



**TREE PRESERVATION ORDER (TPO) APPEAL FORM**  
**The Town and Country Planning (Tree Preservation) (England)**  
**Regulations 2012 – SI No. 605, Regulation 19**

Before completing this form please read "Guide for Appellants (Tree Preservation Orders – consents for works)"

**WARNING** Your appeal must reach the Planning Inspectorate within 28 days from receipt of the decision against which you are appealing.

Appeals received after the deadline will only be accepted in exceptional circumstances.

If you need this document in large print, on audio tape, in another language or in Braille, please call 0303 444 5000.

**PLEASE PRINT CLEARLY IN CAPITALS USING BLACK INK**

**A. APPELLANT**

Name Cranbury Estates Limited

Address Cranbury Estates Ltd, Estate Office, Cranbury Park, Winchester, Hants

Postcode SO21 2HL

Daytime Tel 02380255617

Email  
Tim.piper@cranbury.co.uk

I prefer to be contacted by: Email ☒ Post ☐

**B. AGENT:** If acting on behalf of the appellant, you will be our main contact on all matters relating to this appeal and we will direct all queries and correspondence to you. It will be your responsibility to keep the appellant informed.

Name Ben Abbatt

Organisation

**Sapling Arboriculture Limited**

Address

**Holbache, Mount Pleasant Road Alton Hampshire**

Postcode GU34 2RS

Daytime Tel 01420 550 160

Email  
ben@saplingarboriculture.com

I prefer to be contacted by: Email ☒ Post ☐

### C. APPEAL SITE

Address where the appeal tree is (trees are) located:

Land to the rear of 3 Portchester Rise, Eastleigh, SO50 4QS

Do you own the site: Yes

**If no**

- 1)** give details of your interest in the site (eg tenant, neighbour):
  
- 2)** give the name and address (if different from the above) of the owner and/or occupier of the site. We will need to contact them to make arrangements for our Inspector to gain access to the site:

### D. COUNCIL/DECISION

Council: Eastleigh Borough Council

Council Contact Name: Tree Officer

Telephone Number: 02380688000

Full title of tree preservation order (if known): EBC TPO 313 Boyatt Lane Allbrook Brickworks Oakfields Porchester Rise

Date of Council's decision (if applicable): 13<sup>th</sup> April 2023

### E. APPEAL

Please tick only the relevant boxes.

**I am appealing against:**

**The Council's refusal of consent**

✓

**The Council's failure to issue a decision (deemed refusal of consent)**

**Condition(s) attached to the consent**

**The Council's refusal to agree a matter that required their agreement under the terms of a condition of consent.**

## F. GROUNDS OF APPEAL

Please provide at least one reason for each of the boxes you have ticked in section E. You must explain fully why you disagree with the council's decision, where one has been issued. To do this, you need to go through the reasons for the decision, and explain why you disagree. Only the reasons within the council's decision and the reasons put forward by you at application stage should be included on your appeal form. You should not introduce any new reasons for the appeal.

Your appeal should relate to the same works as those specified in your application to the council. Exceptionally we may be able to accept your appeal even if you are seeking a variation to the works originally applied for. We will only be able to do so if the changes do not materially alter the nature of the application and, if no one who should have been consulted about the proposed works would be prejudiced by our doing so. For instance, you may have originally applied for consent to crown thin a tree by reducing the percentage of leaf area by 20%, whereas on appeal you may seek a lesser reduction of 10%. However if on appeal you appear to be seeking more works than originally applied for, it is recommended that you submit a new application to the council rather than seek to amend your original application at appeal stage because the Inspector will not consider any works above those which were put forward in your application form.

Similar limitations apply in respect of the reasons you give for seeking consent, especially under the fast-track procedure where the council has no opportunity to respond to your grounds of appeal. The Inspector will only consider the matters that were before your council when the decision on your application was made. This means that if the reason you submitted on your application form was that the tree was causing overshadowing, you should not, on appeal make a claim that tree roots are causing subsidence. If you want to make a different case for the work applied for you should make a fresh application to the council.

We will also look at the original application to check that it clearly specifies the proposed work. If we decide that the works you have applied for are so vague that we cannot be sure how much work is involved, we may decide that the appeal is invalid and reject it. For example it is not sufficient to specify that you want to remove some of the lower branches, or you wish to reduce the tree by 15%. This is too vague and fails to indicate the extent of the works.

If you choose the recommended Fast Track appeal procedure (see section G) the reasons you set out below will be treated as your statement of case. It is important that you set them out in full because you will not get an opportunity to add to them later.

