

**REPORT FOR THE SOMERSET WEST AND TAUNTON PLANNING COMMITTEE,
20th FEBRUARY, 2020**

**Objection to Somerset West and Taunton (Taunton No.1) Tree Preservation
Order SWT01, to the front of 12 The Avenue, Taunton**

The Tree Preservation Order protects one Hornbeam tree that is growing as a street tree outside 12 The Avenue.

RECOMMENDATION

It is recommended that the Tree Preservation Order is confirmed, unmodified.

Background

The Tree Preservation Order (TPO) was served on 19th September 2019.

The grounds for serving the TPO were stated on the notice as follows:

A Section 211 notification has been submitted to this council proposing to fell the hornbeam tree (38/19/0263T). The tree has high amenity value, and contributes to the character of the conservation area. The council currently considers that insufficient evidence has been provided to justify removal of this tree.

Procedure

A Tree Preservation Order comes into force on the day that it is served for a period of 6 months. The TPO lapses after that date unless it has been confirmed by the Council. If there are no objections to the TPO, it can be confirmed. If any objections are received, the points raised must be considered and a decision made as to whether to confirm the TPO, either with or without modification. The decision whether to confirm a TPO that raises objections is taken by members of the Planning Committee.

When deciding whether to serve and confirm a TPO, the present or future public amenity value of the trees must be considered. Tree Preservation Orders are served to protect selected trees if their removal would have a significant impact on the local environment. TPO trees should therefore be visible from a public place, such as a road or footpath.

In assessing a tree's amenity value, consideration must be paid to its visual impact, its health and structural integrity, its life expectancy and its suitability to the location. The tree's potential impact on highways, services and structures should be considered.

Representations

Two objections to the TPO have been received, one from the person that made the initial 211 notification to fell, the other from his neighbour at 13 The Avenue.

A representation in support of the TPO has been received from Somerset County Council's Tree Officer.

The reasons given for the objections can be summarized as follows:

- a) The tree is the 'wrong species' of tree, in that it has grown larger than intended;
- b) The tree has caused damage to the concrete surface of the front gardens, and may cause damage to the house itself;
- c) The tree will require constant managing;
- d) Why has only one of the street trees been protected?
- e) As the trees are protected by the conservation area, the TPO is superfluous;
- f) The tree's roots have caused damage to drainage pipes;
- g) The tree has a co-dominant stem which may be a weak point in the future.

In support, SCC's Tree Officer has stated that:

- a) The tree is worthy of retention;
- b) Unless there is a claim of subsidence, the tree should be retained and the damage repaired in such a way as to prevent its re-occurrence.

Determining Issues and Considerations

The tree is within Staplegrove Road Conservation Area. The TPO was served in response to a section 211 notification being submitted by Mr Reid of 12 The Avenue, proposing that the tree is felled. The reason given on the notification is that the tree is 'damaging the driveway, as confirmed by Somerset County Council's (previous) Tree Officer'. In fact, there is no driveway but a small front garden.

The tree is a 'fastigiate' hornbeam, a cultivar that has a narrower form than the native tree. According to the RHS, it is a 'medium-sized deciduous tree, crown narrow when young, becoming compact and ovoid and turning yellow in the autumn'.

It is owned by Somerset County Council, and is one of numerous street trees that line the roads of this attractive, leafy conservation area. The trees are at the edge of the pavement, immediately adjacent to the road.

The tree in question is approximately 7.5 metres from the front of 12 The Avenue. This distance is no closer than street trees and houses elsewhere on the road, as the front walls of nearly all the houses along The Avenue follow the same line.

The tree appears to be a healthy specimen, with no obvious defects, disease or decay. It contributes to the leafy character of the area, is highly visible to the public and therefore can be considered to have a high amenity value.

In response to the points raised by the objectors to the TPO:

- a) Although narrow when young, these hornbeams do become quite broadly ovoid in shape. As to whether they have become larger than SCC intended when they were planted several decades ago is not considered relevant in this case. They are not very large trees such as lime or beech, generally not excessively large for the area and if certain trees grow more quickly they can be pruned if necessary.
- b) The front garden of 12 The Avenue, on the north side of the path to the house, is covered with a layer of concrete. This has been cracked by roots underneath and close to the surface. Tree roots can damage light structures such as paving slabs and tarmac, through physical action as they grow, being generally close to the surface. However, this damage can be easily repaired, and its re-occurrence avoided by altering the design and materials of the garden. For instance, gravel could be used instead of concrete, as on the south side of the footpath, or better still, soil and planting.

