

# APPENDIX (3)

Your reference:

Our reference: RA03.ACC0014-0001

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4<sup>th</sup> August 2017

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PLANNING TEAM

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Dear Sirs,

**OBJECTION to Bromsgrove District Council Tree Preservation Order (11) 2017 dated 4<sup>th</sup> July 2017  
Land Adjoining 73 Linthurst Newton Blackwell**

We write on behalf of Access Homes LLP to **OBJECT** to Bromsgrove District Council Tree Preservation Order (11) 2017 which was made by Bromsgrove District Council on 4<sup>th</sup> July 2017 ("the TPO").

Access Homes LLP are the freehold owners of the Land Adjoining 73 Linthurst Newton Blackwell, to which the TPO relates ("the Site").

This objection is made on two main grounds:

1. The making of the TPO in its current form does not meet the required legal and planning policy tests; and
2. The actions of Bromsgrove District Council ("the Council") over the last twelve months throughout both the process of assessing the merits of protecting the Site by way of a Tree Preservation Order, and also dealing with associated matters, have contained repeated errors, inconsistencies, and fundamental legal flaws.

The basis for these objections is set out substantively below.

## **1. Objection to the extent and form of the TPO**

No substantive justification has been given by the Council for the extent of the protection in the TPO, nor has an assessment of the trees selected for protection been provided.

Birmingham T. 0121 454 0739 F. 0121 455 7211 53 Calthorpe Road Edgbaston Birmingham B15 1TH  
Cheltenham T. 01242 224422 F. 01242 518428 Ellenborough House Wellington Street Cheltenham GL50 1YD  
Hereford T. 01432 349670 F. 01432 349660 Thorpe House 29 Broad Street Hereford HR4 9AR  
Thames Valley T. 0118 911 1206 F. 0118 900 7874 100 Longwater Avenue Green Park Reading RG2 6GP  
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This failure is a breach of the requirements of Regulation 5(2)(a) of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 ("the Regulations"), which require the "reasons for making the order" to be served on all parties with a legal interest in the land affected.

Firstly, it is important to note that the Council did not serve notice of the TPO on Access Homes LLP as freehold owner in breach of Regulation 5(1) of the Regulations. The Council is well aware from the Court proceedings relating to the previous tree preservation order for the Site that Access Homes LLP is the registered owner of the land affected by the TPO, however the Council still failed to serve it.

Secondly, even if the Council had served notice of the TPO on Access Homes LLP, the only justification given in the notice accompanying the TPO (which Access Homes LLP has now obtained following a direct request to the Council) was in the form of a generic statement, which simply stated:

**"The trees provide special amenity value and the Tree Preservation Order is made in the interests of amenity".**

The Council's failure to provide substantive reasons for making the TPO is also, in our view, a failure to carry out a lawful consultation. It is settled law that, if a consultation exercise is undertaken, then it must be carried out properly (see the case of *R v North East Devon HA ex p Coughlan*). This means that it must, amongst other things, include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration of the same and thus enable an intelligent, and fully-informed, response.

The Council is under a duty to address relevant arguments raised during the consultation exercise. It is not entitled to assume that, because it has complied with the statutory timescales for consultation, that the consultation exercise is automatically sufficient. This is particularly the case where there is clear evidence to the contrary, for example our client's persistent requests for further information, as set out further below.

The failure to provide substantive "reasons" for making the TPO is also grounds for reasonable doubt as to whether the TPO has been made in accordance with the Council's legal powers to make tree preservation orders as provided by Section 198 of the Town and Country Planning Act 1990 ("TCPA 1990"), or whether the making of the TPO is ultra vires.

The legal power for the Council to make the TPO in Section 198(1) of the TCPA 1990 expressly requires that tree preservation orders may only be made where it appears to the local planning authority that "***it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands***".

It would be irrational, and therefore, unlawful for the Council consider it expedient to protect trees without the Council having considered in detail the Government's planning policy guidance in relation to the making of tree preservation orders.

This guidance is provided by the Planning Practice Guidance ("PPG"), which makes clear that prior to making the TPO, the Council should to be able to "***show that protection would bring a reasonable degree of public benefit in the present or future***" (PPG para 36-007-20140306).

The PPG also makes clear that in assessing amenity "***trees or at least part of them should normally be visible from a public place such as a road or footpath, or accessible by the public***" (PPG para 36-008-20140306), and further that "***Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public***" (PPG para 36-007-20140306).

