



**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE PLANNING COMMITTEE**

**MONDAY 4TH DECEMBER 2017, AT 6.00 P.M.**

**PARKSIDE SUITE, PARKSIDE, MARKET STREET, BROMSGROVE, B61 8DA**

**SUPPLEMENTARY DOCUMENTATION**

The attached papers are additional items and a revised Appendix 2 to be added to the Agenda previously distributed relating to the above mentioned meeting.

6. Tree Preservation Order (11) 2017 - Trees on land adjacent to 73 Linthurst Newtown, Blackwell (Pages 1 - 56)

K. DICKS  
Chief Executive

Parkside  
Market Street  
BROMSGROVE  
Worcestershire  
B61 8DA

1st December 2017

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First ScheduleTrees specified individually

(encircled in black on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
T1	Ash	399729 - 272428	Near left boundary
T2	Ash	399703-272484	Centre left side of site
T3	Ash	399661-272519	Near left boundary
T4	Ash	399658-272523	Near left boundary
T5	Willow	399649-272540	Near left boundary
T6	Oak	399698- 272582	Near right boundary
T7	Silver Birch	399704-272544	Centre site
T8	Silver Birch	399714-272551	Centre site
T9	Ash	399737-272563	Right boundary of site
T10	Ash	399757-272533	Right boundary of site
T11	Sycamore	399761-272527	Right boundary of site
T12	Ash	399764-272521	Right boundary of site
T13	Holly	399790-272479	Right boundary of site
T14	Holly	399792-272476	Right boundary of site
T15	Sycamore	399765-272484	Right side of property
T16	Yew	399759-272493	Right side of property
T17	Willow	399750-272501	Rear of property
T18	Oak	399664-272558	Centre of plot rear of Property
T19	Apple	399726-272560	Right side of site

## Groups of Trees

(within a dotted black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
G1	2 x Horse Chestnut, 1 x Oak, 3 x Lawsons Cypress 1 x Spruce	399743-272428	Front boundary with Linthurst Newtown road
G2	2 x Horse Chestnut 3 x Beech 1 x Birch, 6 x Sycamore	399729-272512	Centre of site
G3	1 x Pear, 4 x Apple	399746-272529	Right side of site
G4	3 x Silver Birch	399697-272574	Near right boundary
G5	1x Oak, 1x Holly 1x Ash	399686-272549	Centre of site

## Trees specified by reference to an area

(within a broken black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
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NONE

## Woodlands

(within a continuous black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
W1	Mixed native Species woodland	399639-272584	North-eastern end of site



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**Bromsgrove District Council**

www.bromsgrove.gov.uk

Project: **Bromsgrove District Council  
Tree Preservation Order  
(11) 2017**

Drawing: **Land Adjoining  
73 Linthurst Road  
Blackwell**

Drawing No: **2000/0**

Drawn: **G.B.**

Scale: **1/1250  
@ A4**

Date: **06/11/2017**

**Engineering and Design Services**  
Town Hall  
Waite Stranz Square  
Redditch  
Worcs B98 8AH

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Ordnance Survey 100024252

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## LAND AROUND 73 LINTHURST NEWTOWN, BLACKWELL



### EVALUATION OF TREES' SUITABILITY FOR A TPO

Prepared for: Access Homes LLP

Prepared by: P Barton

24 November 2017

## 1. INSTRUCTION

- 1.1. I have been instructed by Access Homes LLP, to evaluate trees growing on land adjacent to 73 Linthurst Newtown, Blackwell, for their suitability for protection by a Tree Preservation Order (TPO). This report is to be submitted to Bromsgrove District Council to provide information to the local planning committee tasked with deciding whether a provisional TPO should be confirmed.
- 1.2. The purpose of this report is simply to provide an expert opinion on the condition of trees at the site and to use a well-known methodology, adopted by the council, to assess the trees suitability for protection by a TPO.

## 2. BACKGROUND INFORMATION

- 2.1. A provisional TPO (ref: TPO (13) 2016) was served at the site by Tree Officer Andrew Bucklitch on August 3rd 2016 in response to calls from local residents that were aware of some clearance work taking place at the site. The provisional Order consisted of a single Woodland designation that covered the entire site, therefore protecting all trees and saplings in perpetuity. Objections were submitted to the council regarding the appropriateness of the provisional Order and the council subsequently amended the scope of the Order to reduce the boundary of the 'woodland' and to protect a number of individual trees, two 'areas' and several 'groups' of trees. This amended Order was confirmed by the planning committee at a meeting held on 9th January 2017.
- 2.2. Following an application to the court under section 288 of the Town and Country Planning Act, a 'consent order' sealed by the High Court of Justice (Planning Court) that quashed the TPO.
- 2.3. A new provisional TPO (TPO (11) 2017) was served on the site on 4th July 2017 following visits to the site by Tree Officer Gavin Boyes. Objections to this new Order were submitted to the council, therefore triggering the requirement for the planning committee to once again consider the merits of the TPO and decide whether it should be confirmed. A planning committee site visit took place on 6th November 2017, which I attended. At the planning committee meeting held that evening, the committee deferred their discussions regarding the Order due to recent communications between the landowner's solicitor and the council's solicitors, and over concerns that the TPO plan was not accurate enough to adequately identify the trees during their site visit. It was therefore requested that BDC's tree officer re-visit the site to affix tags to trees to clearly identify which trees are intended for inclusion in the TPO.

## 3. PURPOSE AND APPLICATION OF TREE PRESERVATION ORDERS (TPO)

- 3.1. A TPO is an order made by a local planning authority (LPA) to protect trees in the interests of amenity. An order prohibits the cutting down, 'topping', lopping, uprooting, wilful damage or destruction of trees without written consent from the LPA<sup>1</sup>.

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<sup>1</sup> National Planning Practice Guidance



3.2. 'Amenity' is not defined in law, so LPAs need to exercise judgment in deciding whether it is within their powers to make an Order. As such, LPAs are advised to develop ways of assessing the amenity value of trees in a structure and consistent way, taking in to account the following criteria<sup>2</sup>:

- *Visibility* - the extent to which the trees can be seen by the public.
- *Impact* - particular importance of trees due to their size, form, future potential, rarity, cultural or historic value, contribution to the landscape and contribution to the character or appearance of a conservation area.
- *Other factors* - LPAs may consider taking in to account other factors such as importance to nature conservation or response to climate change.

#### **4. TREE AMENITY VALUATION SYSTEM USED BY BROMSGROVE DISTRICT COUNCIL**

4.1. A search of the planning pages of Bromsgrove District Council's (BDC) website does not reveal any information on a formally adopted approach to a structure way of assessing tree's suitability for a TPO. However, the council's tree officer, Gavin Boyes, has in the process of providing evidence of decision making for TPO (11) 2017, submitted a completed assessment using the 'Tree Evaluation Method for Preservation Orders', known as 'TEMPO'.

4.2. The TEMPO system was devised by arboricultural consultant Julian Forbes-Laird in 2006 and, to my knowledge, is commonly used by local planning authorities (LPAs) across the country as an adopted methodology for assessing tree's suitability for protection using TPOs.

4.3. TEMPO consists of a three-part system:

- Part 1 - the Amenity Assessment
  - Tree condition
  - Retention span (life expectancy)
  - Relative public visibility
- Part 2 - the Expediency Assessment
  - Known or perceived threats to the tree(s)
- Part 3 - the decision guide
  - Based on the accumulated points awarded in the above assessments.