The house is 7.5 metres away from the tree. At that distance, the roots, if any, will be minor feeding roots of small diameter. They are extremely unlikely to do any physical damage to the foundations of this Victorian house. There is no known history of subsidence in this area, and there is currently no evidence of it.

- c) The tree is within the conservation area. We do not have a record of numerous applications over the years to prune it, or other similar trees in the area. Over the last year or two, the council has received a small number of notifications to prune similar trees where they were almost touching the houses. Although not the easiest trees to prune successfully because of their form and habit, it can be done by the best tree surgeons if considered necessary.
- d/e) Tree Preservation Orders are generally served when it is thought that trees are under threat. In this case a conservation area notification was made to fell the tree (38/19/0263T). The council's options were either to 'raise no

objection' or to serve a TPO to ensure the tree's retention and to demonstrate that the council does object to its removal, as in this case. If further notifications were submitted to fell other trees in the area, it may be necessary to serve further TPOs, subject to assessment of the details of each case.

- f) Drainage pipes and particularly unions between them can be affected by growing tree roots. The houses are Victorian and some of the pipes may be considerably old. It is possible for these pipes to be cleared of roots and either repaired or replaced in such a way that the roots do not re-enter and cause further damage.
- g) Although no tree can be considered 100% 'safe', this tree's current physical structure does not suggest that it is likely to fail in the foreseeable future. Its growth and health can be monitored by SCC's Tree Officer and SWT's Tree Officer, who will react to any changes if necessary.

In conclusion, it is considered that the benefits of this tree to the environment, the conservation area and the street scene outweigh the disadvantages, particularly given Taunton's new Garden Town status and the nation's renewed interest in increasing its tree canopy cover. The damage caused to minor structures such as concrete and tarmac can be repaired or altered to avoid re-occurrence.

There is no evidence that the tree is damaging the house itself, or is likely to. It should be noted that the front garden wall, which is apparently about 10 years old, is showing no signs of damage, despite sizeable roots passing underneath it.

It is understood that SCC have agreed to pay for the works to repair the damaged surface of the front garden. The case officer has been liaising with SCC's Tree Officer Ben Coles and Mr Reid to resolve the issues, including the possibility of cutting the minor roots close to the house, which is unlikely to cause undue harm to the tree and would be outside of the notional Root Protection Area as given by BS5837 (Trees in relation to buildings and construction).

It is therefore recommended that the Tree Preservation Order is confirmed, unmodified.

Note: Dead or imminently dangerous branches can be removed from the trees, subject to written notice to the council, giving the council up to 5 days to respond.

Applications can be made for the pruning of TPO trees if necessary, using the standard form on the Planning Portal, accessed via the Somerset West and Taunton website.

This is to certify that this is a true and correct copy
of the Somerset West and Taunton (Taunton No.1)
Tree Preservation Order 2019



D Galley for Legal Services Manager

Town and Country Planning (Tree Preservation) (England) Regulations 2012

Town and Country Planning Act 1990

Somerset West and Taunton (Taunton No.1) Tree Preservation Order, 2019

The Somerset West and Taunton in exercise of the powers conferred on them by Sections 198 of the Town and Country Planning Act 1990 make the following Order:-

1. Citation

This Order may be cited as the Somerset West and Taunton (Taunton No.1.) Tree Preservation Order 2019 (SWT01).

2. Interpretation

(1) In this Order "the authority" means the Somerset West and Taunton.

(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.

3. Effect

(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, 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.

4. Application to trees to be planted pursuant to a condition

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 September 2019

The Common Seal of the SOMERSET WEST AND TAUNTON
was affixed to this Order in the presence of: -

 PP
Duly Authorised Signatory

Schedule 1

Reference on Map	Description	Situation (See accompanying map)
T1	Hornbeam	Street tree to front of 12 The Avenue, TA1 1EA

Trees specified by reference to an area (within a dotted black line on the map)

Reference on Map	Description	Situation
None		

Groups of Trees (within a broken black line on the map)

Reference on Map	Description	Situation
None		

Woodlands (within a continuous black line on the map)

