

Appendix C - Objections to TPO (13) 2016

Ref	Name
01	Freefield Investments Ltd
02	Grove Tompkins Bosworth Solicitors (on behalf of Freefield Investments Ltd.)
03	Cotswold Wildlife Surveys (on behalf of Freefield Investments Ltd.)
04	Barton Hyett Arboricultural Consultants (on behalf of Freefield Investments Ltd.)
05	Jerry Ross Arboricultural Consultancy (on behalf of Freefield Investments Ltd.)

FREEFIELD INVESTMENTS LTD

PO BOX 16864
HENLEY IN ARDEN
B95 8BG
TEL: 01564 792539 FACSIMILE: 01564 898711

08 August 2016

Our ref: MAF1/JDP
Your ref: TPO(13)2016

Mrs R Sultana
Bromsgrove District Council
Parkside
Market Street
Bromsgrove
Worcs
B61 8DA

BY EMAIL ONLY

Dear Madam

Re: Town and Country Planning Act 1990
Bromsgrove District Council Tree Preservation Order (No.13) 2016
Tree/s on land at side and rear of 73 Linthurst Newtown, Blackwell

We refer to your letter of 3rd inst., enclosing purported Tree Preservation Order on land owned by this company at Linthurst Newtown, Blackwell. Can you please note the above address for all future correspondence with us.

It is clear the Local Authority has acted precipitively and not in accordance either with the prescribed procedures and regulations or governing statutes. Further, the Local Authority has misapplied and misinterpreted the relevant law and has acted oppressively demonstrating clear prejudice and bias.

The schedule to the purported TPO does not comply with the relevant regulations and guidelines and wrongly describes the land as woodland. The Local Authority's own records and a quick glance at the site evidences this land is not woodland. Accordingly, the schedule is fatally flawed due to the errors and omissions.

The plan attached to the purported TPO is also incorrect and to assist we attach a copy of our Title Plan which shows the extent of and the correct boundary to our land.

For your further information, we would refer you to the Judgement in Evans v Waverley Borough Council (1995) which specifically addresses the 'woodland' mis-categorisation.

Taking all the above into account, it is clear the TPO is manifestly wrong and therefore a nullity.

M

FREEFIELD INVESTMENTS LTD

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For your further information, your Tree Officer that attended the site on Wednesday last, serving Notice, ordered our contractors to immediately cease their maintenance work and demanded immediate access to our land. When access was lawfully denied, because your Officer had not given any prior notice, he became belligerent and hostile and threatened to ask the police to attend. We are disappointed that a Local Authority Officer would endeavour to unlawfully force entry and prevent our contractors from carrying out their lawful work. As a gesture of goodwill, our contractors have temporarily ceased their maintenance work to allow the Local Authority the opportunity to liaise with us and deal with this matter fairly and objectively.

We have today instructed our solicitors, Grove Tompkins Bosworth, 54 Newhall Street, Birmingham, B3 3QG, to draft proceedings against the Local Authority to set aside this Order and to seek costs on an indemnity basis and damages for unwarranted interference with the rights and powers of the landowner.

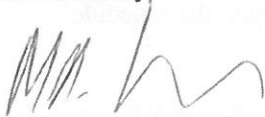
In the circumstances, we invite the Local Authority to forthwith revoke this purported TPO so as to avoid unnecessary litigation and wasteful costs.

We also confirm we have instructed an Arboriculturist, Andy Warren of Cotswold Wildlife Surveys, Withy Way, Charingworth, Chipping Camden, Glos, GL55 6NU, to act on our behalf and to survey any trees on our land that may merit consideration for a TPO. We would invite the Local Authority's Tree Officer to meet with Andy Warren in order that this issue is professionally dealt with in the best interests of all parties.

For the avoidance of doubt, we formally object to this TPO without in any way admitting the validity of the same.

Finally, as a further gesture of goodwill, we undertake not to cut down any mature trees on our land pending a site meeting with our Arboriculturist.

Yours faithfully,



M A Fell
Director

c.c. Clare Flanagan, Principal Solicitor, Bromsgrove District Council
Claire Felton, Head of Legal, Equalities & Democratic Services
Kevin Dicks, Chief Executive, Bromsgrove District Council
Andy Warren, Cotswold Wildlife Surveys
Grove Tompkins Bosworth, Solicitors

Grove Tompkins Bosworth

— Solicitors —

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J. R. Devlin
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YOUR REF

OUR REF **JRD.MS.Freefield**

DATE **05 September 2016**

Bromsgrove District Council
Parkside
Market Street
Bromsgrove
Worcs B61 8DA

and by email: r.sultana@bromsgroveandredditch.gov.uk

Dear Sirs

**Re: Freefield Investments Limited
Tree/s on Land at Side & Rear of 73 Linthurst Newtown, Blackwell
Tree Preservation Order (13) 2016**