4.4. In order to provide the committee with a more detailed and transparent evaluation of the trees than that provided by Gavin Boyes, I have assessed the trees contained in the TPO (and some additional trees) using the TEMPO system, and present my findings and observations on the following pages. I acknowledge that elements of assessing amenity valuation can be subjective, but have tried as much as possible to explain my reasoning clearly in order to inform the committee as objectively as possible.

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<sup>2</sup>National Planning Practice Guidance

## 5. FINDINGS OF THE TEMPO ASSESSMENT

- 5.1. I visited the site on 21st November 2017, and assessed the 19 individual trees, 6 groups of trees and 1 woodland that are included in the current TPO. In addition, I also assessed some trees within groups as individuals in order to identify the better quality trees contained within them.
- 5.2. Each feature assessed is presented in turn below, with a photograph and my notes from the TEMPO assessment.
- 5.3. The details of the TEMPO methodology are provided in full at **Appendix 3**.
- 5.4. Each category of the tree-by-tree assessment is scored out of a maximum of 5 points. The thresholds for the total score for each trees are as follows:

TOTAL SCORE	DECISION GUIDE	EXPLANATION
Any 0	Do not apply TPO	Clear reason NOT to protect tree.
1-6	TPO indefensible	Failed to score enough points in sections 1a-c; such trees have little to offer their locality and should not be protected.
7-10	Does not merit TPO	May have scored adequately in section 1 but failed to score additional points necessary. E.g. a borderline amenity tree with low 'threat'.
11-14	Possibly merits TPO	Trees that have qualified under all section but not convincingly.
15+	Definitely merits TPO	Trees that have passed the amenity and expediency test and fully justify a TPO.

- 5.5. Please note that the tree reference numbers used in this report are based on the reference numbers used on the TPO served in July 2017, and not on the proposed amended TPO as prepared for the December 2017 planning committee meeting.

- T1 - ASH



TPO ref	T1
<b>Species</b>	Ash
<b>Condition</b>	5
<b>Longevity</b>	4
<b>Visibility</b>	3
<b>Sub-score</b>	12
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	15
<b>Merits TPO?</b>	YES
<b>Notes</b>	Boundary tree of fair form and no significant defects. Limited visibility from road.

- T2 - ASH



TPO ref	T2
<b>Species</b>	Ash
<b>Condition</b>	5
<b>Longevity</b>	5
<b>Visibility</b>	2
<b>Sub-score</b>	12
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	15
<b>Merits TPO?</b>	YES
<b>Notes</b>	Young tree of good form but currently limited visibility from public areas. Located approximately 5m back from fenceline - TPO plan requires amending for accuracy.

- T3 - ASH



TPO ref	T3
Species	Ash
Condition	5
Longevity	5
Visibility	2
Sub-score	12
Other factors	1
Expediency	2
<b>Total score</b>	<b>15</b>
Merits TPO?	YES
Notes	Tagged 30206 due to ambiguity of current TPO plan. There are 4 trees in close proximity in this area.

- T4 - ASH



TPO ref	T4
Species	Ash
Condition	5
Longevity	5
Visibility	2
Sub-score	12
Other factors	1
Expediency	2
<b>Total score</b>	<b>15</b>
Merits TPO?	YES
Notes	Tagged 30012 due to ambiguity of current TPO plan. There are 4 trees in close proximity in this area.

- T5 - ASH. There is not an Ash present on the site in the location indicated by the TPO plan, so no tree was assessed. There is a nearby Goat Willow of poor form.
- T6 - ENGLISH OAK



TPO ref	T6
<b>Species</b>	English Oak
<b>Condition</b>	5
<b>Longevity</b>	5
<b>Visibility</b>	1
<b>Sub-score</b>	11
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	14
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Score presents TPO as possibly justifiable but there is currently no public visibility for this tree - i.e. it has no public amenity value.

- T7 - SILVER BIRCH



TPO ref	T7
<b>Species</b>	Silver birch
<b>Condition</b>	3
<b>Longevity</b>	2
<b>Visibility</b>	2
<b>Sub-score</b>	7
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	10
<b>Merits TPO?</b>	NO
<b>Notes</b>	Bulges around stem union at 1.5m indicate weak fork structure. Top of crown just about glimpsed from one part of road.



- T8 - SILVER BIRCH



TPO ref	T8
<b>Species</b>	Silver birch
<b>Condition</b>	5
<b>Longevity</b>	2
<b>Visibility</b>	1
<b>Sub-score</b>	8
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>11</b>
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Score indicates TPO possibly justifiable but tree not currently visible from any public vantage point.



- T9 - ASH



TPO ref	T9
<b>Species</b>	Ash
<b>Condition</b>	3
<b>Longevity</b>	4
<b>Visibility</b>	3
<b>Sub-score</b>	10
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	13
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Boundary tree leaning in to site. Branch failure wounds at 5m.

- T10 - ASH



TPO ref	T10
<b>Species</b>	Ash
<b>Condition</b>	1
<b>Longevity</b>	1
<b>Visibility</b>	3
<b>Sub-score</b>	5*
<b>Other factors</b>	N/A
<b>Expediency</b>	N/A
<b>Total score</b>	N/A
<b>Merits TPO?</b>	NO
<b>Notes</b>	*Tree must score >7 to consider further assessment. Poor structural condition: previously topped at approximately 10m with 5m regrowth. Decay of topping points visible from ground level. Dense ivy on main stem. Low safe useful life expectancy.

- T11 - SYCAMORE



TPO ref	T11
<b>Species</b>	Sycamore
<b>Condition</b>	3
<b>Longevity</b>	4
<b>Visibility</b>	3
<b>Sub-score</b>	10
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>13</b>
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Ivy to 8m obscures inspection. Limited visibility from road to south. Previously reduced.

- T12 - ASH



TPO ref	T12
Species	Ash
Condition	3
Longevity	2
Visibility	3
Sub-score	8
Other factors	1
Expediency	2
<b>Total score</b>	<b>11</b>
Merits TPO?	POSSIBLY
Notes	Twin stemmed from base. Ivy covered Southern stem. Previously reduced.

- T13 - T14 - HOLLY



TPO ref	T13	T14
<b>Species</b>	Holly	Holly
<b>Condition</b>	3	3
<b>Longevity</b>	4	4
<b>Visibility</b>	4	4
<b>Sub-score</b>	11	11
<b>Other factors</b>	1	1
<b>Expediency</b>	2	2
<b>Total score</b>	14	14
<b>Merits TPO?</b>	POSSIBLY	POSSIBLY
<b>Notes</b>	Currently smothered on west side by cherry Laurel.	Currently smothered on west side by cherry Laurel. Two further, small holly stems to south.

• T15 - SYCAMORE



TPO ref	T15
Species	Sycamore
Condition	3
Longevity	4
Visibility	3
Sub-score	10
Other factors	1
Expediency	2
<b>Total score</b>	<b>13</b>
Merits TPO?	POSSIBLY
Notes	Multi stemmed from base. Squirrel damage, some severe on east side.

• T16 - YEW



TPO ref	T16
Species	Yew
Condition	3
Longevity	5
Visibility	3
Sub-score	11
Other factors	1
Expediency	2
<b>Total score</b>	<b>14</b>
Merits TPO?	POSSIBLY
Notes	Asymmetrical crown form due to adjacent trees to west.

