06 March 2020

To: All Councillors

As a Member or Substitute of the Licensing & Appeals Sub-Committee, please treat this as your summons to attend a meeting on 16 March 2020 at 3.00pm in the Committee Room, Town Hall, Matlock DE4 3NN.

Yours sincerely

Sandra Lamb
Head of Corporate Services

AGENDA

SITE VISIT:

The Sub-Committee is advised Members will leave the Town Hall, Matlock DE4 3NN at 11:30 am prompt to visit the site at 12:15 am that is subject to the Appeal. The site visit will be conducted in accordance with the attached Site Visit Procedure.

1. APOLOGIES

Please advise the Committee Team on 01629 761133 or e-mail committee@derbyshiredales.gov.uk of any apologies for absence.

2. ELECTION OF CHAIRMAN

The Sub-Committee will elect a Chairman for the meeting.

3. INTERESTS

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council’s Code of Conduct. Those interests are matters that relate to money or that which can be valued in money, affecting the Member her/his partner, extended family and close friends.

Interests that become apparent at a later stage in the proceedings may be declared at that time.
To determine an objection to Tree Preservation Order No. 184 and to determine whether the Order should be confirmed, with or without modification.

Members of the Appeals Committee who will consider this application:

Councillors: Stuart Lees, Claire Raw and Andrew Statham.

Nominated Substitute Member:

Councillor: Graham Elliott.

COMMITTEE SITE VISIT PROCEDURE

The purpose of the site visit is to enable the Committee Members to appraise the site of the Tree Preservation Order (TPO). The site visit is not a public meeting. No new drawings, letters, representations or other documents may be introduced at the site meeting.

The procedure will be as follows:

1. Members of the Committee and Officers of the Council will arrive at the site as close as possible to the given time and Members will alight (weather permitting).

2. Those making representations may attend.

3. The Chairman will ascertain who is present and address them to explain the purpose of the site visit and sequence of events.

4. Those present will be allowed to point out site features.

5. Those present will be allowed to give factual responses to questions from Members on site features.

6. The site visit will be made with all those attending remaining together as a single group at all times.

7. The Chairman will terminate the site visit and Members will depart.
1. PURPOSE OF THE REPORT

To consider the objection to Derbyshire Dales District Council Tree Preservation Order 184 at Beech House, Lumsdale, Matlock.

2. RELEVANT INFORMATION

2.1 INTRODUCTION

The Derbyshire Dales District Council Tree Preservation Order 184 at Beech House, Lumsdale, Matlock protects 11 mature trees in the gardens and grounds of Beech House and the garden of Pine Trees.

2.2 NATIONAL GUIDANCE

National Planning Practice Guidance

This guidance sets out how the legislation relating to Tree Preservation Orders should be implemented. The making of a Tree Preservation Order can be instigated where it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands. It advises that Orders should be used to protect trees where their removal would have significant negative impact on the local environment and its enjoyment by the public.


2.3 SITE DESCRIPTION

Situated within the Lumsdale Conservation Area, Beech House is in a settlement edge location. The site measures approx. 300 x 65m and consists of the gardens immediately surrounding Beech House and the woodland and open field adjacent to it to the south and west. Bordering the western boundary is Lumsdale, a paved public road. A public footpath borders the northern boundary. A lane borders the southern and part of the eastern boundary together with woodland and the gardens of a house.
called Pine Trees. The ground generally slopes fairly steeply up from the west to the east and from the south up to the north.

Area 1 of DDDC Tree Preservation Order 98 (confirmed 1994) covers much of the woodland in the north-western part of the site.

2.4 GROUNDS FOR MAKING THE ORDER

All trees subject to the new Tree Preservation Order are clearly visible from public places, have significant life expectancies, appear to be in at least fair structural and physiological condition and contribute to the character and appearance of the Conservation Area.

2.5 RELEVANT HISTORY

Notification to fell the sycamore tree close to the property known as Pine Trees was received by email on 20 May 2019 from Mr Anderson on behalf of Mrs Else of the owner of Pine Trees with the knowledge of the trees owner, Dr D. Holden. Justification for the works were given in the email as follows:

“\textit{The reason Mrs Else is keen to remove it is that during high winds last month, the site workers were concerned by the tree creaking, to such an extent that they refused to work nearby. Mrs Else has no particular affection for the tree and neither has the owner. In fact the site’s previous occupants were also un-enamoured with the tree}”

The notification also stated:

“The owner of the tree and the field in which it grows, is Dr Holden, of Beech House, Upper Lumsdale, who has granted Mrs Else permission to do whatever she likes to the tree”.

A site visit by DDDC’s Trees and Landscape Officer was undertaken on 3rd June 2019 to observe the tree and its surroundings, visually assess the tree’s condition and informally judge its contribution to the character and appearance of the Conservation Area.

On 4 June 2019 an email was sent to Mr Anderson, as follows:

“Considering that the landscape character of the Lumsdale Conservation Area, within which the tree is located, is well treed we would not support the removal of a large, mature, apparently healthy tree based only on an observation of creaking sounds. I suggest your client commissions a climbing inspection to determine the cause of the creaking. A new notification should be subsequently submitted, complete with photographic evidence to support the conclusions, that responds in a more focused way to
address the implied risk than felling the tree unless this is demonstrated to be the only appropriate response.

Please indicate that you withdraw your current tree works notification at this site within 7 days. Alternatively, DDDC will have to consider making a new TPO, to include the subject tree and potentially others, in order to prevent the notified works being undertaken until sufficient evidence to justify the works is submitted”.

Mr Anderson responded by email on 7th June 2019, including the following comments:

‘Please note I have no intention of climbing the tree to ascertain why it’s creaking….

and:

‘my client finds the tree disconcerting, the owner doesn’t like it’

Having regard to this response, Tree Preservation Order 180 was made on 12 June 2019 which included the sycamore tree close to Pine Trees along with 8 other trees which were also in the ownership of Dr Holden in the garden of her house, ‘Beech House’ and the land surrounding it together with 2 trees in the ownership of Mrs Else within the garden of Pine Trees. The additional 10 trees were included because they were considered to meet the requirements of the Tree Evaluation Method for Preservation Orders (TEMPO) assessment system for tree suitability for being made subject to Tree Preservation Order.

An objection to Tree Preservation Order 180 was received on 22 July 2019.

The time available to the council to confirm Tree Preservation Order 180 expired in December 2019.

