

REPORT FOR DECISION

MEETING: PLANNING CONTROL COMMITTEE
DATE: 9 October 2018
SUBJECT: TREE PRESERVATION ORDER CONFIRMATION
REPORT FROM: HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER: DAVE MARNO

TYPE OF DECISION: COUNCIL

FREEDOM OF INFORMATION/STATUS: This paper is within the public domain

SUMMARY: The report considers the confirmation of a temporary tree preservation order currently made Crow Lumb Wood, Ramsbottom

OPTIONS & RECOMMENDED OPTION To amend the Order; reject the Order or confirm the Order as proposed.

The Committee is recommended to confirm, the extant temporary Tree Preservation Order (No.343) designated as Crow Lumb Wood Ramsbottom.

IMPLICATIONS:

Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Financial Implications and Risk Considerations:	Director of Finance and E-Government to advise regarding risk management - N/A
Statement by Director of Finance and E-Government:	N/A
Equality/Diversity implications:	N/A

Considered by Monitoring Officer: N/A

Are there any legal implications? Yes – Confirmation of the Order and recording on the Local Land Charges Register

Staffing/ICT/Property: N/A

Wards Affected: North Manor

Scrutiny Interest: N/A

TRACKING/PROCESS

EXECUTIVE DIRECTOR:

Chief Executive/ Management Board	Executive Member/Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council

Introduction

This report sets out the issues relating upon the current temporary tree preservation order (TPO) currently designated at Crow Lumb Wood, Ramsbottom.

The Tree Preservation Order was made on 1st May 2018 and took effect on that date on a provisional basis. In simple terms, it prohibits anyone from cutting down, topping or lopping any of the trees included in the Order, without the Council's consent. The Order remains in force for a period of six months or until the Council makes a decision to confirm the Order. When an Order is confirmed, it takes effect on a permanent basis. Before making a decision on whether to confirm the Order, the Council must consult those with an interest in the land and consider any objections received. The Council has received one objection and must now consider that objection and determine whether the Order should be confirmed i.e. made permanent. The Order may be confirmed with or without modifications. If the Order is not confirmed by 1st November 2018, it will lapse and the trees included in the Order will lose protection.

Discussion

The site is a large area of land that stretches from Bolton Street in the north west to the River Irwell to the east and follows the river in the downstream direction between Holme Mill and Nuttall Lane estate. (See attached map).

Following an assessment of trees on the site, the Council imposed a temporary Tree Preservation Order on 1st May 2018. The order, attached at Appendix 1 at the back of this report, related to an area comprising mainly mixed hardwoods including Ash,

Willow, Oak, Beech, Hawthorn, Silver Birch and Hazel trees, and covered an area of approximately 7Ha.

The decision to initiate the TPO Order was as a result of concern that the extent of the tree cover on the site may be under threat from redevelopment of the site following the submission of historic pre-application discussions, some unmanaged tree removals in the immediate locality and the contribution to amenity in terms of its juxtaposition to the Ramsbottom Conservation Area and relationship to public views within the valley.

The Council made the Order because the woodland provides a significant contribution to the Site of Biological Importance and a significant framing contribution to the Conservation Area and views from the valley. The woodland provides an important screening effect obscuring the housing estate along Nuttall Lane which would otherwise dominate the skyline looking from Nuttall Park. The woodland is of some age (150 years +) and the trees are in good condition and of high amenity value to the area. The trees also provide a wildlife habitat and benefit to nature. It was therefore considered expedient in the interests of amenity to make the Order.

Pursuant to Regulation 6 of the The Town and Country Planning (Tree Preservation) (England) Regulations 2012, objections and representations that are made in writing must be appropriately considered.

Representation

Letters were issued to the owners/occupiers of land within the proposed woodland order and one representation has been received from FLAC on behalf of the substantive land owner Peel Investments (North) Ltd dated 25th May 2018. This representation is appended.