We are aware that the Council's Tree Officers have undertaken numerous visits to the Site over the last twelve months, and so a reasoned justification for the making and extent of the TPO in accordance with the PPG should be available and disclosed. We are also aware that the justification and 'TEMPO' scores have been requested by our client's Arboricultural Consultant on a number of occasions, and the Council has failed to provide these repeatedly.

In fact, a large number of attempts have been made by our firm, our client's Arboricultural Consultants, and our clients directly to engage with the Council in relation to the appropriate level of protection of trees on this Site, but the Council has consistently declined to engage.

Our clients have also made a formal request for the disclosure for information pursuant to the Environmental Information Regulations 2004, which the Council has failed to respond to within the required statutory timeframes (discussed further below). The result of these repeated errors on the part of the Council has meant that there has been no way of our clients obtaining the reasoned assessment of the Council's perceived merits of the TPO in advance of needing to submit this Objection. This puts our client at a considerable disadvantage, and is in breach of the various legal requirements set out above and below.

Due to the lack of information provided by the Council, we enclose an assessment of the TPO prepared on behalf of Access Homes LLP by Barton Hyett Arboricultural Consultants. This sets out our client's objection to the extent of the TPO on the basis of the failure to meet the requirements of the PPG guidance in assessing the amenity value of the trees on the Site.

The enclosed document prepared by Barton Hyett should be treated as a formal part of our client's objection to the extent of the TPO.

## **2. Unlawful Actions and Errors of Bromsgrove District Council**

As the Council is aware, our client has already incurred considerable inconvenience and expense as a result of the Council's unlawful actions in relation to the making of tree preservation orders and other related failings in relation to the Site.

We are aware that Council has also incurred considerable expense due to its actions, which costs will have been met at public expense.

In particular the Court action which resulted in the original tree preservation order made by the Council in relation to the Site last year, Bromsgrove District Council Tree Preservation Order (13) 2016, being quashed by Court Order on 20<sup>th</sup> June 2017 ("the Court Order"), due to the Council's unlawful actions in the making of that tree preservation order.

The High Court of Justice also ordered the Council pay from public money our client's legal costs due to the nature of the Council's errors.

In addition to the errors identified in the Court action, there have been a number of further issues as regards to the actions and conduct of the Council in connection with the TPO and related matters. These include:

1. The Council's failure to serve notice of the TPO on all parties with an interest in the land affected by the TPO, in breach of Regulation 5(1) of the Regulations;

2. The Council's failure to provide reasons for the making of the TPO in breach of Regulation 5(2)(a) of the Regulations and potentially Section 198(1) of the TCPA 1990;
3. The TPO being made by the Council in a form which is, in part, more restrictive than the form of Tree Preservation Order annexed to the Court Order, and so therefore being in breach of the Court Order;
4. The Council's failure to pay our client's legal fees as set out in the Court Order within the timeframe required by Civil Procedure Rules Part 44.7;
5. The Council's failure to act fairly, consistently, and impartially with regard to the consultation of persons interested in the tree preservation orders at the Site, and in particular the illogical selection of consultees, and the inconsistent redaction of names, addresses, and signatures of consultation responses; and
6. The Council's failure to respond to our client's formal request for the disclosure of information relating the making of the tree preservation orders at the Site dated 21<sup>st</sup> June 2017 in breach of Regulation 5(2) and 7(1) of the Environmental Information Regulations 2004.

The above are all clear breaches of the Council's legal obligations under statute and / or Court Order which have occurred since the High Court quashed the previous tree preservation order.

It is unclear whether the errors are sheer incompetence or are a deliberate and unlawful attempt to frustrate due process in relation to the TPO, but in either case, this letter illustrates a number of clear failings on the part of the Council which our client will consider challenging in Court.

We hope that, in the circumstances, the Council will scrutinise its reasons for making the TPO in accordance with the national policy in the PPG, and will by return disclose the Council's formal assessment of the perceived amenity of the trees proposed to be protected on the Site to our client, together with a reasoned justification for the making of the TPO.

The failings of the Council in relation to the request for disclosure under the Environmental Information Regulations are being pursued separately, and our client reserves its position with regard to taking further action in relation to the Council's failings through the Courts.

Yours faithfully

*Harrison Clark Rickerbys*

**HARRISON CLARK RICKERBYS LIMITED**

*Encl – Barton Hyett objection*