

Development Control Committee - Wednesday 26th June, 2019

Report of the Strategic Director of Place

Confirmation of Tree Preservation Order

Purpose

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.

Recommendations

2. It is recommended that:-
 - The Tree Preservation Orders referred to in the Appendix to this report should be confirmed.

Background

3. 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.
4. 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.

5. 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.
6. 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.
7. 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.
8. New tree preservation orders are served when trees are identified as having an amenity value that is of benefit to the wider area.
9. 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.
10. 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.
11. 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

12. 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

13. The relevant statutory provisions have been referred to in paragraph 3, 5, 6 and 11 of this report.

Equality Impact

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

Human Resources/Transformation

15. There are no Human Resource/Transformation issues

Commercial Implications

16. There are no Commercial Implications arising from this report.



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STRATEGIC DIRECTOR PLACE

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List of Background Papers

Appendix 1.1 – TPO/0272/UGW – Confirmation Report
Appendix 1.2 – TPO Plan and Schedule as served;
Appendix 1.3 – Plan identifying objectors & supporters;

APPENDIX 1.1

Confirmation Report for

***The Borough of Dudley (Land to the East of Setton Drive, Sedgley)
(TPO/0272/UGW) Tree Preservation Order 2019***

Tree Preservation Order

Order Title

Case officer

Date Served

Recommendation

TPO/0272/UGW
Land to the East of Setton Drive
James Dunn
16/01/19
Confirm

SITE AND SURROUNDINGS

1. The order, as served, protects 23 Individual Trees and 9 groups of trees, that are located around the field boundaries of the filed located to the east of Setton Drive, extending into the adjacent area of Green Belt.
2. The trees were identified as being worthy of protection following a survey of the area, and the trees were considered worthy of preservation due to their contribution to the amenity of the area, in terms of their public visibility and contributions to the landscape in the area.
3. The site forms part of the wider Turl's Hill Green Belt area that is made up of a number of fields, paddocks and woodland. The area was previously covered by an old TPO (TPO/005) served in the 1960's, and the entire area has been reviewed as part of the TPO review process. The review has resulted in this, and a number of other TPOs being served to protect trees that have been identified as providing significant amenity other surrounding area.
4. The trees subject to this the notice are of varying size, and individual quality. Whilst some are worthy of protection as individuals, and others as component parts of groups of trees, it is considered that all make a positive contribution to the amenity of the area, both to their visual appearance, and as defining items in the landscape character of the area.

PUBLIC REPRESENTATIONS

5. Following the service of the TPO, objections to the inclusion of some of the trees in the order were received from the owners of 2 of the field plots. The letters of objection were based on the following grounds:
 - Ash and sycamore trees are considered very common to the country and are all self-set trees;
 - Sycamore trees have limited merit in the British Landscape and should not be protected.
 - The trees in G5, G6, G7 and G8 provide little amenity.
 - Ash trees grow to a height of up to 35 metres, it the third most common tree in Britain, and is currently being affected by Ash Die-back.

- The Council “cannot justify the regulatory expense of placing TPOs on Ash trees that are susceptible to Ash Dieback and may have a limited life”;
- Sycamore trees can also grow to a height of 35 metres, and can be affected by a variety of disorders;
- Most of the trees appear to be shallow rooted and some are showing signs of disease;
- There are concerns that T14, T15, T16 T17 & T18 may damage the Severn Trent main sewer that runs through the field;
- There are concerns regarding the condition of T11, G5 , G6, G7 and G8 given their proximity to Setton Drive and Turls Hill Road;

