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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/0111/SED – Confirmation Report;  
Appendix 1.2 – TPO Plan and Schedule as served;  
Appendix 1.3 – Plan identifying objectors.  
Appendix 1.4 – TPO plan and Schedule as proposed for confirmation.

**APPENDIX 1.1**

***Confirmation Report for***

***The Borough of Dudley (High Park Crescent No.1 Sedgley (TPO/0111/SED))  
Tree Preservation Order 2014***

Tree Preservation Order	TPO/01111/SED
Order Title	High Park Crescent No.1
Case officer	James Dunn
Date Served	19/08/14
Recommendation	Confirm with modifications

## **SITE AND SURROUNDINGS**

1. The Tree Preservation Order comprises of 18 mature and early mature trees that are located in front of the properties on the western side of High Park Crescent. These properties are comprised of long front gardens and drives.
2. Many of the trees are contemporary with the construction of the properties, but a number also predate the properties. There are a smaller number of trees that appear to have been planted since the properties have been built.
3. The trees are very much a characteristic of the immediate locality and were all considered to provide sufficient amenity to the surrounding area to justify their protection.
4. The preservation order, along with a second order comprising similar trees to the south, has been served as part of the ongoing review of the existing preservation orders in the area. The majority of the trees included within the new orders would have been protected by the previous Tree Preservation Orders in the area.

## **PUBLIC REPRESENTATIONS**

5. Following the service of the order, objections were received from two local residents. One of the objectors does not object to any specific tree, but raises general objections to the order; the other objects to the inclusion of a specific tree within the order. The objections are based on the following grounds:
  - The order was made without any prior consultation with the property owners;
  - The council should assume responsibility for the maintenance of the trees including the collection of leaves in the autumn
  - The trees block light from the properties;
  - The cedar tree listed as T18 was implicated as a cause of a subsidence event at an adjacent property;
  - The cedar tree (T18) is overhanging the driveway of the adjacent property and is “out of control”;
  - The roots of the cedar tree (T18) are damaging the driveway of the adjacent property.

## RESPONSE TO OBJECTIONS

6. It is considered that the trees subject to this TPO do all provide a sufficient amount of amenity to the area, and their inclusion within the TPO is justified.
7. It is not normal practice to consult on, or advertise a proposed TPO to the owners of the trees or local residents prior to a TPO being served. Essentially this is in order to prevent the removal of any trees not previously protected before the proposed order comes into force.
8. Any party affected by an order is given an opportunity to submit comments and objections following the service of the order. Any objections received need to be considered prior to the order being made permanent.
9. Regardless of the protected status of the tree, it is always the owner of the tree who is legally responsible for the tree and any required upkeep. The Council will happily provide advice on appropriate management of protected trees, but does not assume responsibility for the maintenance of the trees. Similarly the Council does not become liable for the clearance of leaves during the autumn.
10. Having viewed the trees, it is not considered that that any of the trees obstruct significant light from the adjacent properties, and therefore it is not considered that any of the trees should be removed from the order due to light obstruction reasons.
11. The cedar tree (T18) is an early mature cedar tree that is located on the boundary between 45 and 43 High Park Crescent. The objector states that it has previously been implicated in a subsidence event at number 43.
12. Given that the tree has been implicated in a subsidence event that has been assessed by specialist engineers and arboriculturalists, it is considered that it would be reasonable to remove the tree from the order, so as not to present any obstacle to the appropriate management of this tree in the future, that could increase the risk of further damage to the affected property. Whilst the loss of the tree would have a detrimental impact on the amenity of the area, should it be removed, it is considered that this would be wholly justified if its removal were to prevent any further structural damage to the adjacent property.
13. It is accepted that the Cedar tree (T18) does considerably overhang the adjacent driveway. However it is not considered that the amount of overhang is such that it prevents the reasonable use of the driveway, or is sufficiently bad that it could not be remedied by appropriate pruning. As such, it is not considered that the tree should be removed from the order due to the overhang over the driveway.
14. Inspection of the driveway revealed a number of root traces within the tarmac surface, which had caused some humping of the surface. No stepped edges that

could cause trip hazards were observed. There was also a lifting of the tarmac immediately adjacent to the tree.

15. Whilst the lifting of the driveway is obviously caused by roots of the tree; it is difficult to diagnose the exact nature of the roots that are causing the damage with the surface in place. Often what appears to be substantial lifting can be caused by a relatively small and insignificant root just underneath the surface, or it could be a large root beneath seated at the a greater depth, that has pushed up the sub base.
16. Both of the above described situations can often be remedied without need for the felling of the tree, and as such it is considered that given the high amenity of the tree, it is not considered that the tree should be removed from the order on the basis of driveway damage.
17. Overall it is considered that given the implication of the Cedar tree (T18) as a cause of structural damage to the adjacent property it is reasonable to remove the tree from the order to remove any restrictions on its future maintenance.

