

Your reference:

Our reference: RA03.ACC0014-0001.RA

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1 December 2017

BY SPECIAL DELIVERY BY 1PM

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PLANNING TEAM

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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 16th 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 4th 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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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.

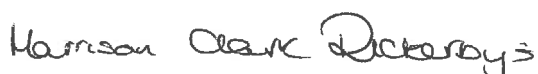
We had hoped that the Council's Officers would engage with our clients in relation to the trees to be protected, however it has become apparent that the Council continues to flout both the requirements of the Pre-Action Protocol and our client's requests to engage.

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 4th December, together with a copy of this letter.

Yours faithfully



HARRISON CLARK RICKERBYS LIMITED

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