6. The representations are considered below.

RESPONSE TO REPRESENTATIONS

7. Whilst it is accepted that the majority of the ash and sycamore trees subject to the order are likely to be self-set, it is not considered that the self-set nature of the tree, nor their common occurrence in the landscape are sufficient reasons to prevent their inclusion within the order. Given the general prominence of the trees in the local landscape, it is considered that they still provide sufficient amenity value to justify their inclusion within the TPO.
8. When the survey for the TPO was undertaken the trees were assessed using the TEMPO system, which considered issues such as the condition, longevity, visibility along with a number of other factors to determine the overall amenity value of the tree. All of the individually protected trees and the identified groups were considered to provide sufficient amenity to the area to justify their inclusion within the order.
9. The querying of the inclusion of ash trees in the TPO is reasonable, given the current spread and significance of Ash Die-back. This is a fungus that is likely to lead to the death of the majority of Ash trees across the country, and it is accepted likely to lead to the death of the ash trees subject to the order. However current guidance is to retain ash trees, even during the first stages of infection in order to determine whether the infected trees have any natural resistance to the disease.
10. Ash trees have leafed out later this years, and it is not currently possible to determine the vitality of the trees properly. However prior to the committee sitting the Tree Officer will undertake a site visit to determining the current extent of any die-back in the ash trees, and will present any recommended changes as a pre-committee note.
11. In terms of the “regulatory expense” of protecting trees that are susceptible to ash die-back. It is not considered that the processes or resources required to administer the TPO on the ash trees subject this order would be significant, and overall it is not considered that this is sufficient grounds to prevent the confirmation of the order.

12. Given the location of the trees, their ultimate size is not considered to cause any significant issues, even if they were to grow up to their maximum height of 35 metres, which is very unlikely. A maximum height of between 20 – 25 metres is likely to be expected.
13. Whilst sycamore trees can be infected by a number of disorders, it is not considered sufficient grounds to prevent the inclusion of the trees in the TPO. Whilst non-native, sycamore trees are a significant component of the landscape in the area, and they provide sufficient amenity value to justify their inclusion.
14. On inspection it was noted that a number of the trees, mainly within the groups do have some existing defects, and as part of their long term management could do with some works, and even possible removal. However the presence of the TPO should not be seen as an obstacle to appropriate tree works, as such works are likely to be approved and considered acceptable. Should an issue arise where urgent action is required, then the exemptions within the order provide an appropriate avenue for such works. Overall, whilst it is accepted that some work to the trees as a whole may be justified, it is not considered that the presence of the TPO present a significant obstacle to such works, and should not impede on the tree owner's ability to discharge their duty of care.
15. Overall have considered the comments by the field owners' it is recommended that the TPO be confirmed without modification.

CONCLUSION

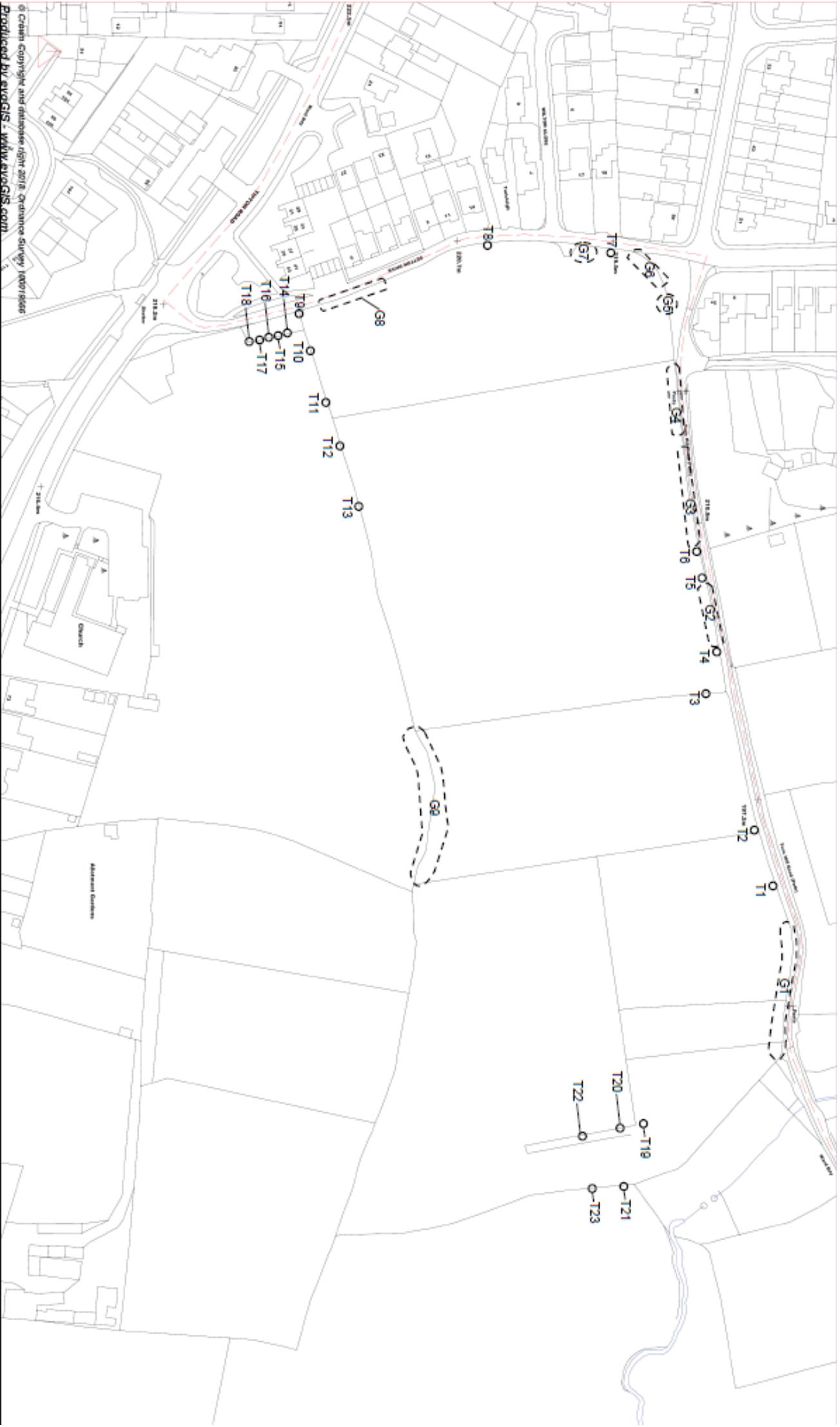
16. Having considered the comments by the field owners' it is considered that the trees subject to this order make a positive contribution to the amenity of the area, and the objections raised are not sufficient to prevent the inclusion of the trees within the order it is recommended that the TPO be confirmed without modification.

