

# Tree Preservation Order No 2021/00455/TPO

Cabinet Member	Cllr Iain Eadie
Date:	4 <sup>th</sup> of April 2022
Agenda Item:	5
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Key Decision?	NO
Local Ward Members	Cllr Richard Cox, Cllr Richard Cross, Cllr Thomas Marshall, Armitage with Handsacre Ward.



## PLANNING COMMITTEE

### 1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2021/00455/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 14<sup>th</sup> of May 2021 (the original as set out below). A further order was served on the 29<sup>th</sup> of October 2021 for the reasons set out below:

The trees included in this order are prominent within the landscape when viewed from Westfield Road, Running Hills and Rectory Lane. The section known locally as the 'Holly Walk' (designated W1) has historical associations with 'The Towers' a property now known as 19 Rectory Lane and was part of the structural landscaping for that house. A previous order was made in response to works carried out to some of the trees. Further works would reduce or potentially remove the considerable visual amenity that the trees afford to the locality. The original order was designated as three Areas and these have now been re-designated to Groups, Individuals and one Woodland (W1) which protects the section known as the Holly Walk. Government guidance requires a new order to be made if an Area designation is changed to a Woodland as this is viewed as a substantial change. Therefore it is thought expedient on the grounds of amenity to make a tree preservation order in respect of the tree/s.

The TPO document is located at Appendix A at the end of the report.

- 3.2 Objections to the order from one party were received and raised a number of points. Correspondence was entered into regarding the objections. However, the objections have not been negotiated away.
- 3.3 The objections are detailed below and are dealt with in context for ease of reference:

## Summary of objections:

- a) An objection is raised to the designation of W1 as a woodland.
- b) The inclusion within W1 of trees that were formerly managed as a hedge.
- c) The larger trees within W1 should be specified individually.
- d) The Horse Chestnut within W1 should be removed from the TPO on the grounds of its condition.
- e) The specimens within G1 should be re-specified as individual trees.
- f) The TPO is not defensible when assessed against a structured amenity assessment.

### **Objection a. The designation of W1 as a woodland.**

The objection to the designation of W1 as follows:

The area designated W1 is a hedgerow containing a dense thicket of holly, with a few mature thorn and four mature trees. It is clearly not a woodland.

Guidance is provided in the government publication available on line "Tree Preservation Orders: A Guide to the Law and Good Practice". Section 2.2 makes the point that the Act does not define the term "woodland". Neither does it define the term "tree", but for the purpose of a TPO, it states that the High Court has held that a "tree" is anything which ordinarily one would call a tree. Similarly, we can assume that, if tested, the High Court would rule that the "woodland" classification should only be used for areas which ordinarily one would call "woodland".

The best objective definition of the term "woodland" is probably that included in the National Forest Inventory Woodland 2015, published by the Forestry Commission and last updated in August 2020. This defines woodland as:-

A minimum of 0.5ha under stands of trees with, or with the potential to achieve, tree crown cover of more than 20% of the ground. Areas of young trees, which have the potential to achieve a canopy cover of more than 20%, will also be interpreted as woodland and mapped. The minimum width for woodland is 20 m....

The area designated as W1, as shown shaded on the plan attached, extends to approximately 0.1ha and for much of its length is only approximately 8m in width. Any protection should not therefore refer to woodland but to individual trees and groups.

The objection letter is available to view via:

[https://lichfielddc.ezyportal.com/TPORegister/GetTPORegisterDocument?tpo\\_no=532&documentID=762](https://lichfielddc.ezyportal.com/TPORegister/GetTPORegisterDocument?tpo_no=532&documentID=762)

### **Response to objection a.**

As detailed within the objection, the current government guidance on tree preservation orders

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

does not define the term 'woodland' and is not prescriptive in the use of the designation in relation to the area or width of a woodland to be protected. The definition produced by the Forestry Commission (referenced within the objection) in relation to the NFI and referenced within the objection is at the following link:

<https://www.forestresearch.gov.uk/tools-and-resources/national-forest-inventory/about-the-nfi/>

However, within the above linked page it also states:

*We are also interested in smaller areas of woodland. This includes smaller woods (0.1 to 0.5 hectares), trees in linear features (hedges), trees in groups and single trees. Data for these 'small woods' are based on sample field survey and/or newly emerging high resolution remote sensing data.*

Being 0.1 ha, W1 falls within the definition of a 'small wood'.