- T17 - GOAT WILLOW



TPO ref	T17
<b>Species</b>	Goat willow
<b>Condition</b>	3
<b>Longevity</b>	2
<b>Visibility</b>	2
<b>Sub-score</b>	7
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>10</b>
<b>Merits TPO?</b>	NO
<b>Notes</b>	Fair but unremarkable. Heavily pruned on north side for clearance from overhead power lines.

- T18 - ENGLISH OAK



TPO ref	T18
<b>Species</b>	English oak
<b>Condition</b>	3
<b>Longevity</b>	4
<b>Visibility</b>	1
<b>Sub-score</b>	8
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>11</b>
<b>Merits TPO?</b>	NO
<b>Notes</b>	Extensive squirrel damage to stem at 3m has resulted in dieback of central crown.



- T19 (A & B) - APPLE(S)



TPO ref	T19 (A)	T19 (B)
<b>Species</b>	Apple	Apple
<b>Condition</b>	1	3
<b>Longevity</b>	1	2
<b>Visibility</b>	1	1
<b>Sub-score</b>	3	6
<b>Other factors</b>	n/a	n/a
<b>Expediency</b>	n/a	n/a
<b>Total score</b>	3	6
<b>Merits TPO?</b>	NO	NO
<b>Notes</b>	T19 as per TPO plan assessed. 90% dead.	Better condition Apple assessed 5m north of tree T19a. Low life expectancy and no public visibility.

Notes: The TPO plan appears to indicate that T19 (A) is the protected tree. However, there is a nearby Apple that it the plan may refer to so both trees have been assessed for completeness.

- G1 - LAWSON CYPRESS, SPRUCE, OAK, HORSE CHESTNUT



TPO ref	G1
<b>Species</b>	English oak Lawson Cypress x 4, Spruce x 2, English oak x 1, Horse chestnut x 2.
<b>Condition</b>	3
<b>Longevity</b>	2
<b>Visibility</b>	4
<b>Sub-score</b>	9
<b>Other factors</b>	4
<b>Expediency</b>	2
<b>Total score</b>	<b>15</b>
<b>Merits TPO?</b>	YES
<b>Notes</b>	The most prominent trees on the site due to roadside location. There are two more trees within the group than are specified in the TPO schedule - additional Lawson Cypress and Spruce. The group is dominated by the Oak in the middle which is the best quality tree in terms of its form and longevity.

• ADDITIONAL ASSESSMENT - 9 TREES WITHIN G1

Ref	Species	Condition	Longevity	Visibility	Sub-score 1	Other factors	Expediency	Total Score	TPO?	Notes
G1.1	Lawson Cypress	5	2	4	11	4	2	17	YES	Prominent tree at east end of G1. Recent permission gained to crown lift to 3m to improve visibility from driveway exit.
G1.2	Lawson Cypress	3	2	2	7	1	2	10	NO	Small tree of rather poor form behind the crown of adjacent Lawson.
G1.3	Spruce sp.	3	1	4	8	1	2	11	NO	Slender, suppressed tree between Lawson Cypress trees. Adds little to the group.
G1.4	Lawson Cypress	5	2	4	11	4	2	17	YES	No significant defects observed. Removal would benefit the form and appearance of the better quality adjacent Oak.
G1.5	English oak	5	4	4	13	5	2	20	YES	The dominant tree of G1, overhanging the entire road. Although mature, potential for long future contribution to the site.
G1.6	Horse chestnut	5	2	4	11	4	2	17	YES	Minor deadwood but no significant defects.
G1.7	Spruce sp.	1	1	3	5			5	NO	Slender suppressed form due to closely spaced adjacent trees. Small crown.
G1.8	Lawson Cypress	1	0	3	4			4	NO	Slender suppressed form with weak union between stems at 2.5m. Potential for split and failure on to road. Recommend removal.
G1.9	Horse chestnut	3	2	4	9	4	2	15	YES	No significant defects observed. Close to electricity terminal - likely to be cut back by utility company.

## PHOTOS OF TREES WITHIN G1

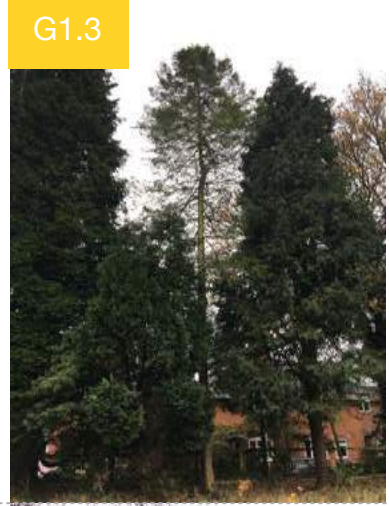
G1.1



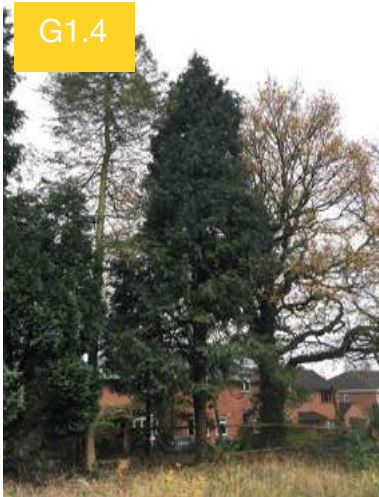
G1.2



G1.3



G1.4



G1.5



G1.6



G1.7



G1.8



G1.9



- G2 - ASH - Not assessed as G2 has been agreed to be removed from the TPO as it was made in contravention with the Court consent order which specified that any future TPO must not be any more restrictive than the TPO that was quashed.
- G3 - HORSE CHESTNUT, BEECH, BIRCH, SYCAMORE



TPO ref	G3
<b>Species</b>	Horse chestnut x 2, Beech x 3, Downy birch x 1, Sycamore x 7
<b>Condition</b>	5
<b>Longevity</b>	2
<b>Visibility</b>	3
<b>Sub-score</b>	10
<b>Other factors</b>	4
<b>Expediency</b>	2
<b>Total score</b>	16
<b>Merits TPO?</b>	YES
<b>Notes</b>	Large mature trees visible over House and from Foxes Close. Only 6 Sycamore included in TPO; clarification needed which tree is excluded.

- G4 - APPLE & PEAR



TPO ref	G4
<b>Species</b>	Pear x 1, Apple x 5
<b>Condition</b>	3
<b>Longevity</b>	1
<b>Visibility</b>	2
<b>Sub-score</b>	6
<b>Other factors</b>	n/a
<b>Expediency</b>	n/a
<b>Total score</b>	6
<b>Merits TPO?</b>	NO
<b>Notes</b>	Late-mature fruit trees planted in a row; only Southern tree visible from road. 5 Apple present but only 4 included in TPO schedule.

- G5 - SILVER BIRCH



TPO ref	G5
<b>Species</b>	Silver Birch x 3
<b>Condition</b>	5
<b>Longevity</b>	2
<b>Visibility</b>	2
<b>Sub-score</b>	9
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>12</b>
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Closely spaced trees forming cohesive canopy. Just possible to glimpse top of crowns from one location on road.

- G6 - OAK, ASH HOLLY



TPO ref	G6
<b>Species</b>	Oak x 1, Ash x 1, Holly x 1
<b>Condition</b>	3
<b>Longevity</b>	4
<b>Visibility</b>	1
<b>Sub-score</b>	8
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>12</b>
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Borderline justifiable; not possible to view these trees from a public area. Small and unremarkable specimens.



