

Application Number: TPO/0002/25
Site: LAND AT REAR OF 28 MAY AVENUE, PENNINGTON,
LYMINGTON
Affected Trees: 1 x Holly and 1 x Sycamore
Agent:
Case Officer: Barry Rivers
Officer Recommendation: To Confirm Tree Preservation Order
Reason for Referral to Committee: Objections received

1 SUMMARY OF THE MAIN ISSUES

The key issues are:

1. The public amenity value of the trees and their value to the wider community.
2. The expediency to protect these trees.

2 TREE PRESERVATION ORDER HISTORY

The subject holly and sycamore tree are situated to the northern and southern extent of a domestic dwelling located in the rear garden.

The order was made in response to an outline planning application for the demolition of the existing building and construction of 4 new dwellings within the property which would result in the loss of these trees.

A Tree Preservation Order (TPO) was made on 17 January 2025. (Appendix 1.) The owner of the trees and the project Arboricultural Planning consultant on behalf of the developer have put in writing their objections to the Order.

3 THE TREES

The TPO covers an individual holly and sycamore tree. The trees are visible from public vantage points within the residential development of May Avenue and Tylers Close.

4 POLICIES AND GUIDANCE

Relevant Legislation

Town and Country Planning (Tree Preservation) (England) Regulations 2012
Part VIII of The Town and Country Planning Act 1990

Local Plan Part One:

- Policy ENV4 – Landscape Character and Quality

Supplementary Planning Documents:

- Lymington Local Distinctiveness Supplementary Planning Document

5 PLANNING HISTORY

24/11073 demolition of the existing building and construction of four dwellings with associated parking and access (outline application – access and layout only) – under consideration

6 PARISH / TOWN COUNCIL COMMENTS

No comments received.

7 COUNCILLOR COMMENTS

No comments received.

8 CONSULTEE COMMENTS

None

9 REPRESENTATIONS RECEIVED

There are two letters of objection received to the Order from the owner of the land and the Arboricultural Planning Consultant on behalf of the developer. There are three letters of support from neighbours. The representations are summarised below:

Representations received in support of the Order:

- Agree there needs to be TPOs for the Holly and Sycamore trees, referenced T1 and T2 in order to protect the woodland bank and to retain amenity value. The biggest concern of the relevant property owners of Tylers Close is potential subsidence from the proposed development at 28 May Avenue.
- The holly appears fine, but it would be useful to have the sycamore marked to identify it (or to visit the site to be shown specifically) so neighbours can be sure that it is the tree they believe it to be. Although there needs to be a TPO for the reasons stated above, it would be necessary for appropriate general maintenance of the Sycamore tree to be able to be carried out, to ensure that the houses and garages of Tylers Close are protected from damage, for example from a large branch breaking off. The sycamore is close to the garages.
- My understanding from the other enclosed documents provided by NFDC Planning is that this maintenance would be allowable. The sycamore is already large, and they grow quickly, and can grow very large over their life cycles, so general maintenance will be required to keep the tree well managed / of controllable size.

- We confirm and support T1 the Holly as an important sanctuary for birds and other animals. We also support T2 Sycamore but are uncertain of the precise location of the tree concerned. We suggest the tree should be identified with a temporary paint spray. If it is this tree, we fully support the TPO's for the protection of birds and animals. The trees in this area need attention as their branches overhang our garages.

Representations received in Objection to the Order:

The owner:

- The holly tree has grown out of control. It has been a constant maintenance issue to the family and is situated on a steep bank making it difficult to maintain.
- The holly is old and in very poor condition. Without doubt it has deteriorated over the years, suffering storm damage and dropping branches of all sizes onto the property.
- Health and safety concerns with regard to the trees precarious position on the bank and during strong winds it sways violently presenting a serious risk factor to everybody residing at the property.
- The family were advised by a tree surgeon friend some years ago that if the tree fell naturally it would pull the bank apart, and in turn put our neighbour's property at risk.
- Having owned the land for 31 years it is strange that NFDC have decided to place a TPO on our land. This could be seen as obstructive in terms of the current planning permission sought by Merrifield Homes Ltd and our plans to sell the property.

