

## **DEVELOPMENT CONTROL COMMITTEE**

### **REPORT OF THE DIRECTOR OF REGENERATION AND ENTERPRISE**

### **CONFIRMATION OF TREE PRESERVATION ORDERS**

#### **Purpose**

1. To consider whether or not the attached Tree Preservation Order(s) should be confirmed with or without modification in light of the objections that have been received.

#### **Recommendations**

2. It is recommended that:-
  - The Tree Preservation Orders referred to in the Appendix to this report should be confirmed without modification.
  - The recommendation is subject to the approval of members of the Development Control Committee

#### **Background**

3. Section 198 of the Town and Country Planning Act 1990, provides that, where it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an Order with respect to such trees, groups of trees or woodlands as may be specified in the order.
4. A Tree Preservation Order may, in particular, make provision—
  - (a) for prohibiting (subject to any exemptions for which provision may be made by the Order) the cutting down, topping, lopping, uprooting, willful damage or willful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give their consent subject to conditions;
  - (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the Order;
  - (c) for applying, in relation to any consent under the Order, and to applications for such consent, any of the provisions of this Act mentioned in subsection (4), subject to such adaptations and modifications as may be specified in the order.

5. Section 4 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 allows the Council to make a direction that the order shall take effect immediately for a provisional period of no more than six months.
6. For a tree preservation order to become permanent, it must be confirmed by the local planning authority. At the time of confirmation, any objections that have been received must be taken into account. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 sets out the procedure for confirming tree preservation orders and dealing with objections.
7. If the decision is made to confirm a tree preservation order the local planning authority may choose to confirm the order as it is presented or subject to modifications.
8. New tree preservation orders are served when trees are identified as having an amenity value that is of benefit to the wider area.
9. When determining whether a tree has sufficient amenity to warrant the service of a preservation order it is the council's procedure to use a systematic scoring system in order to ensure consistency across the borough. In considering the amenity value of a tree factors such as the size; age; condition; shape and form; rarity; prominence; screening value and the presence of other trees present in the area are considered.
10. As the council is currently undergoing a systematic review of the borough's tree preservation orders, orders will also be served where there is a logistical or procedural benefit for doing so. Often with the older order throughout the borough, new orders are required to replace older order to regularise the levels of protection afforded to trees.
11. Where new orders are served to replace older orders, the older orders will generally need to be revoked. Any proposed revocation of orders shall be brought before the committee under a separate report.

## **Finance**

12. There are no direct financial consequences arising from this report, although the Committee may wish to bear in mind that the refusal or approval of applications for works to preserved trees subject to conditions, or any subsequent applications may entitle the applicant to compensation for any loss or damage resulting from the Council's decision (Section 203 of the Town and Country Planning Act 1990)

## **Law**

13. The relevant statutory provisions have been referred to in paragraph 3, 5, 6 and 11 of this report.

## **Risk Management**

14. There are no material risks arising from this report other than those identified in paragraph 12 above. Should the Order be confirmed, any works to the preserved trees subject to the order will be considered by future applications and determined on the basis of good tree husbandry and amenity considerations.

## **Equality Impact**

15. The proposals take into account the Council's Equality and Diversity Policy and it is not considered that there will be any impact upon persons of protected characteristics..

## **Human Resources/Organisational Development**

16. There are no Human Resources/Organisational Development issues arising from this report.

## **Commercial/Procurement**

17. There are no Commercial or Procurement implications arising from this report.

## **Council Priorities**

18. The proposals for the confirmation of the tree Preservation Order are considered to align with the Council's decision to declare a Climate and Environmental Emergency, recognising that the value of the trees as a heat sink and that they function as an efficient carbon store to buffer environmental implications which aligns with the carbon reduction strategy and the aim to reach net zero by 2041.



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DIRECTOR OF REGENERATION AND ENTERPRISE

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## **List of Background Papers**

Appendix 1.1 – TPO/0301/HAS– Confirmation Report  
Appendix 1.2 – TPO Plan and Schedule for confirmation

## APPENDIX 1.1

### Confirmation Report for

#### **The Borough of Dudley (St. Margaret's at Hasbury C of E Primary School, Hagley Road, Halesowen) (TPO/0301/HAS) Tree Preservation Order 2021**

Tree Preservation Order	TPO/0301/HAS
Order Title	St. Margaret's at Hasbury C of E Primary School
Case officer	John Fraser
Date Served	26/11/2021
Recommendation	Confirm without modifications

### SITE AND SURROUNDINGS

1. The order, as served, protects 20 individual trees and 1 group of trees, around the boundaries of the school playing fields and playground area. The school is specifically in Halesowen South but is very close to Belle Vale and Hayley Green and Cradley South from where children will attend.
2. The trees were identified as being worthy of protection following a survey of trees within the school playing fields on 23<sup>rd</sup> November 2021. The trees were found to score sufficient points on a TEMPO evaluation to warrant protection under the TPO regulations. The trees were considered worthy of preservation due to their contribution to the amenity of the area in terms of their public visibility and contributions to the landscape in the area, their health and educational benefits, and the valuable connection to nature that the trees provide to the students who attend St. Margaret's Primary School.
3. The school playing field and playground is a large area that sits some 3 metres below the gardens of the surrounding properties on Hagley Road and Alvechurch Road. The land rises steeply towards the gardens from the playing fields on the northern and western boundaries of the site.

