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**DEVELOPMENT CONTROL COMMITTEE**

**REPORT OF THE DIRECTOR OF THE URBAN ENVIRONMENT**

**CONFIRMATION OF TREE PRESERVATION ORDERS**

**PURPOSE OF REPORT**

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

**BACKGROUND**

2. 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.
3. 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.
4. 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.
5. 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.

6. 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.
7. New tree preservation orders are served when trees are identified as having an amenity value that is of benefit to the wider area.
8. 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.
9. 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.
10. 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**

11. There are no direct financial consequences arising from this report although the Committee may wish to bear in mind that the refusal or approval subject to conditions, of 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**

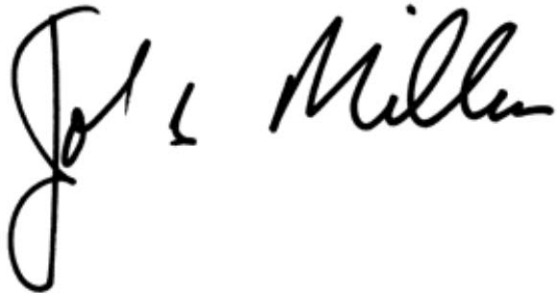
12. The relevant statutory provisions have been referred to in paragraph 2, 4, 5 and 10 of this report.

## **EQUALITY IMPACT**

13. The proposals take into account the Council's Equality and Diversity Policy.

## **RECOMMENDATION**

14. It is recommended that the tree preservation orders referred to in the Appendix to this report should be confirmed.



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DIRECTOR OF THE URBAN ENVIRONMENT

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### **List of Background Papers**

Appendix 1.1 – TPO/0091/QBD – Confirmation Report;  
Appendix 1.2 – TPO Plan and Schedule as served;  
Appendix 1.3 – Plan identifying objectors.

***APPENDIX 1.1***

***Confirmation Report for***

***The Borough of Dudley (Land in Quarry Road, Netherton (TPO/0091/QBD))  
Tree Preservation Order 2014***

Tree Preservation Order

Order Title

Case officer

Date Served

Recommendation

TPO/0091/QBD
Land in Quarry Road, Netherton
James Dunn
04/12/14
Confirm without modification

## **SITE AND SURROUNDINGS**

1. The Tree Preservation Order is principally comprised of an area of woodland that is bordered by Mousesweet Brook to the south; the Showman's Ground to the east Quarry Road to the north and Mushroom Green to the west.
2. The woodland area is visible from various aspects in Quarry Road; from Silverthorne Lane and Greenfield Avenue to the south, and from within the Mousesweet Brook / Blackbrook Open space and woodlands. However, given the local topography and presence of other buildings and woodlands, the views are almost always partial, often as a backdrop.
3. The woodland is comprised of willow, with some ash, sycamore, hawthorn and other species, with the southern end of the site comprising mainly wetland willow trees.
4. The TPO was served in response to the partial clearance of the front of the site adjacent to Quarry Road. The TPO was served on the whole of the woodland that fell under the land title of owner of the site.
5. Half of the land has been leased under a long term lease to another company. The area that has been leased covers the western half of the TPO area and includes the site of Griff Chain Ltd.

## **PUBLIC REPRESENTATIONS**

6. This order was previously considered by the Committee on the 2<sup>nd</sup> December 2014. At this meeting, the committee deferred the decision on the confirmation of the order to allow a site visit to be undertaken by the committee. This additional delay, would have taken the TPO beyond the 6 month provisional period during which the order needs to be confirmed. As such, the order was re-served as an identical facsimile of the original order.
7. All of the objections that were received to the previous order have been carried forward and will be considered as having been made to the latest order.
8. The statutory period for objections to be submitted in relation to this order expired on the 6<sup>th</sup> of January 2015, after the agenda for this committee meeting was

completed. Any objections received between the finalising of the agenda and the date of this meeting will be forwarded to the committee as a pre-committee note.

