one of the property owners, and will cease once the 16-week statutory period of the contract with the estate agent has expired.

There is no immediate threat to the tree, based on a notification to fell. There is no foreseeable threat to the tree, based on an application for outline planning consent. And so, at best, the decision to apply a TPO can only be considered a precautionary move, since the tree stands on the edge of a potential, but not actual, development plot.

The owner believes this amounts to insufficient grounds for a TPO, since the tree has long been cared for by the current owner and there are no plans for the removal of the tree.

#### **Amenity:**

Addressing the second part of the NFDC's given reason, "*the loss of an amenity to the local environment*":

"Amenity" is the key consideration.

The government guidance on “Amenity” states:

*‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. 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. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.*

The guidance goes on to state the factors that local authorities ought to take into account when assessing Amenity.

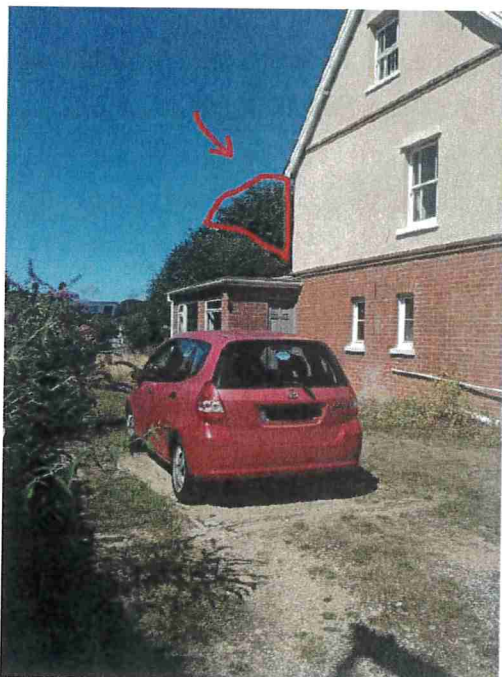
The first, and most important factor is “**Visibility.**” The government’s guidance states:

*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.*

In the case of this tree, it is located directly behind the centre point of the houses 3/5 Stanley Road, and as a result, it is almost entirely hidden from public view.

There is an approximately two metre stretch of pavement at the western end of the property’s road frontage from where a small area of the tree’s crown can be seen.

The maximum view, at the western edge of the property can be seen in the attached Photograph 1.



Photograph 1

As the image shows, even at this point of maximum view, most of the tree is hidden by either hedging or the building.

At the eastern end of the property's road frontage, through the approximately two metre gap with the east-side neighboring property, an even smaller area of the crown is visible. As can be seen in the attached Photograph 2, almost the whole tree is again hidden by either hedging or the building.



Photograph 2

Therefore, given the tree's almost complete invisibility to the general public, it is stretching plausibility, and against the intent of the government's guidance, to argue that, in terms of "enjoyment by the public" and "public benefit," "the impact on the local environment is significant."

The government's guidance in its publication, "Tree Preservation Orders: A Guide to the Law and Good Practice" states explicitly, "If [the tree(s)] cannot be seen or are just barely visible from a public place, a TPO might only be justified in exceptional circumstances."

I should additionally like to note here that the government guidance stresses Visibility from a public place. The argument of Visibility from neighbouring properties, runs directly counter to government guidance. However, I will address it, in recognition that this argument is sometimes made in defense of TPOs.

In the case of this tree, given its small stature, its position in the garden, the height of surrounding fencing, and the rear aspects of respective neighbouring properties, the tree is only partially visible



from some lesser used windows of three properties that overlook the garden. Therefore, it is fair to argue that the amenity of the tree for those three households is minimal, and insufficient to compete with the rights of the property owner.

When assessing Amenity, beyond Visibility, the government guidance mentions secondary factors. *“Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:*

- *size and form;*
- *future potential as an amenity;*
- *rarity, cultural or historic value;*
- *contribution to, and relationship with, the landscape”*

The first phrase in this guidance is important,

*“Public visibility alone will not be sufficient to warrant an Order.”*

In other words, *“public visibility”* alone is necessary, but it is not a sufficient condition, on its own, to warrant an order.

In the case of this tree, I would argue that, following the intent of the government’s guidance, the condition of *“public visibility”* is not met, and so secondary factors should not apply.

However, given the likelihood that the Council will mention these secondary factors, I will consider them here.