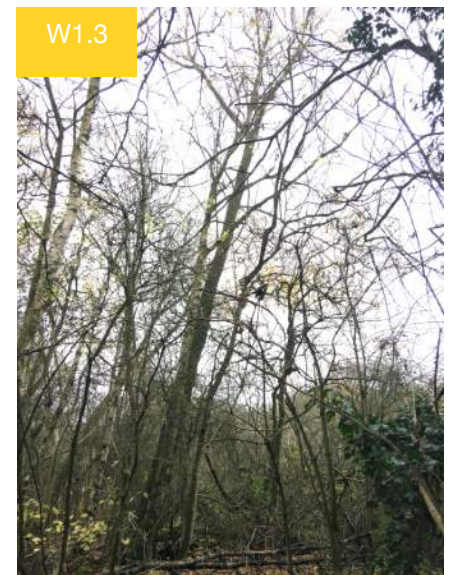
- W1 - MIXED SPECIES WOODLAND



TPO ref	W1
<b>Species</b>	Silver birch, goat willow, English oak, Apple, pear, sycamore, elder, poplar, hawthorn.
<b>Condition</b>	3
<b>Longevity</b>	4
<b>Visibility</b>	2
<b>Sub-score</b>	9
<b>Other factors</b>	1
<b>Expediency</b>	2
<b>Total score</b>	<b>13</b>
<b>Merits TPO?</b>	POSSIBLY
<b>Notes</b>	Borderline justifiable; not possible to view these trees from a public area. Consists of predominantly small and unremarkable specimens and collapsed/dead trees.

- ADDITIONAL INDIVIDUAL TREES ASSESSED WITHIN W1

Ref	Species	Condition	Longevity	Visibility	Sub-score 1	Other factors	Expediency	Total Score	TPO?	Notes
W1.1	English oak	3	4	2	9	1	2	12	YES	Tagged 30091. Storm damage to crown has resulted in small, squat form. Located on north boundary of woodland area so just about visible from footpath to north. TPO defensible.
W1.2	Hybrid black poplar	3	2	2	7	1	2	10	NO	Tagged 30227. The most prominent of the larger woodland trees but still not of sufficient amenity value to warrant protection.
W1.3	Hybrid black poplar	3	2	2	7	1	2	10	NO	Tagged 30303. Leans to south. Amongst the most prominent of the larger woodland trees but still not of sufficient amenity value to warrant protection.
W1.4	English oak	5	5	1	11	1	2	14	NO	Similar to nearby T6; good form and long life expectancy but presently no public visibility.



## 6. PUBLIC VISIBILITY OF TREES WITHIN THE SITE

- 6.1. Documents submitted by the council for consideration in the November and December 2017 planning committee meetings (Appendix 9 of supporting documents) include a collection of photographs entitled 'Photographs of trees from local vantage points'. However, 5 of the photographs included were taken from the rear gardens of private properties, giving a false impression of the 'public' visibility of the trees. The National Planning Policy Guidance makes it clear that it is *public* visibility which is the primary element of tree's amenity value.
- 6.2. In order to address this important issue of *public* visibility, a selection of photographs is provided in **APPENDIX 2** with a plan showing the locations of each vantage point from a publicly accessible location.

## 7. CONCLUSIONS AND RECOMMENDATIONS TO THE COMMITTEE

- 7.1. The TEMPO assessment presented in this report has used an 'expediency' score of '2' for all trees; indicating that there is a *perceived* threat rather than a *foreseeable* threat. There have been no applications to remove any large or mature trees from the site other than those that are considered to pose an obstruction to visibility splays from the existing driveway from no.73. Neither has there been any pre-application discussions, or outline planning applications for development of the site. Whilst some vegetation has been cleared, this has all been small self-sown trees and ruderal vegetation. It therefore follows that there is no real and present threat of tree felling, but this has been *perceived* as a risk by local residents that have written in support of the TPO citing reasons that include not wanting to see the site developed for housing.
- 7.2. My assessment of the trees located at the site that are currently included in the provisional TPO has found that some trees are of adequate prominence, condition and longevity to warrant protection in an order, but that some are not.
- 7.3. As detailed in the tree-by-tree assessment above, are the following trees which I do not consider have enough merit to warrant protection:
- T5 (Ash) - no Ash tree located in this part of the site
  - T6 (Oak) - not visible from any local public vantage points
  - T7 (Silver Birch) - compromised structural condition and low public visibility at the rear of the site
  - T8 (Silver Birch) - not visible from any local public vantage points
  - T10 (Ash) - poor structural condition due to previous 'topping' which reduces the safe useful life expectancy of the tree.
  - T12 (Ash) - previously topped tree. Low public visibility.
  - T17 (Goat Willow) - poor form due to pruning by power line contractor. Low useful life expectancy.

- T18 (Oak) - small tree with extensive squirrel damage causing crown dieback.
- T19 (Apple) - unclear which tree the existing TPO seeks to protect, but both apples in the area have a short useful life expectancy and no public visibility.
- G4 (Pear and Apple) - late mature trees in decline with low future life expectancy.
- G6 (Holly, Ash, Oak) - small closely spaced trees of poor form and no public visibility.
- W1 (mixed species woodland) - predominantly small, poor formed trees with low public visibility. Larger trees within woodland assessed separately but even these fail to score adequately for suitability in the TPO.


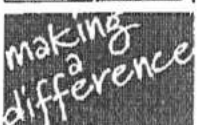

7.4. I recommend that the committee confirms the TPO subject to modifications which remove the above trees from the order, thereby protecting only those trees which have been evidenced to have adequate amenity value to warrant protection.