We have been consulted by our clients, Freefield Investments Limited, in relation to the above Tree Preservation Order which has been issued and in our view is self-evidently wrong in designating the whole of the area as W1 and is clear abuse of process to deliberately frustrate our clients' lawful use of their land. Can we please invite the local authority to revoke the TPO as in the alternative we are instructed to seek Counsel's opinion with a view to claiming costs and damages in accordance with precedents and case law. Our clients' Arboriculturist has been instructed to liaise with the local authority Tree Preservation Officers and to work constructively with them to agree any trees or groups of trees that may be appropriate for TPO protection. In view of the holiday period our clients' Arboriculturist has not had sufficient time to prepare his full professional report in this matter and we are therefore asking for additional time in order that this can be prepared and submitted for consideration and a constructive meeting can take place with your Mr Bucklitch.

We trust this is in order and no action will be taken until this meeting has taken place.

Yours faithfully

GROVE TOMPKINS BOSWORTH
Personal Email: jrd@gtb-solicitors.com



30th September 2016



Cotswold Wildlife Surveys

Mrs R Sultana
Bromsgrove District Council
Parkside
Market Street
Bromsgrove
Worcestershire
B61 8DA

Dear Madam,

TREE PRESERVATION ORDER: BROMSGROVE DISTRICT COUNCIL (No. 13) 2016 - TREES ON LAND AT SIDE AND REAR OF 73 LINTHURST NEWTON, BLACKWELL, BROMSGROVE, B60 1BS

Further to the formal notice of the above Tree Preservation Order (TPO) on 3rd August 2016, this is to confirm, that on behalf of my clients Mr M Fell and Ms E Rosser, I wish to object to the notification of the TPO.

The Council have made the order for the following reason:

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

Whilst we are not opposed to TPOs *per se*, in this case the TPO appears to have been hastily applied across part of the garden at No. 73, as well as the land on each side and to the rear of No. 73.

It is understood that the TPO was made in response to the clearance of scrub and previously felled tree stems on the adjoining land, and that the whole site, including the rear and side garden of No. 73 was identified by the Tree Officer as woodland, thereby engendering a blanket 'W' coverage for the TPO.

My objection is as follows:

1. The side and rear garden of No. 73 is not woodland, and is not connected in any way to the works on the adjoining land. Furthermore, No. 73 is in the private ownership of Mr Fell and Ms Rosser and is used for domestic purposes. As such it should not have been included in the TPO.
2. The clearance works on the adjoining land actually started about two years ago, with recent works focusing on tall ruderal vegetation, scrub and previously felled material, with some small areas of young, self-seeded trees also included.

The latter consisted of Ash *Fraxinus excelsior*, Sycamore *Acer pseudoplatanus*, Domestic Plums *Prunus domestica* and Goat Willow *Salix caprea*, whilst the scrub included Elder *Sambucus nigra* and Cherry Laurel *Prunus laurocerasus*.

It is worth noting that most of the young, self-seeded trees to the rear of No. 73 had previously been severely pruned by the electricity board as part of their cable wayleave clearance operations.

By designating the whole site as W1, work on clearing the scrub had to cease, leaving the land around No. 73 in an unkempt state. This is having a negative effect on the neighbourhood, and is particularly concerning for Mr Fell and Ms Rosser who are surrounded on three sides by the mess.

3. As the TPO was applied to trees of *special amenity value*, it is requested that the TPO is re-issued so that it only applies to those trees of landscape and visual importance and not the whole site, and not the garden of No. 73.

Indeed, I have walked the site with Andy Bucklitch, the Tree Officer, and I am aware that he has since re-visited to examine the individual trees in more detail.

During our visit he acknowledged that the woodland TPO is the highest level of cover, and is designed to protect trees which are potentially at risk, thereby allowing the Tree Officer sufficient time to review the site and place specific TPOs on individual trees.

Given that only a small part of the adjoining land is being tidied up, with the majority untouched, I do not see the justification for a blanket woodland TPO, when there would appear to be sufficient time to assess the trees on the site on their individual merits as laid out in the Town and Country Planning Act.

I would also suggest that any TPO should not restrict my clients at No. 73 on the grounds of reasonable tree works, which under the present circumstances this clearly does.