Arboricultural Planning Consultant/developer

- The regulation notice accompanying the TPO states: "*The authority has made the order because it is considered that the premature removal or extensive pruning of the tree(s) would result in the loss of an amenity to the local environment*" this is obviously a standard reason attached to the regulation 5 Notice of TPOs from NFDC.
- 'Premature removal' is not defined: It would not be premature for example to remove a tree because it conflicts with a housing layout. It implies the Authority only allows trees to be felled due to old age which is not the case.
- 'Extensive pruning' is not proposed in the reports that it is the client's intention to remove and replant so why mention extensive pruning.
- The use of the standard form is unhelpful and demonstrates that there has been little proper assessment of the trees that might provide a considered TPO.
- PPG (Planning Policy Guidance) is that 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 making or confirming an Order Authorities should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

- The trees are barely visible from public vantage points, not to the extent their loss would have a significant negative impact on the local environment.
- The holly has been re-graded from category 'B' to a category 'C' and the Sycamore a category 'C'. The original categorisation was carried out without knowledge of the proposed layout. The re-categorization of the holly has been carried out based on photographic evidence from the client. Upon reflection and a year after the original survey, this tree is clearly not a category 'B' tree based on the flow diagram recommendations in BS5837:2012.
- The design team considered the retention of the trees but concluded that given the condition, position and visibility of the trees, especially the holly, and the levels issue, the removal would allow a better housing layout.
- It is too simplistic and a failure to understand the role of BS5837:2012 in the planning process to state that just because a tree is going to survive alive for more than 10 years, it has to be retained and that proposed layouts should reflect that.
- The Tree Officer is concerned that new landscaping will take a long time to establish any meaningful contribution, so the presence of existing (remaining mature trees) should be a priority. This disregards the limited contribution the trees make to the character and appearance of the area and a short-term loss and long-term gain with a well-designed landscaping scheme complimenting some much needed housing is a win for the authority.
- As the Tree Officer has concluded that the sycamore T007 is not a constraint on the proposed layout it would not be problematic for the client if the TPO was confirmed for that but not the holly (T008).

10 CONSIDERATION OF THE GROUNDS FOR OBJECTION

- The trees are visible from a public vantage point. They sit on an elevated position and can be seen from the approach to the existing dwelling from May Avenue and from Tylers Close. They provide a positive contribution to the locality.
- The Local Planning Authority has a duty (under section 197 the Town and Country Planning Act) to ensure whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. To make such orders under section 198 (Powers to make tree preservation orders), if it appears to a local authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in the area, they may for that purpose make an Order with respect to such trees.
- Amenity is not defined within the legislation and the objections question the public amenity benefits the trees provide in the locality. The trees are located within an area indicated within the Lymington Local Distinctiveness Supplementary Planning Document (character area 2 Lower Buckland) as being "important trees/tree groups". The area defined is now significantly diminished in established tree cover due to previous tree clearance prior to the submission of the planning application. The holly and sycamore represent the only remaining "important trees" within the site, by that measure.