The decision on your appeal will take into account the contribution that the tree(s) make to the character and appearance of the area and the reasons set in support of your application/appeal. Please bear in mind that the Planning Inspectorate has no jurisdiction to resolve allegations of maladministration or complaints about the time taken by the Council to issue a decision, since such matters are not relevant to the merits of the proposal.

**If you are appealing to fell a tree or against a condition requiring replacement planting please indicate the species and size of any tree(s) you would be prepared to plant if the appeal were to be allowed:**

**Number of trees and Species:**

**Size:**

**F. GROUNDS OF APPEAL (cont)**

**See section K**

**Please continue at section K or on a separate sheet if necessary**

### **G. PROCEDURE – (See Section 9 of the Guide for Appellants before making your choice)**

Appeals dealt with by the Fast Track procedure are usually decided more quickly than those which proceed through a hearing or a more formal local inquiry and because of this we recommend the Fast Track procedure.

However, if you or the Council ask to be heard by the Inspector we will organise a hearing which will take the form of a round table discussion. In very exceptional cases, where complex legal matters are at issue, a substantial number of third parties are involved and/or formal cross examination is warranted, we may decide to hold an inquiry.

**Please tick one box only.**

I wish my appeal to be decided through the Fast Track procedure ☒

I wish to appear and be heard by an Inspector ☐

### **H. SITE VISIT – Please note: no discussion about the merits of the case will take place during the site visit.**

Are you willing for an Inspector to enter the site and conduct the visit unaccompanied?

Yes

If Yes, please give details below of anything the Inspector needs to know with regard to how to access the site:

Site is to the rear of 3 Portchester Rise and is a public footpath.

Access to Mr Double property / rear garden at 3 Portchester Rise will need to be negotiated with Mr Double. My client is able to inform Mr Double of the access requirements at the Planning Inspectorates request. I believe that Mr Double is likely to be mindful to allow access as he is the main beneficiary of the proposed works.

If No, please outline below why this is not possible, why you need to be there or why you need to be represented during the Inspector's visit:

Are there any Health and Safety concerns that the Inspector will need to be aware of prior to the site visit?

Yes

If Yes, please detail the concerns below:

Public footpath.

## I. SUPPORTING DOCUMENTS

**In support of your appeal form please send a copy of your application for consent and a copy of the Council's decision (where one has been issued).**

**Please tick the boxes to show which documents you are enclosing and list any other documents you are submitting in the space below. If you cannot send a copy of the tree preservation order – we will ask the Council to send a copy together with the relevant background papers.**

**I enclose:**

- |                                         |   |
|-----------------------------------------|---|
| 1. A copy of my application for consent | 1 |
|-----------------------------------------|---|

If you do not have a copy of your application please state the council's application reference number here (it should be stated on your decision if one was made):

\_\_\_\_\_

- |                                                         |   |
|---------------------------------------------------------|---|
| 2. A copy of the Council's decision (if one was issued) | 2 |
|---------------------------------------------------------|---|

- 1. Copy of TPO 331 Portchester Rise EBC TPO Record.PDF
- 2. Original letter from Mr Double 1329\_001.PDF
- 3. Email to Mr Tim Piper J139 25 02 email 20230112 to TP no3
- 4. Site plan J139 25 TSP Hazelwood Grove-TSP.PDF
- 5. T\_23\_94663 ApplicationFormRedacted
- 6. T\_23\_94663 Officer Report CH94663.PDF
- 7. T\_23\_94663 PL\_Final Decision.PDF
- 8. Tech Guide 1 section 9.PDF
- 9. Related appeal Appeal Decision\_8714.PDF

## J. CONFIRMATION

### DECLARATION

1. I understand that:

- a) the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my appeal.
- b) details from this form, including my name, the site description and reasons for making this appeal may appear on the Appeals Casework Portal.

By signing this form I am agreeing to the above use of the information I have provided.

2. I have completed all sections of the appeal form and confirm that the details are correct to the best of my knowledge.

3. I have sent a copy of this appeal form and enclosures to the Council.

Signature Ben Abbatt

Date 19<sup>th</sup> April 2023

Name (in capitals) BEN ABBATT

On behalf of (if applicable) CRANBURY ESTATES LIMITED

**For more information about how we process your personal information please see "A Guide for Appellants (Tree Preservation Orders- consents for works)."**

**Please send the completed form and supporting documents to:**

Trees and Hedges  
Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Telephone: 0303 444 5000

or e-mail it to: [treeandhedgeappeals@planninginspectorate.gov.uk](mailto:treeandhedgeappeals@planninginspectorate.gov.uk)

### What happens next:

- 1. You must send a copy of this completed form to the Council including copies of any supporting documents you send to us.
- 2. When we receive your appeal form we will check it against background documents supplied by the Council before telling you whether your appeal is valid.
- 3. At the end of the appeal process we will send you the Inspector's decision, including the reasoning in writing.