The representation made includes the following points:

- The order encompasses the totality of their client's land and includes substantial areas where no trees are present or includes scrub land only. These areas cannot be protected by a TPO.
- There was no expediency in making the order as the land does not include churchyard, garden, orchard or public open space and therefore enjoys statutory protection under the Forestry Act 1967. As such the order is duplication.
- The owner's development aspirations for the site and good standing is such that the LPA has no risk of pre-emptive felling.
- Consider that the Order has been done without proper assessment and that there are trees of low merit that do not warrant statutory protection.
- The proposed TPO is unnecessary, be allowed to lapse or ask that it be revoked.

The land owner's agent goes on to provide their own field work assessment and suggested Landscape and Biodiversity Management Plan and they say to address management issues of retained woodland and geared towards delivering significant net benefit to biodiversity. The representation considers that the habitats are being degraded due to an increasing cohort of invasive sycamore, Himalayan balsam and it is apparent that the areas of better quality woodland would benefit from positive management.

The representation received must form part of the consideration as to whether the TPO is confirmed together with the respective merits of the case for and against.

Consultee Responses

Forestry Commission – No objections having reviewed the proposals.

Greenspace and Local Nature Reserves Officer - No objections.

Analysis

S198 of the Town and Country Planning Act 1990 sets out the provisions for making tree preservation orders. S198(1) states that if it appears to a LPA 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.

The Town and Country Planning (Tree Preservation)(England) Regulations 2012 sets out the detailed process of tree preservation order designation and details required for such orders including timeframes, prohibited activities, determination, revocation et al.

The proposed order would seek to protect woodland in this instance and can only protect trees and not bushes or scrub.

The woodland is an extensive area that sits adjoining the Ramsbottom Conservation Area and has a close relationship in enhancing that Conservation Area. It would be possible to have sought to expand the Conservation Area to include the land and legislation provides protection for trees where they are located within such areas. However, should proposals come along for the land that would require tree removal, where the LPA considers it expedient to do so in consideration of the respective tests, then a TPO would have to be issued where it considers that trees ought to be retained. The effects of a Conservation Area imposition does also provide a greater constraint on development of land. As such, the proposed imposition of a TPO seeks solely to protect trees.

The land is crossed by public rights of way, which provides public access into the woodland from Bolton Street down to the River Irwell and in a northerly direction towards Kay Brow and Holme Mill. Additionally, due to the topography of the area, the woodland can be seen as an imposing natural feature from the varying vantage points including Holcombe, Ramsbottom town centre and also from the opposite side of the valley including Nuttall Park and Bury New Road.

The tree cover is readily seen as a key and integral part of the natural landscape, which this area is recognised not only in terms of its heritage, topography, hillside location but also a key feature to the way in which the town has developed and nestled in to the wider natural landscape, which this site is part of.

As such, it is considered that there is a significant weight of argument in relation to visual amenity.

In consideration of expediency, there is a degree of overlap as to whether a TPO is necessary or whether a matter be left to the Forestry Commission to regulate through the Forestry Act 1967. The expediency test here can have a number of factors and threat on trees is one, the volume of trees to be removed in any year without need for consent is another. TPO orders protect trees regardless.

The 2012 regulations sets out within Schedule 2 how much information is required to fulfil the requirements of a TPO, and different degrees of information are required depending upon the number or type to be protected.

The representation made by on behalf of the land owners describes development aspirations and that they are responsible owners. The designation a TPO does not ban tree removal at all costs but becomes a significant material consideration within development proposals. Future removal of trees would be subject to assessment and consideration by the LPA and where works are considered to be appropriate, works could be permitted to be carried out under circumstances and/or subject to conditional controls. In addition, any tree removals can be subject to replanting requirements to serve to maintain the natural aesthetics the site provides.

There have been examples of the land owner removing trees in this vicinity and indeed the Forestry Commission were engaged within the consideration of enforcement action.

The imposition of a TPO on this site is considered to be expedient such that unrestricted levels of tree removals do not happen again. Furthermore, the Forestry Act does permit levels of removals, which if the order was not confirmed could allow tree removal to take place, over time, which would harm the positive natural presence that this woodland provides.

