
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

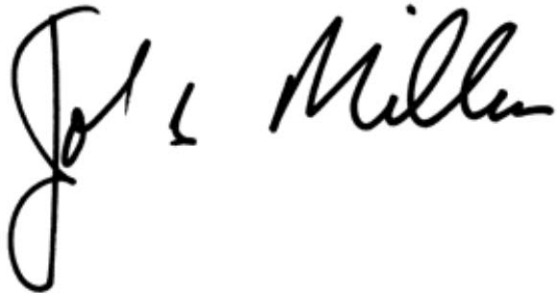
12. The relevant statutory provisions have been referred to in paragraph 2, 4, 5 and 10 of this report.

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 – TPO/0055/NOR – King Edward VI College Playing Field, Swinford Road, Oldswinford.
Copy of TPO plan and schedule.
Copies of objections.
Response to objections.

Tree Preservation Order

Order Title

Case officer

Date Served

Recommendation

TPO/0055/NOR
King Edward VI Sports Ground, Swinford Road
James Dunn
28/11/13
Confirm with Moifications

SITE AND SURROUNDINGS

1. The Tree Preservation Order covers eight mature oak trees that are situated close to the boundary of the King Edward VI Sports Ground, Swinford Road. The trees run down the eastern boundary of the sports ground, and extend along a short section of the southern boundary. Given their age and setting, it is considered that these trees may have formed part of a landscaping feature that predates the current land use. The trees are bordered by residential properties on Swinford Road, Willow Park Drive, Oakleigh Road, and Love Lane. The trees can be seen from Swinford Road, Willow Park drive, Oakleigh Road, Love Lane and Cobham Road.

PUBLIC REPRESENTATION

2. Following the service of the order, objections were received from neighbouring residents at 34 Oakleigh Road, 41 Willow Park Drive and 121 & 119 Love Lane. The objections are based on the following points:
 - The trees obstruct light to the garden of 119 Love Lane;
 - The leaves that fall from the tree need to be cleared from the garden of 119 Love Lane on a regular basis;
 - T8 is of such a size that it may affect the foundations of 119 Love Lane;
 - Two of the trees, T7 & T8 have been implicated in an ongoing subsidence event at 121 Love Lane. The various technical tests that have been carried out over the last four years, have implicated T7 & T8 as a significant factor in the damage. Prior to the service of the TPO the College had agreed to, and were arranging the removal of these two trees;
 - Concerns that T3 may fall across the property of 41 Willow Park Drive, given that a similar tree failed into the sports ground on 2008.
 - There are concerns about the angle of lean on T4 and the potential for failure.
 - The trees subject to the preservation order are not all particularly good specimens. A tree adjacent to 34 Oakleigh Road (T4) is growing at an extreme angle, and a tree close to the pavilion has a branch growing at a noticeable angle (T3).
 - The trees are not all accurately plotted on the plan included within the preservation order.

RESPONSE TO OBJECTIONS

3. It is accepted that, given the size of the trees subject to this preservation order, that they will block some light from adjacent properties. However, given that the trees close to the garden of 119, Love Lane are situated to the north of that property it is not considered that there will be any significant light obstruction from the garden of 119, Love Lane. It is not considered that the objection based on light obstruction to the rear garden of 119, Love Lane is sufficient to prevent the confirmation of the order.
4. The trees will drop leaves into the rear gardens of the adjacent properties that will require some effort and cause some inconvenience on behalf of the property owner in order to clear up. However if we are to enjoy the wide and various benefits of having large trees in the urban setting then the problems with clearing up fallen leaves will always exist. It is considered that the clearing of leaves is part of routine property maintenance and therefore not sufficient to prevent the confirmation of the order.
5. Whilst it is accepted that trees can cause damage to property in certain circumstances, the size of a tree is never an accurate indicator of a trees potential to cause damage. As such, it is not considered that a concern about the potential structural damage that may be caused by a tree is sufficient grounds for to prevent the confirmation of a TPO unless it can be supported with significant technical evidence.
6. Following the service of the order, the case officer has visited the residents of 121, Love Lane to discuss their ongoing issues of structural damage, and the implication of the oak trees (T7 & T8) as a contributory cause of that damage.
7. On visiting, there was evidence of a downward movement in the rear half of the property toward the trees, and the reports from the technical analysis and monitoring that have been carried out over the last four years confirm that there is clay present under the foundations; that there are oak roots present in close proximity to the foundations; the soil near the underside of the foundations is desiccated; and that the level monitoring at the property shows a distinct pattern of seasonal movement.
8. Overall it is considered, that whilst the trees may not be the sole cause of the damage to the property, there is sufficient evidence to implicate them as a contributory cause of the damage. Given that there is sufficient evidence to implicate the trees as a potential cause of the damage, it is considered that it would be appropriate for the two oak trees (T7 & T8) closest to the rear of the property of 121, Love Lane, to be removed from the order. This will allow the college to remove the trees as they had already agreed to do prior to the order being served.

