
DEVELOPMENT CONTROL COMMITTEE

REPORT OF THE STRATEGIC DIRECTOR OF PLACE

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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STRATEGIC DIRECTOR OF PLACE

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List of Background Papers

Appendix 1.1 – TPO/0193/CAP – 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 (Wrens Nest Road, Dudley)(TPO/0193/CAP)) Tree
Preservation Order 2015***

Tree Preservation Order

Order Title

Case officer

Date Served

Recommendation

TPO/0193/CAP
Wrens Nest Road Dudley
James Dunn
17/12/15
Confirm without modification

SITE AND SURROUNDINGS

1. The Tree Preservation Order protects 4 Norway maples, and 1 lime tree along Wrens Nest Road. One of the Norway maple trees and the lime tree are located in the grounds of The Greens Health Centre, and the remaining Norway maple trees are located in 187, 191 & 195 Wrens Nest Road.
2. The trees were assessed using the TEMPO amenity assessment system and were considered to provide public amenity to the local area.
3. The order has been served following a review of existing TPOs in the area. The trees within the grounds of The Greens Health centre were previously protected as T9 & T10 of TPO/529 that was served in 1997 and the trees located in the gardens of 187, 191 & 195 Wrens Nest Road were previously protected as T2, T3 & T4 of TPO/669 that was served in 2001.
4. Both of these orders were in place prior to the construction of the buildings that currently occupy the plots in question.

PUBLIC REPRESENTATIONS

5. Following the service of this order objections were received from the owner of The Greens Health Centre against the inclusion of the Norway maple (T4) and the lime tree (T5) within the order. The objection was accompanied with a report from an arboricultural consultant detailing the basis of the objections. The objections are based on the following points:
 - Whilst the trees are publicly visible they lack the special quality required to justify their protection via a TPO;
 - They have been pruned heavily in the past which detracts from their appearance, and are not good examples of their type;
 - There is onset of decay in the pruning wounds that will reduce the life expectancy of the trees;
 - The owners has previously maintained the trees, and therefore there is little expediency for the order;
 - The presence of a TPO places an undue bureaucracy and financial burden on the tree owners.

RESPONSE TO OBJECTIONS

6. Councils have the powers to serve Tree Preservation Orders (TPO) where it is considered "*expedient in the interests of amenity*". Where determining which trees are suitable for inclusion within TPOs, Councils are advised to use a standardised amenity assessment system, to ensure a consistent decision making process. The council currently use a system called TEMPO which is a system in widespread use by many Councils.
7. TEMPO assesses trees based on their condition, retention span, public visibility and "other factors". If a tree scores sufficiently at this stage, the expediency of serving a TPO is considered, based on the threat to the tree(s). If once all has been considered the tree scores a sufficient level of points, then it is considered appropriate to include it within a TPO.
8. The system currently sets out the following brackets for suitability for TPO:
 - 1-6 points – TPO indefensible;
 - 7-11 points – Does not merit TPO;
 - 12 – 15 – Possibly merits a TPO
 - 16+ points – definitely merits a TPO
9. The 5 trees in this order were assessed using TEMPO and were scored at 13 points. As such it was considered that the inclusion of the trees within a TPO was justifiable in the interests of amenity.
10. The arboricultural report that was submitted in support of the objections to the TPO included a TEMPO assessment undertaken by the arboricultural consultant, and scored Norway maple and lime tree as 11 and 10 points respectively.
11. Having compared the scores the difference in the assessment scores occurred in the "retention span" for both trees and the "public visibility" assessment of the lime tree (T5).
12. The council scored the trees with a retention span of 40 - 100 years (4 points), where the objector scored the tree in the 20 – 40 years (2 points). The lower score by the objector was reasoned on the basis that the previous pruning of the trees and the compression forks present in the lime tree (T5) has reduced safe and useful life expectancy of the trees.
13. Whilst it is accepted that given the physiology of the trees, and the previous pruning, will require management pruning in the future to keep them in a reasonable condition for their location. It is still considered that with reasonable pruning and management, the trees can easily be retained beyond the 40 years required to justify the score attributed by the Council's assessment.

