



## 1.0 INTRODUCTION

- 1.1 Four applications from British Associated Airports Ltd (Southampton Airport) (BAA) were received on 13<sup>th</sup> January 2003 (see Appendix A. All appendices will be available for viewing at the Members rooms and Local Services Reception). The applications are for felling and tree surgery works to trees protected by Tree Preservation Orders (TPO's) and are summarised as follows:

Tree Preservation Order	Address	Species	Works Applied For	Reason Given For Works
The Southampton(174-194 Midanbury Lane) Tree Preservation Order 2000	188 Midanbury Lane	1 x Corsican Pine	Fell	Aviation Safety
The Southampton (Dell Road) Tree Preservation Order 1976	14 Castle Road	1 x Lombardy Poplar	To reduce in height to the level of the residential building on site	Aviation Safety
The Southampton (Townhill Park/Cutbush Lane) Tree Preservation Order 1956	Marlhill Copse adjacent to 11 St. Helena Gardens	2 x Monterey Pines	Fell	Aviation Safety
	Marlhill Copse to rear of 8 – 11 Moat Hill	5 x Monterey Pines 5 x Corsican Pines 1 x Scots Pine 1 x Dead Larch 20 x Sycamore	Fell	Aviation Safety

## 2. BACKGROUND

### 188 Midanbury Lane

- 2.1 The Corsican pine at 188 Midanbury Lane is individually protected as T2 by the Southampton(174-194 Midanbury Lane) TPO 2000 (see Appendix B). This order was confirmed on 8<sup>th</sup> January 2001 without modifications, following the withdrawal of an objection.
- 2.2 There have not been any previous applications to fell this tree. The reason for

the order was to protect trees within Midanbury Lane following a threat of felling a tree in another property along the road (not airport related).

#### 14 Castle Road

- 2.2 The Lombardy poplar at 14 Castle Road is protected by the Southampton (Dell Road) TPO 1976 (See Appendix B), as part of group G48. This order was confirmed on 8<sup>th</sup> September 1976 and the reason for placing an order on the trees in this vicinity was a petition sent to the Council by the local residents requesting that the trees be protected.

#### Marhill Copse

- 2.3 Marhill Copse lies to the south of Mansbridge Road (A36) on land which rises southwards to a ridge along which passes the rear access drive to Townhill Park House. The land again rises to a second ridge to the rear of Moat Hill, where the trees in question are situated.
- 2.4 Marhill Copse appears to have been planted over a considerable period of time and contains many mature specimens. The copse acts as a natural barrier between the residential area to the south completely screening it from any viewpoint along the River Itchen and M27 at this point.
- 2.5 Marhill Copse lies within a woodland designation (W1) of the Southampton (Townhill Park/Cutbush Lane) TPO 1956 (see Appendix B). In 1983 an application to fell and pollard numerous trees within Marhill copse was made by the Air UK Ltd (see Appendix C). The application was refused on the grounds that:



"The loss or pollarding of the trees in question would be detrimental to the wooded character and amenity of the area."

"There is no reason within the T.P.O. regulations for the action requested to be taken."

2.6 No appeal action was taken against the refusal.

### 3.0 THE APPLICATION

3.1 BAA have a duty under the Civil Aviation Act (1982) to take every reasonable step to ensure take off and approach surfaces, to and from the airport, are clear of obstacles (See Appendix A). There are two types of obstacle, those which are permanent (typically buildings) and those which are removable. Trees fall into the removable obstacle category and the guidance suggests that these are reduced in height until they are the same height as a permanent obstacle.

3.2 The height at which an object becomes an obstacle is based on a minimum climb out angle which a plane can obtain with one power unit (engine) operative. The plane must be able to clear the object by 35 feet should all but one of its engines fail when taking off. Any tree which grows into this climb surface becomes a removable object and is required to be reduced in height until it is either below the surface or the same height as a permanent obstacle.

3.3 The species of tree to be reduced will very much influence what works can be carried out. Pine trees do not respond well to extensive crown reduction as they do not readily have the ability to re-grow from large pruning wounds. It has therefore been considered by BAA with the advice from CBA Ltd (Arboricultural consultants)(see Appendix D) that it would be more appropriate to apply to fell the trees than to carry out "topping" works that would leave only tree trunks.

3.4 Where the species of tree does dictate that it could be successfully crown reduced ie in the case of 14 Castle Road, the application is for a crown reduction to bring the tree height down to the same level as the adjacent building.

