

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
PLANNING COURT

IN THE MATTER OF LAND ADJACENT TO 73 LINTHURST NEWTON,
BLACKWELL

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 288 OF THE
TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

ACCESS HOMES LLP

Claimant

AND

BROMSGROVE DISTRICT COUNCIL

Defendant



CONSENT ORDER

Upon the application and grant of permission for statutory review of the Defendant's decision dated 9 January 2017 to confirm Tree Preservation Order No. 13 of 2016 relating to Trees on Land at the side and rear of 73 Linthurst Newtown, Blackwell (the "Existing Tree Preservation Order"),

TAKE NOTICE THAT the Claimant and the Defendant agree to an Order in the following terms:

UPON the Defendant agreeing to consent to judgment on the grounds of the Claim set out in the Schedule 1 hereto

AND UPON the Defendant making a new Tree Preservation Order in a form which shall be no more restrictive than the plan and schedule attached to this order at Schedule 3 ("the New Tree Preservation Order"), SAVE THAT the Claimant does not agree the extent of the proposed Tree Preservation Order and reserves the right to make further objections

AND UPON the Claimant agreeing not to or not to permit or allow any other person to:

- (a) Cut down, top, lop, uproot, wilfully damage, or wilfully destroy or;
- (b) Cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of the trees specified in the Schedule to the Existing Tree Preservation Order (except as is permitted by any application under Part 4 of Town and Country Planning (Tree Preservation)(England) Regulations 2012/605 including the Tree Works Approvals reference TPO17/010 granted conditionally by the Defendant on 5 April 2017 and TPO17/011 granted conditionally by the Defendant on 7 April 2017)

Until the new Tree Preservation Order is made by the Defendant PROVIDED the New Tree Preservation Order is made within 14 days of the date of the deemed service of this Consent Order, endorsed by the Court.

BY CONSENT IT IS ORDERED THAT:

1. Bromsgrove District Council Tree Preservation Order No.13(2016) dated 12 January 2017 shall be quashed;
2. The Defendant shall pay the Claimant's costs in the agreed sum of £11,743.91 (Eleven Thousand, Seven Hundred and Forty-Three Pounds and Ninety-One Pence).

Signed on behalf of the Claimant


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Name: ROSALIND ANDREWS

Position: SOLICITOR

Organisation: HARRISON
CLARK RICKERBYS

Dated:8th.....June...2017

Signed on behalf of the Defendant


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Dated: ...7 June 2017.....

Name: CLARE FLANAGAN

Position: PRINCIPAL SOLICITOR

Organisation: BROMSGROVE DISTRICT
COUNCIL

Consent order made
as agreed by the
parties



AC Lawyer
14/6/17

SCHEDULE 1

Upon further investigation and pursuant to ground two of the claim, the Defendant considers it reasonable and proportionate to amend the extent of the trees and woodlands protected under section 198 of the Town and Country Planning Act 1990 as in the schedule of the New Tree Preservation Area.

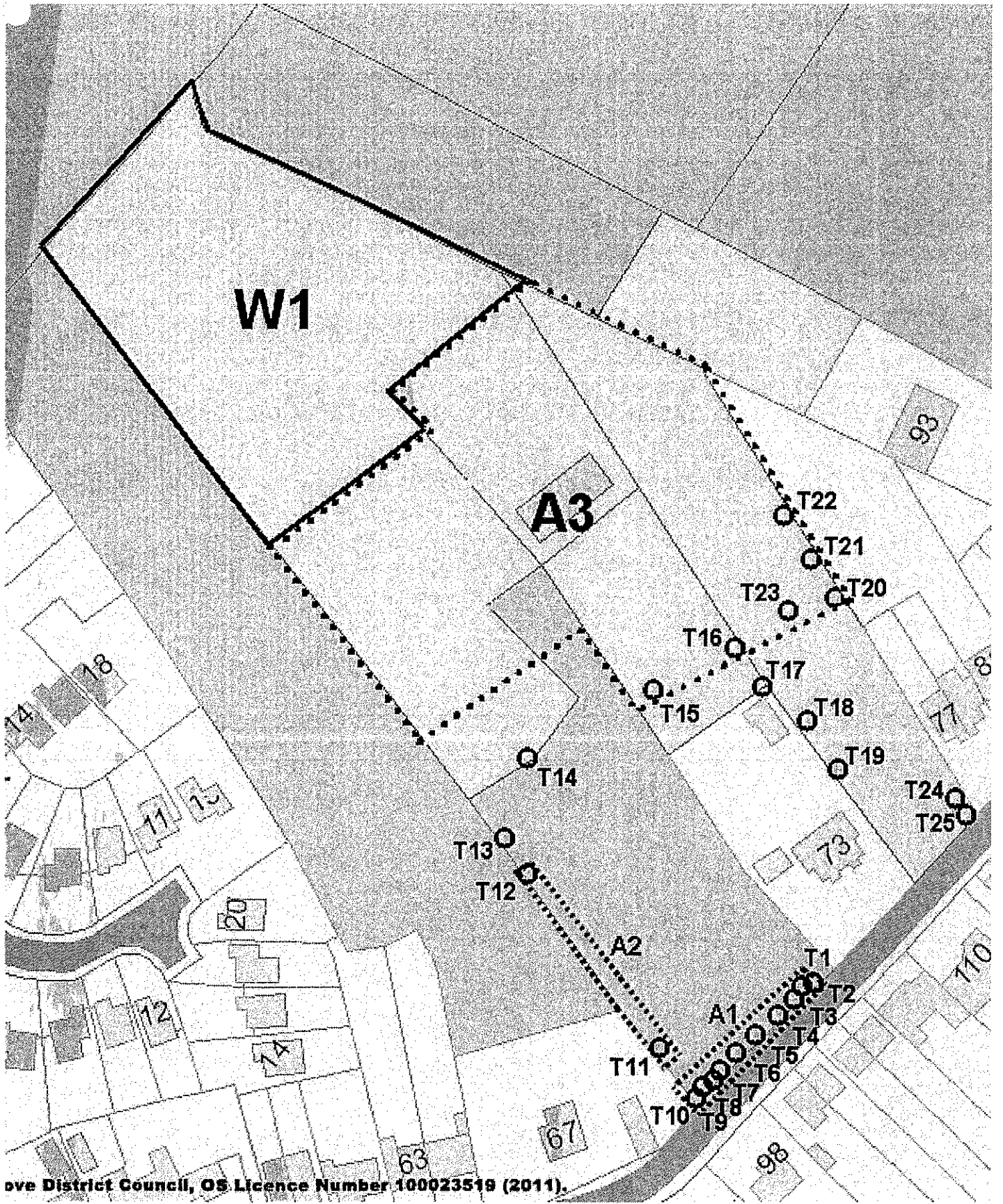
Also pursuant to ground three of the claim, irregular procedure at the site visit such as to give the appearance of procedural unfairness.

