

Tree Preservation Order No 2021/00451/TPO

Cabinet Member: Cllr Iain Eadie
Date: 4th October 2021
Agenda Item:
Contact Officer: Gareth Hare
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Key Decision? NO
Local Ward Members: Cllr Brian Yeates Bourne Vale Ward



PLANNING COMMITTEE

1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2021/00451/TPO

2. Recommendations

- 2.1 That the Committee confirm the Tree Preservation Order with modifications.

3. Background

- 3.1 A tree preservation order was made on the 22nd of April 2021 in respect of trees within the boundary of Drayton Manor Business Park, Coleshill Road. The grounds for the order are as follows:
- Previous works have removed a large area of woodland from the site. The TPO will afford protection to the remaining trees and ensure that they continue to provide amenity to both the business park and surrounding area.
- The TPO documents are located at Appendix A at the end of the report and can also be found via <https://lichfielddc.ezyportal.com/>
- A previous order of the same number was served on the 14th of October 2020 but lapsed before it could be confirmed.
- 3.2 One objection to the order was received and raised a number of points. Correspondence was entered into regarding the objection but the objection has not been negotiated away.
- 3.3 The objections are detailed below (essentially in the form of previous communication with the objector) and are dealt with in context for ease of reference:

1. Amenity

Objection: The purpose of a Tree Preservation Order (TPO) is to secure the amenity benefits that arise from trees. Specifically, hedges, bushes and shrubs are excluded from a TPO. A local planning authority may only make a tree preservation order where it appears to the authority that it is expedient to do so in the Interests of amenity, held in the Court of Appeal case FFE Estates v Hackney LBC [1981] Q.B. 503, CA to mean “pleasant circumstances or features, advantages”. Furthermore, orders should only be generally made to protect trees which are publicly visible and if the removal of such trees would have a significant impact upon the environment and its impact viewed by the public.

Response: 2021/00451/TPO protects a large number of trees which are visually significant and prominent in views from the surrounding road network, adjoining properties, and the adjacent access routes such as that to Drayton Manor Park. In addition, many of the trees perform a very effective screening function or break up the views to the existing industrial buildings on site. They may also perform similar screening functions for potential development within the site. A significant amount of concern was expressed by members of the public in relation to works on the site and this concern stemmed from the trees being visible from public viewpoints. Therefore the placing of the order from the amenity, public visibility and environmental impact perspectives is- in the opinion of the Council- satisfied.

2. Expediency

Objection: Secondly, the local planning authority should only make a tree preservation order where it is “expedient” to do so. The approach taken by the Council once more in the above mentioned TPO is to designate areas of trees and groups of trees in arbitrary ways which are not capable of clear identification in real terms on the ground.

Response: the TPO clearly defines what it protects via the varied designations of the schedule. These are clarified further via the changes in the schedule addressed below. The initial basis for the mapping of the TPO was the report prepared by a landscape architect on behalf of the site owner. The report clearly identifies trees and the boundaries of groups/areas as does the TPO. Having visited the site twice and assessed the positioning of the trees against the initial report and the TPO I can report that the trees and groups of trees can be easily identified by reference to the TPO plan. The potential for further removal of trees within the site adds to the case for expediency as the trees are seen to be under threat.

3. Blanket cover/amenity

Objection: It appears that the Council has undertaken an approach to provide blanket cover rather than to assess the areas and groups of trees and the individual trees within those areas. In particular, the Council has not addressed its mind as to whether or not there are significant amenity benefits arising from the areas or groups of trees in question and consequently whether their loss would have any significant negative impact upon the local environment and its enjoyment by the public.

Response: The designation of individual trees, groups and areas within the site does not appear to fall within the description of blanket protection. Those trees protected are and will following additional amendments, be those which provide significant amenity benefits. Conversely, their loss would have a significant negative impact upon the local environment and it’s enjoyment by the public.

4. Lack of survey

Objection: The Council has not carried out any tree, arboricultural or landscape survey to justify the making of this TPO. A qualified landscape architect carried out a survey on behalf of the site owner to assess whether the individual trees/groups/areas should be afforded the proposed blanket protection of the TPO as issued by the Council in July 2020.

Response: The LDC Arboricultural Officer has visited the site twice to assess the trees and whether they should be included within the TPO.

