

APPENDIX 1

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

REPORT OF COUNCIL TREE OFFICER

1 TREE PRESERVATION ORDER HISTORY

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

2 THE TREES

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

3 THE OBJECTION

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

The grounds for objection is that:

- There is no expediency for making the TPO.

4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

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

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

“Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

Revision date: 06 03 2014”

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

5 SUPPORT

No letters of support have been received

6 CONCLUSION

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

7 RECOMMENDATION

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

Further Information:

Hannah Chalmers
Tree Officer
Telephone: 01590 646674

Background Papers:

Tree Preservation Order No. 41/15

APPENDIX 2

**TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER TPO/0041/15
LAND OF 21 SOLENT AVENUE, LYMINGTON**

The New Forest National Park Authority, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Anyone wishing to undertake works to trees protected by TPO should apply in writing to the Authority clearly identifying the tree(s) and the work intended. A decision will usually be issued within six weeks. Application forms are obtainable from the Authority's website.

Citation

1. This Order may be cited as the TPO/0041/15 - LAND OF 21 SOLENT AVENUE, LYMINGTON.

Interpretation

2. (1) In this Order "the authority" means the New Forest National Park Authority.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall -

(a) Cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this Ninth day of December 2015
Signed on behalf of the New Forest National Park Authority

Authorised by the Authority to sign in that behalf

SCHEDULE

SPECIFICATION OF TREES TPO/0041/15

Trees specified individually

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

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

Trees specified by reference to an area

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

Reference on map	Description	Situation
None		

Groups of trees

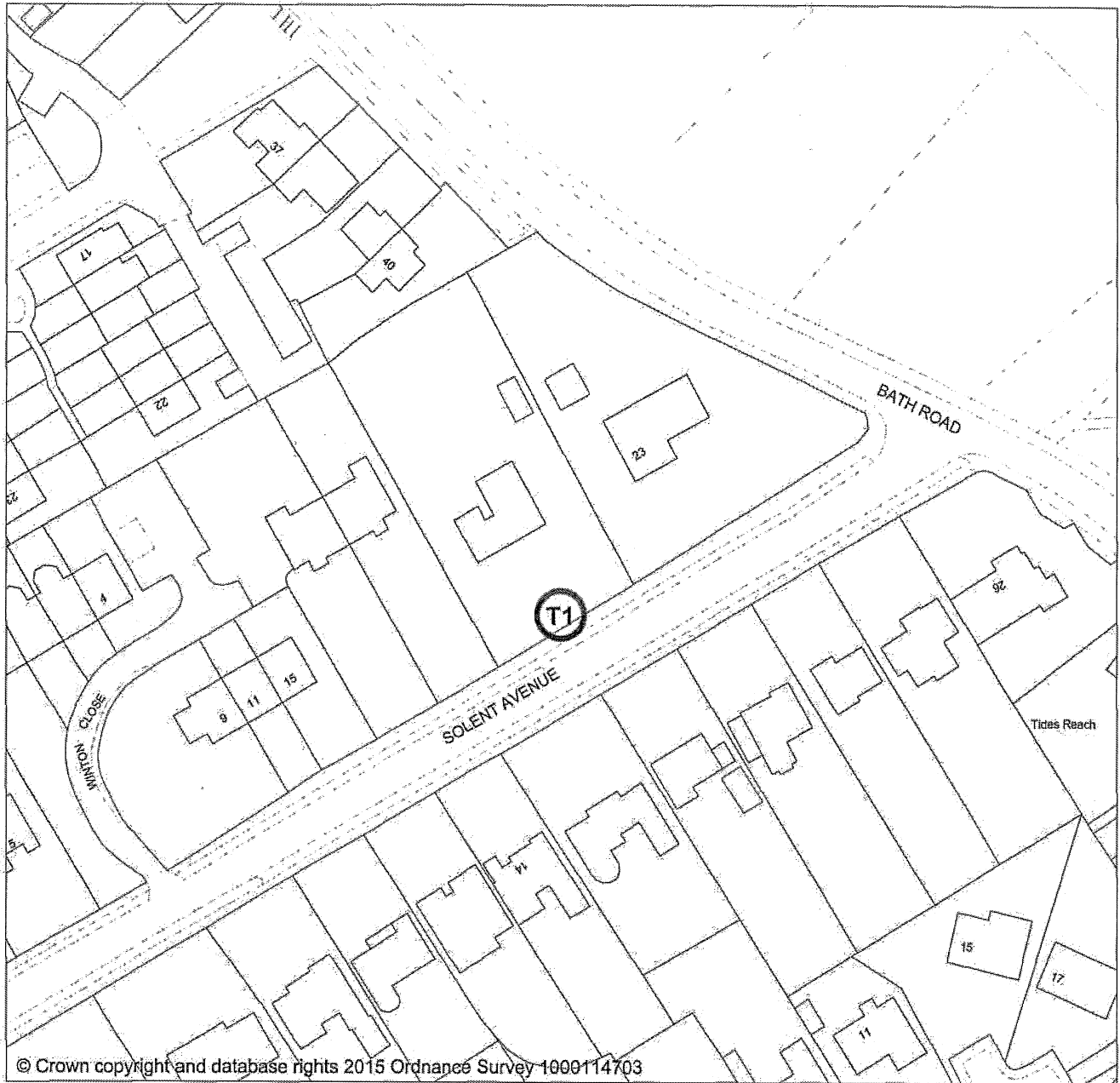
(within a broken black line on the Plan attached to this order)