RECOMMENDATION

17. 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

Map referred to in the Borough Council of Dudley

Land to the east of Setton Drive, Sedgley (TPO/0272/UGW)

Tree Preservation Order 2018

SCHEDULE

Specification of trees

Trees specified individually
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Beech	Land to the south to Turls Hill Road, and to the east of Setton Drive
T2	Horse Chestnut	Land to the south to Turls Hill Road, and to the east of Setton Drive
T3	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T4	Horse Chestnut	Land to the south to Turls Hill Road, and to the east of Setton Drive
T5	Horse Chestnut	Land to the south to Turls Hill Road, and to the east of Setton Drive
T6	Horse Chestnut	Land to the south to Turls Hill Road, and to the east of Setton Drive
T7	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T8	Sycamore	Land to the south to Turls Hill Road, and to the east of Setton Drive
T9	Sycamore	Land to the south to Turls Hill Road, and to the east of Setton Drive
T10	Lime	Land to the south to Turls Hill Road, and to the east of Setton Drive
T11	Sycamore	Land to the south to Turls Hill Road, and to the east of Setton Drive
T12	Lime	Land to the south to Turls Hill Road, and to the east of Setton Drive
T13	Sycamore	Land to the south to Turls Hill Road, and to the east of Setton Drive
T14	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T15	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T16	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T17	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive

T18	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T19	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T20	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T21	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T22	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive
T23	Ash	Land to the south to Turls Hill Road, and to the east of Setton Drive

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>
G1	A Group consisting of 9 x Ash trees	Land to the south to Turls Hill Road, and to the east of Setton Drive
G2	A Group consisting of 5 x Ash trees and 1 x Sycamore tree	Land to the south to Turls Hill Road, and to the east of Setton Drive
G3	A Group consisting of 3 x Ash trees, 3 x Hawthorn and 1 x Field Maple	Land to the south to Turls Hill Road, and to the east of Setton Drive
G4	A Group consisting of 3 x Lime trees and 3 x Sycamore tree	Land to the south to Turls Hill Road, and to the east of Setton Drive
G5	A Group consisting of 6 x Sycamore stems	Land to the south to Turls Hill Road, and to the east of Setton Drive
G6	A Group consisting of 5 x Sycamore trees and 4 x Ash trees	Land to the south to Turls Hill Road, and to the east of Setton Drive
G7	A Group consisting of 8 x Ash stems	Land to the south to Turls Hill Road, and to the east of Setton Drive
G8	A Group consisting of 8 x Sycamore trees	Land to the south to Turls Hill Road, and to the east of Setton Drive
G9	A Group consisting of 2 x Ash trees and 2 x Sycamore trees	Land to the south to Turls Hill Road, and to the east of Setton Drive