SCHEDULE 2

STATEMENT OF MATTERS JUSTIFYING THE PROPOSED AGREED ORDER

1. The parties agree that the attendance of the site visit by the tree officer without the Development Control Manager, as is the usual practice of the Defendant, is sufficient in the circumstances of this case to give the impression of procedural unfairness.
2. In light of further information to and assessments by the Defendant's tree officers, the Defendant agrees that the area protected by a tree preservation officer should be reduced. While most of the woodland designation in the Existing Tree Preservation Order is similarly designated as woodland by the Forestry Commission and Natural England, additional site visits have demonstrated that the amenity value of the southern area can be adequately protected by an area order directed towards the established older trees of the site.

SCHEDULE 3
PLAN AND SCHEDULE FOR THE NEW TREE PRESERVATION ORDER



TPO (13) 2016 – Revised First Schedule

Trees specified individually
(encircled in black on the map)

<u>No. on Map</u>	<u>Description</u>	<u>National Grid Reference</u>		<u>Situation</u>
T1	Cypress	399763	272444	Land adjacent 73 Linthurst Newtown, Blackwell
T2	Cypress	399762	272443	Land adjacent 73 Linthurst Newtown, Blackwell
T3	Spruce	399758	272439	Land adjacent 73 Linthurst Newtown, Blackwell
T4	Cypress	399754	272435	Land adjacent 73 Linthurst Newtown, Blackwell
T5	Oak	399751	272431	Land adjacent 73 Linthurst Newtown, Blackwell
T6	Chestnut	399747	272427	Land adjacent 73 Linthurst Newtown, Blackwell
T7	Spruce	399742	272424	Land adjacent 73 Linthurst Newtown, Blackwell
T8	Cypress	399741	272422	Land adjacent 73 Linthurst Newtown, Blackwell
T9	Chestnut	399738	272420	Land adjacent 73 Linthurst Newtown, Blackwell
T10	Ash	399737	272416	Land adjacent 73 Linthurst Newtown, Blackwell
T11	Ash	399729	272427	Land adjacent 73 Linthurst Newtown, Blackwell
T12	Yew	399703	272464	Land adjacent 73 Linthurst Newtown, Blackwell
T13	Ash	399699	272471	Land adjacent 73 Linthurst Newtown, Blackwell
T14	Ash	399702	272485	Land adjacent 73 Linthurst Newtown, Blackwell
T15	Chestnut	399729	272499	Land adjacent 73 Linthurst Newtown, Blackwell
T16	Maple	399746	272508	Land adjacent 73 Linthurst Newtown, Blackwell
T17	Willow	399751	272501	Land adjacent 73 Linthurst Newtown, Blackwell
T18	Yew	399759	272496	Land adjacent 73 Linthurst Newtown, Blackwell
T19	Maple	399765	272485	Land adjacent 73 Linthurst Newtown, Blackwell
T20	Ash	399767	272519	Land adjacent 73 Linthurst Newtown, Blackwell
T21	Maple	399763	272525	Land adjacent 73 Linthurst Newtown, Blackwell
T22	Ash	399757	272534	Land adjacent 73 Linthurst Newtown, Blackwell

T23	Apple	399758	272517	Land adjacent 73 Linthurst Newtown, Blackwell
T24	Holly	399790	272479	Land adjacent 73 Linthurst Newtown, Blackwell
T25	Holly	399792	272475	Land adjacent 73 Linthurst Newtown, Blackwell

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

<u>No. on Map</u>	<u>Description</u>	<u>National Grid Reference</u>		<u>Situation</u>
A1	All Holly, Hazel & Yew trees within A1	399749	272432	Land adjacent 73 Linthurst Newtown Blackwell
A2	All Holly, Hawthorn & Yew trees within A2	399717	272445	Land adjacent 73 Linthurst Newtown Blackwell
A3	All trees of whatever species of trunk diameter 100mm or greater at 1.5m within A3.	399709	272538	Land to the rear of 73 Linthurst Newtown Blackwell

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

<u>No. on Map</u>	<u>Description</u>	<u>National Grid Reference</u>		<u>Situation</u>
NONE				

Woodlands
(within a continuous black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>National Grid Reference</u>		<u>Situation</u>
W1	All trees, coppice & understorey of whatever size & species within W1	399647	272575	Land adjacent 73 Linthurst Newtown Blackwell