Paul Barton  
MSc, MArborA.  
Director



## APPENDIX 1: TPO PLAN



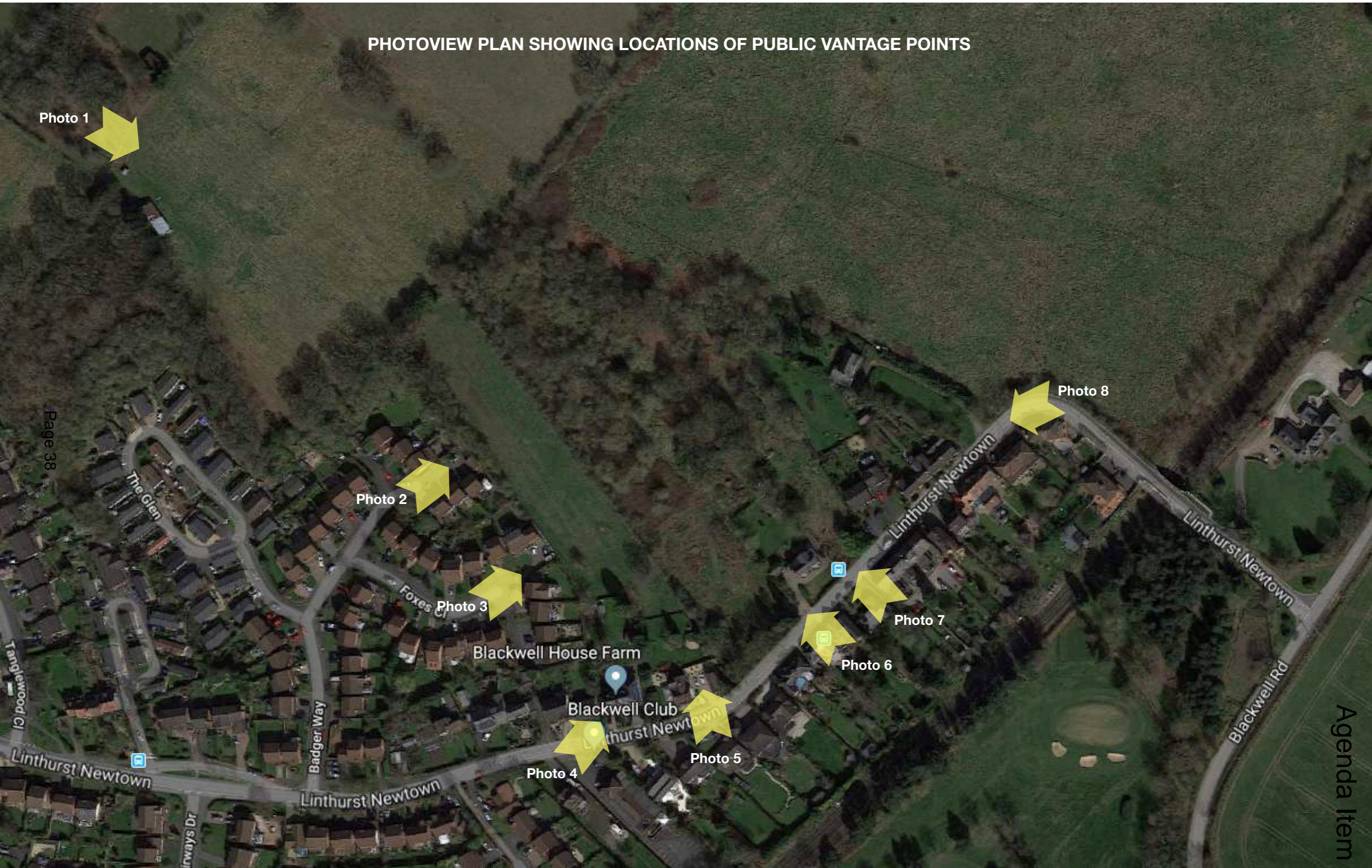
  <a href="http://www.redditchbc.gov.uk">www.redditchbc.gov.uk</a>	 <b>Bromsgrove District Council</b> <a href="http://www.bromsgrove.gov.uk">www.bromsgrove.gov.uk</a>	<b>Project:</b> Bromsgrove District Council Tree Preservation Order (11) 2017	<b>Drawn:</b> G.B.	Engineering and Design Services Town Hall Walter Stanz Square Redditch Worcs B98 8AH
		<b>Drawing:</b> Land Adjoining 73 Linthurst Newtown Blackwell	<b>Scale:</b> 1/1250 @ A4	
		<b>Drawing No:</b> P0000/0	<b>Date:</b> 28 / 06 / 2017	

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Ordnance Survey 100024252



APPENDIX 2: PUBLIC VISIBILITY OF TREES COVERED  
BY THE TPO

PHOTOVIEW PLAN SHOWING LOCATIONS OF PUBLIC VANTAGE POINTS





APPENDIX 3: TEMPO GUIDANCE NOTES

## TREE EVALUATION METHOD FOR PRESERVATION ORDERS

# TEMPO

## Guidance Note for Users

**Julian Forbes-Laird**

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**Registered Consultant of the Arboricultural Association**  
**Director & Principal Consultant, Forbes-Laird Arboricultural Consultancy Ltd**

July 2006

## Introduction

### **Background**

The impetus to take a fresh look at existing TPO suitability evaluation methods grew out of the preparation for a local authority of a detailed Method Statement for reviewing Tree Preservation Orders (TPOs) in 2002. The client wanted the Method Statement to include a reliable means of assessing trees for TPO suitability, and asked for a bespoke system.

Having looked closely at what was already available, JFL decided that there was considerable room for improvement, as each of the better-known existing methods has disadvantages.

Accordingly, TEMPO was developed by JFL (whilst working as a Senior Consultant at CBA Trees) as a direct response to the apparent continuing uncertainty about what attributes a tree should have in order to merit statutory protection by TPO.

### **Overview**

TEMPO is designed as a field guide to decision-making, and is presented on a single side of A4 as an easily completed pro forma. As such, it stands as a record that a systematic assessment has been undertaken.

TEMPO considers all of the relevant factors in the TPO decision-making chain. In this connection, it is helpful to revisit the wording of central government advice<sup>1</sup>:

‘Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO’

From this, it becomes apparent that most existing methods are inadequate, seeking as they do solely to consider the tree rather than any known threats to its retention. TEMPO corrects this omission by including an expediency assessment within the framework of the method.

Excluding the first section, which is simply the survey record and is thus self-explanatory, TEMPO is a three-part system:

- Part 1 is the Amenity Assessment
- Part 2 is the Expediency Assessment
- Part 3 is the Decision Guide

These parts are set out and function as follows:

## Part 1: Amenity Assessment

This part of TEMPO is broken down into four sections, each of which are related to suitability for TPO:

- a) Condition
- b) Retention span
- c) Relative public visibility
- d) Other factors

The first three sections form an initial assessment, with trees that 'pass' this going on to the fourth section. Looking at the sections in more detail:

### **a) Condition**

This is expressed by five terms, which are defined as follows:

GOOD	Trees that are generally free of defects, showing good health and likely to reach normal longevity and size for species, or they may have already done so
FAIR	Trees which have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential or, if they have already done so, their condition is likely to decline. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse
POOR	Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired, and are likely to deteriorate. Life expectancy is curtailed and retention is difficult
DEAD	Tree with no indication of life
DYING/ DANGEROUS	Trees showing very little signs of life or remaining vitality, or with severe, irremediable structural defects, including advanced decay and insecure roothold. Death or catastrophic structural failure likely in the immediate future, retention therefore impossible as something worthy of protection

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. Dead, dying or dangerous trees should not be placed under a TPO, hence the zero score for these categories, due to exemptions within the primary legislation.

A note on the pro forma emphasizes that 'dangerous' should only be selected in relation to the tree's existing context: a future danger arising, for example, as a result of development, would not apply. Thus, a tree can be in a state of collapse but not be dangerous due to the absence of targets at risk.

Where a group of trees is being assessed under this section, it is important to score the condition of those principle trees without which the group would lose its aerodynamic or visual cohesion. If the group cannot be 'split' in this way, then its average condition should be considered.

Each of the condition categories is related to TPO suitability.

## b) Retention span

The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' potential retention span.

This factor has been divided into ranges, which are designed to reflect two considerations:

- It has long been established good practice that trees incapable of retention for more than ten years are not worthy of a TPO (hence the zero score for this category); this also ties in with the R category criteria set out in Table 1 of BS5837:2005
- The further ahead one looks into the future, the more difficult it becomes to predict tree condition: hence the width of the bands increases over time

Scores are weighted towards the two higher longevities (40-100 and 100+), which follow the two higher ranges given by Helliwell<sup>2</sup>.

The Arboricultural Association (AA) publishes a guide<sup>3</sup> to the life expectancy of common trees, which includes the following data:

300 years or more	Yew
200-300	Common [pedunculate] oak, sweet chestnut, London plane, sycamore, limes
150-200	Cedar of Lebanon, Scots pine, hornbeam, beech, tulip tree, Norway maple
100-150	Common ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear
70-100	Rowan, whitebeam, apple, wild cherry, Catalpa, Robinia, tree of heaven
50-70	Most poplars, willows, cherries, alders and birches

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive. However, it should assist with determining the overall lifespan of most trees, in light of their current age, health and context as found on inspection.