- **Size and form**

I believe the tree is a Common Oak (*Quercus robur*). It appears to be in good health. Its stem, measured at a height of about one-and-a-half metres, has a diameter of approximately 70 centimetres, indicating a fully mature tree of approximately 100 years in age. It is reasonable to speculate that the tree was planted at the time when the houses were built.

In full summer foliage it appears to be about eight metres in height, which is very small for a mature oak. Its small stature is due to remedial pollarding necessitated about four decades ago, after a neighbour, the then owner of the No.5 side of the property, took exception to its presence and removed one side, or approximately 50%, of the crown.

Since the initial pollarding, the tree has required regular trimming, and the crown’s foliage has tended to form in dense clumps, almost giving the appearance of an elevated bush. This can be seen in the attached Photograph 3.



Photograph 3

For the reasons stated above, a fair assessment of size and form would be: a Common Oak tree of small size and pollarded form.

- **Future potential as an amenity**

Given that the tree's almost entirely hidden location, and its small stature, it is unlikely that its potential as an amenity will change in the future. The 3/5 Stanley Road building will remain in place, and the tree, given its pollarded shape and requirement for regular trimming, will not grow to be any more visible.

While stressing that there are no current plans to do so, in the case that the back garden area does get developed, the small size of the plot would only allow for a private driveway, and the public will not have any greater access than they do currently.

In sum, then, there is no prospect in the foreseeable future that the tree's amenity value will increase.

- **Rarity, cultural or historic value**

The tree is thought to be a Common Oak, which is one of, if not the most common of trees found in the UK. So there is no rarity value.

Culturally, the Common Oak is England's national tree. Although its cultural representation doesn't take on a pollarded form, the Common Oak can be said to hold a cultural value.

The tree has no known historical value. It has remained an almost entirely hidden, small, back garden tree for all of its life.

- **Contribution to, and relationship with, the landscape**

As a low visibility, back garden tree, it provides an attractive garden reference point for the property owners, but cannot be said to contribute much to the wider landscape. The tree is surrounded by hedging, and once formed part of the garden boundary between two properties. In the surrounding area there are many other far more prominent trees that can be said to

contribute to the wider landscape. In comparison, this tree's contribution is negligible.

Another two factors, not appearing in the list above, but which do get mentioned as "**Other factors**" in the government guidance, are the importance of the tree as wildlife habitat and to mitigate climate change.

The tree provides a normal habitat for wildlife, and is surrounded by many other hedges and nearby trees which must do the same. In other words, it provides a normal but not essential habitat for wildlife.

Regarding climate change, all trees including this one must have a role to play.

However, when assessing these factors in terms of the appropriateness of a TPO, the government guidance states,

*"These factors alone would not warrant making an Order."*

### **The tree's TEMPO performance as assessed by the owner.**

The Tree Evaluation Method for Preservation Orders (TEMPO) is adopted by many local authorities in order to provide a fair and accountable assessment of trees. Different local authorities use slightly different versions of the TEMPO system. In researching this objection, a publicly available TEMPO procedure used by the NFDC could not be found. Instead, three other local authorities TEMPO procedures were applied to the tree. In each of the three cases, the tree's TEMPO score fell into the "marginally justifiable in unusual circumstances" category, but below the minimum score that those local authorities generally adopted to apply TPOs.

In sum, for all of the reasons given above, on grounds of Expediency, the various factors that contribute to an assessment of Amenity, and the insufficient scores in the sample TEMPOs, the owner of 3/5 Stanley Road objects to **TPO/0013/22**.

## **2. Procedural**

A further objection is made on procedural grounds.

Government guidance states that

*"Before making a TPO the LPA officer should visit the site of the tree or trees in question and consider whether or not a TPO is justified."*

In a telephone conversation with the son of the property owner, the NFDC Tree Officer stated that he visited the public pavement area outside the property, without entering the property. Given the tree's near invisibility from that public area (See Photograph 1 and Photograph 2), it cannot be said that the Tree Officer "*visit[ed] the site of the tree,*" or was able to make a fair consideration of Amenity to determine "*whether or not a TPO is justified.*"

Therefore, there has been a failure to meet the procedural obligations for issuing a TPO.

For this reason, also, the owner of 3/5 Stanley Road objects to **TPO/0013/22**.

