

Tree Preservation Order No

2021/00459/TPO

Cabinet Member	Cllr Iain Eadie
Date:	7 th of March 2022
Agenda Item:	
Contact Officer:	Gareth Hare
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Key Decision?	NO
Local Ward Members	Cllr Alastair Little, Cllr Janice Silvester-Hall, Hammerwich with Wall Ward



**PLANNING
COMMITTEE**

1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2021/00459/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 24th of September 2021 in respect of trees on land at Springhill Farm, Walsall Road, Muckley Corner. The grounds for the order are as follows:
- The larger and more mature trees within the order are visible from many public viewpoints within the surrounding road network. These provide significant amenity to the surrounding area and contribute substantially to the rural aspect of the location. There are a number of smaller trees which have the potential to provide substantial future amenity. The trees appear in generally good condition and are capable of being retained -and providing amenity to the area- for a substantial period. It has been brought to the attention of the council that the trees may be under threat of removal. An area designation has been used in order to expedite the process and is intended as a temporary measure. The area will be re-designated to groups and individuals prior to confirmation
- The TPO documents are located at Appendix A at the end of the report and can also be found via <https://lichfielddc.ezyportal.com/>
- 3.2 One objection to the order was received and raised a number of points. Correspondence was entered into regarding the objection and an amended schedule of trees was produced. However, 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:

Summary of objections:

- The TPO is a disproportionate response
- The TPO is not wholly expedient in the interests of public visual amenity
- Some trees are in a poor condition and therefore the Order is not wholly expedient

- d. Trees included within the Order have been assigned inappropriate designation.

Objection a. The TPO is a disproportionate response

The Site benefits from extant planning permission for a burial ground, through permission granted at appeal, ref: APP/K3415/A/09/2113244 (LPA ref: 09/00069/FULM) and confirmed by a Certificate of Lawfulness (ref: 17/01536/CLE).

There are also two current planning applications before Lichfield District Council relating to the Site. One application is made under Section 73 of the Town and Country Planning Act 1990 (as amended) and has reference 20/01265/FULM. It is for variations to conditions on an extant planning permission for the development of the site as a burial ground. The second current application (ref: 21/01179/FUL) is for an amended access alignment to that approved under the extant planning permission.

A balanced view on the planning proposals can be reached through the normal discussions and communications that are undertaken as part of the normal development management process, without the need for the heavy-handed and onerous application of a TPO. In addition, the Council have identified the 'larger and more mature trees' within the site as contributing to the amenity of the location, but this does not encompass every tree on the site.

Given the nature of the current planning proposals (which can be reasonably designed with reference to qualities and constraints defined with reference to British Standards), it is considered appropriate that a suitable worded planning condition would function perfectly adequately in order to ensure effective tree retention across the site. On this basis, a TPO is not considered to be wholly expedient and is a disproportionate response from the LPA. It is also of note that despite the asserted prominence of the trees on site, the LPA have not considered it appropriate to protect these trees at any point in the past.

Response to objection a.

The Council considers the TPO an appropriate response to the apparent threat to trees at the site. On the 20th of September 2021, tree surgeons attempted to gain access to the site in order to fell all the trees and remove the hedges.

The foregoing is at odds with the current planning applications and the site's development as a burial ground. Planning conditions –alone– are insufficient to provide for long term protection of trees on development sites and the tree preservation order will serve to give effect to conditions should planning consent be granted. The specific duty of the authority in this regard is set out within The Town and Country Planning Act 1990 (as amended) Part VIII section 197. A tree preservation order will also assist in ensuring that pre-emptive felling does not take place.

Objection b. The TPO is not wholly expedient in the interests of public visual amenity

The Authority have applied the TPO to the whole site as a blanket approach but the reason for applying the TPO refers only to the '*larger and more mature trees*' which are visible from many public viewpoints within the surrounding road network. It is also noted that there are a '*number of smaller trees which have the potential to provide substantial future amenity*'.