3.5 BAA claim a number of exemptions under the Civil Aviation Act (1982) and Town and Country Planning (Trees) Regulations 1999 (see Appendix A).

#### 4.0 OBJECTIONS

4.1 There is no legal requirement to consult local residents in respect of Tree Applications, but this being an unusual case, it was considered appropriate to carry out some public consultation. The owners of the properties on which trees are situated were specifically consulted. To cover the wider area Bitterne Park Residents Association, Townhill Park Residents Association and Local Ward Councillors were also consulted. Site notices were placed in prominent view on public highways. A copy of the consultation letter is attached (see Appendix E). A site visit was also carried out by the Tree Officer with representatives from local residents groups and airport action groups in order to identify the trees in question at Marlhill Copse. During the consultation period, the case was also reported by the local press.

4.2 In total 415 letters of objection were received along with 2 letters giving approval to the proposals, by the closing date of 17<sup>th</sup> February 2003. A further 10 objection letters were received after 17<sup>th</sup> February and before submission of the final report. Copies of all letters are available for viewing in the Members rooms at the Local Services Reception.

4.3 The objections were essentially all along a similar line and the key points can be summarized as follows:

- Loss of visual amenity which would change the character of the area and devalue properties
- Loss of screening and noise barrier to M27
- Loss of wildlife habitat
- Loss of stability to steep bank once root systems have died
- The trees were there before the airport and their removal could set a precedent for further tree removal on this side of the city

4.4 The letters also expressed some concerns about airport usage and these can be summarised as follows:

- Tree removal would enable larger planes to use the airport
- There is a procedure that should be followed whereby planes should take off along the line of the river and therefore avoid flying over the trees
- Tree removal would allow planes to fly lower

4.5 Some residents also made observations that are summarised as follows:

- The aircraft are higher over the trees when taking off than when landing
- The aircraft are nowhere near the trees when taking off

## 5.0 THE TREES

5.1 No mention as to tree health has been made within the application, however it was considered prudent for the Tree Officer to carry out a cursory inspection of the trees, where they were easily accessible, in order to ascertain if there were any obvious defects. Regardless of a TPO it is still the responsibility of the owner to maintain their trees in a safe manner and to carry out any necessary inspections to ensure the trees are safe.

#### 188 Midanbury Lane

- 5.2 This is a large, mature Corsican Pine situated in the front garden of the property. The cursory inspection did not bring to light any obvious defects in this tree. The tree appeared to be in good health and vigour (see Appendix F photograph 1).

#### 14 Castle Road

- 5.3 This is a medium sized, middle aged to mature Lombardy Poplar growing along the south boundary of the property. The cursory inspection did not bring to light any obvious defects in this tree. The tree appeared to be in good health and vigour (See Appendix F photograph 2).

#### Adjacent 11 St Helena Gardens

- 5.4 These are two large, mature Monterey pines identified as trees 1 and 2 on the attached plan (see Appendix F photograph 3). Tree numbered 1 appears in good health with no obvious defects. Tree numbered 2 has an obvious defect at its base which would suggest internal decay. There are also remnants of a root and butt decay fungus called *Heterobasidion annosum*. This is a serious decay fungi of coniferous trees and can render the tree structurally unsafe. This tree could be felled under Section 198(6)(a) of the Act as an exemption.



## To Rear 8 – 11 Moat Hill

- 5.5 These trees are predominantly large, mature Monterey and Corsican pines and a cursory inspection of these trees found them, on the whole to be in good health (see Appendix F photograph 4). There was signs of wind damage and past storm damage in some of the crowns and this is to be expected in trees of a mature age. There is also a dead Larch which could be felled under Section 198(6)(a) of the Act as an exemption.
- 5.6 Monterey Pines were introduced to England in 1833 and Corsican Pines were introduced to England in 1759. It would be expected that these species of trees could have a life span of up to 150 years and should attain their full size by 80 to 100 years. It is very difficult to age a tree as there are many factors involved in its development, however a height above ordnance datum (AOD) was taken in 1982 and there is also a current height AOD.
- 5.7 The height AOD in 1982 was 38.3m and in 2002 was 40.56m, this shows that in twenty years the trees have grown approximately 2.26m (It should be noted that the figure for 2002 is an average for the group of trees). This indicates that the trees have, on average, only grown 10cm - 12cm a year. This growth rate would indicate that the trees are mature (in the last third of their life) and therefore do not have the potential to greatly increase in size in the future. They are likely to be somewhere between 100 and 150 years old. Given their current health I would expect then to have a safe useful life expectancy of in excess of ten years.
- 6.0 THE ISSUES
- 3.1 In order to give the applications full consideration, further advice and information was requested from BAA (see Appendix G). A reply was received on 18<sup>th</sup> February and the outcome of this is discussed in the following paragraphs.