### PUBLIC REPRESENTATIONS

4. Following the serving of the TPO, three letters of objection were received from the occupants of 4 Quarry Hill, 10 Alvechurch Road and 11 Alvechurch Road. The comments highlighted a loss of 'ambient' light from gardens on dull days, the nuisance caused by overhanging branches and leaf and seed litter from the trees.

5. Two letters of support for the TPO, have been received as well as a number of letters from children attending the school. The letters of support were based on the following grounds:
  - The trees on the site provide habitat to various species of wildlife, and the removal of the trees would reduce the available habitat for the wildlife to use;
  - The trees give pleasure to the students of the school and local residents and make the area more appealing;
  - The trees reduce the negative impacts of climate change;
  - The trees absorb carbon from the air, and release oxygen;
6. The representations are considered below.

## **RESPONSE TO REPRESENTATIONS**

7. With regard to loss of light/view, the gardens concerned are of sufficient size to provide reasonable levels of private amenity space without significant hindrance from the trees. The trees are situated to the north/ northeast of the gardens of the objectors in Quarry Hill and Alvechurch Road and the sun traverse in the sky is from early morning north-east through south to evening north-west. This means that shading from the tree would mostly be directed away from the gardens. Furthermore, the trees stand some distance from the houses on Quarry Hill and Alvechurch Road.

The shade from trees can be considered both a constraint and opportunity. There is no common law right to light or legal right to a view, and a neighbour can plant what they like where they like on their property.

The possible only recourse to this is the Prescriptions Act 1932 section 3, where if a person has had uninterrupted light for a period of 20 years or more and then a neighbour plants a tree blocking out light, then a right of easement exists.

It is also a right to receive sufficient natural illumination through defined apertures such that the rooms served by the apertures can be used for the ordinary purposes to which the building is likely to be put.

The test for deciding whether or not an actionable interference has arisen is not how much light has been taken away but how much light remains and whether the remaining light is sufficient for a claimant's purposes.

Due to the position and orientation of the trees, the issue of lack of light to the gardens/houses standing on Quarry Hill and Alvechurch Road is not considered to be significant.

Reference is made to accumulations of leaf litter etc. Complaints about leaf fall are not uncommon and are seen as a normal maintenance obligation and are borne out of living in an area defined by a mature landscape of trees.

8. The submitted grounds for the support of the TPO are reasonable and where the fundamental amenity value of the trees is sufficient, it is considered that all the trees in the First Schedule should be retained within the order.

## **CONCLUSION**

9. Having considered the comments submitted by both the objectors and the supporters of the TPO, it is considered that it is reasonable to confirm the TPO without amendment to ensure against any future inappropriate or unreasonable intervention and to preserve the trees for future generations.

## **RECOMMENDATION**

10. It is recommended that the Tree Preservation Order be confirmed without modification.

# APPENDIX 1.2

## Tree Preservation Order Plan and Schedule As Served



  
Scale: 1:1250

Map referred to in the Borough Council of Dudley  
TPO Reference: TPO/0301/HAS  
St.Margaret's at Hasbury C of E Primary School, Hagley Road, Halesowen, B63 4QD

# FIRST SCHEDULE

## INDIVIDUAL TREES (Circled in black on the plan)

Reference on map	Description	Situation
T1	Beech	Playing fields of St.Margaret's at Hasbury C of E Primary School Hagley Road Halesowen B63 4QD
T2	Beech	
T3	Beech	
T4	Cherry	
T5	Box elder	
T6	Cherry	
T7	Cherry	
T8	Cherry	
T9	Walnut	
T10	London plane	
T11	Norway maple	
T12	Silver maple	
T13	Birch	
T14	Cherry	
T15	Cherry	
T16	Beech	
T17	Norway maple	
T18	Norway maple	
T19	Birch	
T20	Birch	

## GROUPS (Within the broken black line on the plan)

Reference on map	Description	Situation
G1	Predominantly Birch, Hawthorn & Hazel	Playing fields of St.Margaret's at Hasbury C of E Primary School Hagley Road Halesowen B63 4QD

## AREAS (Within the dotted line on the plan)

Reference on map	Description	Situation
	N/A	