Notwithstanding the specific comments, the TPO has been applied to all trees within the Site. Whilst some of those trees are visible to the general public, the general assertion, made by the Authority in reference to specific trees, is simply not true for all trees within the site.

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.'

Further to this, and more fundamentally, the Planning Policy Guidance states:

'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 characteristic 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.'*

The Tree Survey work that has been undertaken by the Applicant (see Tree Schedule and Tree Constraints Plan attached) to inform the development of the Site indicates that some

of the trees within the site can be considered to contribute to the landscape and amenity of the site due to their size, form and amenity potential (therefore meeting some of the criteria), but the remainder of the individually protected trees are not of a particularly notable size or form, they do not display signs of longevity, are not rare and make no contribution to the wider landscape. None of the trees contribute to the appearance of a Conservation area as this criterion is clearly irrelevant in this instance.

The Tree Survey work undertaken has highlighted 2 no. category A trees (T30, T38) and 10 no. category B trees (T1, T24, T25, T28, T31, T35, T36, T41, T42, T43, T44, G4), along with 49 no. category C trees and 2 no. category U records across the entire Site (G1, H5). It is noted that this includes a common ash (T25, category B) which has been identified as a veteran specimen given its high arboricultural value should be retained on the site, in accordance with para 180 c) of the NPPF. Further, the two no. category A trees within the site are also of high arboricultural value and considered to be a significant component in the landscape both within the site and beyond.

However, the remainder of the trees within the Site are not considered to be so significant, with a number being of low arboricultural value and not displaying characteristics sufficient to warrant them being part of the TPO, which is not justifiable for these trees.

No information has been provided by the Council 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. Notwithstanding expediency considerations, it is considered that the TPO should only cover those trees identified above (Category A and Veteran) and not be applied as a blanket designation. The blanket designation to all trees on the site is considered to be wholly inappropriate.

Response to objection b.

GDH, I refer to my previous comments regarding the expediency of serving the order to assist in the prevention of the removal of the trees. In addition, the full statement of reasons for making the order are set out below:

The larger and more mature trees within the order are visible from many public viewpoints within the surrounding road network. These provide significant amenity to the surrounding area and contribute substantially to the rural aspect of the location. There are a number of smaller trees which have the potential to provide substantial future amenity. The trees appear in generally good condition and are capable of being retained -and providing amenity to the area for a substantial period. It has been brought to the attention of the council that the trees may be under threat of removal. An area designation has been used in order to expedite the process and is intended as a temporary measure. The area will be re-designated to groups and individuals prior to confirmation. Therefore it is thought expedient on the grounds of amenity to make a tree preservation order in respect of the tree/s

Prior to making the order, the site was accessed and an initial visual assessment of the trees carried out. It is made clear that the area designation is a temporary measure. A further assessment of the site was undertaken and a list of trees produced. The trees proposed to be included within an amended order – as per the numbering of the BS5837 tree schedule WNIC 211001 1093 TS V1A -produced for the client and attached to the objection- are as follows:

T1, T24, T25, T28, T30, T31, T35, T36, T37, T38, T41, T42, T43, T44, a total of 14 individual trees. A draft schedule and plan is included at Appendix B.

All the trees included within the list were assessed using TEMPO (Tree Evaluation Method for Preservation Orders which is a structured method for assessing the suitability of trees for inclusion within a TPO) and were found to have a minimum score of 17. This score relates to the category 'definitely merits a TPO' within the decision guide of TEMPO. The TEMPO guidance note can be accessed at <http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf>

As part of the further assessment, a number of photographs were taken both within the site and from the surrounding road network which show the visibility and prominence of the trees from a number of viewpoints. Photographs will be displayed separately at the committee meeting.

Objection c some trees are in a poor condition and therefore the Order is not wholly expedient

As set out above, two category U tree records have been assessed, which should be removed. This includes a group of trees (G1) and a hedgerow (H5). The trees have damage at their base and lower stems with sparse canopies which are in poor physiological health. Given that the long-term viability of these is greatly reduce it is not considered expedient to protect these trees by TPO. Application of the TPO system to such poor quality trees devalues the legislation and the importance of its appropriate use.