## K. SUPPLEMENTARY SHEET

### J139.25.02.02 Grounds of Appeal

Works applied for in T/23/94663 were:

*“2136 oak Quercus robur: Overlong lateral branches over the adjacent garden to the south. Remedial works to reduce branches to an even horizontal canopy spread of 9m.*

*Reason; to reduce the potential for branch failure. As the tree is 22m high, a 9m canopy spread would be in balance with a more normal canopy form and allow for some regrowth.*

*The additional benefit is that as the branches have been reduced on the north side, branch reduction on the south side will help to balance the tree.*

*Application and works to be carried out at the request of the adjacent landowner to the south, 3 Portchester Rise, who has expressed concerns of the overlong branches over their garden and their potential to fail.”*

- Consent for *“Reduce lateral limbs extending south over 3 Portchester Rise by up to 3 m”* has been given in T/23/94663.
- Refusal for *“1no. Oak (Tag 2136) – Remedial works to reduce branches over the adjacent garden to the south to an even horizontal canopy spread of 9m”* has been given in T/23/94663.
- In the Officer's comments the tree officer states, *“The lowest lateral limb is approximately 12m”*.

The applicant and I are confused as a consented 3 m reduction of a branch 12m long will leave the branch 9m long, which has been refused in T/23/94663. Therefore, the applicant and I seek clarification of this issue.

Notwithstanding the above issue, the branch over Mr Double's property has been measured with a laser measuring device (Truepulse 200 <https://lasertech.com/product/trupulse-200-range-finder/> ) at 16m length (see email of the 12<sup>th</sup> January 2023). Therefore, following the consented works, the branch would be 13 m long. It is my view, as a Chartered Forester, Chartered Surveyor, Chartered Environmentalist, Professional Diploma in Arboriculture, Professional Member of the Arboricultural Association, Lantra Professional Tree Inspector, Lantra Professional Tree Inspector trainer and assessor, that the extent of works consented is insufficient to realistically and reasonably manage the issues that the tree presents to Mr Double and his wife for an appreciable period of time, nor that the works consented are reasonably implementable due to the diameter of the branch wood supporting a potential climber is likely to be insufficient. Such assessment by the planning authority ought reasonably to include the practical implementation of the works that they are asked to consider and subsequently consent and therefore familiarisation with current industry climbing best practice is a prerequisite for being able to determine the proposed works as part of a tree works application.

The tree officer understands that the 12m long branch is reasonable to reduce by 3 m as detailed in their consent and officers comments. Accepting that the branch is, in reality, 16 m; even the 3 m reduction to 13 m means that the tree officer ought reasonably to accept that further reduction is reasonable as they accept a 12m long branch is too long.

As detailed in the email of the 12<sup>th</sup> January 2023, overlong branches are more likely to fail. I believe that the tree officer accepts this principle. It is therefore appropriate that reasonable tree works are implemented to reduce the potential for reasonably foreseeable branch failure is reduced to a practical and normal level of risk. My view is that a 13 m remaining branch length is insufficient to sufficiently reduce the risk of branch failure for more than a 3 year period.

Foreseeable risk of failure and consequence of 3 m reduction: The concern of my client is that, with the asymmetrical canopy towards the dwelling, there is an increased potential for failure towards the dwelling and rear garden leading to foreseeable harm to people using the garden or damage to the property.

To reduce the potential for failure it is necessary to reduce the leverage towards the dwelling and garden.

The council's consent relates to a 3 m reduction in canopy. There is no evidence provided by the council of how they have come to such a consideration or evidence that such a reduction is sufficient to mitigate the risk. However, in accepting that remedial works are appropriate, on the basis of the consent given, they concur that the issue, failure towards the dwelling and garden, is a real and foreseeable risk and needs to be remediated.

It is my view that for a 3 m reduction to be implemented there is a continuing risk to the dwelling and that the works to implement the 3 m reduction would put the tree contractor at an unreasonable risk.

A 3 m reduction would be, at best, a temporary measure with anticipated regrowth within 5 years back to a similar point.

Additionally, such regrowth tends to be a greater density of twigs and foliage and therefore there is likely to be an increased weight and wind-sail as a result of the council specification. Therefore, there is a reasonable potential for an increase risk of failure within a 3 year period.