The W1 designation was applied after full consideration of the tree cover as a whole within the previously applied Area designation A3 and is considered to be the correct designation for the trees

within. It is not possible to modify a tree preservation order from an Area to a Woodland prior to confirmation as this is viewed as a substantial change. Therefore the order served on the 29<sup>th</sup> of October 2022 was made to replace the original order in full compliance with the government guidance.

### **Objection b: The inclusion within W1 of trees that were formerly managed as a hedge**

#### **Response to objection b:**

The area encompassed by W1 is known as the 'Holly Walk' locally and appears contemporary with landscaping carried out during the development of the property known as 'The Towers'. The Holly Walk appears to have come into existence in the period between 1841 (the date of the Armitage Tithe Map) from which the Holly Walk and the landscaping at The Towers are absent and the first edition Ordnance Survey map in 1884 which shows both.

The tithe map is available here:

<https://www.search.staffspasttrack.org.uk/details.aspx?ResourceID=42309&ExhibitionID=42310&PageIndex=1&SearchType=2&ThemeID=774>

An extract of the first edition Ordnance Survey map is at Appendix B

The objection asserts –should the TPO not be confirmed- that the mature Holly and Thorn within W1 would be protected by the Hedgerow regulations. A previous hedgerow removal notice on an adjacent piece of land allowed detailed assessment of the regulations in this regard and it can be confirmed that the Holly and Thorn in question would not be classed as 'important' should a hedgerow removal notice be submitted and could therefore be removed.

The original intention of the planting is unknown but believed to be a part of the landscaping for The Towers as above referenced. It is acknowledged that many of the Holly trees have previously been reduced to approximately 1m in height as this exhibited in the form of their main stems. However, this management ceased many years ago and the trees have regrown crowns which are typical of their species. It is also acknowledged that there are edging stones and remnants of former fences within W1 which appears to support the idea of a landscaped feature. However, these are indications of a former use and have long fallen into disrepair.

The TPO guidance states –in relation to hedges:

*Authorities may only use an Order to protect anything that may ordinarily be termed a tree. This would not normally include shrubs, but could include, for example, trees in a hedge or an old hedge which has become a line of trees of a reasonable height.*

The Hollies in question have certainly become trees of a reasonable height and therefore fall within the terms of the guidance.

### **Objection c: The larger trees within W1 should be specified individually**

#### **Response to objection c.**

Specifying the larger trees within W1 individually is not necessary as they are detailed as species within the schedule description for W1 and therefore afforded the protection of the TPO. They form an integral part of W1 and therefore should be treated and specified as such.

**Objection d**      The Horse Chestnut within W1 should be removed from the TPO on the grounds of its condition

#### **Response to objection d**

The Horse Chestnut is in failing condition and therefore there is no objection to the total removal of the tree or it's retention as a reduced stem for wildlife habitat. Therefore the reference to 'Horse Chestnut' within W1 of the schedule has been removed and the order thus modified.

## **Objection e: The specimens within G1 should be re-specified as individual trees**

### **Response to objection e**

G1 contains four trees that have contiguous crowns and clearly present as a group in the landscape. G1 is a clear and unambiguous designation as there are no other trees in the group save the ones identified within the schedule. As such it is considered to be an appropriate designation.