- It is being increasingly recognised that canopy cover and ecosystem service provision is an important factor of the presence of trees within the built environment. To focus on the narrow definition of amenity being purely visual, misses the important associated benefits the presence of trees to provide within neighbourhoods and the importance of rear garden green infrastructure. The erosion of the important tree group through previous felling and additional loss of these two remaining trees has, and will, further reduce the amount of established canopy cover.
- An Arboricultural Impact Assessment (AIA) was submitted with the planning application 24/11073 (dated December 2024) undertaken by the Arboricultural Planning Consultant in accordance with BS5837:2012 "Trees in relation to design demolition and construction – Recommendations". The report includes a Tree Survey which evaluates the quality of the trees and categorizes them on their suitability for retention, giving an indication of the minimum life expectancy (in years). Category 'A' being the highest, B then C and lastly U denoting trees not suitable for retention irrespective of development.
- The holly tree was categorized as a 'B' with at least a 20-year estimated remaining life expectancy and the sycamore tree a 'C' estimated with at least 10 years life expectancy. This implies that if they were removed prior to this minimum timescale of their expected life expectancy in the absence of any other specific reason or occurrence that may significantly reduce this timescale, it could be deemed as premature removal.
- The Arboricultural Planning Consultant has stated in the objection letter that the Holly tree has now been re-graded and "is clearly a category 'C'" contrary to the original assessment. A subsequent revised, and more recent AIA, by the Arboricultural Planning Consultant (dated 14th April 2025) has again categorised the holly as a 'B', and in fair physiological and structural condition (with at least 20 year estimated life expectancy).
- The sycamore tree as stated in the objection has been accepted as not being a constraint, and the TPO for this tree has been accepted. Therefore, it is assumed the objection no longer applies to this tree.
- The main reasons provided for the removal of the trees within the AIA are specifically in relation to the trees position on the bank and concerns they will dominate any proposed residential development, and their retention will reduce the amount of development possible. Issues of dominance of existing trees on proposed development layouts can also be addressed by pruning and reasonable adjustments to layouts made, in order to achieve a harmonious and sustainable relationship between existing trees and new structures (the premise of BS5837:2012).
- A revised layout accommodating existing trees with a reasonable estimated retention span will ensure that at such time in future that the existing tree/s may require removal, there will be adequate space available to accommodate an appropriate suitable replacement tree.
- Although replacement tree planting within an appropriate well designed landscaping scheme would be welcomed and could be conditioned through the planning process, to eventually replace some of the trees already felled on the site. It is well recognised that successful establishment and development through to maturity of newly planted trees is often inadequate and often falls short of expectations. Protecting existing trees, incorporating them into a scheme should be prioritised over removal and replanting where feasible.

- A revised block plan has been submitted with the outline application 24/11073 which shows an amended planning layout providing more separation from the proposed dwelling to the holly and both the holly and sycamore tree to be retained. The supporting AIA and accompanying Tree Protection Plan (dated April 2025) indicates the protection measures that could be implemented to ensure the trees can be retained and not adversely impacted by the proposal. In my view this demonstrates the trees can be retained and the TPO does not significantly inhibit a development within the site.

The imposition of a TPO would not hinder reasonable routine management of the tree's, including pruning where appropriate. Provided works were justified with sufficient reason and undertaken in accordance with good Arboricultural practice

11 CONCLUSION

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.

The trees provide a positive contribution to the amenity of the area, they are identified in the Lymington Distinctiveness SPD as being within an important tree group, and it's been demonstrated they can be retained within the development proposal. Therefore, in the interest of public amenity it is expedient to confirm this Tree Preservation Order.

12 RECOMMENDATION

CONFIRM THE TREE PRESERVATION ORDER

Further Information:

Barry Rivers
Tree Officer (Planning)
023 8028 5629

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/0002/25 LAND AT REAR OF 28 MAY AVENUE, PENNINGTON, 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: *James Carpenter*

James Carpenter
Strategic Director for Place, Operations and Sustainability

Date: 17th January 2025

TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER TPO/0002/25
LAND AT REAR OF 28 MAY AVENUE, PENNINGTON, 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/0002/25 - LAND AT REAR OF 28 MAY AVENUE, PENNINGTON, 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 17th day of January 2025

Signed on behalf of New Forest District Council

Mark Wyatt

Authorised by the Authority to sign in that behalf

SCHEDULE

**SPECIFICATION OF TREES
TPO/0002/25**

Trees specified individually

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

Reference on map	Description	Situation
T1	Holly	Situated to the northern extent of site, as shown on plan.
T2	Sycamore	Situated to the southern extent of site, as shown on plan.