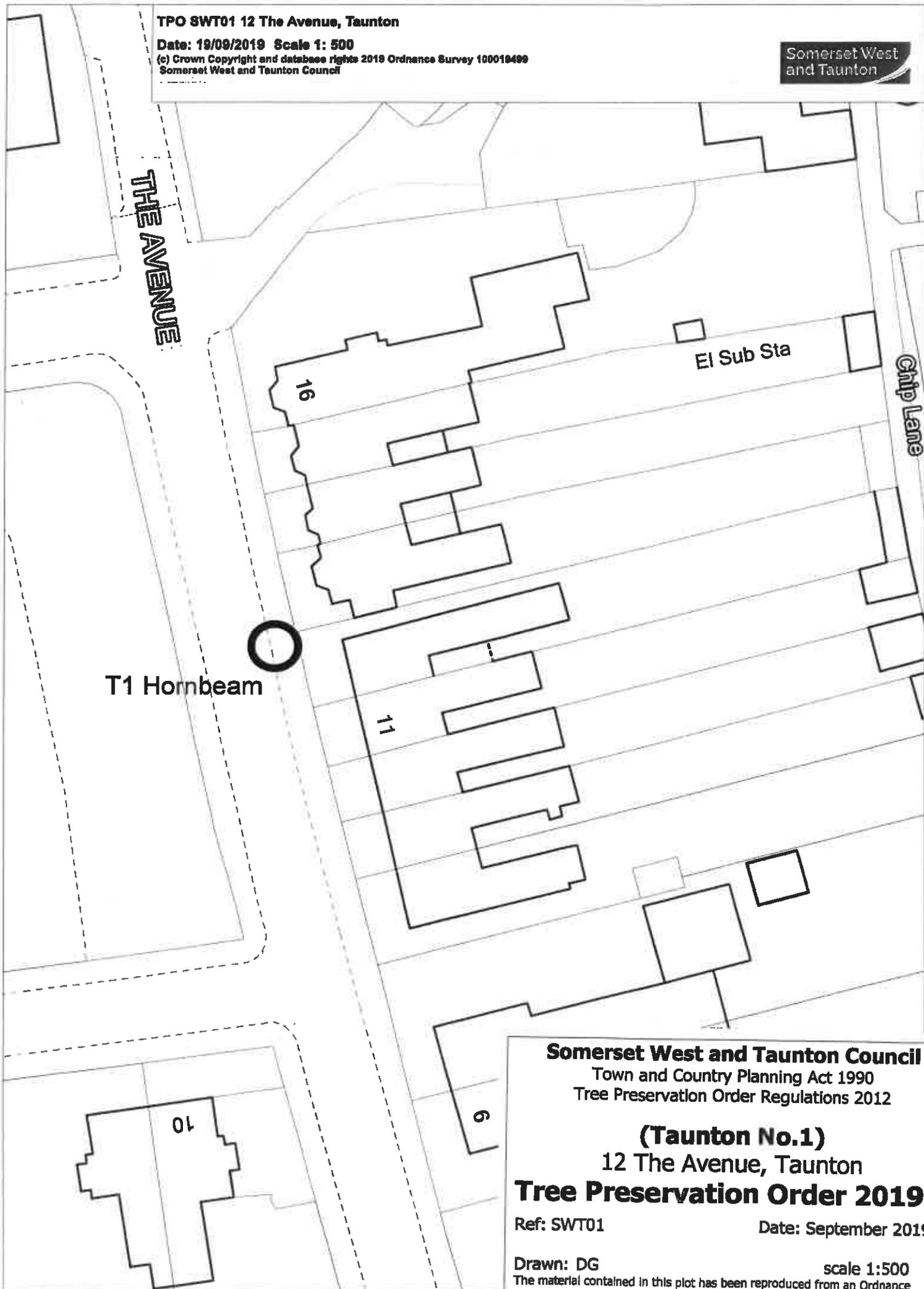
Reference on Map	Description	Situation
None		

TPO SWT01 12 The Avenue, Taunton

Date: 19/09/2019 Scale 1: 500

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Somerset West and Taunton Council

Somerset West
and Taunton



Somerset West and Taunton Council

Town and Country Planning Act 1990

Tree Preservation Order Regulations 2012

(Taunton No.1)

12 The Avenue, Taunton

Tree Preservation Order 2019

Ref: SWT01

Date: September 2019

Drawn: DG

scale 1:500

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Town and Country Planning Act 1990, Section 198

Town and Country Planning (Trees) Regulations 2012

Somerset West and Taunton (Taunton No.1) Tree Preservation Order 2019

To:

Somerset County Council (Highways)
County Hall
Taunton
TA1 4DY

TAKE NOTICE that the Somerset West and Taunton in pursuance of their powers as Local Planning Authority under Section 198 of the Town and Country Planning Act 1990 has this day made a Tree Preservation Order (a copy whereof together with the map included therein is enclosed herewith) in respect of:-

A tree to the front of 12 The Avenue, Taunton, TA1 1EA.

The said Order contains a direction under Section 201 of the Town and Country Planning Act 1990, the effect of which is explained overleaf.