- 6.2 A profile drawing was received and clearly shows the height of the trees as vertical lines, which penetrate the 1% climb surface. It also shows the height of the ground level which also penetrates the climb surface. Unfortunately it does not show the house heights. It does appear from this drawing that a large percentage of the safety climb surface is unobtainable as it cuts directly into the ground level. Air crew have to take permanent obstacles into consideration by configuring the flight settings and weight distribution of the aircraft.
- 6.3 As the permanent obstacles have to be avoided by a safety margin anyway it would be more realistic to show what the obtainable flight path is to avoid permanent obstacles and if trees then protrude into this there may be scope for crown reduction. It is likely that the trees protrude much less into this type of flight path than the unobtainable 1% quoted.
- 6.4 BAA have supplied a list of aircraft accidents throughout the UK where trees have been a contributory factor (see Appendix G), but have not supplied any data specific to Southampton Airport. It is therefore assumed that there have not been any significant incidences that needed to be reported, with regard to tree problems.
- 6.5 Although each and every application made under the TPO legislation is considered on its own merits, it is likely that the decision made with regard to these four applications could set a precedent for future applications of a similar nature. If a decision to grant consent were to be given then it may have implications on tree removal throughout the east side of the city within the flight path surfaces. Given the topography of the area it is likely that many trees would be lost as they encroach into the safety climb surface. The extent to which trees would need to be felled can be seen on the profile drawing supplied by BAA.
- 6.6 With particular reference to the trees in Marlhill Copse, these trees are growing on a fairly steep slope and it is highly likely that their root systems have an influence in retaining the soil of the bank. Their removal could therefore result

in the bank being eroded and land slipping. This in turn may affect adjacent land and properties. If a permission were given to fell these trees BAA should be approached by the land owners to ensure they have made provision to prevent soil erosion.

## 7.0 ENVIRONMENTAL IMPLICATIONS

7.1 BAA have been made aware of the various Acts of parliament they would have to comply with should they be given permission to fell the trees. A felling license would need to be issued by the Forestry Commission and an environmental impact study would need to be carried out, in particular, with regard to Bats and Badgers (English Nature will need to give advice on this). It may then be necessary to apply for a license from the Department for Environment, Food & Rural Affairs, to disturb or move the wildlife.

7.2 The removal of any of these trees will have a significant impact on the local and wider environment and its enjoyment by the public.

## 8.0 LEGAL IMPLICATIONS

8.1 The consent of the Local Authority is necessary to undertake tree works unless the following exemptions apply:—

- (1) to the cutting down, topping or lopping of any tree that is dying or dead or has become dangerous;
- (2) to the cutting down, topping or lopping of any tree:
  - (a) in compliance with an obligation imposed by or under an Act of Parliament;
  - (b) in pursuance of the power conferred on the Postmaster General by virtue of Section 5 of the Telegraph (Construction) Act, 1908;
  - (c) in pursuance of the powers conferred by Section 24 of the Regulation of Railways Act, 1868;

- (d) for the purpose of preventing or abating a nuisance;
- (e) in the case of a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;
- (f) by or at the request of an Electricity Board within the meaning of the Electricity Act 1947, where such tree obstructs the construction by the Board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act, 1919, and the Electric Lighting Act, 1882, or interferes or would interfere with the maintenance or working of any such line.

- 8.2 This information forms part of the second schedule of the statutory T.P.O. documentation protecting the trees in question.
- 8.3 Mr M Jefferies of the Office of The Deputy Prime Minister (ODPM) was contacted by telephone and confirmed that in ODPM's opinion BAA's statutory undertakers rights only applied to operational land. However, this is currently a moot point and the Council's Legal department and BAA's Legal Department are working to resolve this question.
- 8.4 Therefore BAA are not considered to have provided enough evidence at this time to suggest that they do have the necessary statutory powers to enforce any tree works to be undertaken beyond their operational land.
- 8.5 Even if permission were to be granted, under the T.P.O. regulations, for specific works to take place, the consent of individual landowners would be required by BAA before they could enter the land.

