

Our ref: ST14523/MS/AM/ARB001
Digital ref:
Your ref:

Date: 20th April 2017

FAO - Head of Legal, Equalities and Democratic Services
Bromsgrove District Council
Parkside
Market Street
Bromsgrove
Worcestershire
B61 8DA

Dear Sir / Madam,

Re: The Bromsgrove District Council Tree Preservation Order (2) 2017 – Trees on Land at Foxlydiate ADR Land

We refer to the above Tree Preservation Order, (hereinafter referred to as 'the Order') and by way of this letter we object to the Order on behalf of The Applicant and respectfully request that the Order is not confirmed. This detailed objection is in accordance with *Regulation 6(1) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012*.

This Order has been served on a site that is subject to a live hybrid planning application (Ref: 16/0263), which was validated on 21st March 2016. Since then several statutory and non-statutory consultees have commented on the application, to which a number of meetings have taken place and formal responses been prepared. It should also be noted that at the time of submission the site was subject to a draft allocation, as the Bromsgrove District Council's emerging District Plan had not been adopted. This District Plan has since been adopted (25th January 2017) and the site has been allocated under planning policy 'RCBD1 Redditch Cross Boundary Development'. This adopted policy confirms, the site will provide up to 2,800 homes and will help Redditch Borough Council meet its housing requirement of 6,380 dwellings by the year 2030. Furthermore, pre-application discussions have been held with Council on a number of occasions, the first of which was undertaken on the 23rd April 2015. As such we consider it wholly unreasonable to serve this Order (for 86 individual trees, 16 Groups and one Woodland) or any other TPO on the site at this late stage in the planning process.

Since March 2016 the design of the site has evolved as a result of these statutory responses. As part of the hybrid planning application submission, Land Use Masterplan Option 10 Revision H was provided. Since then a significant amount of consultation with statutory consultees has taken place, resulting in minor amendments being made to the Land Use Masterplan. As part of this consultation it was agreed that addendums to the Environmental Statement and the Drainage Strategy and Flood Risk Assessment, alongside an amended Land Use Masterplan and Parameter Plans would be produced and submitted. We anticipate these revised plans will be submitted in May 2017. Therefore, we reserve the right to comment further at a later stage.



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Therefore, we object to the Order on the following grounds:

1. The Council has protected trees that are not worthy of protection.
2. There are drafting errors in the Order; and
3. The Council has protected trees that would have to be removed to enable the proposed access routes into and through the site to be constructed if planning permission is granted for application ref: 16/0263.

1. The Council has protected trees that are not worthy of protection

A tree survey was undertaken by an arboriculturist from 'Outline Trees Arboricultural Consultancy' in 2014, which was subsequently submitted to the Council as part of an Environmental Statement (Appendix 1: British Standards 5837:2012 Tree Survey & Tree Constraints Plan (2014) of the Arboricultural Method Statement, Volume 2) in support of Planning Application Ref. 16/0263. This tree survey data has been cross referenced with the trees protected by the Order. This has found twenty-six individual trees (T2, T3, T4, T6, T7, T12, T16, T17, T24, T25, T27, T31, T32, T34, T37, T40, T41, T58, T60, T62, T69, T74, T76, T77, T78, T86) and four trees groups (G8, G9, G15, G16) categorised as 'C' quality by the 'Outline Trees Arboricultural Consultancy' tree survey report have been protected by the Order. It has also been found that five individual trees (T22, T64, T67, T79, T80), which were categorised as 'U' quality by the 'Outline Trees Arboricultural Consultancy' tree survey report, have also been protected by the Order.

These trees were surveyed by an arboriculturist in accordance with the standards set out in British Standard 5837:2012 – Trees in relation to demolition and construction. This British Standard refers to category 'C' trees as '*Trees of low quality*', whilst the standard refers to category 'U' tree as '*those in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years*'.

We contend that trees of lower quality, i.e. category 'C' trees and those that are in such poor or health or condition that they cannot be expected to safely be retained for longer than ten years i.e. category 'U', are not suitable for protection by Tree Preservation Order. To reiterate we believe that trees which are in a potentially dangerous condition, where Section 14(1)(C) exemption from the 2012 Regulations would be applicable, should not be protected by the Order. This includes trees T22, T64, T67, T79, T80 referred to in the Order's First Schedule.

To conclude, we respectfully request that the Council gives serious consideration to the grounds of objection as set out in this letter and after consideration of the legal matters pertaining to the drafting errors and the issues surrounding the protection of average and/or lower quality trees (category 'C' trees) and trees with structural problems that may lead to their collapse (category 'U' trees), does not confirm 'The Bromsgrove District Council Tree Preservation Order (2) 2017'.

2. Drafting Errors in the Order

The *Town and Country Planning (Tree Preservation) (England) Regulations 2012* states in section 3.3 that '*The map contained in, or annexed to, an order shall be prepared to a scale sufficient to give a clear indication of the position of the trees, groups of trees or woodlands to which the order relates*'.