14. The public visibility of the lime tree (T5) was assessed by the council as being within the 4 point category ("Large trees, or medium trees clearly visible to the public"). The objector has scored it in the 3 point category ("Medium trees, or large trees with limited view only"), arguing that the tree is partially screened by the adjacent T4.
15. Whilst it is accepted that as T4 is located between the lime tree (T5) and the public highway, it does screen the lime tree when passing directly in front of T4. There are still significant views of the lime trees when approaching in both directions and it is not considered that the limited screening of the tree has any significant impact on the overall visibility and prominence of the lime tree. As such the score afforded by the Council's assessment is appropriate.
16. In the report the arboricultural consultant concludes that the trees are relatively poor specimens, whose removals would have little impact on the amenity value of the area due to the presence of numerous trees on the opposite side of the road.
17. Whilst it is accepted that the trees are far from perfect specimens, it is considered that these trees, along with similar trees on the western side of Wrens Nest Road, provide a strong landscape function as part of the transition from the Wrens Nest Nature Reserve to the adjacent housing estate.
18. They also state that as the owners have previously maintained the trees, this demonstrates their commitment to the retention of the trees, and brings the expediency of the order into question.
19. The limited expediency of the order has been reflected in the expediency element of the TEMPO assessment which rates the TPO as "precautionary only". It is not necessarily considered that past maintenance of the trees should be taken as a guarantee of future intentions toward the trees.
20. The conclusion of the report finishes by stating that the continued presence of the TPO on the trees adds an unnecessary layer of bureaucracy into the maintenance of the trees, requiring the engagement of professionals which "could be seen as a waste of public health funds".
21. It is considered that the engagement of professional to maintain the trees and make the relevant application, will not place an undue burden on the owners of the trees, and form part of the reasonable costs of property maintenance.
22. Overall having re-considered the Council's original assessment scoring, and having considered the objections and arguments put forward by the objector's arboricultural consultant, it is considered that the trees justify their original score, and therefore their inclusion within the TPO is appropriate and justified.

23. Overall it is not considered that any of the objections raised are sufficient to prevent the confirmation of the order as it was served. It is therefore recommended that the TPO is confirmed without modification.

CONCLUSION

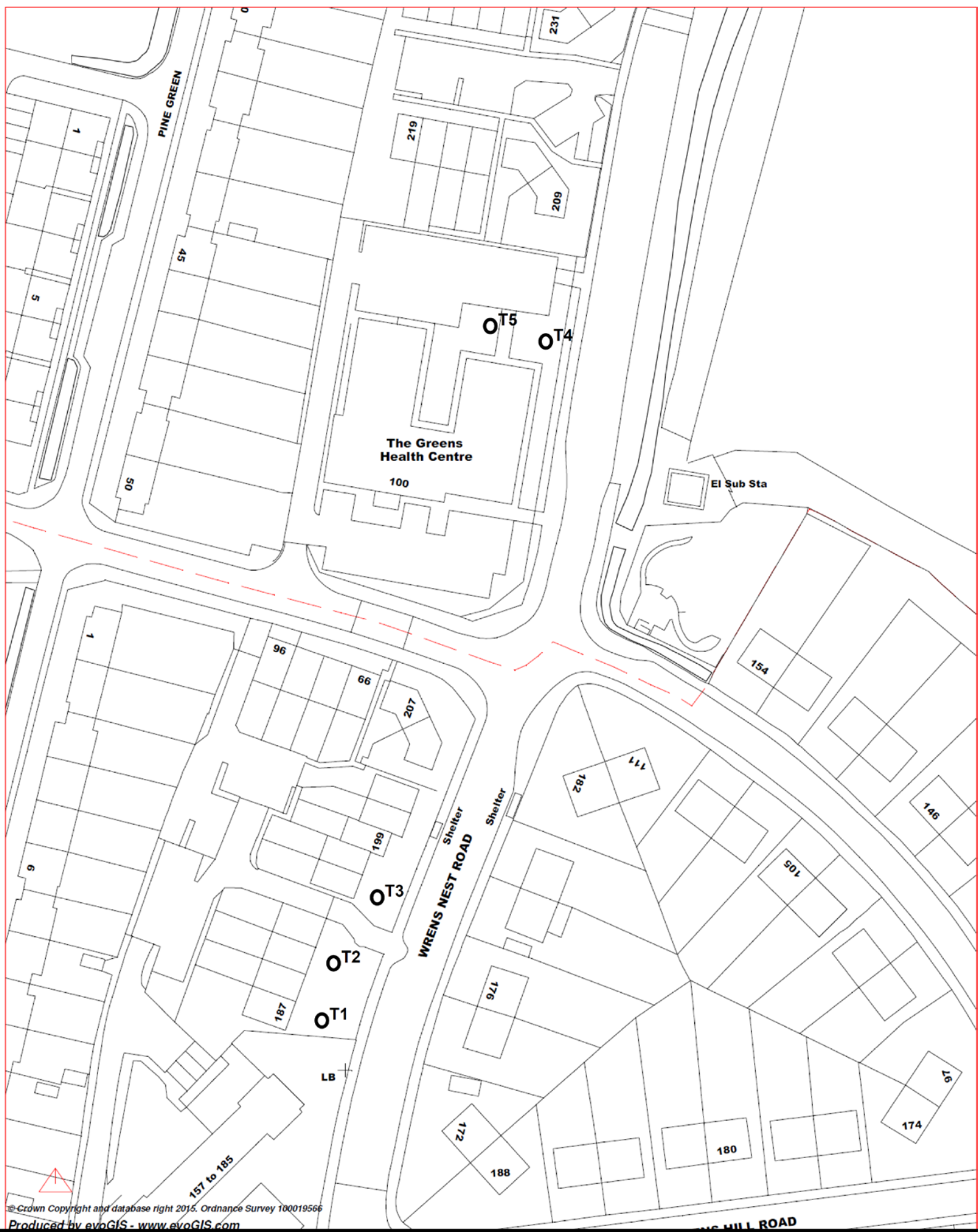
24. It is not considered that any of the objections raised to the TPOs are sufficient to prevent the confirmation of the order.