As a final comment, just as a well-loved pet would not need the protection of an animal welfare order, and a well-loved child would need no protection from child welfare authorities, the same can, and should, be said of this well-loved tree that has been looked after for more than half a century in the current family's ownership, and will hopefully continue to be looked after by the same family for many years to come.

I trust that Council will bear in mind that, since they are responsible for both making and confirming TPOs, they are in effect both proposer and judge. Therefore, and in good faith, I hope that the Council will demonstrate that they are making their decision in an even-handed and open manner.

Best regards,



Margaret Wild,  
Owner, 3/5 Stanley Road, Lymington, SO41 3SJ

**From:** Julian Hayes [REDACTED] >  
**Sent:** 27 January 2023 11:15  
**To:** Karen Wardle [REDACTED] >  
**Cc:** Barry Rivers <[REDACTED]>  
**Subject:** Re: Appeals Hearing to consider a TPO Objection - 3/5 Stanley Road

Dear Karen

I will not be able to attend the appeal hearing, but I hope that the points that I make below will be considered by the panel before a decision is made.

New Forest District Council have a published document entitled "Tree Protection and Development Guidance". I have quoted below the opening statement in this document:

**"Trees are a significant and highly visual component in the landscape, and there is an increasing need to focus attention on trees and their role in providing not only a pleasant environment, but the many benefits that trees provide such as reducing the impacts of climate change, helping in the management of stormwater runoff, improving biodiversity through the retention and creation of new habitats, removing pollution particulates from the environment in which we live and regulating the temperature through shading and evapotranspiration. Trees can be used to offset the adverse impacts that development and environmental change can have in both rural and urban settings".**

I became aware of this Oak tree on Stanley Road when the property came on to the market in 2022. In the sale details mention was made of the development potential for this site. Any tree on a development site is a potential obstruction and is likely to be lost. The property is currently not on the "open" market, but the risk to this tree remains.

Referring back to the New Forest District Council's publication "Tree Protection and Development Guidance" I would make the following points.

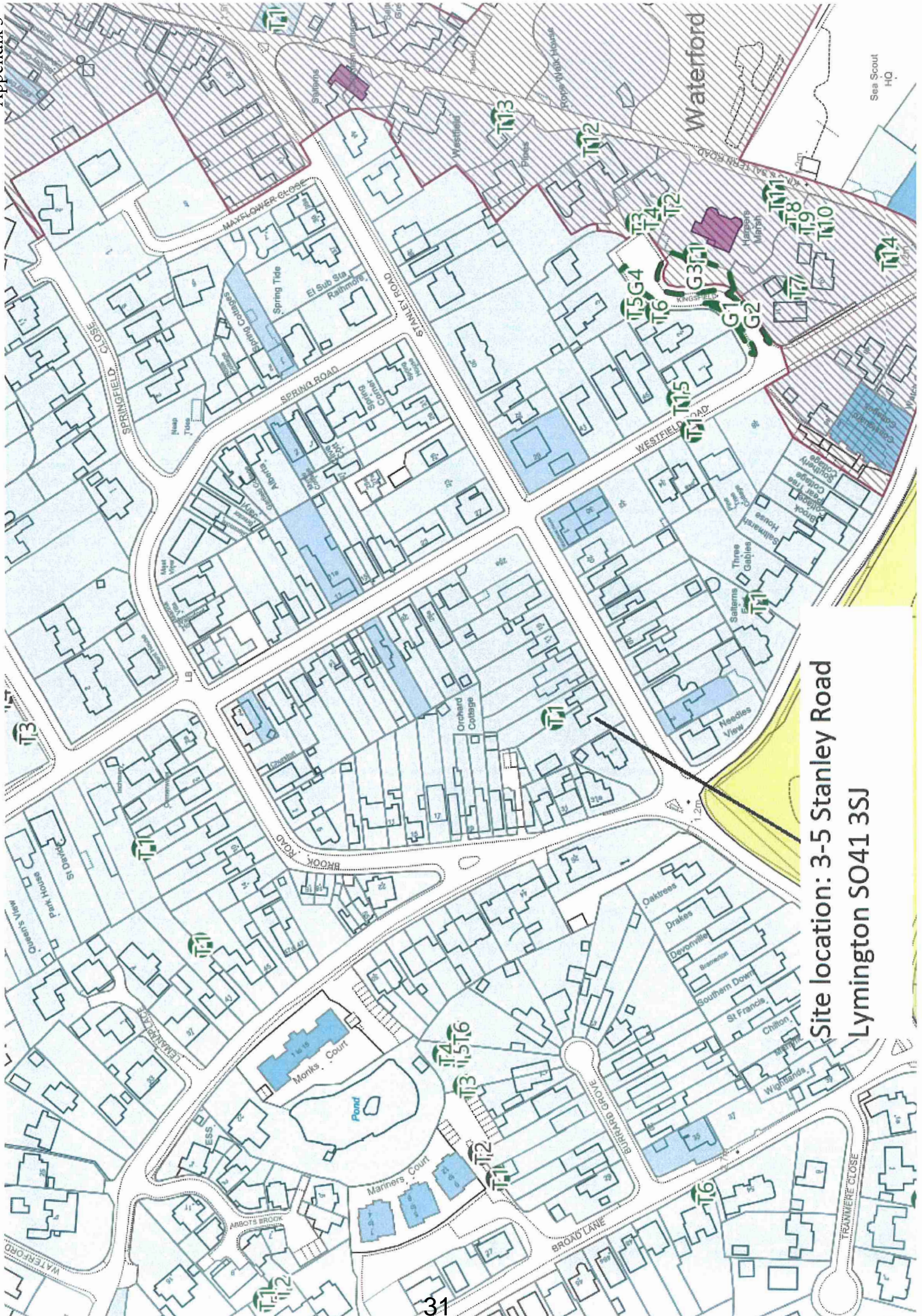
1. This Oak tree is a highly visible tree in the landscape when seen from Stanley Road or the surrounding properties in Brook Road and Waterford Lane.
2. In a time of "Climate Emergency" trees (particularly native species) are of great importance.
3. There is no doubt that this tree being a native Oak adds a great deal to the biodiversity of the area. Birds such as Great Tits, Blue Tits, Robins, Blackbirds, Song and Mistle Thrushes, Great Spotted Woodpeckers and Nuthatches nest in the surrounding area and use the insects that feed on this tree as a source of food. Pipestrelle bats are evident around the tree in the summer and are probably using it as a summer roost.
4. There are no other trees in the very immediate vicinity protected by TPOs and as such this tree is important in removing pollutant particulates.
5. As stated above there are no other trees protected by TPOs in the area bounded by Stanley Road, Waterford Lane, Brook Road and Westfield Road. As such this tree is important for its use to offset the adverse impacts that development and environmental change can have in the urban setting.