It is without doubt the council might argue that my client could then seek a repetition of the tree works. However, unlike the council, the resources (time and financial cost) are a limitation for members of the public and it is reasonable that the outcome of any consent ought to be longer time period than less than 3 years.

Climbing practice: Current climbing practice is overseen by the Health and Safety Executive. In its guidance <https://www.hse.gov.uk/treework/safety-topics/climbing-operations.htm> it states:

***“Tree climbing***

### ***What you need to know***

*The Work at Height Regulations 2005 do not ban climbing work but for all tree work involving work at height employers have a duty to plan the work and select appropriate work equipment make it as safe as possible.*

*The Regulations say that climbing work with a personal fall protection system - ropes and harness - can only be done if:*

- *A risk assessment has shown that the work can be done safely while using that system*
- *The use of other, safer work equipment (eg mobile elevating work platforms) is not justified (underlining my emphasis)*
- *The user and a sufficient number of available people have received training specific to the task, including rescue techniques.”*

The guidance is clear (see underlined section): trees should only be climbed where it is not feasible or reasonable to use a mobile elevating work platform (MEWP). In this instance, due to the narrow access along the footpath and the slope of the rear garden to 3 Portchester Rise, it is not feasible to use a MEWP and therefore the tree would need to be climbed to implement the tree works.

Due to the asymmetrical canopy the work position of any tree contractor carrying out the work to reduce the branches by 3 m will be on narrow diameter (less than 100 mm diameter) branches with the foreseeable potential for branch failure, particularly when additional loading of a 70 to 100 kilo tree contractor and equipment on the branch end is considered (tip loading / leverage). Due to the asymmetrical canopy, there are problems with identifying suitable anchor points above the point where the pruning is specified. Such works positioning is not recommended by the current guidance, Technical guide 1 Tree Climbing and Aerial Rescue by the Arboricultural Association published May 2021 due to the inherent increased risk of falling and subsequent branch failure. The specific sections of the Technical guidance is section 9 . As a result of the 3 m branch reduction specification detailed by the council and consented by the council, the tree contractor may be taking unnecessary unreasonable risks to achieve the outcome specified and consented by the planning authority. Therefore, the current consented works are contrary to specifically sections:

- 9.1.1 as there is insufficient tree structure to provide a reasonable anchor point.

- 9.1.2 as the climber is less able to keep the fall protection system taught due to the extremities of the tree canopy that is consented to be worked.
- 9.1.3 as the asymmetrical canopy has insufficient anchor point above the point 3 m from the distal point of the canopy the ability for the climber to lean away from and the fall arrest system is therefore compromised.

As the implementation of the 3 m reduction is, in effect, a consent that is not reasonable to implement, it fails the comparable planning conditions test <https://www.gov.uk/guidance/use-of-planning-conditions> (point 6: reasonable in all other aspects) as to require compliance with a works specification that puts the contractor outside the current industry guidance is unreasonable.

### Landscape

Tree 2136 contributes to the line of trees visible from the frontage to 3 Portchester Rise, but is not the principal feature. The image below is looking from Portchester Rise towards the specific tree 2136.



APPEAL SAL 1 Street view image from Google accessed 19<sup>th</sup> April 2023 showing evergreen hedge on the frontage of 3 Portchester Rise (with tree 2136 identified by red arrow) [https://www.google.co.uk/maps/@50.9877311,-1.3571237,3a,75y,5.19h,98.54t/data=!3m7!1e1!3m5!1sTP1iF3C2QZposvp\\_CRuccg!2e0!6sh](https://www.google.co.uk/maps/@50.9877311,-1.3571237,3a,75y,5.19h,98.54t/data=!3m7!1e1!3m5!1sTP1iF3C2QZposvp_CRuccg!2e0!6sh)

[https://streetviewpixels-pa.googleapis.com/v1/thumbnail?panoid=3DTP1iF3C2QZposvp\\_CRuccg%26cb\\_client=3Dmaps\\_sv.tactile.gps%26w%3D203%26h%3D100%26yaw%3D63.33755%26pitch%3D0%26thumbfov%3D100!7i16384!8i8192](https://streetviewpixels-pa.googleapis.com/v1/thumbnail?panoid=3DTP1iF3C2QZposvp_CRuccg%26cb_client=3Dmaps_sv.tactile.gps%26w%3D203%26h%3D100%26yaw%3D63.33755%26pitch%3D0%26thumbfov%3D100!7i16384!8i8192)



APPEAL SAL 2 Street view image from Google accessed 19<sup>th</sup> April 2023 showing public footpath to east of tree 2136 with other trees screening the view of tree 2136 (red arrow annotated trees 2136 cut stumps over adjacent garden to the north)

<https://www.google.co.uk/maps/@50.9880961,-1.3569312,3a,75y,249.32h,102.12t/data=!3m6!1e1!3m4!1sklbmjRPoZQevQfso8pTm2A!2e0!7i16384!8i8192>



APPEAL SAL 3 Street view image from Google accessed 19<sup>th</sup> April 2023 showing tree 2136 (identified by red arrow) from Oakfields to north of tree 2136.