Yours sincerely,



Andy Warren BSc (Hons), MA (LM), Tech Cert (Arbor A), MCIEEM, TechArborA



TREE PRESERVATION ORDER OBJECTION

ON BEHALF OF

FREEFIELD INVESTMENTS LIMITED

RELATING TO

BROMSGROVE DISTRICT COUNCIL TREE PRESERVATION ORDER (NO 13) 2016

AT

**LAND AT SIDE AND REAR OF:
73 LINTHURST NEWTOWN, BLACKWELL**

Prepared by: Paul Barton *MSc, TechCert (ArborA), MArborA*
Checked by: Jerry Ross, *BSc, FArborA*
Reference: F.73LN

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REVISIONS:

Date	Rev	Description of revision	Initials
28.09.16	-	First issue	PEB

1. INTRODUCTION

1.1 A Tree Preservation Order (TPO) has recently been served by Bromsgrove District Council.

1.2 The title of the TPO is:

- Bromsgrove District Council Tree Preservation Order (No 13) 2016, tree/s on land at side and rear of 73 Linthurst Newtown, Blackwell

1.3 The above address is hereafter referred to as 'the site'.

1.4 The TPO specifies:

- W1 woodland

1.5 The stated reasons for serving the Order are as follows:

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

1.6 The TPO was served on 3rd August 2016 and takes provisional effect for six months from this date. After this time, if the TPO has not been formally confirmed by the Local Planning Authority (LPA) its provisional effect will lapse and a new Order must be served.

1.7 The deadline for objections to be received by the LPA in relation to this Order was stated as 5th September 2016. Since then, letters have been exchanged between Freefield Investments Limited and the local planning authority (LPA) and a letter from the LPA dated 9th September granted an extension of time for representations to be made until Friday 30th September 2016.

1.8 I have been instructed to prepare this representation as part of an objection to the TPO by the Directors of Freefield Investments Limited.

1.9 The objection is made in accordance with Regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. It states the reasons for the objection and specifies the trees, groups of trees or woodlands in question.

2. GUIDANCE

2.1 Guidance is provided to Local Planning Authorities by the Department for Communities and Local Government through the online Planning Practice Guidance suite (<http://planningguidance.planningportal.gov.uk>), which replaced previous guidance contained in the document 'Tree Preservation Orders: A Guide to the Law and Good Practice' commonly referred to as 'the Blue Book'. This guidance sets out the grounds on which a TPO might be served. For clarity, the relevant elements of this guidance are reproduced below:

2.2 Power to make a TPO:

Local planning authorities can make a Tree Preservation Order if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

When deciding whether an Order is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified.

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

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. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The 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.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also

assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- *size and form;*
- *future potential as an amenity;*
- *rarity, cultural or historic value;*
- *contribution to, and relationship with, the landscape; and*
- *contribution to the character or appearance of a conservation area.*

Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order

It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.

3. GROUNDS FOR OBJECTION

3.1 The grounds for objection are as follows:

- a. The use of the woodland category is inappropriate and unjustified.
- b. The TPO cannot be justified on the grounds of preserving public amenity
- c. The plan showing the land covered by the TPO is not of sufficient accuracy.

3.2 Each of the above points of objection are explained in further detail in the following paragraphs.

Inappropriate use of the woodland category

3.3 The planning policy guidance on making TPO's states:

'The woodland category's purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.'

'It is unlikely to be appropriate to use the woodland classification in gardens.'

3.4 The TPO schedule describes the trees to be protected as "all trees of any size and species within W1 on the plan".

3.5 The land that the Order relates to is in parts heavily vegetated with ruderal low-level flora including bramble, nettles, fern and annual weeds, but devoid of trees. While it is accepted that woodlands have open areas such as glades and rides, the areas of this site that are devoid of any trees comprise major proportions of the area as a whole and cannot be described in these terms. The designation of an area that includes such substantial regions of tree-less land as 'Woodland' within a TPO is unreasonable and contrary to the intentions of the TPO legislations. The designation of this land within this provisional TPO as 'Woodland' is interpreted as an attempt to enforce the conversion of existing scrubland into future woodland by protecting all naturally occurring self-set seedling and sapling growth. In so doing the Local Authority appears to be forcing the landowner to give his land over for a use for which he has not intended.



Photos 1 & 2: open scrub areas to the sides of no.73 showing barley any trees of significant stature.

- 3.6 The TPO plan shows that the northeast side of the garden of no.73 is also included within the woodland order. As noted above in the planning policy guidance, woodland orders should not be used in gardens.
- 3.7 The northern part of the site contains numerous young trees, including Goat Willow, Silver and Downy Birch, Hawthorn, Oak, Sycamore, Beech, Elder and Apple. These are largely pioneer species of tree that readily self-seed and colonise previously disturbed or barren land. This accords with the site history, which in recent time was a Mink Farm and paddock, *not* woodland. Indeed there is no historical evidence that the area included any woodland: aerial imagery shows that in 1945 that the area was an agricultural field as shown in figure 1 below.