It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection (assuming that it doesn't already).

If a group of trees is being assessed, then the mean retention span of the feature as a whole should be evaluated. It would not be acceptable, for example, to score a group of mature birches based on the presence of a single young pedunculate oak.

A note on the pro forma identifies for inclusion in the less than ten years band trees which are assessed being an existing or near future nuisance, including those clearly outgrowing their context, or which are having an adverse effect on adjacent trees of better quality.

The nuisance element is introduced to cover situations where, for example, a Section 211 Notice has been received by the LPA for removal of a tree causing subsidence damage. In relation to outgrowing context, some common sense is needed here: if the trees are being considered for TPO protection prior to development, and if it is apparent that demolition of existing structures will be a component of this process, then a tree should not be marked down simply because it is standing hard up against one of the existing structures.

As with condition, the chosen category is related to a summary of TPO suitability.

## **c) Relative public visibility**

The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility. The common situation of backland development is one such example.

The categories each contain two considerations: size of tree and degree of visibility. I have not attempted to be too prescriptive here, as TEMPO is supposed to function as a guide and not as a substitute for the surveyor's judgement. However, I have found that reference to the square metre crown size guide within the Helliwell System<sup>4</sup> can be helpful in reaching a decision.

Reference is made to 'young' trees: this is intended to refer to juvenile trees with a stem diameter less than 75mm at 1.5m above ground level. The reasoning behind this is twofold: this size threshold mirrors that given for trees in Conservation Areas, and trees up to (and indeed beyond) this size may readily be replaced by new planting.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion.

Whilst the scores are obviously weighted towards greater visibility, we take the view that it is reasonable to give some credit to trees that are not visible (and/or whose visibility is not expected to change: it is accepted that, in exceptional circumstances, such trees may justify TPO protection<sup>5</sup>).

Where groups of trees are being assessed, the size category chosen should be one category higher than the size of the individual trees or the degree of visibility, whichever is the lesser. Thus a group of medium trees would rate four points (rather than three for individuals) if clearly visible, or three points (rather than two) if visible only with difficulty.

Once again, the categories relate to a summary of TPO suitability.

## **Sub-total 1**

At this point, there is a pause within the decision-making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c.

The scores from the first three sections should be added together, before proceeding to section d, or to part 3 as appropriate (i.e. depending on the accrued score). Under the latter scenario, there are two possible outcomes:

- ‘Any 0’ equating to ‘do not apply TPO’
- ‘1-6’ equating to ‘TPO indefensible’

## **d) Other factors**

Assuming that the tree or group qualifies for consideration under this section, further points are available for four sets of criteria, however only one score should be applied per tree (or group):

- ‘Principle components of arboricultural features, or veteran trees’ – The latter is hopefully self-explanatory (if not, refer to Read 2000<sup>6</sup>). The former is designed to refer to trees within parklands, avenues, collections, and formal screens, and may equally apply to individuals and groups
- ‘Members of groups of trees that are important for their cohesion’ – This should also be self-explanatory, though it is stressed that ‘cohesion’ may equally refer either to visual or to aerodynamic contribution. Included within this definition are informal screens. In all relevant cases, trees may be assessed either as individuals or as groups
- ‘Trees with significant historical or commemorative importance’ – The term ‘significant’ has been added to weed out trivia, but we would stress that significance may apply to even one person’s perspective. For example, the author knows of one tree placed under a TPO for little other reason than it was planted to commemorate the life of the tree planter’s dead child. Thus whilst it is likely that this category will be used infrequently, its inclusion is nevertheless important. Once again, individual or group assessment may apply
- ‘Trees of particularly good form, especially if rare or unusual’ – ‘Good form’ is designed to identify trees that are fine examples of their kind and should not be used unless this description can be justified. However, trees which do not merit this description should not, by implication, be assumed to have poor form (see below). The wording of the second part of this has been kept deliberately vague: ‘rare or unusual’ may apply equally to the form of the tree or to its species. This recognises that certain trees may merit protection precisely because they have ‘poor’ form, where this gives the tree an interesting and perhaps unique character. Clearly, rare species merit additional points, hence the inclusion of this criterion. As with the other categories in this section, either individual or group assessment may apply. With groups, however, it should be the case either that the group has a good overall form, or that the principle individuals are good examples of their species

Where none of the above apply, the tree still scores one point, in order to avoid a zero score disqualification (under part 3).

## **Sub-total 2**

This completes the amenity assessment and, once again, there is a pause in the method: the scores should be added up to determine whether or not the tree (or group) has sufficient amenity to merit the expediency assessment.

The threshold for this is nine points, arrived at via a minimum qualification calculated simply from the seven-point threshold under sections a-c, plus at least two extra points under section d. Thus trees that only just scrape through to qualify for the 'other factor' score, need to genuinely improve in this section in order to rate an expediency assessment. This recognises two important functions of TPOs:

- TPOs can serve as a useful control on overall tree losses by securing and protecting replacement planting
- Where trees of minimal (though, it must be stressed, adequate) amenity are under threat, typically on development sites, it may be appropriate to protect them allowing the widest range of options for negotiated tree retention

## **Part 2: Expediency assessment**

This section is designed to award points based on three levels of identified threat to the trees concerned. Examples and notes for each category are:

- 'Immediate threat to tree' – for example, Tree Officer receives Conservation Area notification to fell
- 'Foreseeable threat to tree' – for example, planning department receives application for outline planning consent on the site where the tree stands
- 'Perceived threat to tree' – for example, survey identifies tree standing on a potential infill plot

However, central government advice<sup>7</sup> is clear that, even where there is no expedient reason to make a TPO, this is still an option. Accordingly, and in order to avoid a disqualifying zero score, 'precautionary only' still scores one point. This latter category might apply, rarely for example, to a garden tree under good management.

Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO. However, it is not felt necessary to incorporate such considerations into the method, as it is chiefly intended for field use: these other considerations are most suitably addressed as part of a desk study.

As a final note on this point, it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 15, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes.



## **Part 3: Decision Guide**

This section is based on the accumulated scores derived in Parts 1 & 2, and identifies four outcomes, as follows:

- Any 0 Do not apply TPO  
Where a tree has attracted a zero score, there is a clearly identifiable reason not to protect it, and indeed to seek to do so is simply bad practice
- 1-6 TPO indefensible  
This covers trees that have failed to score enough points in sections 1a-c to qualify for an 'other factors' score under 1d. Such trees have little to offer their locality and should not be protected
- 7-10 Does not merit TPO  
This covers trees which *have* qualified for a 1d score, though they may not have qualified for Part 2. However, even if they have made it to Part 2, they have failed to pick up significant additional points. This would apply, for example, to a borderline tree in amenity terms that also lacked the protection imperative of a clear threat to its retention
- 11-14 Possibly merits TPO  
This applies to trees that have qualified under all sections, but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'
- 15+ Definitely merits TPO  
Trees scoring 15 or more are those that have passed both the amenity and expediency assessments, where the application of a TPO is fully justified based on the field assessment exercise

## **Notation boxes**

Throughout the method, notation space is provided to record relevant observations under each section. For local authorities using TEMPO, it may even be helpful to include a copy of the TEMPO assessment in with the TPO decision letter to relevant parties, as this will serve to underline the transparency of the decision-making process.

## Conclusion

TEMPO is a quick and easy means of systematically assessing tree or group suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey, especially where Area TPOs are being reviewed.