## **Objection f: The TPO is not defensible when assessed against a structured amenity assessment**

### **Response to objection f:**

The validity of the TPO is questioned in relation to an assessment of the trees via TEMPO (Tree Evaluation Method for tree Preservation Orders). The objection report on this aspect is available to view via

[https://lichfielddc.ezyportal.com/TPOResister/GetTPOResisterDocument?tpo\\_no=532&documentID=761](https://lichfielddc.ezyportal.com/TPOResister/GetTPOResisterDocument?tpo_no=532&documentID=761)

TEMPO is a structured assessment tool for TPO suitability and the guidance note can be found here: <http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf>

Essentially it considers the amenity, retention span, visibility/suitability plus other relevant factors of the subject tree or trees and the expediency of making a TPO, with scores allocated to each section. It then compares the resulting total scores to a decision guide.

The TEMPO assessment produced to support the objection attributes a score of 11 for each Tree/Group or Woodland of 2021/00455/tpo which, when compared with the TEMPO decision guide, indicates that the trees do not merit a TPO.

It should be noted however, that TEMPO (as detailed within the guidance notes) is not prescriptive and merely recommends a course of action. It is acknowledged that TPO's may or may not be made irrespective of the outcome of a TEMPO assessment.

However, an assessment carried out by the Principal Arboricultural Officer indicates the following values:

T1: 16

G1: 19

T2: 16

W1: 17

These scores, when compared to the TEMPO decision guide, indicate that the trees definitely merit a TPO.

In conclusion it is considered that the trees fulfil the criteria to merit the protection of a tree preservation order and this is supported by the outcome of the in-house TEMPO assessment.

- 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	<p>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.</p> <p>2. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.</p>
Crime & Safety Issues	1. There are no specific crime and safety issues associated with 2021/00455/TPO
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.
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.

	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

	<b>Background documents</b> See end of report
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	<b>Relevant web links</b> <a href="https://lichfielddc.ezyportal.com/">https://lichfielddc.ezyportal.com/</a>
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**TOWN AND COUNTRY PLANNING ACT 1990**

**The Lichfield District (Armitage with Handsacre) Tree Preservation Order (2021/00455/TPO)  
2021 (AS MODIFIED)**

**Land To The North West, Westfields Road, Armitage**

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 (Armitage with Handsacre) Tree Preservation Order (2021/00455/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 .....29th October 2021.....

Signed on behalf of the Lichfield District Council



Authorised by the Council to sign in that behalf

## SCHEDULE

### SPECIFICATION OF TREES

Land To The North West, Westfields Road, Armitage

Tree Preservation Order No 2021/00455/TPO

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

Reference on Map	Description	Situation
T1	Common Ash,	Grid Ref: SK-07780-15814
T2	English Oak,	Grid Ref: SK-07704-15747

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

Reference on Map	Description	Situation
G1	Common Beech (2), English Oak (2),	Grid Ref: SK-07731-15771