The following are points raised in objection to the previous iteration of the TPO and are considered of absolute relevance by the objector. Therefore they are included and addressed individually:

5. Inclusion of T5

Objection: T5 – This tree is of poor form and condition. It is considered that this tree is in decline and it is not expected that decline in health would be delayed by remedial pruning or other intervention and is likely to die within 10 years. The tree does not contribute to visual amenity or landscape character. This tree should not be included in a TPO.

Response: T5 was assessed and decline was not evident. The tree forms an integral part of a small group of predominantly Birch trees within a grassed island and therefore contributes positively to amenity. Good views of the tree are afforded from Drayton Manor Drive which is very heavily used by visitors to Drayton Manor Park.

6. Inclusion of T10

Objection: T10 – The tree does not contribute to landscape character or visual amenity and is of low arboricultural value.

Response: T10 forms an integral part of the same group of trees as T5. It can be clearly viewed from Drayton Manor Drive and reads as part of the group. The group has considerable amenity value from this perspective.

7. Inclusion of T16

Objection: The tree is of poor form and condition and there is limited live growth. It is in an apparent advanced state of decline. The tree does not contribute to landscape character or visual amenity and is of low arboricultural value.

Response: The assessment of T16 is agreed and it will be deleted from any future version of the TPO.

8. Inclusion of T17

Objection: The tree is of poor form and condition. Tree does not contribute to landscape character or visual amenity and is of low arboricultural value.

Response: The assessment of T17 is agreed and it will be deleted from any future version of the TPO.

9. Inclusion of T21

Objection: The tree is of poor form and condition and lacking vigour, this tree is in decline due to its entanglement in a fence restricting the growth and it is not expected that its decline in health will be delayed or reversed by remedial pruning or other intervention and it is likely to die within 10 years. This tree does not contribute to landscape character or visual amenity and is of low arboricultural value.

Response: The assessment of T21 is agreed and it will be deleted from any future version of the TPO.

10. Inclusion of T40

Objection: This tree does not contribute to landscape character or visual amenity.

Response: The assessment of T40 is agreed and it will be deleted from any future version of the TPO.

11. Inclusion of T41

Objection: The tree is considered to be in decline. It is anticipated that there will be decline in the tree's health over next 10 years. The tree is of low/temporary transient landscape benefit and does not contribute to visual amenity.

Response: The assessment of T41 is agreed and it will be deleted from any future version of the TPO.

12. Inclusion of T43

Objection: The tree is in poor condition and showing signs of drought stress. It is anticipated that there will be decline in the trees health over next 10 years.

Response: T43 showed no sign of drought stress. However due to its location hard against a large building it will not be included in a revised TPO.

13. Assessment of Group/Area designations

Objection: The assessment against the 2020 TPO notice also provides comments on the Group/Areas included in the TPO. As a result of these findings and the issuing of the 2021 TPO, we suggest that no adequate assessment has yet to be carried out by the Council of the either the groups or areas of trees that have been listed within the TPO to reasonably conclude whether:

- the preservation of the tree in question is not expedient in the interests of amenity;
- the tree or woodland is under proper management;
- the tree is dying or dead;
- the tree is dangerous, either by virtue of disease or defect taken together with its location;
- the tree is causing (or is likely to cause) damage to property, such as foundations;
- the tree is overshadowing nearby land (either in the same ownership as the tree or
- otherwise).

Response: As previously indicated the trees have been assessed and this includes the Groups and Areas. Consideration has been given to the points raised and the responses follow:

The question of expediency in the interests of amenity has been dealt with in previous responses, particularly at point 2 above.

Proper management of trees within the site is currently not evident. There appears to have been some tree loss since the TPO was made (A3) and prior to the TPO a large expanse of woodland was removed from the site. The potential for further removals adds to the case for expediency as the trees are seen to be under threat. Where trees are dying/dead or in poor condition, these factors have been taken into account where highlighted.

The last two points raised –in relation to damage to property or overshadowing- have not been raised specifically about any trees within the site. Should such concerns have been raised then they would have been taken into account.

14. Assessment for inclusion within the TPO

Objection: The survey carried out by the Landscape Architect indicates various groups/areas of trees that do not contribute to landscape character and visual amenity and are of low arboricultural value; or are non-native invasive species and hedge plants; or are fruit trees that if regularly managed, are not typically included within TPO.