9. Following the service of the order, objections were received from the leaseholder of the western section of the TPO. The objections are based on the following points:

- The objector does not consider the section of woodland under their ownership to provide any visual amenity;
- The presence of the TPO poses a constraint to the business and investment value of the land;
- The TPO was a “knee jerk” reaction following the clearance of the adjacent, if the woodland was significantly valuable it would have encompassed within the conservation area designation of Mushroom Green;
- The presence of the TPO will restrict the development and expansion of the business, having an impact on the future employment prospects of the area;
- As the TPO will restrict the amount of any future development it will have an impact on the value of the land;
- There is no public benefit to the area as it is private and secure;
- The owner of the land should not be liable for any additional costs as the result of the TPO;
- There is no vegetation or wildlife of any significance on the site.

## **RESPONSE TO OBJECTIONS**

10. The area of woodland subject to the objection forms the western area of the TPO'd area. It covers approximately a third of the area of the whole TPO.
11. The woodland area subject to the TPO is relatively young, with the majority of it having grown up since the 1980's. The wider wooded area appears to have developed since the 1960's. Whilst relatively young, it now very much forms part of the character of the area, with woodland being the primary land type beyond the currently developed area.
12. The woodland subject to the TPO and the adjacent woodland now form a contiguous area of woodland.
13. Whilst it is accepted that the section of the woodland subject to the objection does not enjoy the most prominent of views from the north, it is considered that a large section of the area contribute to views from the south and west of the area from both the public park area to the south, and also from within the publicly accessible woodland.
14. Even when the woodland is not overtly identifiable as part of a view, it often provides a backdrop, or depth to a view. In many cases the adjacent woodland would appear significantly sparser, were it not viewed against area of protected woodland.

15. Overall it is considered that as part of the wider wooded area, and due to views of the woodland from both beyond the wooded area and from within the various paths and pedestrian tracks within the woodland there is sufficient justification for the preservation of the woodland.
16. It is accepted that the TPO was initially served in response to the clearance of the front section of the site, and that given the land ownership arrangements of the land in question, the section of woodland subject to the objection would have been unlikely to have been cleared as part of the clearance.
17. However, it is not considered that this reactionary service of the TPO is sufficient grounds to prevent the confirmation, where that trees protected by the TPO are of a sufficient value to warrant protection in the first place.
18. With regard to the comment that the wooded area would have been included within the original designation of the Mushroom Green Conservation Area if it was a valuable piece of woodland, it is worth noting that Conservation area are primarily, but not exclusively concerned about architectural assets; and that when the adjacent conservation area was designated in 1970, the woodland had not developed from the informal area of pasture that covered the site at that time.
19. The wooded area subject to the objection also benefits from various designations within Unitary Development Plan. Half of the site is designated as a Site of Importance for Nature Conservation (SINC); the other half forms a Site of Local Importance of Nature Conservation (SLINC), with the entire site being designated as Linear Open Space.
20. These designations would all form significant obstacles to any further development of the industrial use of the Griff Chain Ltd site. Any significant expansion of the site would likely require a planning application and the presence of the trees would be a material consideration regardless of their protected status. Given the other planning designations it is not considered that the TPO would, in itself, prevent the future development of the site, although it may be a factor once the impact on the nature conservation value of the site of any expansion had been demonstrated.
21. Overall, it is not considered that the impact of the TPO on the potential development of the site is sufficient grounds to prevent the confirmation of the TPO as long as the trees provide a sufficient level of amenity to justify their protection in the first place.
22. Similarly, the impact of the tree on the developable value of the land is not a material consideration, and should not prevent the confirmation of the TPO, especially as the TPO is not the sole obstacle to the development of the land.

23. Having considered the grounds of objection, it is not considered that there are sufficient grounds to prevent the confirmation.

## **CONCLUSION**

24. The woodland protected under the order is considered to provide a public amenity to the users of the Quarry Road, Mushroom Green and the adjacent public open space. It is not considered that the objections raised are sufficient to prevent the confirmation of the order. It is therefore recommended that the order be confirmed without modification.