Response to objection c and d

As set out in the serving notice, the intention was to re-define the area designation to individual and group categories prior to confirmation. Hedgerows, when clearly defined as hedges, fall outside the scope of the Tree Preservation Order legislation and would not therefore be protected. The site has been re-assessed and the list of individual trees –detailed within the response to objection b) has been produced. The tree list contains no trees in poor condition. If confirmed with modifications as proposed, the TPO will include 14 individually designated trees which fully addresses objection d.

Objectors Conclusion and Representation

It is requested that TPO No 2021/00459/TPO 2021 is not confirmed by the Council for the reasons stated within this report.

If, however, the Council is minded to confirm the TPO (have given due consideration to the reasons for objection set out above), it is requested that the TPO be confirmed subject to Modifications that refer only to specific trees within Category A and the identified veteran tree, as identified above.

Response to objectors conclusion and representation

As previously detailed, an amended list of trees for inclusion within a modified tree preservation order has been produced. The trees within the list are all significant trees in terms of amenity and are prominent from several public viewpoints within the surrounding highway network. The confirmation of the tree preservation order as requested within the objection would result in an order containing only 3 trees and as a result would significantly diminish the amenity provided by the trees within the site to the surrounding area. The confirmation of the order with the proposed modifications detailed within the report and at Appendix B -to include the schedule of 14 individual trees- will safeguard the substantial amenity that those trees provide and give effect to any planning conditions imposed on the site if consent for development is granted.

- 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.
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Contribution to the Delivery of the Strategic Plan	1. Assists in ensuring that Lichfield remains a clean, green and welcoming place to live.
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 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. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.
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Crime & Safety Issues	1. There are no specific crime and safety issues associated with 2021/00459/TPO
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Environmental Impact	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.
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GDPR	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.
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	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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TOWN AND COUNTRY PLANNING ACT 1990

The Lichfield District (Hammerwich with Wall) Tree Preservation Order (2021/00459/TPO) 2021

Springhill Farm, Walsall Road, Muckley Corner

The Lichfield District Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the Lichfield District (Hammerwich with Wall) Tree Preservation Order (2021/00459/TPO) 2021

Interpretation

2.— (1) In this Order “the authority” means the Lichfield District Council

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 24th September 2021.....

Signed on behalf of the Lichfield District Council

Authorised by the Council to sign in that behalf

SCHEDULE SPECIFICATION

OF TREES

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

Reference on Map	Description	Situation
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NONE

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

Reference on Map	Description	Situation
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NONE