With respect to these trees, we propose in order to make a valid order it is arranged for a detailed survey, to be carried out by the Council (employing a suitably qualified person), to establish which tree, if any, are really of sufficient amenity value to justify the long-term protection of the TPO. The Council clearly do not have enough information and have not carried out a survey to gather enough evidence

in order to reach a reasonable conclusion that the trees set out in the schedule to the TPO are required to be protected to satisfy the powers in the Act. As a result, no order should be confirmed until such works have been carried out.

Response: The above is largely addressed in previous points. However, other revisions to the schedule have been made as a result of further assessment of groups, areas and individuals. The revisions include the removal from the schedule of T16, T17, T21, T26, T35, T36, T38, G3, A3, A4, A5 and A6 and the revision of the description of A2 to include the species present. These omissions are reflected in the modified schedule and plan at the latter part of Appendix 2. The remaining trees are felt to be worthy of the protection of the preservation order in light of the foregoing responses.

15. The objector asks that all the points be considered in detail prior to confirmation and it is respectfully submitted that the foregoing information indicates that this has been carried out as requested.

- 3.4 Applications can be made and determined under the TPO (if confirmed) and if those applications are refused by Lichfield District Council then the applicant has recourse to appeal to the Planning Inspectorate (PINS).
- 3.5 As per 2.1 and taking the above into account it is recommended that Committee confirm the order with the modifications detailed.

Alternative Options	1. The Committee may choose not to confirm the Tree Preservation Order.
Consultation	1. There is a duty to consult the owner of the affected property and all neighbouring properties (who may have common law rights to work on trees protected by the TPO) when the TPO is made. A copy of the order is served on all affected properties and owners/occupiers are invited to comment or object within 28 days of the date of the order.
Financial Implications	1. Tree Preservation Orders make provision for the payment by the Local Planning Authority, of compensation for loss or damage caused or incurred, within a twelve month period from the date of their decision, as a result of their refusal of any consent under the Tree Preservation Order or their grant of consent subject to conditions. There are no financial implications in the confirmation of a Preservation Order.
Legal Implications	1. There is the potential for High Court Challenge (after confirmation), however this is mitigated by ensuring that the TPO is within the powers of the Act and that the requirements of the Act and Regulations have been complied with in relation to the TPO.
Contribution to the Delivery of the Strategic Plan	1. Assists in ensuring that Lichfield remains a clean, green and welcoming place to live.

Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 1. The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 of the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report and on balance is justified and proportionate in relation to the administration of the tree preservation order. 2. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.
Crime & Safety Issues	<ol style="list-style-type: none"> 1. There are no specific crime and safety issues associated with 2021/00451/TPO
Environmental Impact	<ol style="list-style-type: none"> 1. If a tree preservation order is not confirmed then trees may be lost. This may negatively impact on the potential within the District for carbon capture and delay progress towards net zero.
GDPR	<ol style="list-style-type: none"> 1. The requirements of GDPR are considered to be met both in the service and administration of the TPO and the presentation of information in the report.

	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	High Court Challenge (after confirmation) LDC	Green	Ensuring that the TPO is within the powers of the Act and that the requirements of the Act and Regulations have been complied with in relation to the TPO.	Green

	Background documents See end of report
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	Relevant web links https://lichfielddc.ezyportal.com/
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APPENDIX A

2021/00451/TPO AS SERVED 22/04/2021 FOLLOWS.

SCHEDULE

SPECIFICATION OF TREES

Drayton Manor Business Park, Coleshill Road, Fazeley, Tamworth

Tree Preservation Order No 2021/00451/TPO

Trees Specified Individually (encircled in black on the map)