The effects of a TPO do not prevent good maintenance being carried out nor does it prohibit good land management. There has not been any works done to the land for a considerable period of time and with an appropriate approach to the LPA, a proposal could be duly considered and following any approval from the LPA, duly carried out.

The schedule within the 2012 regulations in relation to woodland designation does not require specific trees to be identified, but does permit designation to be confirmed on a broader description of trees (e.g. mixed hardwoods (mainly oak, ash and alder)) and to be identified within a continuous black line on a map. This has been duly followed within the current temporary order. Whilst the representation goes on to state that areas have been included that do not contain trees, it is clear that such provisions are not required and that where woodland orders are concern, there would be areas within it that would not contain trees. The issue here is one of pragmatism in securing a protective designation.

Recommendation Confirm the Order.

List of Background Papers:-

Appendix 1 - Temporary Tree Preservation Order dated: 1 May 2018

Appendix 2 - Representation received from FLAC on behalf of a substantial land owner within the site proposed site Peel Investments (North) Ltd

Contact Details:-

David Marno
Head of Development Management
Dept of Resources and Regulation
3 Knowsley Place
Bury BL9 0EJ

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Email: d.marno@bury.gov.uk

TREE PRESERVATION ORDER
Town and Country Planning Act 1990

The Metropolitan Borough of Bury
(Crow Lumb Wood, Ramsbottom)
Tree Preservation Order (No. 343) 2018

The Metropolitan Borough of Bury (Bury 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 Metropolitan Borough of Bury (Crow Lumb Wood, Ramsbottom) Tree Preservation Order (No. 343) 2018

Interpretation

2.—(1) In this Order “the authority” means Bury 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, 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 1st day of May 2018.

The Common Seal of the Metropolitan Borough of Bury
was affixed to this Order in the presence of—

.....
[Signature]

Council Solicitor



CONFIRMATION OF ORDER

This Order was confirmed by the Metropolitan Borough of Bury without modification on the
day of 20

OR

This Order was confirmed by the Metropolitan Borough of Bury, subject to the modifications
indicated by , on the day of 20

Signed on behalf of the Metropolitan Borough of Bury

.....
Authorised by the Council to sign in that behalf

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by the Metropolitan Borough of Bury on the
day of 20

Signed on behalf of the Metropolitan Borough of Bury

.....
Authorised by the Council to sign in that behalf

VARIATION OF ORDER

This Order was varied by the Metropolitan Borough of Bury on the day of
20 by a variation order under reference number a copy of which is
attached

Signed on behalf of the Metropolitan Borough of Bury

.....
Authorised by the Council to sign in that behalf

REVOCATION OF ORDER

This Order was revoked by the Metropolitan Borough of Bury on the day of
20

Signed on behalf of the Metropolitan Borough of Bury

.....
Authorised by the Council to sign in that behalf

SCHEDULE

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None.		

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

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None.		