8.6 Under each of the TPO's there is a right to claim compensation should an application be refused or granted consent with conditions and the tree be proven to have caused the applicant financial loss. Dependant on the age of the TPO and the circumstances behind any claim, the Council would have to determine to what extent the trees contributed to the financial loss and therefore what compensation the claimant was entitled to.

8.7 If permission is refused then the applicant does have a right of appeal to the Secretary of State

## 9.0 CONCLUSION

9.1 The removal of these trees would have a significant impact on the local environment and its enjoyment by the public.

9.2 BAA have not been able to provide the evidence to show that they have statutory undertakers rights to remove the trees outside the control of their operational land.

9.3 The profile drawing of the flight surface suggests that it is impossible to attain a safe 1% climb from the runway, without hitting the ground. A better approach to assessing by how much the trees need to be crown reduced would be to show the actual obtainable flight path given the permanent obstacles.

9.4 If the trees in Marlhill Copse are felled there will be an impact on the local wildlife. BAA are aware of the need to contact English Nature and DEFRA with regards to licences if Badgers or Bats are to be disturbed.

9.5 Before the trees in Marlhill Copse can be felled BAA will need to obtain a felling licence from the Forestry Commission.



9.6 Soil erosion at Marhill Copse is a concern and BAA must satisfy the Council that they will prevent this from happening if consent is given for felling.

#### 10.0 RECOMMENDATION

10.1 It is therefore recommended that all four applications are refused consent for the following reasons:

The loss or crown reduction of the trees in question would have a significant detrimental impact to the wooded character and amenity of the area and its use by the public.

10.2 If the Panel is minded to grant permission then the following conditions should be included:

Replacement trees will be planted at a ratio of 2 replants to 1 tree removed. The size, species and location to be agreed in writing with the Council and the trees to be planted before March 2004

Before any felling is started an environmental impact study will be made and a method statement supplied to the Council with regard to minimising wildlife disturbance.

Before any felling a method statement will be supplied to the Council with regard to minimising the potential of landslip.



REASON

To ensure that the transportation impact of the development is acceptable.

105.

DECISIONS ON PLANNING APPLICATIONS MADE UNDER DELEGATED POWERS

The Panel received and noted the report of the Development Control Manager listing decisions on planning applications made under delegated powers. (Copy of report circulated with agenda and appended to signed Minutes).

106.

APPLICATION FOR WORKS TO TREES PROTECTED BY A TREE PRESERVATION ORDER

The Panel considered the report of the Head of Local Services concerning four applications from British Associated Airports Ltd (Southampton Airport) (BAA) for felling and tree surgery works to trees protected by tree preservation Orders (TPO's). The application was made under the duty in the Civil Aviation Act (1982) to take every reasonable step to ensure take off and approach surfaces to and from the airports were clear of obstacles. (Copy of report circulated with agenda and appended to signed Minutes.)

Mrs Fletcher, Operations Director Southampton Airport was present and with the consent of the Chair addressed the meeting. In addition the following were also present:- Councillors Williams and Impey, Susan Batchelor and John Hamsware from Southampton Airport, Mr K Pugh, J D Ring, Terry Millott, , J Bull, D J Luriston, B J Luriston, Mrs Woodford, Mr Curtis, Mrs Finch, John Hooke, Barbara Elmore, I Diaper, R E Diaper and Melody Manning.

JB



RESOLVED that the matter be deferred to a future meeting pending further legal advice regarding interpretation of the provisions of the Town and Country Planning Act 1990:

107. TREE PRESERVATION ORDERS UNDER TOWN AND COUNTRY PLANNING ACT 1990

The Panel received and noted the report of the Head of Neighbourhood Services listing decisions taken under delegated powers in respect of trees subject to Tree Preservation Orders made under the Town and Country Planning Act 1990. (Copy of report circulated with agenda and appended to signed Minutes.)

108. PLANNING APPEALS

The Panel received and noted the report of the Development Control Manager listing decisions taken at Planning Appeal. (Copy of report circulated with agenda and appended to signed Minutes.)

109. PLANNING ENFORCEMENT ACTION

The Panel noted the report of the Solicitor to the Council concerning the current situation regarding legal actions prepared or served by Legal Services. (Copy of report circulated with agenda and appended to signed Minutes).

8<sup>th</sup> April 2003

*Jill Boston*

CHAIR