Figure 1: Aerial image from 1945 with approximate site boundary shown in red (source Google Earth Pro, 2016).

- 3.8 The LPA's 2015 'Strategic Housing Land Availability Assessment' includes the site in its schedule of 'Green Belt potential' sites (site reference BDC154). The assessment process involved two strategic planning officers undertaking desk-based research and site visits to evaluate the site's potential for allocation for housing. The desk-based research included GIS data on conservation sites, the habitat inventory and the Worcestershire Biodiversity Action Plan. The on-site assessment included a survey of the site's size, current use, character of surrounding area, physical constraints, boundaries and surrounding land use. The conclusion of the planning officer's assessment was that the predominant land type is '**agricultural scrubland**' and that 'landscape and trees' would not be significantly impacted by development of the site. Please see figure 2 below.
- 3.9 In addition, the sales particulars written to advertise the land for sale in 2005 describe the land as 'a valuable piece of accommodation/agricultural land'. Clearly, the owner did not purchase a woodland so to classify it as such a short time later is unjustifiable.

Sites in Blackwell, Burcot and Beoley

Appraisal Criteria		Site Reference	BDC8	BDC90	BDC109	BDC124	BDC154	BDC178
SITE SUITABILITY ASSESSMENT								
Site size (In hectare)			0.7	6.7	0.34	2	1.52	1.78
Stage A	Strategic Policy							
	Biodiversity, Geodiversity & Heritage							
	Land at risk of flooding							
Stage B	Impact on the historic, cultural & built environment							
	Access to public transport							
	Access to primary school							
	Access to local retail facilities							
	Access to health facilities							
	Contamination on site							
	Landscape & Trees							
	Public Rights of Way							
	Physical constraints							
	Open space & recreation							
	Employment Land							
	Infrastructure capacity							
	Highway access							
	Green Belt							
	Compatibility with adjoining uses							
	SITE AVAILABILITY ASSESSMENT							
Is the site immediately available for development?								
What is the predominant land type?		Access to Station Cottage	Agricultural	Gardens	Gardens, Housing, Field	Agricultural Scrubland	Agricultural	
SITE ACHIEVABILITY ASSESSMENT								
Willingness of landowner to progress site for development								
Appropriate timeframe for development		Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
POTENTIAL RESIDENTIAL YIELD								
Potential yield based on SHLAA Methodology			10	55	4	24	45	45

Figure 2: BDC SHLAA 2015 showing the site details highlighted in red.

Public visual amenity

3.10 In the LPA's reasons for making the TPO is stated that:

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

3.11 This reason has been applied to all the trees that are the subject of the TPO. Whilst some of the trees that are present on the site are visible to the general public, notably those along the frontage to Linturst Newtown, most are not. It cannot be the case that trees have 'special amenity value' if they cannot be seen

3.12 The Planning Policy Guidance on the making of TPO's states:

'The 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'

3.13 The land covered by the Order adjoins Linthurst Newtown on the southeast side. This is the only road that provides views of the trees within the site. It is accepted therefore that the row of trees along the roadside do have visual amenity as they are easily seen. Additionally, mature trees in the internal square shaped area immediately to the rear of the garden can be partially viewed, as the top of their crowns are visible over the roofs of adjacent houses.



Figure 2: snapshot of Ordnance Survey plan showing the site in relation to local roads and footpaths. Photos taken from locations 1, 2 and 3 are provided below.



Photo 3: from location 1 on the railway bridge.



Photo 4: view from location 2.



Photo 5: view from location 3.

- 3.14 The areas of the site that contain more dense tree cover are not visible from public roads or footpaths, so have a negligible visual amenity value.
- 3.15 No information has been provided by the LPA to demonstrate how the amenity value of any trees that are the subject of the TPO were assessed in a 'structured and consistent way taking into account their visibility, individual visual impact and wider visual impact', as specified within Government guidance.

Inaccurate TPO plan

- 3.16 The plan showing the location of W1 in relation to the land has been drawn at 1:1250 scale. The boundary line appears to have been drawn by hand using a broad-nibbed pen, which when measured with a scale rule gives a boundary width of 2 metres. This is not sufficiently accurate to determine which trees near the boundary of the site are included in the Order.
- 3.17 Additionally, the drawn boundary line along the northeast boundary of the garden of no.73 is approximately 2 metres inside the garden boundary. As noted at 3.6 above, this attempt to include trees within the domestic curtilage of the property as woodland is inappropriate and would lead to

ongoing confusion for the occupant of the house, particularly with regard to naturally occurring saplings or small ornamental garden trees that could be planted along the boundary in the future.