The temporary protection afforded by Tree Preservation Order 180 expired 6 months after it was made so a new Tree Preservation Order was made on 19 December 2019 to ensure continued protection of the trees. Tree Preservation Order 184 was made to protect the same trees as Tree Preservation Order 180.

An objection from Mr Anderson to the making of Tree Preservation Order No. 184 was received on 5 February 2020.

Tree Preservation Order 184 must be confirmed before 18 June 2020 if it is to take effect.

2.6 OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER NO.184
The letter of objection from Mr Anderson, dated 4 February 2020, to the making of Tree Preservation Order 184 is appended to this report. The letter includes copies of some letters previously sent to the council from Mr Anderson. The grounds for objection contained within the letter are summarised below with a response from DDDC’s Trees and Landscape Officer for each.

2.6.1 Officer comments in response to Mr Anderson’s objection Letter dated 4 February 2020

Objection comment - the TPO is not expedient.

Officer response - The sycamore tree close to Pine Trees was assessed during a site visit on 3rd June 2019, in response to the Section 211 notice to fell the tree, council ref T/19/00089/TCA dated 17 May 2019 by email from Mr Anderson, as providing valuable amenity and to be worthy of a new TPO.

The reasons given to justify its felling were that the tree was creaking in high winds which was not necessarily sufficient to justify the complete removal of the tree. Accordingly, further information resulting from a climbing inspection was requested to ascertain whether felling was really necessary to address the creaking noise allegedly being generated by the tree, or whether lesser works would be sufficient which would address the source of the noise whilst allowing retention of the tree. No further info was forthcoming, hence the Tree Preservation Order was made before the end of the 6 week notification period to prevent the tree being felled.

Objection comment - it isn’t expedient to protect any other trees apart from the Sycamore

Officer response – if the owner of the trees is prepared to fell a mature tree whose structural and physiological condition appears to be ‘fair’ without undertaking reasonable investigations when asked to determine its condition it is reasonable to assume that other trees under their ownership are at risk and justify being made subject to Tree Preservation Order.

Furthermore, Mr Anderson also stated that Dr Holden, the tree’s owner,

‘‘doesn’t like it”

and that Mrs Else had Dr Holdens permission

‘‘to do whatever she likes to the tree”.

These comments did not inspire confidence that the other trees on Dr Holden’s and Mrs Else’s properties were free from threat of removal where
these trees collectively make an important contribution to the character and appearance of the Conservation Area – a key requirement for the making of trees subject to a new Tree Preservation Order.

**Objection comment** – there is no amenity valuation for the trees subject to the Tree Preservation Order.

**Officer response** – We use a well-respected and widely used published system called Tree Evaluation Method for Preservation Orders (TEMPO) developed by Forbes-Laird Arboricultural Consultancy. This is a system specifically designed to be used for assessing trees suitability for being made subject to a new Tree Preservation Order.

Mr Anderson’s ‘amenity valuation’ for the sycamore close to Pine Trees, dated July 2019, uses the Helliwell system. This system is not specifically designed to assess suitability for making a tree subject to a new Tree Preservation Order. The figure generated by the Helliwell system does not fall above or below a defined published threshold for Tree Preservation Order suitability.

Conversely, TEMPO produces a figure for a tree which relates directly to a scale with bands which define how suitable the assessed tree is to be made subject to a new Tree Preservation Order.

Every tree included in Tree Preservation Order 184 was awarded a score above the TEMPO threshold value. The range of scores was 12 to 17. The threshold score is 12. The possible range of scores is 0 to 25.

However, notwithstanding my opinion regarding the inappropriateness of Mr Anderson’s choice of the Helliwell system, there are concerns over the points he awarded to the sycamore tree close to Pine Trees. He has not provided any amenity valuation for the other trees included in Tree Preservation Order 184. Mr Anderson asserted that the sycamore tree near to Pine Trees is not suitable to be included in a new Tree Preservation Order because the score he calculated for its ‘amenity valuation’ was too low. I disagree with some of the scores given to the tree, as follows:

1. **Size** – I agree that 8 points should be awarded
2. **Life expectancy** – the Arboricultural Association guidance on Helliwell system (Guidance Note 4 - Visual Amenity Valuation of Trees and Woodlands - The Helliwell System 2008) gives guidance on typical life expectancies of common trees, with sycamore given 250-350 yrs. I assess the tree in question to be approx. 150 years old, so life expectancy would be at least another 100 years, therefore the tree should be awarded 4 points, not 2 points as awarded by Mr Anderson.
3. **Position/Importance in the landscape** – Mr Anderson awarded 1 point. I would award 2 points. The tree is prominent on the skyline when viewed from the public road in Lumsdale. It is also important for its historical boundary position along the field edge.

4. **Other trees** – I agree that 1 point should be awarded.

5. **Relation to the setting** – the tree’s setting has recently changed due to the construction of a replacement house closer to the tree than the original house on the Pine Trees site. The tree was very appropriate in its position before the replacement house was built, being a common species of tree in an appropriate position. The replacement house was built in full knowledge of the trees existence and the Planning Department at DDDC were content that it did not present unacceptable shading or risk to the property when permission to develop the site was granted. I would award at least 3 points for its current situation, and 4 points for its previous situation.

6. **Form** – I agree that 1 point should be awarded.

7. **Other factors** – this category does not exist in the Arboricultural Association guidance document.

So, if I were to assess the tree using the Helliwell system, the points I would award would be:

- Size = 8
- Life expectancy = 4
- Position = 2
- Other Trees = 1
- Relation to setting = 3
- Form = 1
- Other factors = N/A

Multiply all points together to get score = 192

This figure of 192 is well above Mr Anderson’s score of 16 and also well above his figures of 128 or 144 as being what Mr Anderson considers a threshold making a tree suitable for making a Tree Preservation Order.

It should be noted that no guidance is provided in the Arboricultural Associations document regarding the use of the Helliwell system for assessing trees for suitability to be made subject to a new Tree Preservation Order nor does it give a threshold above which a tree may be considered to be suitable.

### 2.6.2 Comments in response to a letter from Mr Anderson dated 22nd July 2019

**Mr Anderson’s comment** - Had it been the only tree in the neighbourhood then I can perhaps see a reason for giving it some special
veneration, but it is not the only tree for miles around, it is one of very many, and thus its amenity value is low.