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Tree Preservation Order Plan

Town and Country Planning Act 1990

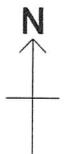
TPO Number: TPO/0002/25

Scale: 1:1000

Date Printed: 16/01/25

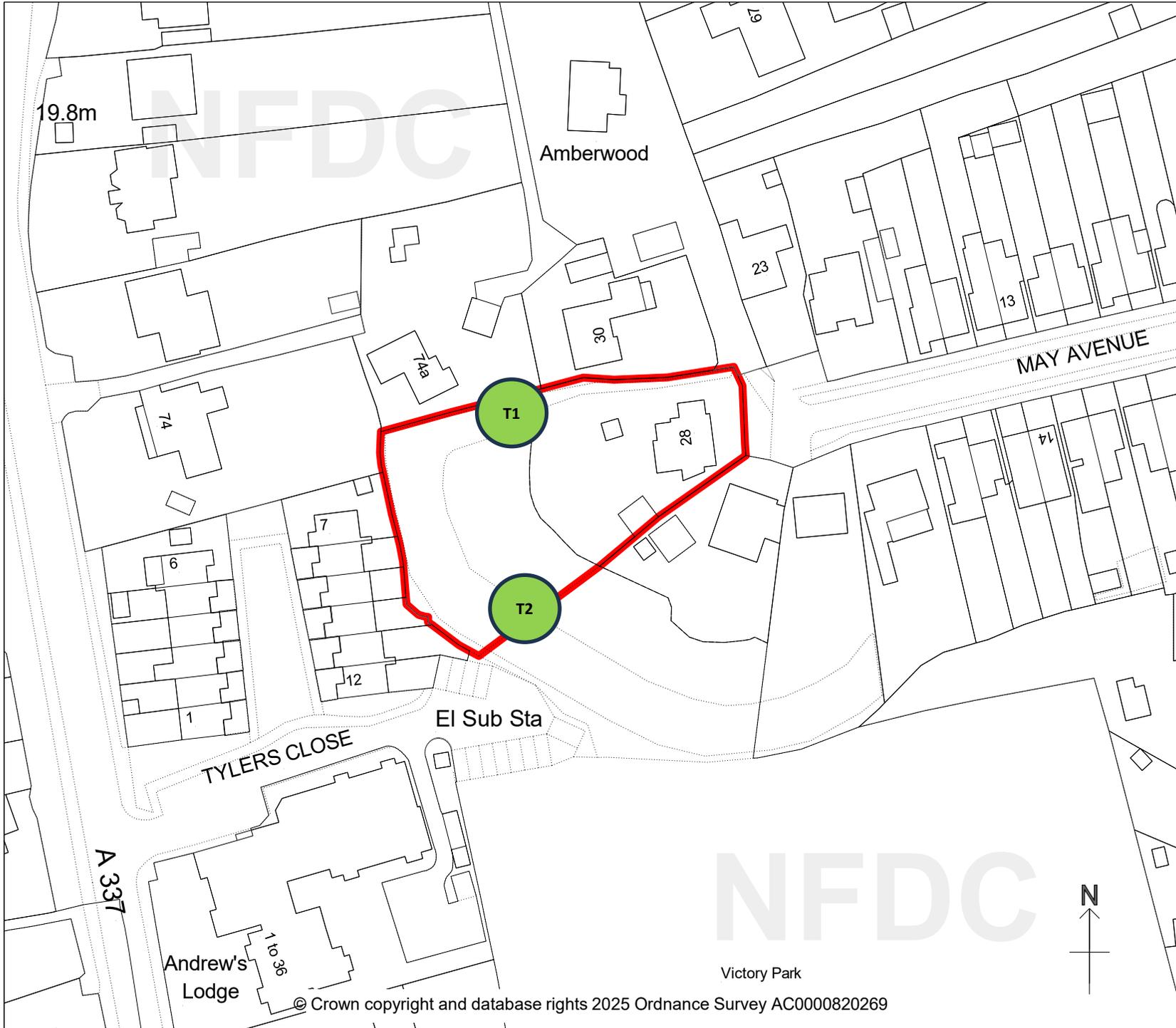
Key

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



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Mark Wyatt
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PLANNING COMMITTEE

July 2025

Land rear of Sabina
 28 May Avenue
 Pennington
 TPO/0002/25

Scale 1:1000

N.B. If printing this plan from the internet, it will not be to scale.