From the consultants' perspective, it is also an effective way of testing the suitability of newly applied TPOs, to see whether they have been misapplied, or it can be used to support a request to make a TPO in respect of trees at risk, for example from adjacent development.

TEMPO does not seek to attach any monetary significance to the derived score: the author recommends the use of the Helliwell System where this is the objective.

CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the Arboricultural Information Exchange [www.aie.org.uk](http://www.aie.org.uk)

TEMPO has undergone a number of minor revisions since its inception, many of which are due to helpful comments received from users. Any feedback on the method is gratefully received by the author.

## **JFL**

Contact: [jfl.flac@btinternet.com](mailto:jfl.flac@btinternet.com)

## *References*

- 1 'Tree Preservation Orders: A Guide to the Law and Good Practice', DETR 2000
- 2 'Amenity Valuation of Trees and Woodlands', DR Helliwell, Arboricultural Association 2003 [the Helliwell System]
- 3 'Tree Management', Leaflet No. 4, Arboricultural Association 1991
- 4 Helliwell op. cit.
- 5 DETR 2000 op. cit. at para. 3.3 (1)
- 6 'Veteran Trees: A Guide to Good Management', Helen Read, English Nature 2000
- 7 DETR 2000 op. cit. at para. 3.5



## APPENDIX 4: TEMPO ASSESSMENT PROVIDED BY BDC TREE OFFICER

# T.E.M.P.O Tree Evaluation Sheet

Evaluation by: Garvin Bayer Date: 27th June 2017 Sheet No. 1 of 2

Address/Site Details: 173 Linthurst Newtown (land adjoining)

Tree Ref	Species	DBH (mm)	Amenity Assessment				Sub	d - other factors	Expediency	Score	TPO Y/N?	Notes
			a - Condition	b - Longevity	c - Visibility							
G1	Mixed Species		3	4	5	12	Trees must have accrued 7+ points (& no zeros) to qualify	4	3	19	Y	
T1	Ash		3	5	3	11		1	3	15	Y	
G2	3x Ash		3	5	2	10		1	3	14	Y	
T2	Ash		3	5	2	10		1	3	14	Y	
T3	Ash		3	5	2	10		1	3	14	Y	
T4	Ash		3	5	2	10		1	3	14	X	
T5	Ash		3	5	2	10		1	3	14	Y	
T6	Oak		3	5	3	11		1	3	15	Y	
T7	Silver Birch		3	4	2	9		1	3	13	Y	
T8	Silver Birch		3	4	2	9		1	3	13	Y	
T9	Ash		3	4	2	9		1	3	13	Y	
T10	Ash		3	4	3	10		1	3	14	Y	
T11	Sycamore		3	4	3	10	1	3	14	Y		
T12	Ash		3	4	3	10	1	3	14	Y		

- Part 1: Amenity assessment**
- a) Condition**  
 5) Good (highly suitable)  
 3) Fair (suitable)  
 1) Poor (unlikely)  
 0) Unsafe  
 0) Dead
- b) Longevity**  
 5) 100+  
 4) 40 - 100  
 2) 20 - 40 (suitable)  
 1) 10 - 20 (just suitable)  
 0) <10 (unsuitable)
- c) Relative public visibility**  
 5) Very large trees, or large trees that are prominent features (V lge=200sqm+)  
 4) Large trees, or medium trees clearly visible to the public (lge=100-200sqm)  
 3) Medium trees, or larger trees with limited view only (Suitable, med=25-100sqm)  
 2) Small trees, or larger ones visible only with difficulty (Unlikely, small = 5-25sqm)  
 1) Young/v.small or not publicly visible regardless of size (prob unsuitable, <5sqm)
- d) Other factors**  
 5) Principal components of arboricultural features, or veteran trees  
 4) Members of groups of trees that are important for their cohesion  
 3) Trees with significant historical or commemorative importance  
 2) Trees of particularly good form, especially if rare or unusual  
 1) Trees with none of the above additional redeeming features

- Part 2: Expediency assessment**
- 5) Known threat to tree  
 3) Foreseeable threat to tree  
 2) Perceived threat to tree  
 1) Precautionary only  
 0) Known as an actionable nuisance
- Part 3: Decision guide**
- Any 0 Do not apply TPO  
 1 - 6 TPO indefensible  
 7 - 11 Does not merit TPO  
 12 - 15 Possibly merits TPO  
 16+ Definitely merits TPO

# T.E.M.P.O Tree Evaluation Sheet

Evaluation by: Gavin Bayes Date: 27th June 2017 Sheet No. 2 of 2

Address/Site Details: 73 Linthurst Newtown (land adjoining)

Tree Ref	Species	DBH (mm)	Amenity Assessment				Sub	d - other factors	Expediency	Score	TPO Y/N?	Notes
			a - Condition	b - Longevity	c - Visibility							
T13	Holly		3	54	3	10	Trees must have accrued 7+ points (& no zeros) to qualify	1	3	14	Y	
T14	Holly		3	4	2	9		1	3	13	Y	
T15	Sycamore		3	4	3	10		1	3	14	Y	
T16	Yew		3	5	2	10		1	3	14	Y	
T17	Willow		3	4	2	9		1	3	13	Y	
T18	Oak		3	5	2	10		1	3	14	Y	
T19	Apple		3	4	2	9		1	3	13	Y	
T												
G3	Mixed species group		5/3	4	4	11		1	3	15	Y	
G4	4x Apple 1x Pear		3	4	2	9		1	3	13	Y	
G5	3x Silver Birch		3	4	3	10		1	3	14	Y	
G6	1x Oak 1x Holly 1x Ash		3	4	2	9		1	3	13	Y	
W1	Mixed species		3	4	2	9	1	3	13	Y		

- Part 1: Amenity assessment**
- a) Condition**
- 5) Good (highly suitable)
  - 3) Fair (suitable)
  - 1) Poor (unlikely)
  - 0) Unsafe
  - 0) Dead
- b) Longevity**
- 5) 100+
  - 4) 40 - 100
  - 2) 20 - 40 (suitable)
  - 1) 10 - 20 (just suitable)
  - 0) <10 (unsuitable)
- c) Relative public visibility**
- 5) Very large trees, or large trees that are prominent features (V lge=200sqm+)
  - 4) Large trees, or medium trees clearly visible to the public (lge=100-200sqm)
  - 3) Medium trees, or larger trees with limited view only (Suitable, med=25-100sqm)
  - 2) Small trees, or larger ones visible only with difficulty (Unlikely, small = 5-25sqm)
  - 1) Young/v.small or not publicly visible regardless of size (prob unsuitable, <5sqm)
- d) Other factors**
- 5) Principal components of arboricultural features, or veteran trees
  - 4) Members of groups of trees that are important for their cohesion
  - 3) Trees with significant historical or commemorative importance
  - 2) Trees of particularly good form, especially if rare or unusual
  - 1) Trees with none of the above additional redeeming features

- Part 2: Expediency assessment**
- 5) Known threat to tree
  - 3) Foreseeable threat to tree
  - 2) Perceived threat to tree
  - 1) Precautionary only
  - 0) Known as an actionable nuisance
- Part 3: Decision guide**
- Any 0 Do not apply TPO
  - 1 - 6 TPO indefensible
  - 7 - 11 Does not merit TPO
  - 12 - 15 Possibly merits TPO
  - 16+ Definitely merits TPO