**Officer response** – I disagree that the tree’s amenity value is low because there are relatively abundant tree numbers in the local area. The character and appearance of the Lumsdale Conservation Area is of a landscape with natural woodlands and trees in groups and individual specimens. The tree referred to in Mr Anderson’s comment is the sycamore close to Pine Trees is a ‘naturalised’ tree within this landscape and typical in the assemblage of species in the local area. I consider its amenity value to be high, particularly considering mature large good form, apparent good condition and its conspicuous position on the skyline when viewed from the road.

**Mr Anderson’s comment** - if a tree has low amenity value like this sycamore there is no need for anyone to trouble themselves seeking justification.

**Officer response** – An applicant is not required to give reasons or justification for the notified works in a section 211 notice for tree works in a Conservation Area.

However, during my site visit to inspect the sycamore tree close to Pine Trees (the tree referred to in the comment) I did not observe any significant reasons for concern; the tree appeared in fair condition structurally and physiologically and I considered the tree to make a valuable contribution to the amenity of the area and the character and appearance of the Conservation Area and be suitable to be included within a potential new Tree Preservation Order.

With these considerations in mind it was appropriate for me to request the results of a more detailed investigation into the cause of the noises allegedly produced by the tree in high winds. This is because the noise may have been generated by a serious crack in the stem of the tree but equally it could have been the result of inconsequential rubbing of branches, or many possibilities between these scenarios. In order to be able to assess the risk presented by the tree it was important to know the cause of the noise and hence what tree works, if any, were justified.

I did not wish to make a new Tree Preservation Order to include this tree if it were demonstrated to have significant structural defects causing the alleged noise. Unfortunately, the applicant/owner/agent was not prepared to provide further information so I had to assume that my assessment was correct and that the tree had no significant structural defects and so was suitable for inclusion in a new Tree Preservation Order and proceeded to make it. Once the Tree Preservation Order was made then a new application for tree works would be required for any proposed works. Such an application has not been received. Once subject to a Tree Preservation
Order DDDC could refuse to grant permission for the tree to be felled, if appropriate, which would not be possible otherwise.

**Mr Anderson’s comment** - Your decision to protect 11 trees, rather than just the single Sycamore in my S211 Notice is completely unjustified, and I have to say despite your protestations to the contrary, seems to be some sort of punishment

**Officer response** - As a professional Officer of DDDC I clearly have no interest in 'punishing' the owner of the tree – rather, I am interested in protecting trees with valuable public benefit and amenity value from being removed unless properly justified.

As described in section 2.6.1 above, I considered that inclusion of 10 other trees into the new Tree Preservation Order in addition to the sycamore close to Pine Trees was justified based on the owners apparent willingness to remove mature trees, offering what I consider to be considerable amenity value, with very limited justification. The trees selected for inclusion in the new Tree Preservation Order were chosen for protection based on their apparent good structural and physiological condition, visibility to the public, size, long remaining life expectancy and contribution to the character and appearance of the Conservation Area.

**Mr Anderson’s comment** - referring to my application to remove 3 (TPO) Horse Chestnut trees last year

**Officer response** - An application (ref T/18/00026/TPO) was made by Mr Anderson to remove 3 horse chestnut trees owned by Dr Holden on her property at Beech House which are subject to an existing Tree Preservation Order (DDDC Tree Preservation Order.98) in February 2018. This was refused consent because insufficient justification was provided. A request for more information regarding their condition to support their justified removal was made but no further information to support the application was forthcoming. I inspected the trees and considered that their removal was not justified considering their condition at the time.

**Mr Anderson's comment** - you have not followed the Government’s guidance as to the serving of Tree Preservation Orders

**Officer response** - The council’s procedure for the making of a new Tree Preservation Order was prepared by the in-house legal team. It is based on published government practice advice National Planning Guidance in ‘Guidance - Tree Preservation Orders and trees in Conservation Areas’, which is available online at:
3. LEGAL CONSIDERATIONS

Tree Preservation Orders are made under sections 198, 201 and 203 of the Town and Country Planning Act 1990.

Section 198(1) of the Act states that ‘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 their area, they may for that purpose make an Order with respect to such trees, groups of trees or woodland as may be specified in the Order.’

Once the Tree Preservation Order is made objections or representations may be made within a specified time period. The Local Planning Authority has 6 months from the date on which the Order was served to consider any objections or representations and to decide whether or not to confirm the Tree Preservation Order. The Order may be confirmed either with or without modification.

4. FINANCIAL CONSIDERATIONS

None

5. OFFICER RECOMMENDATION

Notwithstanding the comments of the objector the analysis above has demonstrated that the apparent good structural and physiological condition, visibility to the public, size and long remaining life expectancy of the trees justifies formal protection and accordingly that Derbyshire Dales District Council Tree Preservation Order 184 should be confirmed without modification to ensure the appropriate future management of the trees at Beech House and Pine Trees, Lumsdale, Matlock which have considerable public amenity value as well as contributing to the character and appearance of the Lumsdale Conservation Area.

APPENDICES

Tree Preservation Order 184
Plan to locate trees referenced in Tree Preservation Order 184
Tree Preservation Order Notice
Objection letter
TOWN AND COUNTRY PLANNING ACT 1990

THE TOWN AND COUNTRY PLANNING
(TREE PRESERVATION) (ENGLAND) REGULATIONS 2012

Derbyshire Dales District Council
Trees at Beech House, Upper Lumsdale, Matlock
Tree Preservation Order No. 184, 2019

Town Hall
Matlock
Derbyshire
DE4 3NN
TOWN AND COUNTRY PLANNING ACT 1990

THE TOWN AND COUNTRY PLANNING
(TREE PRESERVATION) (ENGLAND) REGULATIONS 2012

Derbyshire Dales District Council
Trees at Beech House, Upper Lumsdale, Matlock
Tree Preservation Order No. 184, 2019

Derbyshire Dales District Council, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order -

Citation

1. This Order may be cited as the Derbyshire Dales District Council, Trees at Beech House, Upper Lumsdale, Matlock, Tree Preservation Order No. 184, 2019

Interpretation

2. (1) In this Order "the authority" means the Derbyshire Dales 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, willfully damage, or willfully destroy; or

(b) cause or permit the cutting down, topping, lopping, willful damage or willful 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 19th day of December 2019

THE COMMON SEAL of
DERBYSHIRE DALES DISTRICT COUNCIL
was hereunto affixed in the presence of

[Seal Image]