The grounds for making the said Order are as follows:-

A Section 211 notification has been submitted to this council proposing to fell the hornbeam tree (38/19/0263T). The tree has high amenity value, and contributes to the character of the conservation area. The council currently considers that insufficient evidence has been provided to justify removal of this tree.

A certified copy of the Order and the map included therein may be inspected without charge at The Deane House, Belvedere Road, Taunton, between the hours of 8.30 am and 5 pm, Mondays to Fridays with a late opening of 9:30 on a Wednesday.

Should you wish to raise any objections or make any representations with respect to the Order they should be made in accordance with Regulation 4 of the said Regulations (a copy of which is also printed overleaf) and then sent to Planning, Somerset West and Taunton, The Deane House, Taunton, within 28 days from the date of the service of the notice of the making of the Order. Every objection or representation shall be made in writing and shall state the grounds thereof and specify the particular tree, group of trees, or woodlands in respect of which it is made.

Signed: *AP David Galley*

Performance and Governance

Dated: *19th September 2019*

Notes

Town and Country Planning Act 1990

Section 201(2) of the Town and Country Planning Act 1990 provides that:-

"Notwithstanding Section 199(1), an Order which contains such a direction (a) shall take effect provisionally on such date as may be specified in it; and (b) shall continue in force by virtue of this Section until:-

- (i) the expiration of a period of six months beginning with the date of which the Order was made; or
- (ii) the date on which the Order is confirmed;

whichever first occurs."

The Town and Country Planning (Tree) Regulations 2012

"Objections and representations

- 4. (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.
- (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."

12 The Avenue
Taunton TA1 1EA

9th October 2019

RECEIVED

14 OCT 2019

SOMERSET WEST
and TAUNTON

David Galley
Somerset West and Taunton
Performance and Governance
PO Box 866
Taunton
TA1 9GS

Dear Mr Galley,

Your ref: DG/SWT01/ 12 The Avenue

I am writing in response to your letter of 19th September 2019 informing us that you have served a Tree Preservation Order on a hornbeam tree near our property in order to set out my objections.

From discussions amongst residents, it has been known for some time that this hornbeam was initially wrongly planted with the result that at both 12 and 13 The Avenue, we are now suffering damage from an oversize tree which will need constant managing to stop it growing out of control. It is clear that the right course of action would be to fell the hornbeam and to replace it with a more suitable tree so it is not easy to see how serving a TPO is an appropriate course of action under these circumstances.

Can I please make it clear that in the event of the TPO being confirmed, I will be appealing against that decision.

Meanwhile there is a need to proceed with repairs to the damaged concrete as set out in the quotation from Hillview Landscapes of which you have a copy. Can you please confirm a number of points about this work:

- (a) that we have permission to instruct the contractor to start on this project (is this permission to come from yourself or SCC?)
- (b) that this work will be carried out at the expense of the party giving permission
- (c) that as the work continues, you will advise on the procedure for investigating / inspecting the trees roots as they become exposed so that clear instructions can be given to the contractor.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: whitworth [REDACTED]
Sent: 03 October 2019 18:20
To: Planning <planning@somersetwestandtaunton.gov.uk>
Subject: Yr ref DG/SWTT01 TPO 12/13 The Avenue TA1 1EA

Dear Mr Galley,

Ref your letter of 19 Sept, I wish to object to this TPO on the following grounds:

1. Somerset County Council have long since acknowledged that the wrong cultivar of hornbeam was chosen when these trees were planted in The Avenue. Instead of the intended fastigate growth habit, the consequence of their error has been to blight many of the properties with outsize trees with excessively bushy canopies In these circumstances how can a TPO be appropriate?
2. This individual tree is only an 'amenity' (if it is at all, which I strongly dispute) in the context of all the other trees which together make logical sense of calling a road 'The Avenue'. Why is this tree being singled out for a TPO? Should not all the other trees be treated similarly?
3. Since this tree is in a Conservation Area, so that your authority's permission is already required before work is carried out on it (as was the case some years ago), I submit that the TPO is superfluous.
4. This tree has long been the cause of serious problems. Wessex Water have on several occasions had to come and deal with blockages in sewers for which they are responsible. Each time these been caused by tree roots. On the last occasion six foot deep excavations in both pavement and road were necessary. Now the same tree is causing damage to the front garden of No.12, and threatening the structural integrity of the house itself. What steps are proposed to prevent ongoing problems of this nature. How is a TPO going to help?
5. About ten years ago I was advised by the then Arboricultural Officer of Somerset County Council, that its bi-dominant growth habit means that this tree is inherently unstable. Far from being preserved, it should be removed and replaced forthwith.

I look forward to receiving your observations on the above.

Yours sincerely,

Ben Whitworth