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

Reference on Map	Description	Situation
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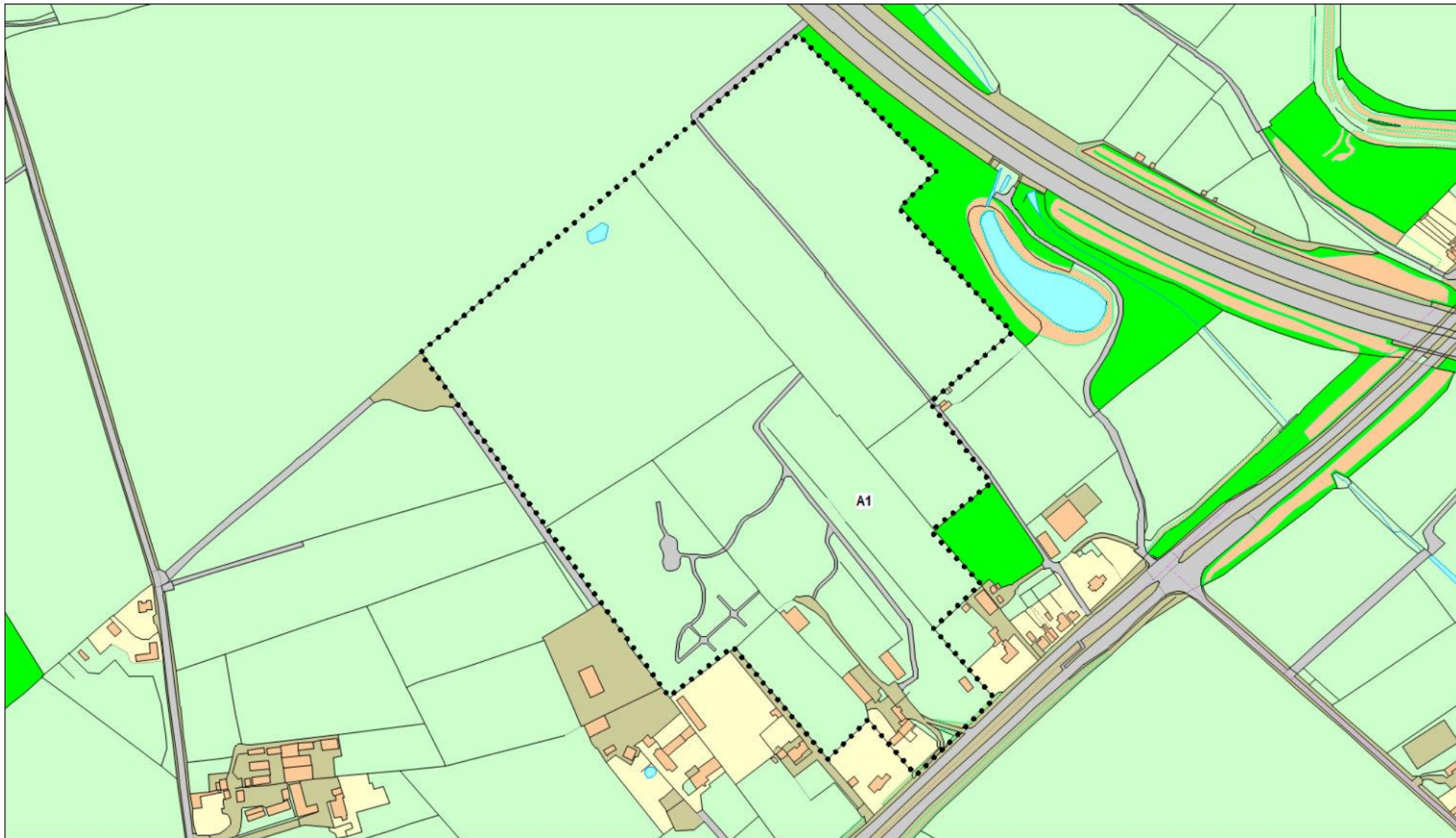
NONE

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

Reference on Map	Description	Situation
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A1	Trees of whatever species,	
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Grid Ref: SK-07026-05742



Lichfield District Council
TPO Ref: 2021/00459/TPO

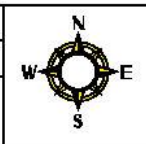
Springhill Farm, Walsall Road, Muckley Corner



The scale shown is approximate and should not be used for accurate measurement.

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Scale	1:3000
Date	23/09/2021



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SCHEDULE
SPECIFICATION OF TREES

Trees Specified Individually
(encircled in black on the map)

Reference on Map	Description	Situation
T1	English Oak,	Grid Ref: SK-07092-05545
T2	English Oak,	Grid Ref: SK-07119-05567
T3	English Oak,	Grid Ref: SK-07130-05579
T4	Turkey Oak,	Grid Ref: SK-07074-05649
T5	Turkey Oak,	Grid Ref: SK-07055-05671
T6	Turkey Oak,	Grid Ref: SK-06982-05761
T7	Sycamore,	Grid Ref: SK-06976-05768
T8	Sycamore,	Grid Ref: SK-06953-05795
T9	Sycamore,	Grid Ref: SK-06943-05806
T10	Common Ash,	Grid Ref: SK-06979-05846
T11	Common Ash,	Grid Ref: SK-06983-06059
T12	English Oak,	Grid Ref: SK-06896-05942
T13	Sycamore,	Grid Ref: SK-06859-05767
T14	Sycamore,	Grid Ref: SK-06903-05714