Woodlands

(within a continuous black line on the map)

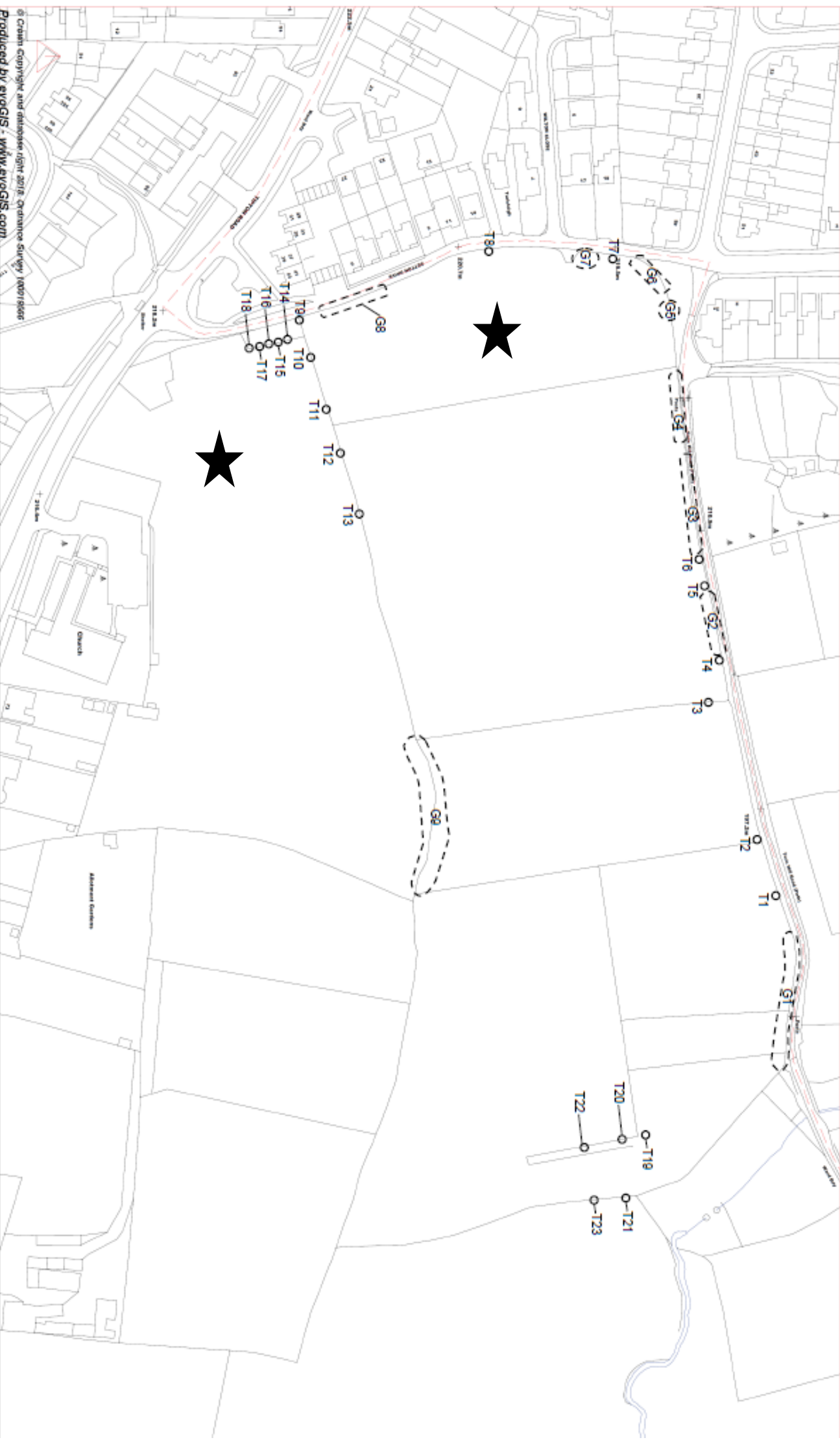
<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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NONE

APPENDIX 1.3

Plan Identifying Objectors Properties

- ★ - Letter of Objection Received from Property Owner**



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Map referred to in the Borough Council of Dudley

Land to the east of Setton Drive, Sedgley (TPO/0272/UGW)

Tree Preservation Order 2018