9. Since the service of the order, the case officer has accessed the site, and has undertaken a visual inspection of the trees on the site. No visual evidence of any major defects was observed on T3; as such, it is not considered that there is any heightened risk of failure due to the condition of the tree. As trees are dynamic, living organisms, the condition and structural safety can change over time. As such, if any future defects are observed, the TPO allows applications to be made to undertake works to the trees. It is not considered that there are currently any grounds to exclude T3 from the order on safety grounds.
10. Similarly not obvious defects were observed in T4. T4 has grown with a distinctive and obvious lean into the sports ground. From looking at the growth form of the tree, it is considered that the lean has developed from early in the tree's life, possibly in an attempt to get out from the shade of an adjacent tree.
11. The growth from the upper canopy suggests that the lean of the tree is stable and has not significantly increased in the recent past. Given that the lean is stable, and no issues were observed to suggest that the tree has any decay present in the main stem, it is not considered that the tree is predisposed to failure. However, it is accepted that if the tree was subject to decay on the tension side of the stem in the future, the significance of such decay may be greater than on a tree with a more vertical stem. As such, it is recommended that the tree be routinely monitored in the future. Overall it is not considered that the lean of the tree is currently a reason not to confirm the preservation order on this tree.
12. Whilst it is accepted that not all of the trees have developed the best crown form and overall habit, and some of them are not perfect examples of their type. It is considered that all of the trees provide a sufficient level of amenity to justify their inclusion within the preservation order. As such, it is not considered that the lack of perfect form in some of the trees is a sufficient reason to prevent the confirmation of the order.
13. Given that the survey of the trees was undertaken from outside the site, as no access was available at the time, some of the trees have been plotted slightly out of position. However, on my subsequent visit to the site, the accurate position of the trees was noted, and the confirmation process does allow for the correcting of mistakes such as the mis-plotting of the trees.

CONCLUSION

14. With the exception of T7 & T8 it is considered that all of the trees identified for protection are of a sufficient quality, condition and provide sufficient amenity as to warrant the permanent protection of the Tree Preservation Order.
15. Given the level of technical evidence that has been provided by the resident of 121 Love Lane it is considered that T7 & T8 have been sufficiently implicated as a significant cause of the damage, and as such it is considered that these trees

should be removed from the preservation order to prevent the presence of a TPO being an impediment to the removal of the tree.