RECOMMENDATION

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

APPENDIX 1.2

Tree Preservation Order Plan and Schedule As Served



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Map referred to in the Borough Council of Dudley

Wrens Nest Road, Dudley (TPO/0193/CAP)

Tree Preservation Order 2015

Scale: 1 : 900

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	Norway Maple	187 Wrens Nest Road,
T2	Norway Maple	191 Wrens Nest Road,
T3	Norway Maple	195 Wrens Nest Road,
T4	Norway Maple	The Greens Health Centre, 100 Maple Green,
T5	Lime	The Greens Health Centre, 100 Maple Green,

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)

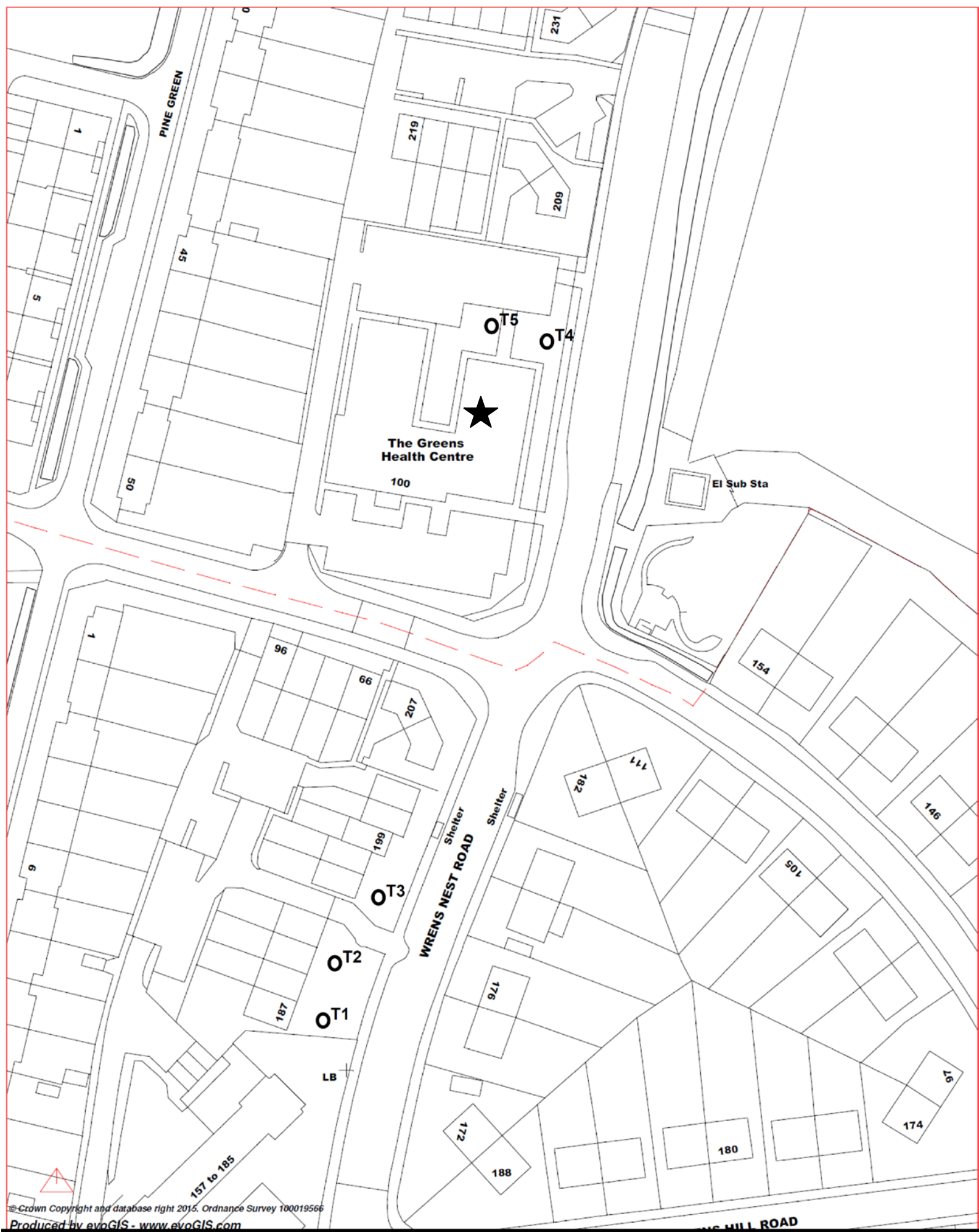
<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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NONE

APPENDIX 1.3

Plan Identifying Objectors Properties

★ - *Objection Received from Property*



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Map referred to in the Borough Council of Dudley

Wrens Nest Road, Dudley (TPO/0193/CAP)

Tree Preservation Order 2015



Scale: 1 : 900