Developers often say that any tree that is removed will be replaced with a new planting. This does not offset the loss and benefits of a mature tree. I hope that all of my points will be considered carefully in arriving at a decision.

Yours sincerely

Julian Hayes





Site location: 3-5 Stanley Road  
Lymington S041 3SJ



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**Tree Preservation Order 0013/22 3-5 Stanley Road Lymington**

**List of Photographs**



**1.Views from Stanley Road.**



2.





3. Oak T1

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- Planning
- TPO
- Safety Inspection
- Subsidence
- Expert Witness
- Design

# Forbes- Laird Arboricultural Consultancy



Principal Consultant:

**Julian Forbes-Laird**

BA(Hons), MICFor, MEWI, M.Arbor.A, Dip.Arb.(RFS)

## TEMPO

### Tree Evaluation Method for Preservation Orders

A systematised assessment tool for TPO suitability

### GUIDANCE NOTE FOR USERS

November 2009



*To be read in conjunction with TEMPO pro forma,  
included at the end of this document*

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## **Introduction**

### **Background**

The impetus to take a fresh look at existing TPO suitability evaluation methods grew out of the preparation for a local authority of a detailed Method Statement for reviewing Tree Preservation Orders (TPOs) in 2002. The client wanted the Method Statement to include a reliable means of assessing trees for TPO suitability, and asked for a bespoke system.

Having looked closely at what was already available, JFL decided that there was considerable room for improvement, as each of the better-known existing methods has disadvantages.

Accordingly, TEMPO was developed by JFL (whilst working as a Senior Consultant at CBA Trees) as a direct response to the apparent continuing uncertainty about what attributes a tree should have in order to merit statutory protection by TPO.

### **Overview**

TEMPO is designed as a field guide to decision-making, and is presented on a single side of A4 as an easily completed pro forma. As such, it stands as a record that a systematic assessment has been undertaken.

