

APPENDIX 3

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

Dear Mr Palmer,

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

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

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

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

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

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

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

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

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

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

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

Your sincerely,

Frank Spooner

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

Dear Mr Spooner,

I write further to your letter dated 7th June 2018.

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

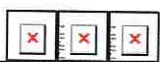
As you will appreciate, the confirmation of the Order does not in itself prohibit the sound arboriculture management of the trees concerned or the potential for some development at the site, subject of course to prior consideration by the Authority.

Yours Sincerely
James Palmer

James Palmer
Tree Officer
01590 64 6677



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New Forest National Park Authority

To:

Frank Spooner

Dear Mr Spooner,

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

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

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

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

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

2. There is no expediency in making the TPO

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

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

3. Inappropriateness of a 'Woodland' designation

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

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

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



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New Forest National Park Authority
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7th June 2018

Our ref: SJA R6 18168-01

Dear Sir

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

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

The TPO is a "woodland" order: 'including all trees of whatsoever species situated to the north of Torreyana Gardens as shown on the plan'. The grounds upon which the New Forest National Park Authority (hereinafter 'the NPA') have made the TPO were stated in the Regulation 3 notice as follows: "**it is considered that premature removal or extensive pruning of the tree(s) would result in the loss of an amenity to the local environment**".

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

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

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

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

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

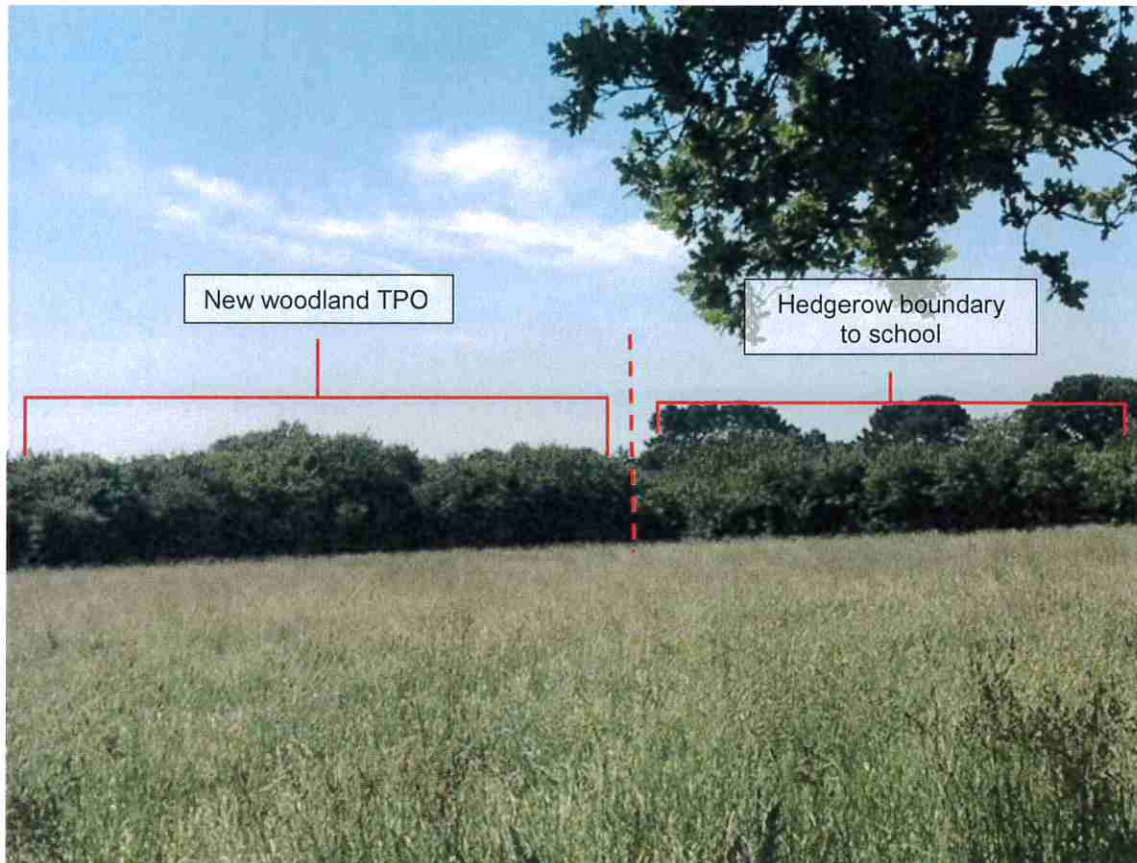
The legislative framework for making TPOs comes from Section 198 of the Town and Country Planning Act 1990, as amended. Section 198(1) states "if it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their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