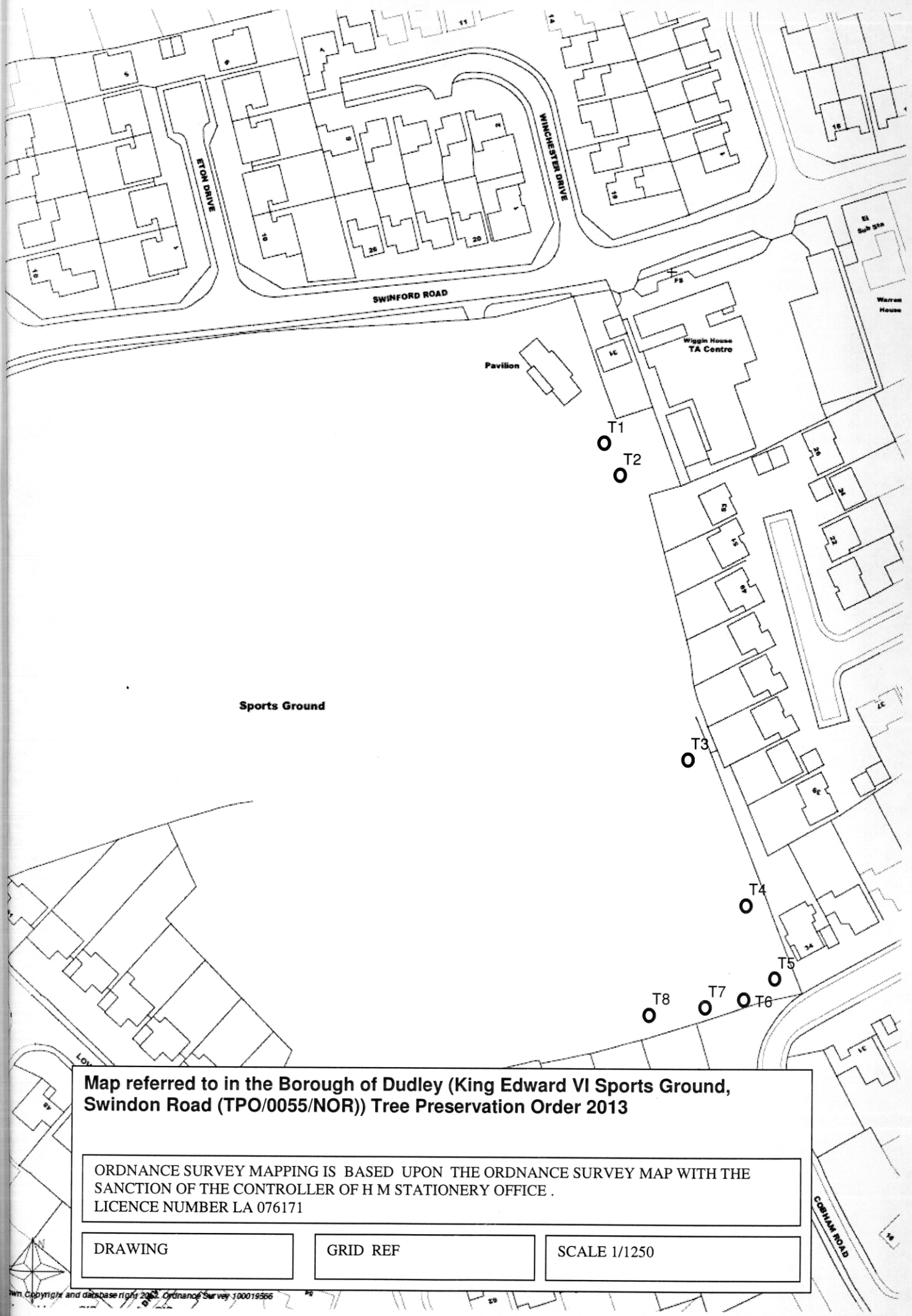
RECOMMENDATION

16. It is recommended that the Tree Preservation Order be confirmed subject to the following modifications:

- T7 & T8 are removed from the order.
- The plan is corrected to show the accurate locations of the trees.

APPENDIX 1

Tree Preservation Order Plan and Schedule As Served



Map referred to in the Borough of Dudley (King Edward VI Sports Ground, Swindon Road (TPO/0055/NOR)) Tree Preservation Order 2013

ORDNANCE SURVEY MAPPING IS BASED UPON THE ORDNANCE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER OF H M STATIONERY OFFICE .
LICENCE NUMBER LA 076171