Authorised Signatory
### SCHEDULE
### SPECIFICATION OF TREES

Grid Reference: SK 3125960680

**Trees specified individually**
(encircled in black on the map)

<table>
<thead>
<tr>
<th>Reference on map</th>
<th>Description</th>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>T1</td>
<td>Oak</td>
<td>At the edge of the field to the south of Beech House and to the north of the junction of Lumsdale and a track opposite Oak Cottage. Approx 25m on a heading of approx. 81deg from the north-eastern corner of Oak Cottage.</td>
</tr>
<tr>
<td>T2</td>
<td>Sycamore</td>
<td>At the edge of the field to the south of Beech House and approx 34m on a heading of approx. 318deg from a large historical chimney.</td>
</tr>
<tr>
<td>T3</td>
<td>Scots pine</td>
<td>Within the garden of Pinetrees close to the boundary with the field to the south of Beech House. Approx 34m on a heading of approx. 227deg from the south-western corner of 1 Pond Cottages.</td>
</tr>
<tr>
<td>T4</td>
<td>Scots pine</td>
<td>Within the garden of Pinetrees a few m from sycamore T5 and close the boundary with the field to the south of Beech House. Approx 28m on a heading of approx. 254deg from the south-western corner of 1 Pond Cottages.</td>
</tr>
<tr>
<td>T5</td>
<td>Sycamore</td>
<td>Within the field to the south of Beech House close to the boundary with the garden of Pinetrees. Approx 35m on a heading of approx. 262deg from the south-western corner of 1 Pond Cottages.</td>
</tr>
<tr>
<td>T6</td>
<td>Sycamore</td>
<td>Within the field to the south of Beech House close to the boundary with the garden of Pinetrees. Approx 37m on a heading of approx. 253deg from the north-western corner of 6 Pond Cottages.</td>
</tr>
<tr>
<td>T7</td>
<td>Sycamore</td>
<td>Within the field to the south of Beech House. Approx 63m on a heading of approx. 278deg from the north-western corner of 6 Pond Cottages.</td>
</tr>
<tr>
<td>T8</td>
<td>Purple Norway Maple</td>
<td>To the south of footpath Matlock 109 in the rear garden of Beech House, approx. 35m on a heading of approx. 147deg from the south-western corner of Moorland View.</td>
</tr>
<tr>
<td>T9</td>
<td>Oak</td>
<td>To the south of footpath Matlock 109 in the rear garden of Beech House, approx. 32m on a heading of approx. 156deg.</td>
</tr>
<tr>
<td>Reference on map</td>
<td>Description</td>
<td>Situation</td>
</tr>
<tr>
<td>-----------------</td>
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</tr>
<tr>
<td>T10</td>
<td>Oak</td>
<td>To the south of footpath Matlock 109, approx. 20m on a heading of approx. 232° from the south-western corner of Moorland View.</td>
</tr>
<tr>
<td>T11</td>
<td>Purple beech</td>
<td>Immediately in front of the south elevation of Beech House.</td>
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Trees specified by reference to an area
(within a dotted black line on the map)

<table>
<thead>
<tr>
<th>Reference on map</th>
<th>Description</th>
<th>Situation</th>
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Groups of trees
(within a broken black line on the map)

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<th>Situation</th>
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<td></td>
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Woodlands
(within a continuous black line on the map)

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<th>Description</th>
<th>Situation</th>
</tr>
</thead>
<tbody>
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<td></td>
<td></td>
</tr>
<tr>
<td>W2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
IMPORTANT - THIS COMMUNICATION MAY AFFECT YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012

Derbyshire Dales District Council
Tree Preservation Order: Trees at Beech House, Upper Lumsdale, Matlock. (TPO 184)

THIS IS A FORMAL NOTICE to let you know that on 19th December 2019 the Council made
the above Tree Preservation Order.

A copy of the Order is enclosed. In simple terms, it prohibits anyone from cutting down,
topping or lopping any of the trees described in the First Schedule and shown on the map
without the Council's consent.

Some explanatory guidance on Tree Preservation Orders is given in the enclosed leaflet,
Protected Trees: A Guide to Tree Preservation Orders, produced by the Department of the
Environment, Transport and the Regions.

The Council have made the Order to protect the trees in the interests of amenity

The Order took effect, on a provisional basis, on 19th December 2019. It will continue in force
on this basis for a further 6 months or until the Order is confirmed by the Council, whichever
first occurs.

The Council will consider whether the Order should be confirmed, that is to say, whether it
should take effect formally. Before this decision is made, the people affected by the Order
have a right to make objections or other representations about any of the trees, groups of
trees or woodlands covered by the Order.

If you would like to make any objections or other comments, please make sure we receive
them in writing by 21st January 2020. Your comments must comply with regulation 6 of the
The Town and Country Planning (Tree Preservation) (England) Regulations 2012, a copy of
which is set out below. Send your comments to:

Mr Jon Bradbury
Development Manager
Derbyshire Dales District Council
Town Hall
Matlock
DE4 3NN

Please:

- state the name of the Tree Preservation Order at the beginning of your letter and
- state the following reference: TPO184

All valid objections or representations are carefully considered before a decision on whether
to confirm the Order is made.
The Council will write to you again when that decision has been made. In the meantime, if you would like any further information or have any questions about this letter, please contact:

Chris Payne
Trees and Landscape Officer
Derbyshire Dales District Council
Town Hall
Matlock
DE4 3NN

Dated: 19th December 2019

Signed:

[Signature]
Jon Bradbury
Development Manager
on behalf of Derbyshire Dales District Council
COPY OF REGULATION 6
OF THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012

"Objections and representations
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 3(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 the objections or representations are made; and
   (c) in the case of an objection, shall state the reasons for the objection.

4(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected."
Mr Jon Bradbury, Development Manager,
Derbyshire Dales District Council,
Town Hall,
Matlock, DE4 3NN.

Dear Mr Bradbury,

**Objection to Tree Preservation Order.**

**Tree Preservation Order: Trees at Beech House, Upper Lumsdale, Matlock.**

Reference: TPO 184

Please accept this letter as an objection to the above Tree Preservation Order (TPO) which was served on 19th December 2019. Unfortunately and for no obvious reason that I can see, I was not sent a copy until January 15th 2020.

To recap, TPO 180 was served in July 2019, in response to a Section 211 Notice that I served on May 17th 2019. I objected to that TPO for numerous reasons. That TPO was served on my client and not to me as her Agent. This is in spite of normal procedures where correspondence relating to planning applications is routinely sent to the Agent. TPO 184 was also not sent to me until I asked for it, which also ignored my e-mail of December 18th to you and your colleague Mr Braund wherein I discussed the matter.