4. CONCLUSIONS

4.1 It is requested that TPO No 13 is not confirmed by the Council for the reasons stated within this report.

4.2 If, however, the council is minded to confirm the Order (having given due consideration to the reasons for objection set out above), it is requested that the TPO be confirmed subject to modifications that omit any tree/tree group that cannot be demonstrated in a consistent and structured way to make a significant, long-term, contribution to public visual amenity as well as its enjoyment by the public.

4.3 Therefore, in the event of a decision being made by the Council to confirm the Order with modifications, it is requested that a more detailed assessment is made of the trees in order to ascertain which trees are of significant quality and visibility in order to attract the special amenity value required for suitability for a TPO. , In order to undertake such an assessment, some vegetation clearance will be necessary to gain access through the dense ruderal vegetation.



Paul Barton, *MSc, MArbora*

28th September 2016



Jerry Ross Arboricultural Consultancy

J.P. Ross B.Sc.(hons) F.Arbor.A

Tel/Fax: 01989 770383

Mobile: 07860 232308

Email: trees@jerryross.co.uk

BROMSGROVE DISTRICT COUNCIL

The Council House,

Burcot Lane

Bromsgrove

Worcestershire

B60 1AA

30 September 2016

FAO C. Felton, Head of Legal Equalities & Democratic Services

Dear Ms Felton

Tree Preservation Order No. 13 (2016)

Land at the side & rear of **73 LINTHURST NEWTOWN, BLACKWELL**

Please accept the following as an addendum to be considered in addition to document no. F.73LN/TPOob/PEB/28.09.2016, being a letter of formal objection to the above TPO by Paul Barton of Barton Hyett Associates, acting on behalf of Freefield Investments Limited.

There follows an analysis of the area included as 'woodland W1' in the Order using the methodology known as Woodland Evaluation Method for Preservation Orders ("Woodland TEMPO). This allows for scoring the area in question on a number of criteria with the total score being used to determine whether a TPO is definitely merited, if a TPO is clearly defensible or unlikely to merit TPO protection or if a TPO is indefensible or simply inapplicable.

I include here a score sheet and a document explaining the system. The system inevitably assumes that the area in question is recognisably 'woodland'; Mr Barton's previous submission makes clear that this is not the case over much of the area designated as W1. However, confining the assessment to that part of the site which is at least largely tree covered, the result is a score of 11, giving a clear indication that **the woodland TPO is indefensible**.

I trust that this method of providing a disinterested evaluation of the appropriateness of designating the site as a woodland TPO will be given due weight.

Yours sincerely

J.P. ROSS B.Sc.(hons) F.Arbor.A

Jerry Ross Arboricultural Consultancy

The Old Pound,
Llangarron,
Ross-on-Wye,
Herefordshire.
HR9 6PG

VAT No: 549 5597 83



the arboricultural
ASSOCIATION
trees.org.uk

REGISTERED
CONSULTANT

WOODLAND EVALUATION METHOD FOR PRESERVATION ORDERS (WOODLAND TEMPO)
SURVEY DAT SHEET AND DECISION GUIDE

Date 30/09/2016 Surveyor J.P.Ross

Woodland details

TPO Ref (if applicable) TPO 13 (2016)

Location: Land adj. to 73 Linthurst Newtown r

REFER TO GUIDANCE NOTES FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition and suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

- | | |
|-------------------------------------|-------------------------|
| 10) Unmanaged – good/fair condition | Highly Suitable |
| 8) Unmanaged – poor condition | Very Suitable |
| 5) Excessively managed | Suitable |
| 2) Under good management | Barely suitable |
| 1) Derelict | Unlikely to be suitable |
| 0) Dead/Dying/Dangerous* | Unsuitable |

Insofar as the area designated as W1 contains any recognisable woodland it is Unmanaged and in Poor Condition.
SCORE 8

*Relates to existing context and is intended to apply to majority of main stand trees having severe irremediable defects only

b) Naturalness & suitability for TPO

- | | |
|-----------------------------|-------------------------|
| 10) Ancient/ASN | Highly suitable |
| 8) Recent semi-natural | Very suitable |
| 5) Replanted ancient | Suitable* |
| 2) Recent native plantation | Barely suitable |
| 1) Pioneer dominant | Unlikely to be suitable |
| 0) Recent exotic plantation | Unsuitable |

Such woodland that can be recognised as such is wholly dominated by self-set 'Pioneer' species
SCORE 1

*If few old growth trees present & little or no regen consider TEMPO tree/group assessment

c) Size (ha) & suitability for TPO

- | | |
|------------|---|
| 10) 100+ | Extremely suitable |
| 8) 10-<100 | Highly Suitable |
| 5) 5-<10 | Very Suitable |
| 2) 0.25-<5 | Suitable |
| 1) <0.1 | Unsuitable (consider TEMPO tree/group assessment) |

Area: 0.25<5 Ha.