Reference on Map	Description	Situation
T1	Silver Birch,	Grid Ref: SK-19913-01206
T2	Silver Birch,	Grid Ref: SK-19917-01206
T3	Silver Birch,	Grid Ref: SK-19921-01205
T4	Silver Birch,	Grid Ref: SK-19925-01205
T5	Silver Birch,	Grid Ref: SK-19930-01206
T6	Silver Birch,	Grid Ref: SK-19935-01205
T7	Silver Birch,	Grid Ref: SK-19940-01206
T8	Silver Birch,	Grid Ref: SK-19930-01193
T9	Silver Birch,	Grid Ref: SK-19929-01185
T10	Goat Willow,	Grid Ref: SK-19926-01176
T11	Downy Birch,	Grid Ref: SK-19917-01173
T12	Silver Birch,	Grid Ref: SK-19910-01176
T13	Downy Birch,	Grid Ref: SK-19906-01179
T14	Silver Birch,	Grid Ref: SK-19923-01199
T15	Sycamore,	Grid Ref: SK-19999-01136
T16	Goat Willow,	Grid Ref: SK-19986-01108
T17	Silver Birch,	Grid Ref: SK-19984-01104
T18	Norway Maple,	Grid Ref: SK-19979-01094
T19	Norway Maple,	Grid Ref: SK-19975-01082
T20	Norway Maple,	Grid Ref: SK-19972-01079
T21	Goat Willow,	Grid Ref: SK-19971-01082
T22	Common Ash,	Grid Ref: SK-19978-01107
T23	Sycamore,	Grid Ref: SK-19961-01123
T24	Italian Alder,	Grid Ref: SK-19959-01126
T25	Sycamore,	Grid Ref: SK-19987-01141
T27	Italian Alder,	Grid Ref: SK-19975-01138
T28	Italian Alder,	Grid Ref: SK-19975-01146
T29	Italian Alder,	Grid Ref: SK-19970-01144
T30	Italian Alder,	Grid Ref: SK-19968-01151
T31	Italian Alder,	Grid Ref: SK-19959-01150
T32	Sycamore,	Grid Ref: SK-19946-01134

**Trees Specified Individually
(encircled in black on the map)**

Reference on Map	Description	Situation
T33	Large-leaved Lime,	Grid Ref: SK-19949-01130
T34	Red Oak,	Grid Ref: SK-19943-01129
T37	English Oak,	Grid Ref: SK-19993-01268
T39	Horse Chestnut,	Grid Ref: SK-19726-01477
T40	Cherry spp,	Grid Ref: SK-19806-01384
T41	Sycamore,	Grid Ref: SK-19760-01315
T42	Colorado Spruce,	Grid Ref: SK-20009-01140
T43	Norway Maple,	Grid Ref: SK-19841-01261

**Groups of Trees
(within a broken black line on the map)**

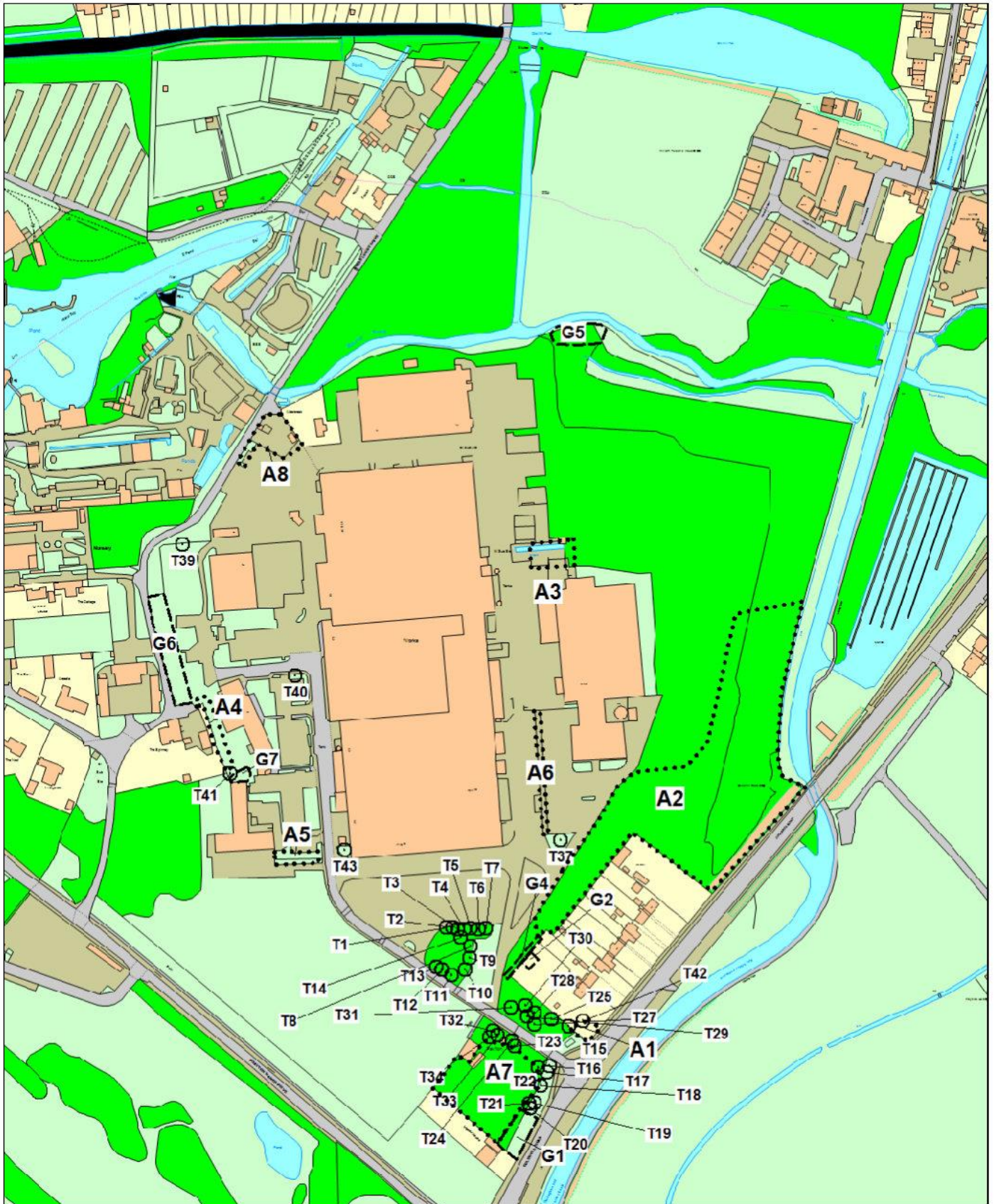
Reference on Map	Description	Situation
G1	Balsam Poplar (4),	Grid Ref: SK-19962-01059
G2	Silver Birch (2),	Grid Ref: SK-19971-01183
G4	Balsam Poplar (8),	Grid Ref: SK-19966-01186
G5	Sycamore (3), Common Alder,	Grid Ref: SK-20002-01627
G6	Horse Chestnut, Lawson Cypress (25), Common Holly (2), Apple spp (2),	Grid Ref: SK-19714-01407
G7	Silver Birch (3),	Grid Ref: SK-19768-01315