The scale used on the Order's Map is shown as 1:6,000 @ A3. This is not a recognisable metric scale and as such does not allow distances to be measured on the plan using a scale ruler. Having a scale bar on the TPO Map would overcome this scaling incompatibility problem, however a scale bar is not included on the Map. This means that the locations of trees cannot be readily ascertained by



measuring distances to the trees from fixed points on-site. Where protected trees are located adjacent to non-protected trees it would be almost impossible to locate that tree, by scaling from the Map in the Order. For example, two ash trees listed as T2 and T3 in the first schedule of the Order are located in a linear group of trees on-site. This group of trees contains a number of trees including other ash trees. Being unable to scale from the map means that the locations of these trees cannot be ascertained and because there are other ash trees in the group, it is virtually impossible to locate trees T2 and T3 properly on-site by using the Order's Map.

The location on the TPO Map for tree T76 appears to be wrong compared to its true location on-site. The *Town and Country Planning (Tree Preservation) (England) Regulations 2012* states in section 3.4 that *'In the case of any discrepancy between the map contained in, or annexed to, an order and the specification contained in the Schedule to that order, the map shall prevail'*. Thus where there are discrepancies on the location of a tree protected by the Order, the location shown on the Map is definitive. As the location shown on the Order's Map for tree T76 is wrong, the legal protection by the Order for this tree is ambiguous.

It appears that the group outline on the map for Group G15 excludes the most westerly oak tree in the group, however as it is impossible to scale from the map, its location on site cannot be ascertained, putting into question whether this tree is actually protected by the Order.

Another problem with the Order's Map is that, at the size the Map should be printed out at, which is A3, details on the map are hard to make out the locations and reference numbers of trees that are supposed to be protected by the Order. The small size of the typeface and plotting symbols for both individual and groups of trees makes reading the Map extremely difficult. Additionally, a number of the trees that are supposed to be protected by the Order, have their reference numbers on the Map obscured by other features. Good practice dictates that a Map attached to a legal document such as a TPO Map must be legible, however for a small number of trees shown on the Map their reference numbers are actually illegible.

The errors mentioned above regarding the TPO Map is contrary to Section 3.3 of the *Town and Country Planning (Tree Preservation) (England) Regulations 2012* because the Map does not give a clear indication of the position of the trees, groups of trees or woodlands to which the Order relates.

The *Town and Country Planning (Tree Preservation) (England) Regulations 2012* states that:

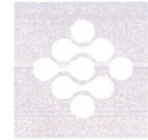
"3.—(1) An order shall be in the form set out in the Schedule to these Regulations or in a form substantially to the same effect and—

(a) shall specify the trees, groups of trees or woodlands to which it relates;

(b) where the order relates to a group of trees, shall specify the number of trees of each species in the group;"

The number of trees for each tree species referred to in the Order's First Schedule for Groups as G1, G2, G3, G5, G10, G12, G13, G14, is not stated in the First Schedule for these Groups. The relevant clause in the 2012 regulations is underlined above and it clearly states that number of trees, of each species must be listed in the Order. This is an error and as such invalidates the protection given by the Order for these Groups.

For the reasons given above it is considered that the Order and Map are flawed due to drafting errors and as a result the Order does not comply with the 2012 regulations. Therefore, we respectfully suggest that the Order cannot be legally confirmed by the Council.



3. The Council has protected trees that would require removal to enable the proposed main access routes into and through the site to be constructed if planning permission is granted for application ref: 16/0263.

Trees that would require removal to enable the construction of the main proposed access routes into and through the site for planning application ref: 16/0263 have been protected by the Order, including a small section from the southern end of group G1, a small section from the western end of group G15, a small section from the eastern end of group G7, a small section from the southern and south-western end sections of G4, a middle section of G12 and individual trees T3, T17, T18, T35, T40, T44, T68, T65, T68, T69, T82.

The Local Planning Authority (LPA) are aware of the main proposed access routes into and through the site for the planning application, which makes the protection of these aforementioned trees, somewhat perplexing. If full planning permission is granted for the access routes into and through the site, this would override the Order and thus the directly impacted trees could then be removed, which would then leave the protection by the Order on these specific trees, superfluous. This would result in the Order having to be reviewed by the LPA in the future to remove the trees lost to the development, in order to maintain the accuracy of the Order.

Therefore we object to the Order, as it protects trees that would require removal to enable the proposed main access routes into and through the site to be constructed, if planning permission is granted for planning application ref: 16/0263.

Please acknowledge this objection and address the acknowledgement and any other correspondence in the matter of the objection and this order to Mr Stuart Field at Planning Development & Regeneration GVA, 3 Brindleyplace, Birmingham B1 2JB.

Yours sincerely
for Wardell Armstrong LLP

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