SCORE 2

d) Cultural factors

Woodland must have accrued 13 or more points (with no zero score) to qualify

- | |
|--|
| 10) Historical record / vital landscape feature / ≥10% veteran tree population present |
| 8) SSSI or other national designation; significant landscape / habitat importance |
| 5) Woodland with local designation / high public use / identifiable habitat value |
| 2) Woodland with internal public access (use light or unknown) / some habitat value |
| 1) Woodland adjacent to highway or with external public access / low habitat value |
| 0) Woodland with none of the above additional features inc. minimal habitat value |

SUB-TOTAL = 11

TPO INDEFENSIBLE

Part 2: Expediency assessment

Woodland must have accrued 15 or more points to qualify

- | |
|--|
| 5) Immediate threat to overall woodland |
| 4) Immediate risk of significant loss / severe fragmentation |
| 3) Foreseeable risk of significant loss / severe fragmentation |
| 2) Foreseeable risk of partial loss / fragmentation |
| 1) Precautionary only |

Scores & Notes

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-12 | TPO indefensible |
| 13-15 | Does not merit TPO |
| 16-20 | TPO defensible |
| 21+ | Definitely merits TPO |

Add scores for Total

Decision



Forbes-Laird Arboricultural Consultancy Ltd



• Planning • TPO • Safety Inspection • Subsidence • Litigation • Design

WOODLAND EVALUATION METHOD FOR PRESERVATION ORDERS

WOODLAND TEMPO

Guidance Note for Users

Julian Forbes-Laird

BA(Hons), MICFor, MEWI, M.Arbor.A, Dip.Arb.(RFS)

Registered Consultant of the Arboricultural Association

Director & Principal Consultant, Forbes-Laird Arboricultural Consultancy Ltd

April 2008

Principal Consultant:

Julian Forbes-Laird

BA(Hons), MICFor, MEWI, M.Arbor.A, Dip.Arb.(RFS)

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Registered Office:

Dendron House

74 Barford Road • Blun-
ham

Bedford • MK44 3ND

Introduction

Background

The impetus to take a fresh look at existing TPO suitability evaluation methods originally 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, the author decided that there was considerable room for improvement, as each of the better-known existing methods has disadvantages.

Accordingly, TEMPO was developed as a direct response to the apparent continuing uncertainty about what attributes a tree should have in order to merit statutory protection by TPO.

Since its public release, TEMPO has consistently gained popularity, being in use with over 50 local authorities, several of which have used it for a full scale TPO review, as well as many consultants.

However, TEMPO was deliberately designed to address considerations of TPO suitability in relation to individual trees and groups of trees: it does not consider factors relating to woodland TPO suitability assessment.

'Woodland TEMPO' has been developed specifically to address these factors, following instruction from Loch Lomond and The Trossachs National Park Authority, who wanted to augment their use of TEMPO with a method specifically designed to consider woodlands.

Overview

Woodland TEMPO (W-TEMPO) is designed primarily as a field guide to decision-making, though it is recognized that some desk study work is likely to be required. Like TEMPO, the woodland version 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.

W-TEMPO considers all of the relevant factors in the TPO decision-making chain, including expediency¹.

Excluding the first section, which is simply the survey record and is thus self-explanatory, W-TEMPO replicates TEMPO's three-part structure:

- 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 W-TEMPO is broken down into four sections, each of which is related to woodland suitability for statutory protection by TPO:

- a) Condition
- b) Naturalness
- c) Size
- d) Cultural 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 six terms, which are defined as follows:

Unmanaged – good/fair condition	Woodland with little or no interference but without this having lead to a marked deterioration in condition
Unmanaged – poor condition	Woodland with little or no interference with this having lead to a marked deterioration in condition
Excessively managed	Woodland showing unnecessary removal/clearing of trees in poor or dead condition, including 'hygiene' works to remove (non-hazardous) dead wood etc
Under good management	Woodland being managed according to accepted standards of good silvicultural practice, including the preservation of deadwood habitat
Derelict	Woodland that has been neglected or which has suffered severe storm damage, such that its cohesion, integrity and value have been eroded beyond reasonable expectation of recovery
Dead/dying/dangerous	Woodland, usually of small size, with key trees in unretainable condition such that it has no obvious future as a viable and cohesive entity

The scores are weighted towards woodlands in unmanaged condition, as government advice² counsels against making a woodland type TPO where good management is in place. However, woodlands that have become derelict, thereby losing their value as cohesive features, score low in that it might not be appropriate to seek to compel their retention. Dead, dying or dangerous trees should not be placed under a TPO, due to exemptions within the primary legislation, hence the zero score for this category. However, it is accepted that the applicability of this to woodlands will only occur in rare cases.