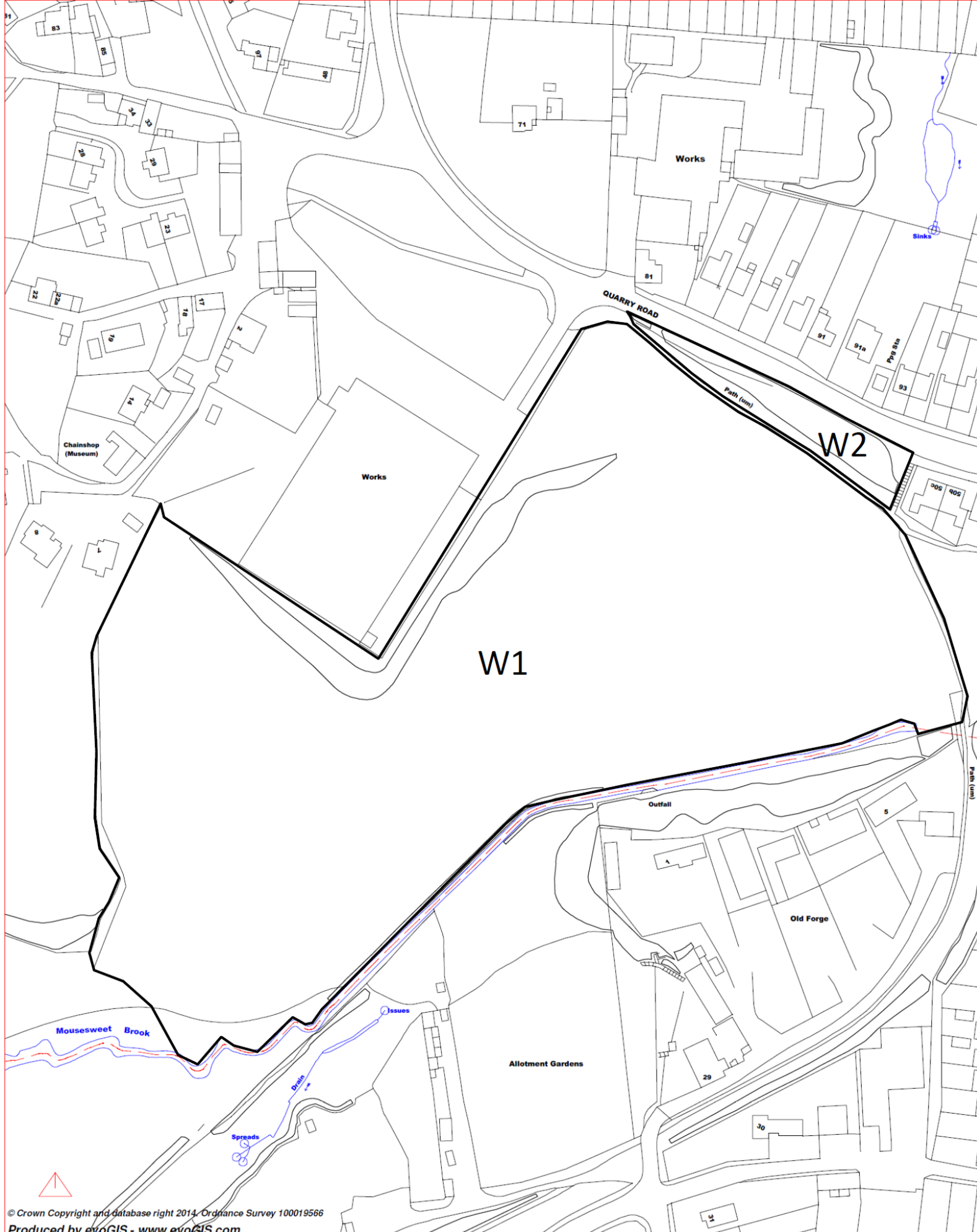
## **RECOMMENDATION**

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



## ***APPENDIX 1.2***

### ***Tree Preservation Order Plan and Schedule As Served***



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Produced by evoGIS - [www.evoGIS.com](http://www.evoGIS.com)

Map referred to in the Borough Council of Dudley

**TPO/0091/QBD (Land in Quarry Road, Netherton)**

Tree Preservation Order 2014

**Dudley**  
Metropolitan Borough Council

Scale: 1 : 1500

# SCHEDULE

## Specification of trees

### **Trees specified individually** (encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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**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>
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**NONE**

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

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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**NONE**

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

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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W1	Mixed deciduous woodland	Woodland between Mousesweet Brook and Quarry Road, Netherton
W2	Mixed deciduous woodland	Land fronting Quarry Road, Netherton

### ***APPENDIX 1.3***

#### ***Plan Identifying Objectors Properties***

**★ - *Objection Received from Property***