DRAWING

GRID REF

SCALE 1/1250

SCHEDULE

Specification of trees

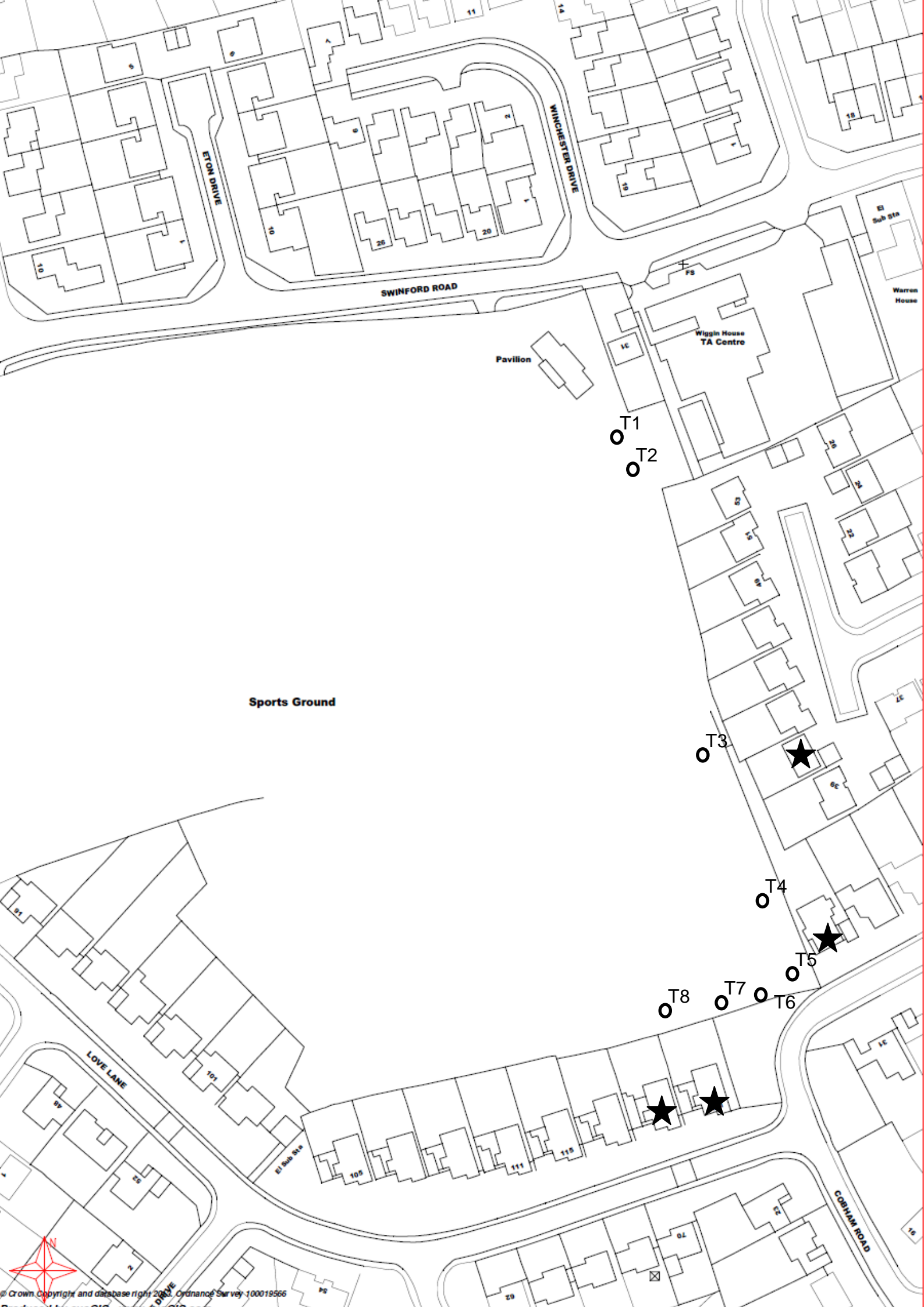
Trees specified individually
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T2	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T3	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T4	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T5	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T6	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T7	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T8	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge

APPENDIX 2

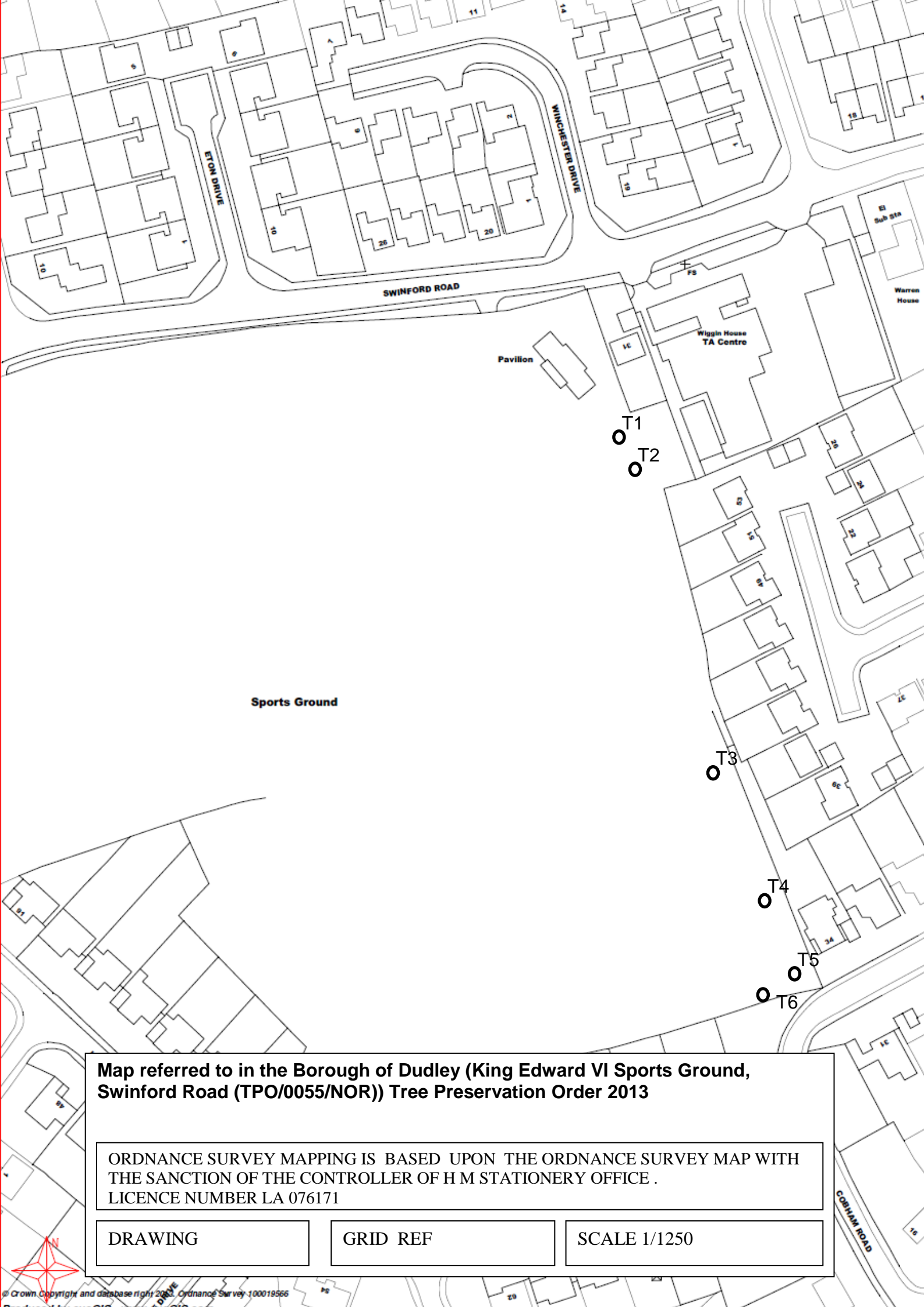
Plan Identifying Objectors Properties

★ - *Objection Received from Property*



APPENDIX 3

Plan and Schedule Proposed for Confirmation



Map referred to in the Borough of Dudley (King Edward VI Sports Ground, Swinford Road (TPO/0055/NOR)) Tree Preservation Order 2013

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T3	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T4	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T5	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge
T6	Oak	King Edward VI Playing Field, Oldswinford, Stourbridge