A note on the pro forma emphasizes that 'dangerous' should only be selected in relation to the woodland's existing context: a future danger arising, for example, as a result of development, would not apply. Thus, a woodland can be in a state of general collapse but not be dangerous due to the absence of targets currently at risk. Although the wording in the method reflects that of the primary legislation in England, it is intended to include hazardous trees that require remediation which is 'urgently necessary in the interests of safety' (as per s106 of the Town and Country Planning (Scotland) Act 1997).

Under this section of W-TEMPO, it is important to consider the condition of those principle trees without which the woodland would lose its aerodynamic, visual or cultural cohesion. If the woodland cannot be 'split' in this way, for example into differing compartments, then its average condition should be considered.

Each of the condition categories is related to TPO suitability.

b) Naturalness

It is an accepted principle of silvicultural assessment to categorize woodlands according to a scale that encompasses woodlands close to their 'natural' state at one end, and woodlands which are wholly alien features at the other.

The six 'naturalness' categories given in this section seek to identify the various possibilities, though it is accepted that woodlands can often comprise a mosaic of types. In such cases, the surveyor should consider scoring the different woodland types present and then either averaging the resulting score, or including only the more natural areas under any resulting TPO.

The class type names are intended either to reflect published classifications, or to be self explanatory. For specific definitions, therefore, it is recommended that further reading is undertaken.

However, it is considered helpful to outline the author's general intention as follows:

Ancient/ASN	Wooded area continuously occupied by trees since 1600 or earlier (England & Wales; 1750 for Scotland) possibly including later native introductions and management; includes wood pasture
Recent semi-natural	Woodland arising either naturally or by planting after 1600 (or 1750 in the case of Scotland), the character of which is similar to ancient woodland in terms of tree/shrub species present, such that its biodiversity value would be likely to increase over time, given preservation and appropriate management
Replanted ancient	Area known to have been wooded prior to 1600 (or 1750 for Scotland) but which may have been almost cleared in the interim, to be overplanted with (usually exotic) timber crop trees intended for commercial use; some old growth trees and/or ancient areas (inc. soils/seedbanks) surviving; capable of at least partial restoration over time
Recent native plantation	Commercially planted native woodland that either has yet to mature or has matured but has yet to develop an uneven age structure and other features of interest; trees regularly spaced, few habitat features, shrub and herb layers poor
Pioneer dominant	Area recently captured by pioneer species, typically in pole stage and with very little diversity; little if any indication of succession species arising; poor potential for development into recent semi-natural except over significant lapse of time and/or with intensive management
Recent exotic plantation	Commercially planted non-native woodland

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

c) Size

The size bands given in the method broadly correspond to those used by the Forestry Commission (FC) in the publication 'National Inventory of Woodland and Trees, Great Britain' (FC 2003), at Tables 1 and 7a. However, the total number of size categories used by the FC of ten was considered to be unwieldy, and so the categories in the medium to upper size ranges have been conflated.

Where a mosaic woodland is being assessed, the size categories can be used to run multiple assessments to derive an aggregate score (allowing computation of a mean), or to test the TPO suitability of certain compartments (e.g. replanted ancient woodland where old growth trees survive in only a part of the total treed area).

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, woodlands only qualify for consideration within that section providing they have accrued at least thirteen points. Additionally, they must not have collected any zero scores.

The total of thirteen 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'
- '1-12' equating to 'TPO indefensible'

d) Cultural factors

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

Historical record / vital landscape feature / $\geq 10\%$ veteran tree population present

The first of these criteria is intended to identify woodlands which are known to have existed well prior to the 1600 date that defines ancient woodland (or well prior to 1750 in the case of Scotland). An example of such a record would be a Domesday Book entry. It is accepted that 'vital landscape feature' is susceptible to subjective interpretation, though it ought to be possible to benchmark this at a sensible level based on high public visibility. In relation to veteran trees, the percentage given is arbitrary, being designed to reflect the presence of a significant population of such specimens: it maybe that a near miss percentage of, say, 9% is as good, and so this criterion should not be applied too strictly. Clearly, however, very low percentages of veteran trees present would not qualify.

SSSI or other national designation, or significant landscape / habitat importance

The first of these criteria is assumed to be self-explanatory. The second and third criteria are intended to be interpreted in similar fashion as above, though obviously at lesser values. It is recognized that an assessment of habitat importance is likely to require ecological input, unless the benefit is self-evident (e.g. Red Data Book species already known to be present).