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

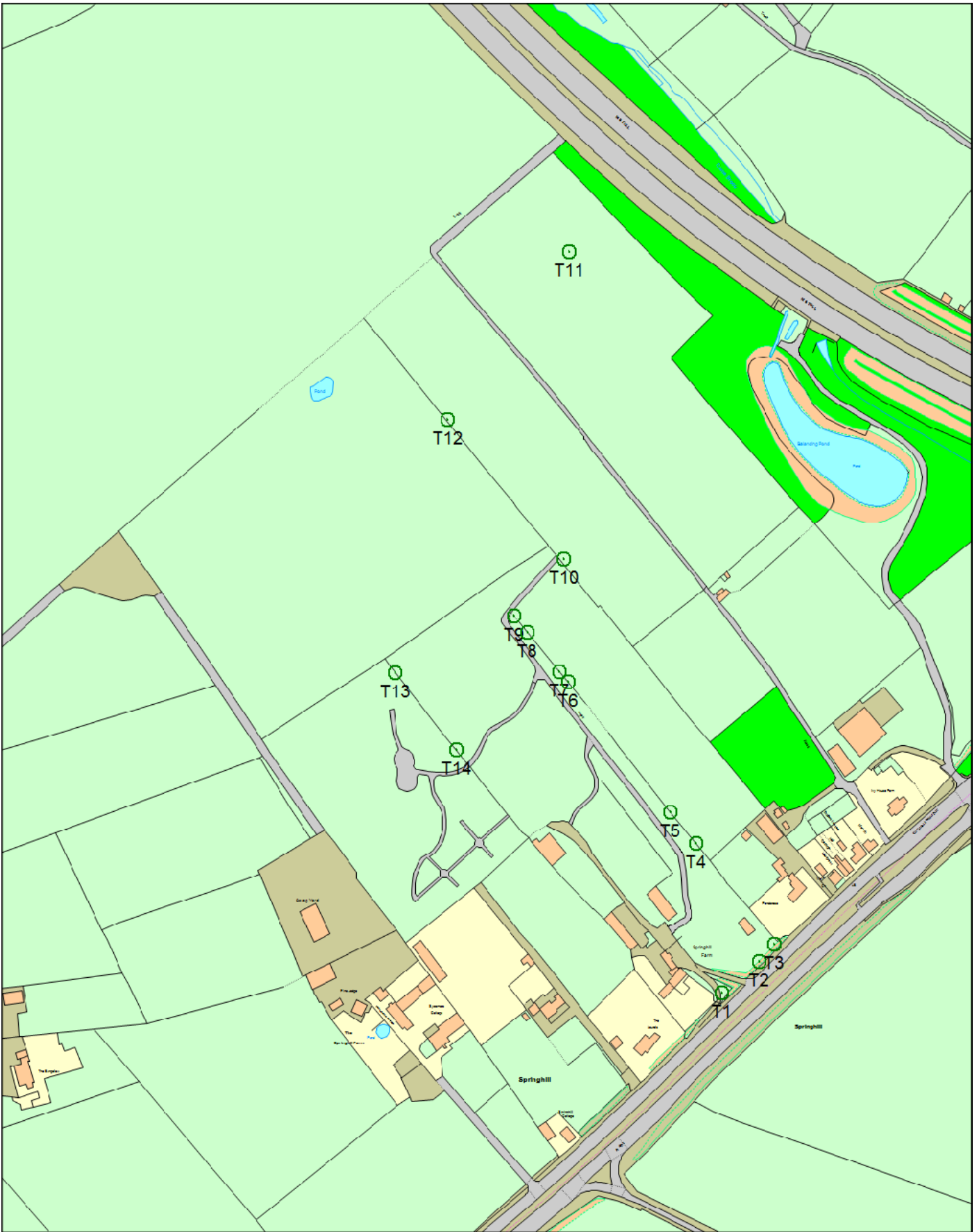
Reference on Map	Description	Situation
NONE		

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
NONE		



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