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

Woodlands

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

Reference on map	Description	Situation
None		



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Tree Preservation Order Plan





Town and Country Planning Act 1990

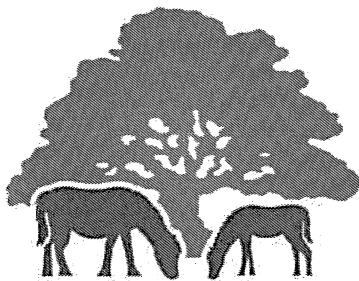
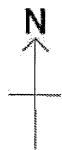
TPO Number: TPO/0041/15

Scale: 1:1000

Date Printed: 07/12/15

Key

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



**NEW FOREST
NATIONAL PARK**

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

HUMAN RIGHTS ACT 2000

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

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

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

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

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

Signed:

An Authorised Signatory

Date: 9/12/15

APPENDIX 3

Mark Hinsley

Arboricultural Consultants Ltd.

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

Established 1994



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

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

Our Ref:MH/SolentAvenue21Lymington/TPO/4070

4th January 2016

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

To whom it may concern

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

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

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

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

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

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Arboriculturalist: John Christopher, FdScArb, HNC Building Studies
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these roots is not a hazard to pedestrians and in no way an unreasonable or negligent act on the part of the tree owner?

We look forward to your earliest reply.

Yours sincerely

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

cc Mr Harry Hutchinson

Arboriculturalist: Alison Parish, BSc. Hons (Ecology), M.Hort. (RHS)
Arboriculturalist: John Christopher, FdScArb, HNC Building Studies
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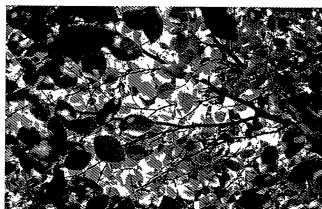
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Established 1994



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

Our Ref:MH/SolentAvenue21Lymington/TPO/4070

18th January 2016

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

FAO Liz Beckett – Tree Officer

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

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

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

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

CIRCULAR 11/95

Part 2

Trees

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

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

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

You further state:

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

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

What does ‘expedient’ mean in practice?

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

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

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

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

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

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

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

Yours sincerely



Mark Hinsley

cc Mr Hutchinson