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

The National Planning Policy Guidance (NPPG) for ‘tree preservation orders and trees in conservation areas’ is the definitive source for guidance on the creation and administering of TPOs by local authorities. A critical element of the guidance given by the NPPG is in response to “What does ‘amenity’ mean in practice?” the NPPG states: **“Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public”.**

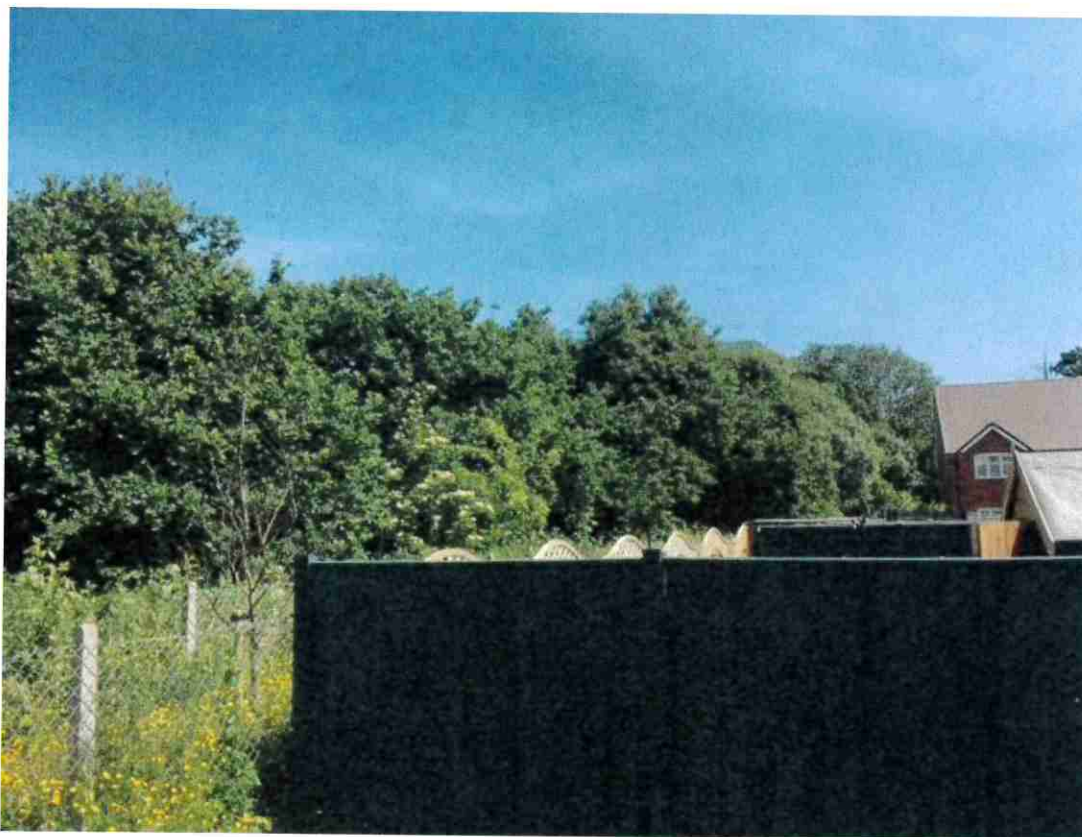
The NPA’s reason for creating this woodland TPO is that its premature removal or pruning would result in the loss of amenity to the environment and falls short of including the words ‘and its enjoyment by the public’.

