

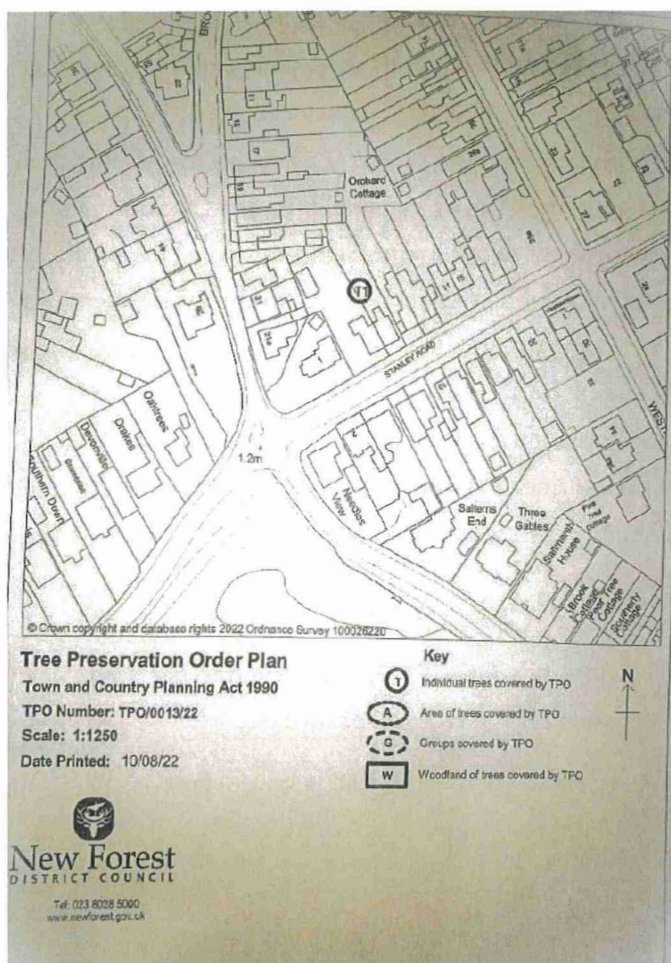
3/5 Stanley Road,
Lymington,
SO41 3SJ
September 1st 2022

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 17th, 2022, that tree preservation order, **TPO/0013/22**, had been made on Thursday, August 11th, 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.*"

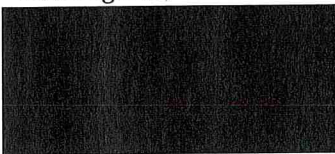
Therefore, there has been a failure to meet the procedural obligations for issuing a TPO.

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