As TPO 184 is exactly the same as TPO 180 I would be grateful if you would accept the reasons I gave in that objection as being the reasons for objection to this one. For the avoidance of doubt I have copied the letters I sent in respect of that TPO, and the subsequent correspondence in respect of my upheld complaint about that TPO below.

I think it is fair to say that this matter, which I should remind you is about a single Sycamore tree, has dragged on for almost 9 months now and I do not think this is fair on me or my clients. So I would be grateful if you would ensure that we do not have to wait any longer.

Yours sincerely,

[Name]


Enclosures:  1. Objection to TPO 180.
           2. letter in response to the Tree Officer’s comments in response to objection.
           3. Letter of complaint in respect of inadequate TPO procedures.
           4. letter outlining procedures to be followed in response to S211 Notice.
Mr Jon Bradbury, Development Manager,
Derbyshire Dales District Council,
Town Hall,
Matlock, DE4 3NN.

July 8th 2019.

Dear Mr Bradbury,

**Objection to Tree Preservation Order.**

**Tree Preservation Order: Trees at Beech House, Upper Lumsdale, Matlock.**

Reference: **TPO 180**

Please accept this letter as an objection to the above Tree Preservation Order (TPO) which was served on June 12th 2019. A Section 211 Notice in respect of a single Sycamore tree was served on May 17th. The Notice was served by me on behalf of Mrs Jennifer Else who lives at Pine trees, adjacent to the tree in question. The owner of the tree is Dr Holden of Beech House. Mrs Else has Dr Holden’s permission to deal with the tree as she sees fit.

The TPO, protects 11 trees, one of which is the Sycamore in question. This leads to the first reason for objecting to this TPO, which is the TPO is not “expedient.” The Government’s guidance¹ states (at paragraph 10) that trees in good management should not be the subject of a TPO. The only tree in question here is the Sycamore and Mrs Else and Dr Holden regard any suggestion that their trees are not in good management to be unfair. Both Mrs Else and Dr Holden have always complied meticulously with the Conservation Area regulations and are fully aware of their duty in respect of tree work, within such an area. Furthermore other trees in the neighbourhood are protected by a TPO and Dr Holden has always complied with the obligations placed upon her by the Order. There is no reason for anybody to presume that this will not remain the case.

Turning to the tree in question, after the serving of the Section 211 Notice the Tree Officer e-mailed on June 4th suggesting that my client commissioned a climbing inspection of the tree and asking for the Notice to be withdrawn. He reasoned that the works needed to be justified. The Conservation Area does not make it incumbent upon a tree owner to justify works to any particular degree, but it does make it incumbent on an Officer to appraise the amenity value of a tree. Despite a response to the e-mail enquiring what it was that increased the tree’s amenity value to the level where it merits a TPO, no answer was forthcoming. The e-mail made it clear that if an amenity valuation showed that the tree was TPO-worthy, the S211 Notice would be withdrawn. Mrs Else and Dr Holden do not want to see the Council’s resources wasted serving unnecessary TPOs.

On June 11th Mrs Else was somewhat surprised to see someone wandering around the neighbourhood, apparently in the throes of making a TPO. On June 12th I received an e-mail informing me that a TPO had been made and I understand that Dr Holden and Mrs Else

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received the TPO paperwork at that time. A copy of the TPO was not sent to me and I only received a basic copy after e-mailing. The Officer has not furnished anybody with any sort of amenity valuation. Although it isn't expedient to protect any other trees apart from the Sycamore in question, the Tree Officer stated by e-mail "If I didn't consider it expedient I wouldn't have done it...."

In 2004 there was a Local Government Ombudsman case (ref 03/C/09398) which addressed a similar situation: A Tree Officer told a tree owner that he could protect all her trees "if he wanted to;" which is an attitude with which the Ombudsman took issue. That case was something of an object lesson for local Councils as the Ombudsman found that the Council had ridden roughshod over the Government's guidance and thus were ordered to pay substantial compensation to the complainant.

You may recall that previously you and I had an extended correspondence about trees at Beech House in respect of my application (ref T/18/00026/TPO) to remove some Horse Chestnut trees for Dr Holden. This was at a time when you were without a Tree Officer. You and I discussed amenity valuation in respect of trees at some length. I hoped that a result of those discussions would be that when the new Tree Officer was appointed, he or she would be charged with developing a system of amenity valuation for use in these situations. As this does not appear to be the case I have appended an amenity valuation based on my former correspondence.

Perhaps you would let us know what you are going to do about this extremely unsatisfactory state of affairs. As a minimum the TPO should be redrawn to cover just the Sycamore tree in question. The other trees are a diversion from the matter in hand.

Please note that if you intend putting this matter in front of the Planning Committee for confirmation then I and my client, and possibly the tree's owner will want to address the committee. It would be preferable if a hearing or inquiry was conducted which would be in line with the Government guidance and preferable to simply inviting the Planning committee to consider the matter like a planning application, which this matter clearly is not.

I look forward to hearing from you.

Yours faithfully,


Amenity valuation; Sycamore tree to the south of Pine Trees, Lumsdale.

This tree is a single tree growing in a field close to the residential property currently under construction.

Photograph 1 shows the tree, taken in March 2019.

Helliwell data sheet.