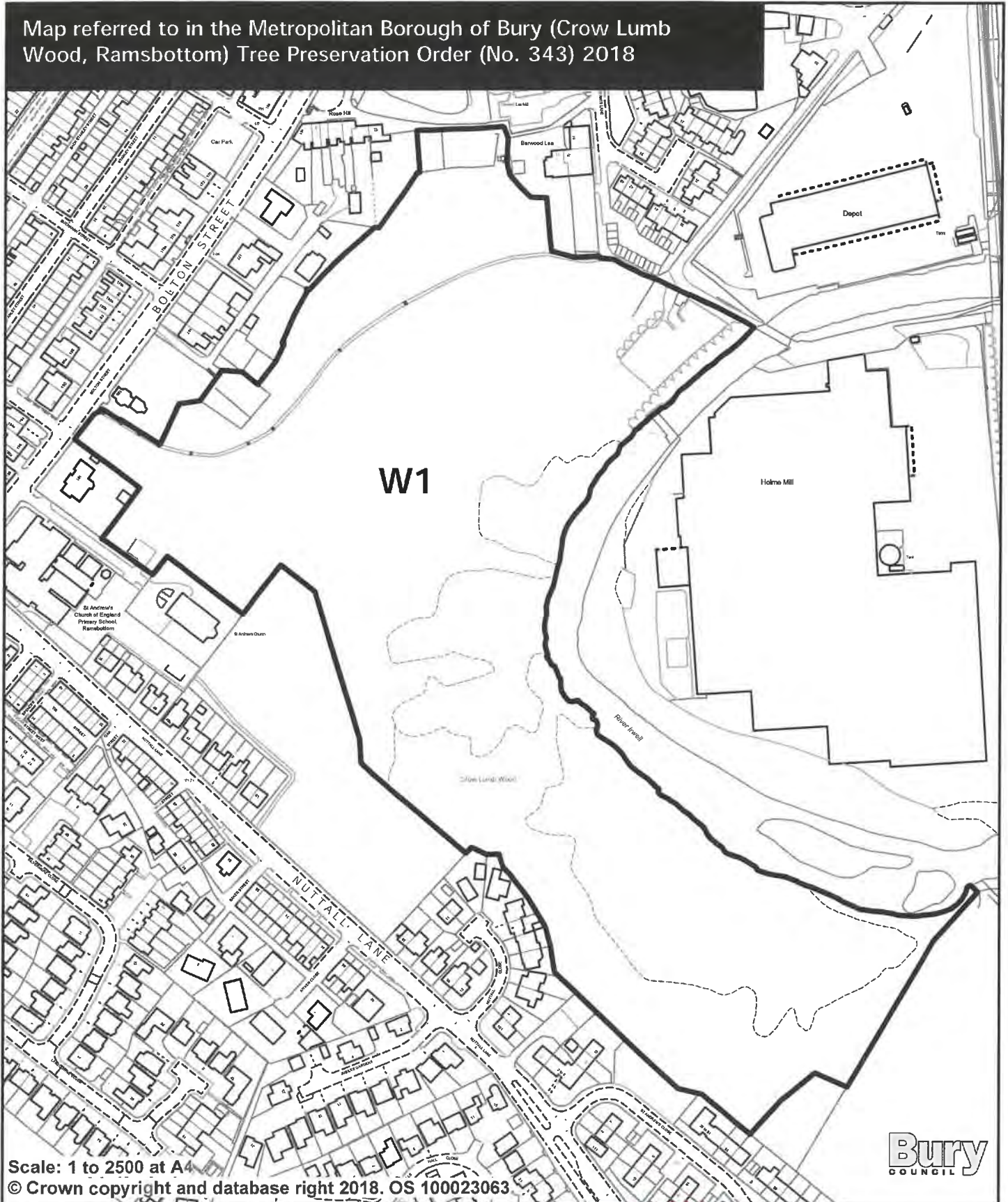
Groups of Trees (within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None.		

Woodlands (within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
W1	Mixed hardwoods (mainly Ash, Willow, Oak, Beech, Hawthorn, Silver Birch and Hazel)	Throughout the site

Map referred to in the Metropolitan Borough of Bury (Crow Lumb Wood, Ramsbottom) Tree Preservation Order (No. 343) 2018



THE COMMON SEAL of THE
METROPOLITAN BOROUGH OF BURY
was hereunto affixed on the 15th
day of May 2018
in the presence of:-

.....
Council Solicitor





Principal Consultant
Julian Forbes-Laird
BA(Hons), MICFor, MRICS, MEWI, RC.Arbor.A, Dip.Arb.(RFS)

Operations Director, Planning & Development
Patrick Stileman
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CC38-1023
CROW LUMB WOOD

25 May 2018

Ms Jayne Hammond
Assistant Director, Legal & Democratic Services
Bury Council
Town Hall
Knowsley Street
BURY, BL9 0SW

By Royal Mail recorded delivery

Dear Ms Hammond,

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012

Bury Council TPO 343/ 2018 - OBJECTION

We write as arboricultural advisors to Peel Investments (North) Ltd, pursuant to the Regulations referred above, to lodge an **Objection** to your council's Tree Preservation Order *Crow Lumb Wood, Ramsbottom* (No. 343) 2018.