Woodland with local designation / high public use / identifiable habitat value

'Local designations' include Sites of Interest for Nature Conservation, which tends to overlap with 'identifiable habitat value', and may even reflect/be considered under 'significant habitat importance' in the class above. 'Local designations' could also include historical records of less antiquity than the 1600 (or 1750) cut-off for ancient woodland. An example of this would be a so-called Roy Wood. High public use is intended to reflect woodlands comprising a locally known recreational resource, whereby public access is commonplace at, say, weekends. 'Identifiable habitat value' could relate to woodlands with a good age structure, retained deadfalls/deadwood, rich shrub and/or herb layers, fungi, etc, where there is factual knowledge that such features are being utilised.

Woodland with internal public access (use light or unknown) / some habitat value

'Internal public access' is intended to reflect either rights of way (England and Wales) or known actual useage (Scotland). 'Moderate habitat value' is intended to identify woodlands offering biodiversity benefits at an intermediate, non-specific level. Features will be similar to those listed in the class above, but will be fewer, and evidence of actual useage will be lower or absent.

Woodland adjacent to highway or with external public access / low habitat value

In relation to access, this class covers woodlands in England and Wales where formal access is external, allowing views of and into the woodland only (rather than the enjoyment of its interior), and where there is no known useage in the case of woodlands in Scotland. 'Low habitat value' is intended to reflect a generally absence of habitat features and only slight indications that the woodland is beneficial to biodiversity, beyond that accruing from cohesively treed space per se.

Woodland with none of the above additional features inc. minimal habitat value

Unlike TEMPO, W-TEMPO provides for a zero score in section 1d: it is intended that this class should apply where the presence of cohesively treed space confers no obvious benefits other than through the trees themselves. Examples would include an area of land captured by a monoculture of self-set sycamore, or a Sitka spruce plantation. This class, then, is intended to weed out any woodland that has 'unfairly' scored highly in other categories by virtue, say, of good condition and/or large size.

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 woodland has sufficient value to merit an expediency assessment.

The threshold for this is fifteen points, arrived at via a minimum qualification calculated from the thirteen point threshold under sections a-c, plus at least two extra points under section d. Thus woodlands 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.

Part 2: Expediency assessment

This section is designed to award points based on four levels of identified threat to the trees concerned, which are intended to form a cascade of reducing impact and/or lower immediacy, as follows:

Immediate threat to overall woodland

For example, planning application for development at the expense of its integrity/cohesion and/or requiring a change of use of significant quantum of treed space.

Immediate risk of significant loss / severe fragmentation

It is intended that this class be applied similarly to that above, but in cases where the anticipated adverse effect and/or where the threat are less imminent.

Foreseeable risk of significant loss / severe fragmentation

It is intended that this class be applied similarly to that above, but in cases where the threat is perceived rather than known.

Foreseeable risk of partial loss / fragmentation

It is intended that this class be applied similarly to that above, but in cases where the anticipated effect is of lower significance to the retention of the overall woodland.

Precautionary only

This class reflects the potential suitability of making precautionary TPOs, in line with published government guidance³. Accordingly, and in order to avoid a disqualifying zero score, 'precautionary only' still scores one point.

Clearly, other reasons apply that might prevent/usually obviate the need for making a woodland TPO. However, it is not felt necessary to incorporate such considerations into the method, as the author wishes to maximize its usability in the field: these other considerations are most suitably addressed as part of wider 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: W-TEMPO merely suggests a course of action. Thus a woodland scoring, say, 21, 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 five outcomes, as follows:

Any 0 Do not apply TPO

Where a woodland 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.

1-12 TPO indefensible

This covers woodlands that have failed to score enough points in sections 1a-c to qualify for an 'cultural factors' score under 1d. Such woodlands have little to offer their locality and should not be protected.

13-15 Does not merit TPO

This covers woodlands 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 woodland in amenity terms that also lacked the protection imperative of a clear threat to its retention.

16-20 Possibly merits TPO

This applies to woodlands 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'.

21+ Definitely merits TPO

Woodlands scoring 21 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 W-TEMPO, it may even be helpful to include a copy of the W-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

Like its cousin, W-TEMPO is a quick and easy means of systematically assessing woodland suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey.

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 woodlands perceived to be at risk, for example from adjacent development.

W-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.

Any feedback on the method is gratefully received by the author.

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References

- 1 'Tree Preservation Orders: A Guide to the Law and Good Practice', DETR 2000
- 2 Ibid.
- 3 DETR 2000 op. cit. at para. 3.5