<table>
<thead>
<tr>
<th>Size</th>
<th>8</th>
<th>A large tree.</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than; 2m²</td>
<td>0</td>
<td>(The metres² refers to a height times spread with a bit knocked off for a clear stem and a rounded crown.)</td>
</tr>
<tr>
<td>0.5 very small; 2-5m²</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>small; 5-10m²</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>10-20m²</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>20-30m²</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>medium; 30-50m²</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>50-100m²</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>large; 100-150m²</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>150-200m²</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>very large; 200m²+</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 2. | **Life expectancy**<sup>*</sup>  
0 - less than 2 years  
1 - 2-5 years  
2 - 5-40 years  
3 - 40-100 years  
4 - 100+ years | 2 | Between 5 & 40 years life expectancy is fair. |
|---|---|---|---|
| 3. | **Position (Importance in the Landscape)**  
**Private assessment**  
0.25 - trees on remote parts of large country estates  
0.5 - garden trees in groups of no particular individual importance  
0.75 - prominent garden trees  
1.0 - main feature or focal point  
**Public assessment**  
0 - trees not visible from any public vantage point  
0.5 - trees only seen with difficulty or by a very small number of people  
1 - most trees in woodlands, back gardens or in groups of trees, etc.  
2 - individual roadside trees. Trees close to busy roads. Trees in public parks. Close to public footpaths in grounds of hospitals, colleges etc.  
3 - prominent individual trees in well-frequented places such as town centres, shopping centres, etc.  
4 - trees which are of crucial importance as the principal feature of a public place. | 1 | Although it can be seen easily, it’s well away from the highway and does not stand out among all the other nearby trees. |
| 4. | **Other trees**  
0.5 - more than 70% of the visual area covered by trees, and at least 100 trees in total  
1 - more than 30% of the visual area covered by trees and at least 10 trees in total  
2 - more than 10% of the visual area covered by trees, and at least 4 trees in total  
3 - less than 10% of the visual area covered by trees, but at least one other tree present  
4 - no other trees present in the area under consideration | 1 | This seems fair. |
| 5. | **Relation to setting**  
0 - totally unsuitable  
0.5 - moderately unsuitable  
1 - just suitable  
2 - fairly suitable  
3 - very suitable  
4 - particularly suitable | 1 | Nobody would choose to grow a large Sycamore in this position. “Just suitable” is the best that can be said of it. |
6. **Form**

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.5</td>
<td>Trees which are of poor form</td>
</tr>
<tr>
<td>1</td>
<td>Trees of average form</td>
</tr>
<tr>
<td>2</td>
<td>Trees of above average form</td>
</tr>
</tbody>
</table>

1. Not good, not bad; just average.

7. **Other factors.**

Score 1 plus 1 point for any of the following factors, to a maximum of 4 points. Particularly typical specimen, particularly atypical specimen, historic association, rare species, particular value to wildlife. (Other factors might be special!)

1. A fairly typical specimen with nothing out of the ordinary beyond it being large.

This gives 16 points out of a possible 16,384. This seems harsh but in reality reflects the tree's lack of merit.

The above protocol takes account of the Government guidance which states that a tree’s visibility alone is insufficient reason for TPO protection. It also takes into account the advice that nature conservation alone is also insufficient justification for protection. It is anticipated that a tree that had particular value to wildlife would mean something more than the ordinary value of any tree.

NB. The halfway score using the above scores would be 128. This could be used as a TPO threshold score, but realistically 144 would be a more-sensible threshold. That would be a tree of a large size, 6 points, likely to live 20 years, 2 points, publicly visible, 2 points, suitable for its position, 2 points, of average form, 1 point and having at least 2 special factors, 3 points.

Thus a large tree that was of good (above ordinary) value to wildlife, in a prominent position next to a road, and somewhat isolated, would score 198 (6 x 2 x 2 x 2 x 2 x 1 x 2), and therefore merit protection.

Mr Jon Bradbury, Development Manager,  
Derbyshire Dales District Council,  
Town Hall,  
Matlock, DE4 3NN.  

July 22nd 2019.

Dear Mr Bradbury,

Objection to Tree Preservation Order.

Tree Preservation Order: Trees at Beech House, Upper Lumsdale, Matlock.

Reference: TPO 180

Thank you for your letter of July 18th which unfortunately entirely misses the pertinent points. I understand that TPOs can be served in the interests of amenity, and I also understand that “amenity” is not defined. I am aware that the Government guidance tells us some things about amenity, the first of which is that the mere fact that a tree is visible is insufficient justification for a TPO.

In all your discussions you have not told us about anything about this single tree that means its contribution to the amenity of the area is sufficient to justify any special mention. As far as I can see the only thing to be said about it is that it is quite large. Had it been the only tree in the neighbourhood then I can perhaps see a reason for giving it some special veneration, but it is not the only tree for miles around, it is one of very many, and thus its amenity value is low. Had it been a tree with particularly spectacular flowers, or a species that offered good autumn colour, then its amenity value might have been higher, but as it is a fairly commonplace tree, of which there are many more nearby, its amenity value is low.

You state that “a TPO is not in any way intended to punish the owner of a tree.” Unfortunately singling out a tree owner and protecting their trees often seems like punishment, which is one of the reasons the Government guidance goes to such lengths to emphasise that trees should only be protected “if their removal would have a significant negative impact on the local environment and its enjoyment by the public.” I should remind you that the Government’s guidance in these matters is that an amenity valuation system should be used to inform their decisions. It repeatedly states that a tree’s amenity value should be appraised, emphasising that a proposal that has no impact on amenity value should not be refused. In fact at paragraph 091 it goes so far as to state “if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work.”

My section 211 notice did not go into any great detail about the need for the proposed work because it did not need to; I understand that if a tree has low amenity value like this Sycamore, there is no need for anyone to trouble themselves seeking justification. I note that despite my discussion of the amenity value of the Sycamore tree in my S211 Notice,
and my further discussion of the topic in my letter of objection, you have still not provided any sort of amenity valuation.

You go on to state that you have recently received several Section 211 Notices in relation to trees on Dr Holden’s land. I presume you are referring to my application to remove 3 (TPO) Horse Chestnut trees last year, and my recent correspondence relating to the storm damaged (TPO) Beech tree earlier this year. I should like to point out that three (including this one) is not really several, and that at all times Dr Holden and I have complied with the regulations meticulously. Precisely why you should jump to the conclusion that this makes it “expedient to make several trees in the ownership of Dr Holden subject to the new TPO” is a mystery to me. I take great care to ensure that I always comply with the Conservation Area regulations, and Dr Holden and Mrs Else have always followed the rules with suitable diligence. Your decision to protect 11 trees, rather than just the single Sycamore in my S211 Notice is completely unjustified, and I have to say despite your protestations to the contrary, seems to be some sort of punishment.

In summary, you have not followed the Government’s guidance as to the serving of Tree Preservation Orders. And despite my correspondence you have still not undertaken an amenity valuation, and furthermore, despite my request for information on precisely how you intend to properly consider the TPO’s objections you have not told us that either. I presume that as the last planning committee meeting was July 18th you won’t be having another one on August 1st, and if you’re planning on having a proper inquiry then my clients and I would appreciate as much notice as possible.

I look forward to hearing from you.

Yours faithfully,

August 20th 2019.

Dear Mr Elliott,

Complaint in respect of the procedure followed while serving Tree Preservation Order no 180, Beech House, Upper Lumsdale.

My clients in this matter are Dr Holden of Beech House, And Mrs Else of Pine Trees, also at Upper Lumsdale.