We set out our Grounds for Objection as follows:

1. At S.198 of the TCPA is provided the power for competent authorities to place "trees" (including where they occur as woodland) under statutory protection, where it is considered *expedient in the interests of amenity* for them to do so. Tree Preservation Orders cannot be used to protect anything other than "trees"
2. Apparent from S.198 of the Act are two tests:
 - i) Do the trees (or woodland) have sufficient amenity value to merit this protection?
 - ii) Is it expedient to protect them?
3. Both tests must be passed if the power is to be employed in accordance with the statute, and accordingly it is against these tests that any new TPO should be examined



The Order seeks to protect things other than “trees”

4. Your TPO 343/ 2018 protects the totality of the site owned by our clients as “Woodland”. However, within the compass of the site are substantial areas where no trees are present and/ or where the vegetation is properly described as scrub or shrubs, neither of which are “trees”. These vegetation types cannot be protected by a Tree Preservation Order. This is settled law and accordingly the Order is ultra vires

There was no expediency in the making of the Order

5. The site is none of: churchyard, garden, orchard or public open space. As such trees thereon enjoy statutory protection under the Forestry Act 1967, in any event. It follows that they are protected against all but very small-scale felling. For this reason, the TPO is a duplication of extant protection, and it was therefore inexpedient to make it. In this regard, also, the TPO is ultra vires
6. Moreover, your authority is well aware both of our client’s development aspirations for the site, and of its good standing within the business and developer community in the northwest and beyond. Your authority has no basis for considering the trees to be at risk of pre-emptive felling which would, anyway, be a straightforward contravention of the Forestry Act 1967 (as amended). Seen in this light, the Order is further shown to have been made absent the necessary driver of expediency

Some of the trees included within the Order lack sufficient amenity to justify a TPO

7. The Order appears to have been made with no or no proper assessment of the amenity of the trees which it seeks to protect. This is demonstrated by the inclusion of a) scrub and shrubs and b) trees of low or very low merit that do not warrant statutory protection (it being manifestly not the intention of the Act to require preservation of trees of unspecial quality)

This completes our Grounds for Objection.

Background information which might assist your authority in revisiting the Order

8. We have undertaken field work to assess the trees on the site and append below a brief summary of our findings, and an indicative plan showing the location of relevant features. It is apparent from this information that the site includes areas of Priority Habitat: both *lowland deciduous woodland* and *wet woodland* are present
9. Unfortunately, these habitats are being degraded due to the presence both of an increasing cohort of invasive sycamore, and of the highly invasive weed Himalayan Balsam. It is apparent, therefore, that these areas of better quality woodland would benefit strongly from positive management
10. We have already referred to our client’s development aspirations for the site. In due course draft proposals will be put before your authority for consideration, which will be accompanied by an undertaking to promote the site on the basis of a comprehensive and detailed Landscape and Biodiversity Management Plan

11. This Plan will seek inter alia to address management issues in areas of retained woodland (broadly, the Priority Habitat woodland), and will be geared towards delivering a significant net benefit to biodiversity

12. We surmise that this approach would be welcomed by your Officers, and it is on this positive and environmentally responsible basis that our client intends to move forward. In addition to the serious flaws in the TPO, as you can see it was wholly unnecessary to make it

What we now seek, on behalf of our client

13. In light of the foregoing, we ask that the TPO is not Confirmed and instead is allowed to lapse at the end of the six-month lifespan for unconfirmed Orders. Alternatively, should your authority prefer, we ask that it be revoked

The alternative

14. Should your authority not be minded to adopt either of these approaches, which we would consider to be most unfortunate, as you are well aware it would need to consider this Objection properly, per central government advice