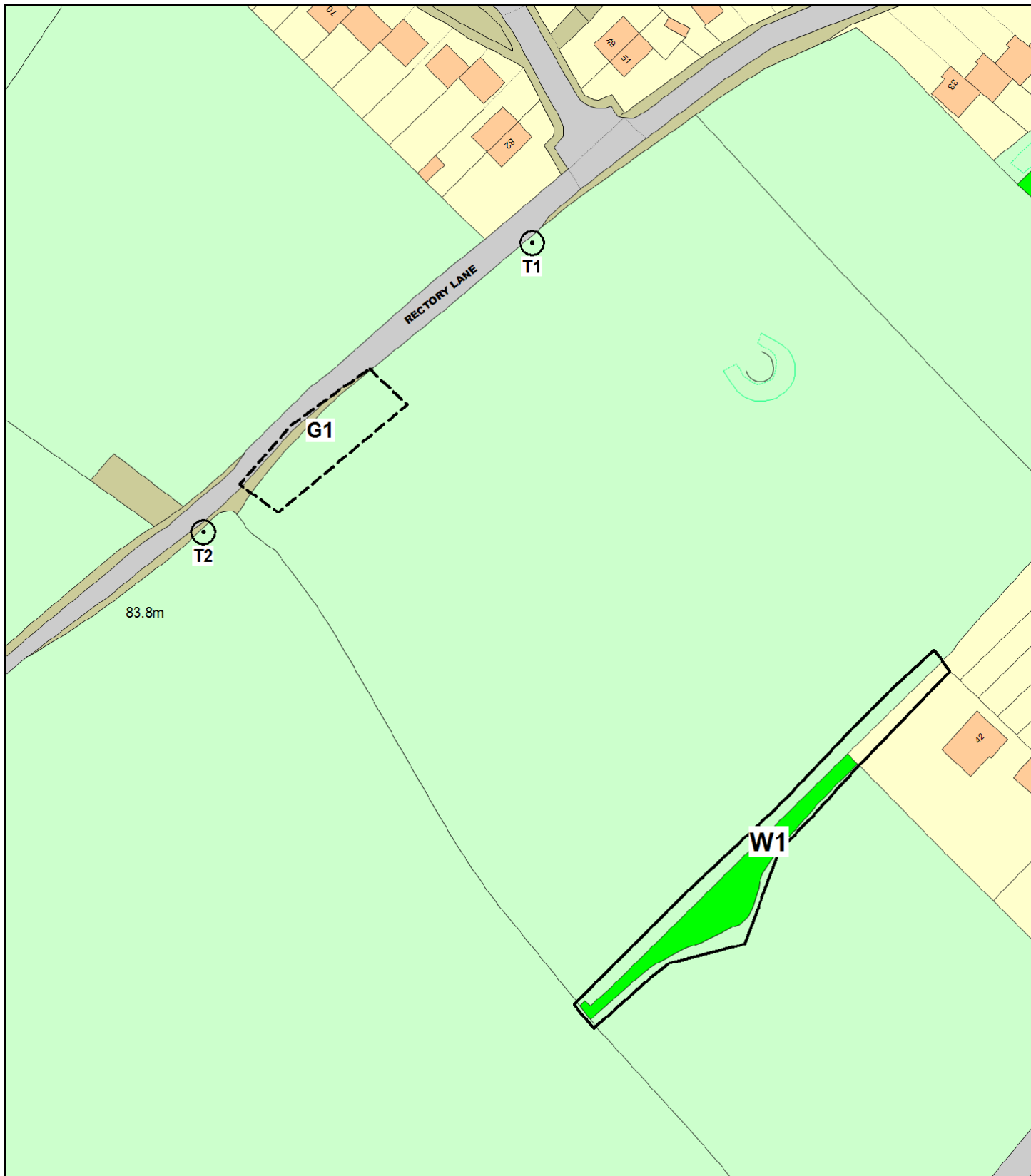
#### Woodlands (within a continuous black line on the map)

Reference on Map	Description	Situation
W1	Mixed woodland comprising mainly the following: Hawthorn Common Holly English Oak Small-leaved Lime	Grid Ref: SK-07834-15675 <i>Crataegus monogyna</i> <i>Ilex aquifolium</i> <i>Quercus robur</i> <i>Tilia cordata</i>


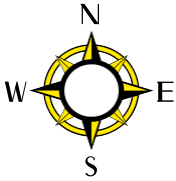
#### Trees specified by reference to an Area (within a dotted black line on the map)

Reference on Map	Description	Situation
NONE		





<p><b>TPO Ref: 2021/00455/TPO</b>  <b>Land To The North West, Westfields Road, Armitage</b></p>	<p><b>Lichfield District Council</b></p>
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	<p><i>The scale shown is approximate and should not be used for accurate measurement.</i></p>		<p><b>Scale</b>      <b>1:1250</b></p>	
	<p>Reproduced from the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office  Crown Copyright Database Rights 2020 Lichfield District Council  Licence No:100017765 Dated 2020</p>		<p><b>Date</b>      <b>23/03/2022</b></p>	

Appendix B:

Running Hills

Birchen Fields

417