TEMPO considers all of the relevant factors in the TPO decision-making chain. In this connection, it is helpful to revisit the wording of central government advice<sup>1</sup>:

‘Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO’

From this, it becomes apparent that most existing methods are inadequate, seeking as they do solely to consider the tree rather than any known threats to its retention. TEMPO corrects this omission by including an expediency assessment within the framework of the method.

Excluding the first section, which is simply the survey record and is thus self-explanatory, TEMPO is a three-part system:

- Part 1 is the Amenity Assessment
- Part 2 is the Expediency Assessment
- Part 3 is the Decision Guide

These parts are set out and function as follows:

## **Part 1: Amenity Assessment**

This part of TEMPO is broken down into four sections, each of which are related to suitability for TPO:

- a) Condition
- b) Retention span
- c) Relative public visibility
- d) Other factors

The first three sections form an initial assessment, with trees that 'pass' this going on to the fourth section. Looking at the sections in more detail:

### **a) Condition**

This is expressed by five terms, which are defined as follows:

GOOD	Trees that are generally free of defects, showing good health and likely to reach normal longevity and size for species, or they may already have done so
FAIR	Trees which have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential or, if they have already done so, their condition is likely to decline shortly, or may already have done so. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse
POOR	Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired, and are likely to deteriorate. Life expectancy is curtailed and retention is difficult
DEAD	Tree with no indication of life
DYING/ DANGEROUS	Trees showing very little signs of life or remaining vitality, or with severe, irremediable structural defects, including advanced decay and insecure roothold. Death or catastrophic structural failure likely in the immediate future, retention therefore impossible as something worthy of protection

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. Dead, dying or dangerous trees should not be placed under a TPO, hence the zero score for these categories, due to exemptions within the primary legislation.

For trees in good or fair condition that have poor form deduct one point.

A note on the pro forma emphasizes that 'dangerous' should only be selected in relation to the tree's existing context: a future danger arising, for example, as a result of development, would not apply. Thus, a tree can be in a state of collapse but not be dangerous due to the absence of targets at risk.

Where a group of trees is being assessed under this section, it is important to score the condition of those principle trees without which the group would lose its aerodynamic or visual cohesion. If the group cannot be 'split' in this way, then its average condition should be considered.

Each of the condition categories is related to TPO suitability.

## b) Retention span

The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' potential retention span.

This factor has been divided into ranges, which are designed to reflect two considerations:

- It has long been established good practice that trees incapable of retention for more than ten years are not worthy of a TPO (hence the zero score for this category); this also ties in with the R category criteria set out in Table 1 of BS5837:2005
- The further ahead one looks into the future, the more difficult it becomes to predict tree condition: hence the width of the bands increases over time

Scores are weighted towards the two higher longevities (40-100 and 100+), which follow the two higher ranges given by Helliwell<sup>2</sup>.

The Arboricultural Association (AA) publishes a guide<sup>3</sup> to the life expectancy of common trees, which includes the following data:

300 years or more	Yew
200-300	Common [pedunculate] oak, sweet chestnut, London plane, sycamore, limes
150-200	Cedar of Lebanon, Scots pine, hornbeam, beech, tulip tree, Norway maple
100-150	Common ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear
70-100	Rowan, whitebeam, apple, wild cherry, Catalpa, Robinia, tree of heaven
50-70	Most poplars, willows, cherries, alders and birches

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive, though it should assist with determining the theoretical overall lifespan of most trees. However, TEMPO considers 'retention span', which is a more practical assessment based on the tree's current age, health and context as found on inspection.

It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection (assuming that it doesn't already).

If a group of trees is being assessed, then the mean retention span of the feature as a whole should be evaluated. It would not be acceptable, for example, to score a group of mature birches based on the presence of a single young pedunculate oak.

A note on the pro forma identifies for inclusion in the less than ten years band trees which are assessed being an existing or near future nuisance, including those clearly outgrowing their context, or which are having an adverse effect on adjacent trees of better quality.



The nuisance element is introduced to cover situations where, for example, a Section 211 Notice has been received by the LPA for removal of a tree causing subsidence damage. In relation to outgrowing context, some common sense is needed here: if the trees are being considered for TPO protection prior to development, and if it is apparent that demolition of existing structures will be a component of this process, then a tree should not be marked down simply because it is standing hard up against one of the existing structures.

As with condition, the chosen category is related to a summary of TPO suitability.

### **c) Relative public visibility**

The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility. The common situation of backland development is one such example.