15. If your authority decides to go down the TPO route, we would require:

- i) Confirmation that this Objection has been received;
- ii) Confirmation that the TPO will not be Confirmed until the Objection has been properly considered;
- iii) Information as to the Council's internal processes for properly considering the Objection, including:
 - a) timeline, including date of submission for further evidence in support of this Objection (should this be required)
 - b) whether the matter will be heard before a panel
 - c) how this panel would be constituted
 - d) details as to how oral representations may be made to the panel (on the assumption that Officers will be afforded this opportunity);
- iv) Confirmation that all aspects of the process will not include decision-making powers being vested in Officers concerned with making the Order: clearly, such Officers could not be involved whilst still meeting the needs of visible fairness

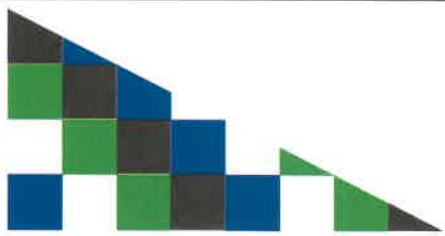
In closing, we reiterate our client's willingness to work constructively with Officers regarding this site and to this end we would gladly attend a meeting, either at the Town Hall or on site as preferred, in order to put matters into a positive light.

Yours sincerely,

Julian Forbes-Laird

Summary of key attributes of principal arboricultural features

FLAC ident.	Species	Age class	Notes	Category
7001	Ash	M	Very large tree, bordering on veteran status. Large open cavity at base through entire width of stem. Historic storm damage in central and upper crown have left decaying stubs. No sign of fungal fruiting bodies. Foliage appears healthy throughout. Stem dia. ca. 950mm	A3
TG7001	Crack willow, goat willow, alder, hawthorn	EM	Dense group of scrubby trees around small water course on relatively damp ground. All trees in group are multiple stem specimens with many having partially failed stems/limbs near to ground level, creating a generally dense continuous group up to the edge of the paved path. Height = 9m Diameter = 250mm	C
TG7002	Hawthorn, goat willow, sycamore	EM	Area of dense, but generally younger/less mature in appearance (than adjacent woodland WG7001) trees. These are obviously self set trees growing on the sloping ground above the more open predominantly grass area. No sign of disease or dieback in group. Height = 12m Diameter = 250mm	B
TG7003	Goat willow, ash, sycamore	EM	Area of dense scrubby tree growth with thicker-like natural regeneration of ash present around a small number of more mature trees. Goat willows are relatively mature here. Height = 12 Diameter = 200mm	C
WG7001	Sycamore, ash, goat willow, crack willow, hawthorn, holly, elder, pedunculate oak	M	Majority of high trees are ash/sycamore with relatively dense lower level of hawthorn, willows and holly. Mixed maturity patches throughout area. Ground flora is diverse with a few small areas dominated by bluebells and other wild flowers, but large areas are dominated by ruderals also. Height = 15m Diameter = 400mm	B
WG7002	Alder, sycamore, ash, goat willow	M	Sloping land down towards river. Generally wet and boggy under foot. Majority of high canopy is alder with sycamore being the second most numerous species. Ash and willow are generally found towards the N and S edges with a scattering of oaks along the W compartment edge. Understorey is not very distinct here with pockets of dense and less dense natural regeneration of sycamore and ash (in a just a few locations). Wood horsetail dominated ground flora in damp areas. Height = 17m Diameter = 350mm	B
WG7003	Pedunculate oak, ash, goat willow, beech, sycamore, holly	M	Mature woodland on less sloping land but still a few patches of wet/boggy ground present. Oak forms majority of high canopy with scattered ash present also. Willow forms section, along with holly and beech of understorey with a few small pockets of thicket-like growth within the larger woodland. Height = 17 diameter = 420mm	A
WG7004	Goat willow, ash, sycamore	M	Dense thicket of goat willow with occasional ash on generally damp soil. Where ground is particularly damp Himalayan balsam and mare's tail cover the ground. Height = 10m Diameter = 240mm	C



FLAC dwg no.
38-1023.01.01
Indicative Notable Features Plan
NTS