Agenda Item 6

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## First Schedule

### Trees specified individually

(encircled in black on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
T1	Ash	399729 - 272428	Near left boundary
T2	Ash	399703-272484	Centre left side of site
T3	Ash	399661-272519	Near left boundary
T4	Ash	399658-272523	Near left boundary
<del>T5</del>	<del>Ash</del>	<del>399649-272540</del>	<del>Near left boundary</del>
<del>T6</del>	<del>Oak</del>	<del>399698-272582</del>	<del>Near right boundary</del>
<del>T7</del>	<del>Silver Birch</del>	<del>399704-272544</del>	<del>Centre site</del>
<del>T8</del>	<del>Silver Birch</del>	<del>399714-272551</del>	<del>Centre site</del>
T9	Ash	399737-272563	Right boundary of site
<del>T10</del>	<del>Ash</del>	<del>399757-272533</del>	<del>Right boundary of site</del>
T11	Sycamore	399761-272527	Right boundary of site
<del>T12</del>	<del>Ash</del>	<del>399764-272521</del>	<del>Right boundary of site</del>
T13	Holly	399790-272479	Right boundary of site
T14	Holly	399792-272476	Right boundary of site
T15	Sycamore	399765-272484	Right side of property
T16	Yew	399759-272493	Right side of property
<del>T17</del>	<del>Willow</del>	<del>399750-272501</del>	<del>Rear of property</del>
<del>T18</del>	<del>Oak</del>	<del>399664-272558</del>	<del>Centre of plot rear of Property</del>
<del>T19</del>	<del>Apple</del>	<del>399726-272560</del>	<del>Right side of site</del>

## Groups of trees

(within a dotted black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
G1	2 x Horse Chestnut, 1 x Oak, 3 x Lawsons Cypress 1 x Spruce	399743-272428	Front boundary with Linthurst Newtown road
G2	3 x Ash	399703-272467	Near left boundary
G3	2 x Horse Chestnut 3 x Beech 1 x Birch, 6 x Sycamore	399729-272512	Centre of site
<del>G4</del>	<del>1 x Pear, 4 x Apple</del>	<del>399746-272529</del>	<del>Right side of site</del>
G5	3 x Silver Birch	399697-272574	Near right boundary
<del>G6</del>	<del>1x Oak, 1x Holly 4x Ash</del>	<del>399686-272549</del>	<del>Centre of site</del>

## Trees specified by reference to an area

(within a broken black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
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NONE

## Woodlands

(within a continuous black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>NGR</u>	<u>Situation</u>
<del>W1</del>	<del>Mixed native Species woodland</del>	<del>399639-272584</del>	<del>North-eastern end of site</del>



Your reference:

Our reference: RA03.ACC0014-0001.RA

Direct email: randrews@hcrlaw.com

1 December 2017

**BY SPECIAL DELIVERY BY 1PM**

FAO Tracy Lovejoy  
 Legal Services  
 Bromsgrove District Council  
 Parkside  
 Market Street,  
 Bromsgrove,  
 Worcestershire  
 B61 8DA

**5 Deansway, Worcester WR1 2JG**

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**PLANNING TEAM**

**BY POST AND EMAIL**

[t.lovejoy@bromsgroveandredditch.gov.uk](mailto:t.lovejoy@bromsgroveandredditch.gov.uk)

Dear Sirs

**TREE PRESERVATION ORDER (NO. 11) 2017**

**TREES ON LAND ADJACENT TO 73 LINTHURST NEWTOWN, BLACKWELL**

We write on behalf of Access Homes LLP in relation to the above matter and further to our Letter Before Claim dated 16<sup>th</sup> November 2017.

We are disappointed to note that:

1. Bromsgrove District Council has failed to respond to our Letter Before Claim in accordance with the 14 day timescale required by the Pre-Action Protocol within the Civil Procedure Rules. Failure to provide all the requisite information in time and prior to the planning committee hearing clearly prejudices our client's position;
2. The revised Committee Report prepared for the Planning Committee Meeting on Monday 4<sup>th</sup> December 2017 has not rectified many of the legal and planning policy errors which we have detailed in our Letter Before Claim, and the relevant planning policy and law remains misapplied; and
3. Although your Tree Officer has attended site to 'tag' the trees to be protected at the request of the Planning Committee, some of the trees 'tagged' do not accord with the Plan nor Schedule of Tree Preservation Order (No. 11) 2017. It is incontrovertible that ambiguity still exists over which individual trees, and trees within groups of trees, are protected or not. It is a legal pre-requisite for any TPO that subject trees are absolutely clearly identified and mapped.

As you will be aware, our clients have been trying to actively engage with the Council for the last 15 months. It has never been disputed that a Tree Preservation Order may be made to protect some of

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**Worcester** T: 01905 612001 F: 01905 744899  
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 New Broad Street House 35 New Broad Street London EC2M 1NH  
 100 Longwater Avenue Green Park Reading RG2 6GP  
 5 Deansway Worcester WR1 2JG  
 Overass House Ross Park Ross-on-Wye HR9 7U5

Our Director

CHAMBERS  
AND PARTNERS



Our Quality



# Agenda Item 6

the trees on site, however only the trees which merit protection, in accordance with the Government's planning policy tests, should be protected.

After extensive site visits over such a protracted period of time it is inexcusable that the Council is promoting a Tree Preservation Order where the Council's own Officers still cannot correctly identify and map the trees to be protected. This confirms the failure of the Council to correctly apply the correct planning policy tests, and of the apparent or actual bias of the Council's Officers with regard to their independent and appropriate and lawful promotion of the Tree Preservation Order.

Notwithstanding the assertions the Council have made in the revised Committee Report prepared for the December Planning Committee Meeting, the legal challenge of Tree Preservation Order (No. 12) 2016 earlier this year was successful because the Council's actions were unlawful.

Although Tree Preservation Order (No. 12) 2016 was quashed by consent, the Council's assertion that the Court had not considered the matter is incorrect. The legal challenge was considered by the Honourable Mr Justice Singh, who considered that the grounds were arguable and that the full legal challenge should be heard by the Court. Our client's costs in the action were paid by the Council.

We consider that the Council's actions in relation to Tree Preservation Order (No. 11) 2017 are also unlawful for the reasons raised in our Letter Before Claim.

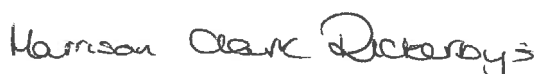
We had hoped that the Council's Officers would engage with our clients in relation to the trees to be protected, however it has become apparent that the Council continues to flout both the requirements of the Pre-Action Protocol and our client's requests to engage.

Due to the fact that the Council's Officer's assessments of the trees to be protected has been entirely undermined by their continued inability to correctly identify the trees on site, our client's arboricultural consultant has prepared a detailed assessment of the trees proposed by the Council to be included in Tree Preservation Order (No. 11) 2017 in the hope that this will assist Members understand the basis on which the trees can be lawfully included within a Tree Preservation Order.

A copy of this report is enclosed, together with a revised TPO schedule indicating the trees which our client's arboricultural consultant considers would merit TPO protection. The report contains extensively researched and detailed recommendations to the Committee as detailed in paragraph 7 on pages 29 and 30 of this report. It is open to the Committee to adopt the recommendations therein and confirm the TPO on this basis in substitution for the recommendations in the manifestly flawed report prepared by the Council's Officer.

These documents will be sent today to the Council's Planning Committee Members and Officers who are due to attend the site visit on Monday 4<sup>th</sup> December, together with a copy of this letter.

Yours faithfully



**HARRISON CLARK RICKERBYS LIMITED**

*Encl*