The categories each contain two considerations: size of tree and degree of visibility. I have not attempted to be too prescriptive here, as TEMPO is supposed to function as a guide and not as a substitute for the surveyor's judgement. However, I have found that reference to the square metre crown size guide within the Helliwell System<sup>4</sup> can be helpful in reaching a decision.

Reference is made to 'young' trees: this is intended to refer to juvenile trees with a stem diameter less than 75mm at 1.5m above ground level. The reasoning behind this is twofold: this size threshold mirrors that given for trees in Conservation Areas, and trees up to (and indeed beyond) this size may readily be replaced by new planting.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion.

Whilst the scores are obviously weighted towards greater visibility, we take the view that it is reasonable to give some credit to trees that are not visible (and/or whose visibility is not expected to change: it is accepted that, in exceptional circumstances, such trees may justify TPO protection<sup>5</sup>).

Where groups of trees are being assessed, the size category chosen should be one category higher than the size of the individual trees or the degree of visibility, whichever is the lesser. Thus a group of medium trees would rate four points (rather than three for individuals) if clearly visible, or three points (rather than two) if visible only with difficulty.

Once again, the categories relate to a summary of TPO suitability.

### **Sub-total 1**

At this point, there is a pause within the decision-making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c.

The scores from the first three sections should be added together, before proceeding to section d, or to part 3 as appropriate (i.e. depending on the accrued score). Under the latter scenario, there are two possible outcomes:

- 'Any 0' equating to 'do not apply TPO'
- '1-6' equating to 'TPO indefensible'

#### **d) Other factors**

Assuming that the tree or group qualifies for consideration under this section, further points are available for four sets of criteria, however only one score should be applied per tree (or group):

- 'Principle components of arboricultural features, or veteran trees' – The latter is hopefully self-explanatory (if not, refer to Read 2000<sup>6</sup>). The former is designed to refer to trees within parklands, avenues, collections, and formal screens, and may equally apply to individuals and groups
- 'Members of groups of trees that are important for their cohesion' – This should also be self-explanatory, though it is stressed that 'cohesion' may equally refer either to visual or to aerodynamic contribution. Included within this definition are informal screens. In all relevant cases, trees may be assessed either as individuals or as groups
- 'Trees with significant historical or commemorative importance' – The term 'significant' has been added to weed out trivia, but we would stress that significance may apply to even one person's perspective. For example, the author knows of one tree placed under a TPO for little other reason than it was planted to commemorate the life of the tree planter's dead child. Thus whilst it is likely that this category will be used infrequently, its inclusion is nevertheless important. Once again, individual or group assessment may apply
- 'Trees of particularly good form, especially if rare or unusual' – 'Good form' is designed to identify trees that are fine examples of their kind and should not be used unless this description can be justified. However, trees which do not merit this description should not, by implication, be assumed to have poor form (see below). The wording of the second part of this has been kept deliberately vague: 'rare or unusual' may apply equally to the form of the tree or to its species. This recognises that certain trees may merit protection precisely because they have 'poor' form, where this gives the tree an interesting and perhaps unique character. Clearly, rare species merit additional points, hence the inclusion of this criterion. As with the other categories in this section, either individual or group assessment may apply. With groups, however, it should be the case either that the group has a good overall form, or that the principle individuals are good examples of their species

Where none of the above apply, the tree still scores one point, in order to avoid a zero score disqualification (under part 3).

#### **Sub-total 2**

This completes the amenity assessment and, once again, there is a pause in the method: the scores should be added up to determine whether or not the tree (or group) has sufficient amenity to merit the expediency assessment.

The threshold for this is nine points, arrived at via a minimum qualification calculated simply from the seven-point threshold under sections a-c, plus at least two extra points under section d. Thus trees that only just scrape through to qualify for the 'other factor' score, need to genuinely improve in this section in order to rate an expediency assessment. This recognises two important functions of TPOs:

- TPOs can serve as a useful control on overall tree losses by securing and protecting replacement planting
- Where trees of minimal (though, it must be stressed, adequate) amenity are under threat, typically on development sites, it may be appropriate to protect them allowing the widest range of options for negotiated tree retention

## **Part 2: Expediency assessment**

This section is designed to award points based on three levels of identified threat to the trees concerned. Examples and notes for each category are:

- 'Immediate threat to tree' – for example, Tree Officer receives Conservation Area notification to fell
- 'Foreseeable threat to tree' – for example, planning department receives application for outline planning consent on the site where the tree stands
- 'Perceived threat to tree' – for example, survey identifies tree standing on a potential infill plot

However, central government advice<sup>7</sup> is clear that, even where there is no expedient reason to make a TPO, this is still an option. Accordingly, and in order to avoid a disqualifying zero score, 'precautionary only' still scores one point. This latter category might apply, rarely for example, to a garden tree under good management.

Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO. However, it is not felt necessary to incorporate such considerations into the method, as it is chiefly intended for field use: these other considerations are most suitably addressed as part of a desk study.

As a final note on this point, it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 16, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes.

## **Part 3: Decision Guide**

This section is based on the accumulated scores derived in Parts 1 & 2, and identifies four outcomes, as follows:

- Any 0 Do not apply TPO

Where a tree has attracted a zero score, there is a clearly identifiable reason not to protect it, and indeed to seek to do so is simply bad practice

- 1-6 TPO indefensible  
This covers trees that have failed to score enough points in sections 1a-c to qualify for an 'other factors' score under 1d. Such trees have little to offer their locality and should not be protected
- 7-11 Does not merit TPO  
This covers trees which *have* qualified for a 1d score, though they may not have qualified for Part 2. However, even if they have made it to Part 2, they have failed to pick up significant additional points. This would apply, for example, to a borderline tree in amenity terms that also lacked the protection imperative of a clear threat to its retention
- 12-15 Possibly merits TPO  
This applies to trees that have qualified under all sections, but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'
- 16+ Definitely merits TPO  
Trees scoring 16 or more are those that have passed both the amenity and expediency assessments, where the application of a TPO is fully justified based on the field assessment exercise

### **Notation boxes**

Throughout the method, notation space is provided to record relevant observations under each section. For local authorities using TEMPO, it may even be helpful to include a copy of the TEMPO assessment in with the TPO decision letter to relevant parties, as this will serve to underline the transparency of the decision-making process.

## **Conclusion**

TEMPO is a quick and easy means of systematically assessing tree or group suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey, especially where Area TPOs are being reviewed.

From the consultants' perspective, it is also an effective way of testing the suitability of newly applied TPOs, to see whether they have been misapplied, or it can be used to support a request to make a TPO in respect of trees at risk, for example from adjacent development.

TEMPO does not seek to attach any monetary significance to the derived score: the author recommends the use of the Helliwell System where this is the objective.

CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the FLAC website ([www.flac.uk.com](http://www.flac.uk.com)) and the Arboricultural Information Exchange [www.aie.org.uk](http://www.aie.org.uk)

TEMPO has undergone a number of minor revisions since its inception, many of which are due to helpful comments received from users. Any feedback on the method is gratefully received by the author.

## **JFL**

Contact: [jfl@flac.uk.com](mailto:jfl@flac.uk.com)

## *References*

- 1 'Tree Preservation Orders: A Guide to the Law and Good Practice', DETR 2000
- 2 'Visual Amenity Valuation of Trees and Woodlands', DR Helliwell, Arboricultural Association 2003 [the Helliwell System]
- 3 'Tree Management', Leaflet No. 4, Arboricultural Association 1991
- 4 Helliwell op. cit.
- 5 DETR 2000 op. cit. at para. 3.3 (1)
- 6 'Veteran Trees: A Guide to Good Management', Helen Read, English Nature 2000
- 7 DETR 2000 op. cit. at para. 3.5

# TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

## SURVEY DATA SHEET & DECISION GUIDE

Date: Site visit Aug 2022 Surveyor: Barry Rivers

### Tree details

TPO Ref (if applicable): Tree/Group No: Species: Oak (Quercus robur)  
 Owner (if known): Location: 3-5 Stanley Road Lymington

### 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 & Notes 3

Previous crown reduction carried out so further future intervention (crown reduction) is likely but crown shows good vitality.

\* 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 & Notes 5

Guidance within this document states common Oak lifespan of 200-300 years

\* 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 & Notes 3

Medium tree with limited view as visible in part from frontage. Previous reduction has reduced its prominence but further crown growth will increase its presence

##### 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
- 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

#### Score & Notes 1

#### Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

#### Score & Notes 2

Based on guidance within this document, survey identifies tree standing on a potential infill plot. Site is being marketed with development potential for 3 additional dwellings

#### 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:

14

#### Decision:

TPO defensible