1.0 Background.

1.1 In February 2018 I applied for permission to remove three Horse Chestnut Trees protected by a TPO. These belonged to Dr Holden and were at the side of Lumsdale. At the time there was no Tree Officer in post and Mr Bradbury and I had some correspondence as to the amenity value of the trees in question.

1.2 One of the Horse Chestnuts had shed a branch a few months previously and blocked the road. Dr Holden has been worried about a repeat occurrence ever since, so I eventually applied to remove all three.

1.3 The application was refused but Mr Bradbury and I had what I thought were constructive discussions about the topic of “amenity valuation.” In fact I anticipated that the first thing he would have required of the new Tree Officer was that he or she would have compiled a system of amenity valuation for the purposes of making decisions about TPO-protected trees. With hindsight it appears that my assessment of Mr Bradbury’s familiarity with the TPO guidance was somewhat askew.

1.4 In March of this year Dr Holden had a Beech tree blown down in a storm. This tree was protected by a TPO so I e-mailed the Tree Officer, Dr Payne, to inform him that we would be clearing up the fallen tree and making other trees damaged by the falling Beech, safe.

1.5 Dr Payne, informed me that he would require a replacement tree to be planted. I replied that I thought this would be unnecessary as the area was already well off for trees and natural regeneration would take care of the planting in due course. I also informed him that he should serve any Tree Replacement Notice to me. I note at this point that it is normal practice to address all correspondence in planning applications to the applicant’s agent. The Planning Portal says as much and this has always been my experience.
1.6 Dr Payne sent a tree replacement notice to Dr Holden. When challenged he made some dubious comments about me possibly losing it, although I think I made it plain that I would have appealed the Notice. I considered I had a reasonable chance of this appeal being upheld as it was quite plainly unnecessary.

1.7 Dr Holden capitulated to the Notice.

2.0 **Current TPO situation.**

2.1 On May 20\textsuperscript{th} on behalf of Mrs Else, I served a Section 211 Notice regarding the removal of one Sycamore tree belonging to Dr Holden but adjacent to Mrs Else’s new house. In the notice I discussed the tree’s lack of significant amenity value. This Notice was on behalf of Mrs Else.

2.2 Dr Payne eventually e-mailed (on June 4\textsuperscript{th}) suggesting that I commissioned a climbing inspection of the tree. Precisely how this might aid an appraisal of amenity value was not made clear.

2.3 I responded on June 7\textsuperscript{th} stating that I and my client (Mrs Else) understood that all Dr Payne had to do was undertake an amenity valuation and that if he did this and showed us that the tree had sufficient amenity value to justify a TPO we would withdraw the notice.

2.4 On June 12\textsuperscript{th} I received an e-mail quoted here in full:

   “Hi
   We have now made a new TPO that includes the sycamore you gave notification of felling at Pinetrees, Lumsdale.”

2.5 No copy of the TPO was included. This was only supplied to me by e-mail 5 days after I requested it. I realise that the TPO guidance doesn’t actually require an LPA to send a copy of a TPO to the Agent who sent a S211 Notice, but as another Tree Officer once said to me; “why on earth wouldn’t you?”

2.6 The TPO covered 11 trees and I replied questioning the expediency of this course of action. He replied “If I didn’t consider it expedient I wouldn’t have done it...” He also singly failed to respond to a request to see his amenity valuation.

2.7 I submitted an objection to the TPO on July 8\textsuperscript{th}, to Mr Bradbury, Development Manager, who was named as the person dealing with objections. I presumed that he had some knowledge of the TPO system but on speaking to him today (August 20\textsuperscript{th}) it appears this is not the case. I got an out of office message from Mr Bradbury the same day.

2.8 I understand that Mrs Else and Dr Holden also submitted objections to the TPO.

2.9 On July 20\textsuperscript{th} I received a letter (not by e-mail) dated July 18\textsuperscript{th}, signed by Mr Bradbury, but possibly never seen by him, presumably written by Dr Payne. The letter did not address the matter of the amenity valuation of the Sycamore and instead made spurious comments about what TPOs are for. It reiterated that I should have presented reasons for the proposed removal and failed entirely to address any of my objections.
2.10 I had objected to the idea of protecting the other trees, and the writer stated that DDDC "have recently received several notifications and applications relating to trees on Dr Holden’s land," and; "Should DDDC not have resisted these works, the result would have been a significant loss of trees from the area." This is untrue and easily checked on the Planning Department’s internet pages. Why on earth anyone (presumably Dr Payne) would make such a statement, when it so easily revealed to be untrue is a mystery to me.

2.11 The letter stated that "I intend to confirm TPO 180 unchanged on August 1st 2019 so if you have any response or further comments in reply to this letter, please ensure that I have them before that date." This led me to believe that Mr Bradbury had written the letter, although I am now not so sure.

2.12 I responded on July 23rd by e-mail, only to receive an out of office notification telling me that Mr Bradbury was away until July 31st. Which didn’t leave much time for anyone to organise any sort of meeting to consider the objections properly. My understanding is that if disputes about new TPOs are not resolved then the matter should go before the full planning committee, and the same procedure as for a planning application is more or less followed.

2.13 At this point it occurred to me that Mr Bradbury had not written the letter. I forwarded my response to Mr Braund (head of regulatory services) who informed me that he would leave the matter to Mr Bradbury to deal with on his return. He also told me that "Appeals against TPOs are heard by the Council’s Licensing and Appeals Committee."

2.14 On August 12th (or thereabouts) Dr Holden called to tell me that Mr Bradbury and Dr Payne were visiting her on August 15th. I asked if she would like me to attend but my offer was declined. After that I presumed that at some point the two Officers would be contacting me to discuss the matter further. I was more than a little surprised to be told by Mrs Else’s husband (on August 19th), that the TPO was confirmed on August 16th.

2.15 Mrs Else had received the letter that day. I have been looking out for my copy of the letter but as yet it has not arrived. The letter states "No objections were made about the Order. On 16th August 2019 the Council decided to confirm the Order." This is of course a blatant untruth; there were numerous objections, and I don’t think "the Council" decided anything; I presumed it was Mr Bradbury but on talking to him it seems it was Dr Payne who had decided to send the letter with its untruths.