[https://www.google.co.uk/maps/@50.9882628,-1.3570827,3a,75y,204.37h,114.3t/data=!3m7!1e1!3m5!1sS1AmN99avTilVTsbWZF55g!2e0!6shhttps:%2F%2Fstreetviewpixels-pa.googleapis.com%2Fv1%2Fthumbnail%3Fpanoid%3DS1AmN99avTilVTsbWZF55g%26cb\\_client%3Dmaps\\_sv.tactile.gps%26w%3D203%26h%3D100%26yaw%3D317.9154%26pitch%3D0%26thumbfov%3D100!7i16384!8i8192](https://www.google.co.uk/maps/@50.9882628,-1.3570827,3a,75y,204.37h,114.3t/data=!3m7!1e1!3m5!1sS1AmN99avTilVTsbWZF55g!2e0!6shhttps:%2F%2Fstreetviewpixels-pa.googleapis.com%2Fv1%2Fthumbnail%3Fpanoid%3DS1AmN99avTilVTsbWZF55g%26cb_client%3Dmaps_sv.tactile.gps%26w%3D203%26h%3D100%26yaw%3D317.9154%26pitch%3D0%26thumbfov%3D100!7i16384!8i8192)

Other views from the west are not possible to show as the Google Streetview does not cover public footpaths.

Therefore, the specific amenity that tree 2136 contributes to the wider landscape is visible from the public realm, although as a contributing factor, rather than a principal feature. This aspect of diminished specific landscape value contribution ought to be considered in relation to the works sought. It is also worth noting that tree 2136 is to be retained as a contributory factor to the visual amenity of the line of trees.

It is worth noting that there were no objections from the neighbouring properties relating to the application for tree works for tree 2136.

It is clear when visiting the site, that this specific property over which the public footpath travels, has many trees within its boundaries and the client has sought to maintain these trees where feasible. However, the circumstances ought reasonably to allow for its practical management to aid the retention of tree 2136 in the landscape and to mitigate the acknowledged risk that the tree presents.

A recent Planning Appeal APP/T0355/8714 has recently allowed an appeal on similar grounds and is provided for context and consideration. It is worth noting in APP/T0355/8714, the application was to remove the tree, however, this application has seeks to retain the tree, albeit at a smaller canopy extent than current.

To conclude:

- The council concurs that management is appropriate through its consent of a 3 m branch reduction.
- The council believes that a 3 m branch reduction might temporarily diminish the risk the tree presents but has not provided any quantified evidence to demonstrate the extent of risk reduction.
- The likelihood is that within a 3 year period the risk of failure will have returned and the risk of failure may have increased as a result of the 3 m reduction works (due to increased twig and leaf density increasing weight and wind-sail area).
- The current safe working practice is that a MEWP is used.
- Due to the site circumstances a MEWP is not reasonable to be used.
- There is no real safe anchor point for a tree contractor to work from that would support the tree contractor to achieve safe working practice to carry out the 3 m branch reduction.
- As the implementation of the 3 m branch reduction is, in effect, a consent that is not reasonable to implement it fails the comparable planning conditions test <https://www.gov.uk/guidance/use-of-planning-conditions> (point 6: reasonable in all other aspects).
- The view of tree 2136 is contributory to a group of trees and is to be retained and will therefore remain a contributory factor to the visual amenity of the local area. Therefore, the character of the local area is likely to remain unaffected.
- No neighbour objections to the proposed works for tree 2136.

It appears to my client that the planning authority has not reasonably balanced their consideration of the accepted foreseeable risk of tree failure, risk to the tree contractor implementing the limited consent, the unbalanced nature of the tree due to works on the north side of the tree, and (very limited) risk to the landscape. Therefore, my client requests that the planning inspectorate review the application and my client respectfully requests that the appeal is allowed and consents the reasonable tree works applied for to allow for the reasonable retention of the tree in the landscape whilst reducing the unreasonable risks to the adjacent dwellings and gardens.

Ben Abbatt

19<sup>th</sup> April 2023