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



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

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



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

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

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

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

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

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

2. There is no expediency in making this TPO

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

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

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

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

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

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

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

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

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

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

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

3. Inappropriateness of a 'Woodland' designation

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

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

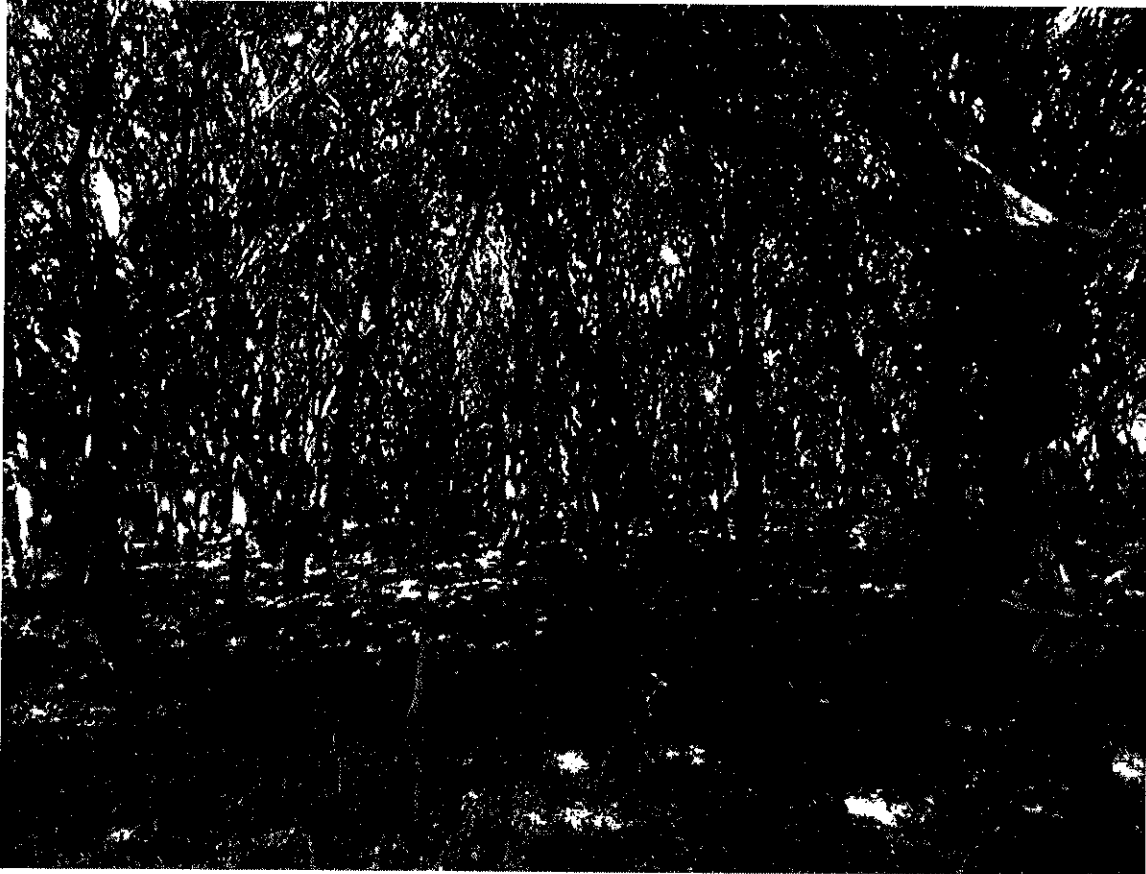
Leaving the land fallow in recent years has allowed it to be colonised by trees, but to call it a woodland is stretching the definition. It is more accurately described as 'scrub', an intermediate stage between use of land other than as woodland (i.e. pasture, meadow, arable, habitation, quarries etc.)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

¹ 'Woodland Conservation and Management' G. Peterken, Chapman and Hall (1993)

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

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

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



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

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

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

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

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

Yours sincerely

Frank Spooner

SJAtrees

Associate Consultant