**Woodlands
(within a continuous black line on the map)**

Reference on Map	Description	Situation
NONE		

**Trees specified by reference to an Area
(within a dotted black line on the map)**

Reference on Map	Description	Situation
A1	Silver Birch, Common Ash, Spruce species,	Grid Ref: SK-20010-01136
A2	Trees of whatever species,	Grid Ref: SK-20071-01297
A3	Sycamore, Silver Birch,	Grid Ref: SK-19984-01469
A4	Sycamore, Goat Willow,	Grid Ref: SK-19745-01351
A5	Wild Cherry,	Grid Ref: SK-19806-01257
A6	Silver Birch, Lawson Cypress,	Grid Ref: SK-19980-01316
A7	Sycamore, Italian Alder, Silver Birch, Lombardy Poplar, Weeping Willow, Large-leaved Lime,	Grid Ref: SK-19950-01104
A8	Sycamore, Silver Birch, Goat Willow,	Grid Ref: SK-19786-01548



Lichfield District Council
TPO Ref: 2021/00451/TPO

Drayton Manor Business Park, Coleshill Road,
Fazeley, Tamworth

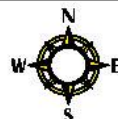
Lichfield
District Council

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Scale 1:2500

Date 21/04/2021

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2021/00451/TPO AS MODIFIED AND PROPOSED FOR CONFIRMATION FOLLOWS:

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T34	Red Oak,	Grid Ref: SK-19943-01129
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(encircled in black on the map)**

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T42	Colorado Spruce,	Grid Ref: SK-20009-01140