2.16 Mr Bradbury told me that the untruth was a mistake, but from my position I have to say it seems unlikely.

3.0 Complaint.

3.1 I do not think Dr Payne or Mr Bradbury have any real understanding of the TPO system. The Government guidance is extremely aware that the TPO system, used inappropriately is likely to lead to potential tree owners to be discouraged from planting trees. It is aware that planting or growing a tree, especially in a domestic garden, is an altruistic act that almost certainly benefits a whole neighbourhood.
3.2 The guidance is not aimed at empowering LPAs to protect all trees, it understands that only trees whose removal would have significant impact on the environment should be protected, in order to avoid developing any antipathy towards trees.

3.3 My clients and I have been treated so poorly here that I consider both of them would be justified in deciding to never grow another tree again. It is a credit to their fortitude that neither have expressed this opinion.

3.4 Dr Payne on behalf of the Council has behaved in an extremely cavalier manner. I assumed this was with the acquiescence of Mr Bradbury, but at the moment I am not sure whether Mr Bradbury is aware of precisely what Dr Payne should have done or has written.

3.5 I believe that the process that has been followed in serving this TPO is so flawed as to be regarded as little more than a charade of the proper process.

3.6 I am aware that some Tree Officers consider the Government’s guidance on TPOs to be no more than “merely guidance,” but it is not, it has the same weight as the NPPF or indeed any other Government Circular. Dr Payne appears to be sufficiently well-qualified to know this, thus I must interpret his approach as deliberately obtuse.

3.7 His inclusion of 11 trees in the TPO when the S211 Notice was for one Sycamore appears to be his attempt to exert some sort of authority in an area where he has no responsibility other than to undertake an amenity valuation. His justification for claiming this was expedient is insulting to my clients and to me.

3.8 The persistent refusal of Dr Payne to correspond with me as my client’s agent also appears deliberately perverse. It could be interpreted as an attempt to avoid having to explain his approach to anybody with experience in TPO matters.

4.0 Remedy.

4.1 The Council do not appear to have any procedures in place as to how TPOs should be served or how objections should be considered. This must be remedied.

4.2 I consider the Council has little option other than to revoke this TPO. Ten of the eleven trees remain subject to the Conservation Area regulations so there is no danger that they will be cut down without consent as Section 211 Notice would have to be served first, whereupon the trees’ amenity value could be appraised, and a TPO served if it proved to be expedient.

4.3 I acknowledge that revocation of the TPO would promptly permit the felling of the Sycamore (six weeks notice has passed) so if upon undertaking an amenity valuation, it was decided to protect the Sycamore tree, a new TPO could be served (at the same time) and then objections could be considered properly. (Preferably after Dr Payne has undergone further training in TPO matters.)
5.0  **Post script.**

5.1  My clients are both aware that there is a limited period for them to apply to the High Court to challenge the TPO. I think you must be aware that the Government’s guidance has not been followed so a challenge on those grounds would be well-founded.

5.2  Could I therefore request that you reply to this complaint promptly, say by the middle of next week. I would much rather my clients avoided the expense of a High Court Challenge, and I assume DDDC would too.

I look forward to hearing from you.

Yours faithfully,

Dear Mr Elliott,

Correct procedure for serving a TPO upon receipt of a S211 Notice.

Before reading this it would be useful to see the Government’s TPO guide, which can be seen here: https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas Please note this guidance has the same weight as the NPPF.

Trees in a Conservation Area are not protected as if there was a large TPO (Tree Preservation Order) covering the whole area. A tree owner wishing to undertake work does not have to “apply,” he or she merely has to give notice of their intent. This is called a Section 211 Notice. (see paragraph 116 of the TPO Guidance.)

The 6-week notice period is to allow the LPA to decide whether a TPO is justified. (Paragraph 118.) At paragraph 119 the guidance spells out that the LPA’s main consideration should be the “amenity value” of the tree in question. The guidance states at paragraph 008 that LPAs should develop structured systems of amenity valuation, and goes so far as to point out that “Public visibility alone will not be sufficient to warrant an Order.” It goes on to also point out that other factors such as nature conservation or response to climate change are also insufficient justification to warrant an Order.

The guidance also points out at paragraph 10 that although a tree may warrant an Order, it may not be expedient to protect it if the owner has trees in good management.

The guidance states there is a right for anyone to object to a TPO and points out (at paragraph 037) that “since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner.”

The previous TPO guidance (the Blue Book) specified how objections should be considered; it suggested that a hearing or inquiry should be held, and acknowledged that the confirmation of a TPO might be discussed by the LPA’s Planning committee. I consider that it goes without saying that it is unfair to expect a Tree Officer to consider objections to a TPO that he or she has instigated, as this is prejudicial to the objector. I acknowledge that some LPAs simply treat a TPO as any other planning application, although they seldom realise that it is actually the LPA applying to the Committee for permission to make the Order. This means the LPA should be treated as the applicant, not the tree owner or objector.

The TPO guidance places great weight on the subject of “amenity valuation,” going so far as to state at paragraph 91 that “it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and
the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work."

Flowchart 1 in the guidance shows the correct procedure to be followed in making and confirming an Order and suffice to say the process stops if a tree does not have sufficient amenity value.

When considering the rather ethereal topic of amenity valuation I think it is worth remembering that had the Government ever considered it prudent to protect all trees, then TPOs would never have been invented; a simple extension to the Forestry Act would simply have made it necessary to seek a licence for any tree work whatsoever. Suffice to say had this happened then 90% of an LPA’s staff would have been doing little but approving or refusing applications for tree work!

I trust you will find this helpful.

Yours faithfully,

(1) Introduction by the Chair explaining that the process is not an adversarial one and all comments should be directed through the Chair.

(2) Report of the Council Officer.

(3) Questions for the Officer from the Committee.

(4) Any clarification required from the Officer

(5) Statements from the objectors and other interested parties

(6) The Committee, its Legal Advisor, the Officer and the applicant and other interested parties (through the Chair) will have an opportunity to ask questions of each speaker.

(7) Any further questions by the Committee, its Legal Advisor, the applicant or the Officer.

(8) The Chair will ask all parties whether they need clarification of any points.

(9) The Committee will withdraw to make its decision.

(10) The Committee will deliberate in private, only recalling the Council’s representative; the objector and other interested parties, or their representative, to clarify evidence already given. If recall is necessary, all parties must be given the opportunity to return, even though only one party is concerned with the point giving rise to doubt.

(11) The Legal Advisor may be called upon during the private deliberation to advise the Appeals Committee Members.

(12) At the end of the proceedings, the Chair of the Appeals Committee will inform the parties of the decision. This will be confirmed, in writing within seven days of the hearing.