**Groups of Trees
(within a broken black line on the map)**

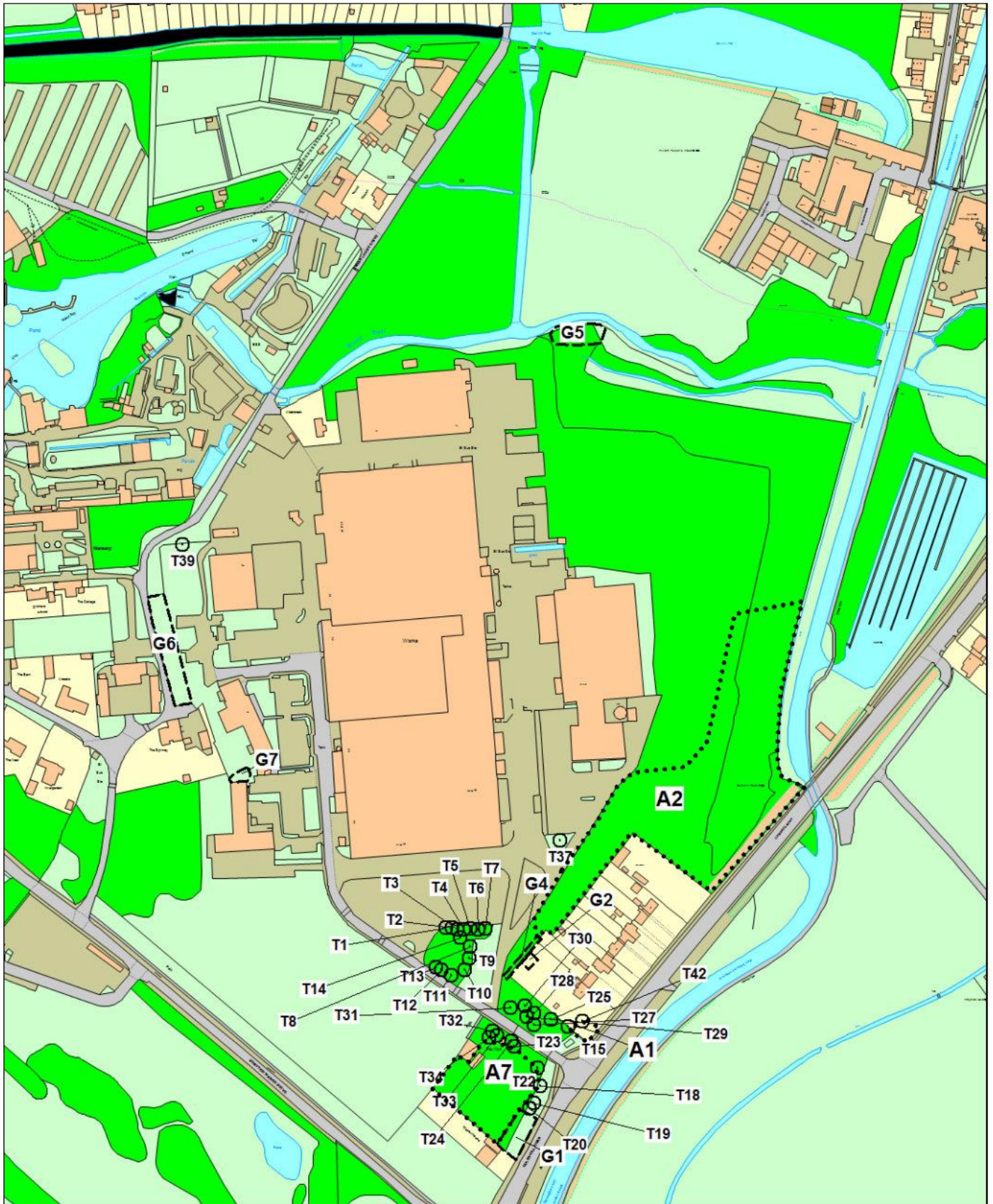
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G6	Horse Chestnut, Leyland Cypress (25), Common Holly (2), Apple spp (2),	Grid Ref: SK-19714-01407
G7	Silver Birch (3),	Grid Ref: SK-19768-01315

**Woodlands
(within a continuous black line on the map)**

Reference on Map	Description	Situation
NONE		

**Trees specified by reference to an Area
(within a dotted black line on the map)**

Reference on Map	Description	Situation
A1	Silver Birch, Common Ash, Spruce species,	Grid Ref: SK-20010-01136
A2	Norway Maple, Sycamore, Alder spp, Silver Birch, Hornbeam, Leyland Cypress, Common Ash, Poplar spp, Oak spp, Willow species,	Grid Ref: SK-20071-01297
A7	Sycamore, Italian Alder, Silver Birch, Lombardy Poplar, Weeping Willow, Large-leaved Lime,	Grid Ref: SK-19950-01104



Lichfield District Council
TPO Ref: 2021/00451/TPO

Drayton Manor Business Park, Coleshill Road,
Fazeley, Tamworth

Lichfield
district council

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