## **CONCLUSION**

18. The trees subject to this order provide a sufficient amount of amenity to the surrounding area. Having considered the submitted objections it is recommended that the Cedar tree (T18) is removed from the order.

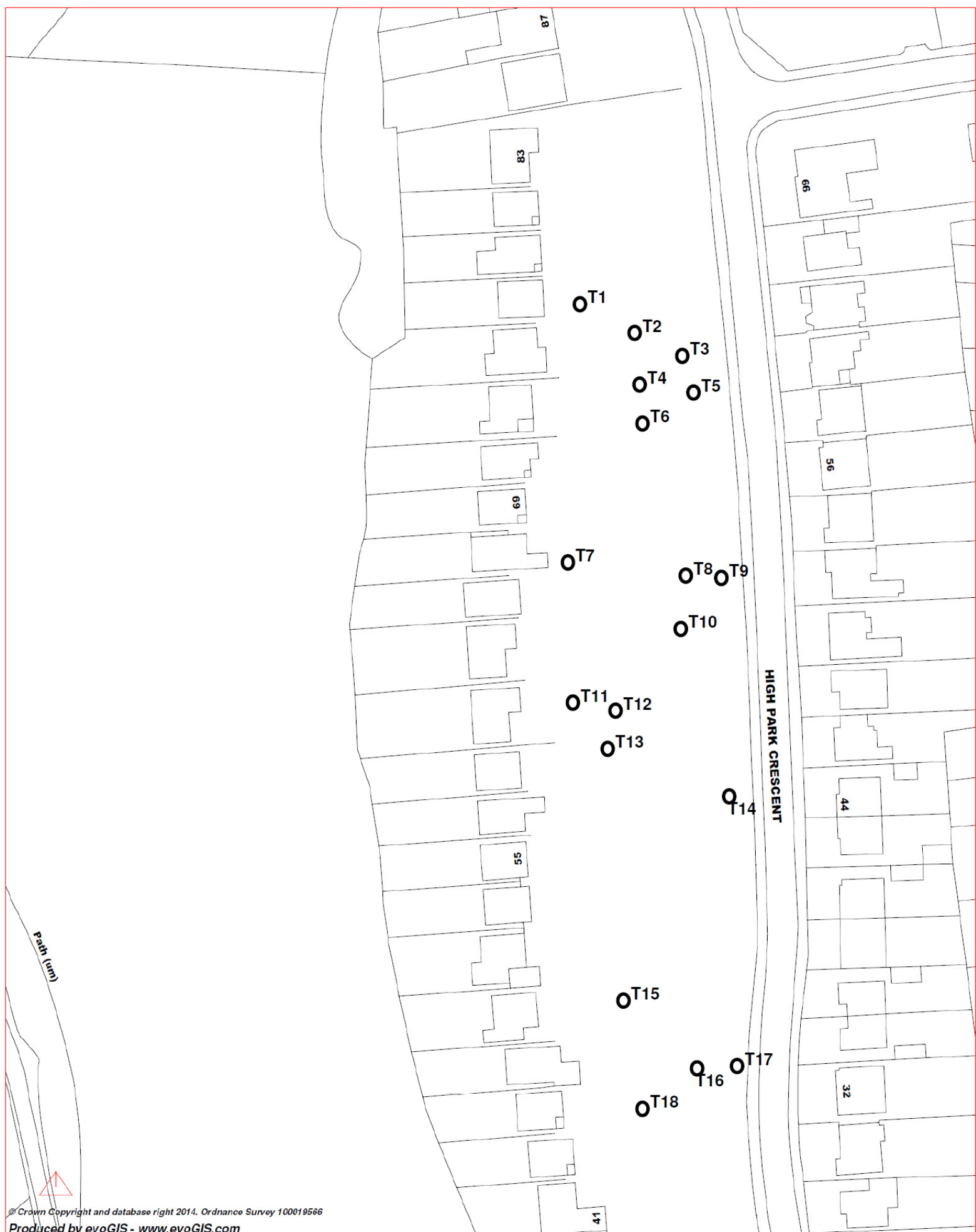
## **RECOMMENDATION**

19. It is recommended that the Tree Preservation Order be confirmed subject to modifications.

**APPENDIX 1.2**

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





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Map referred to in the Borough Council of Dudley

**High Park Crescent, No.1, Sedgley (TPO/0111/SED)**



Scale: 1 : 900

Tree Preservation Order 2014

# 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	Red Maple	77 High Park Crescent
T2	Oak	75 High Park Crescent
T3	Maple	75 High Park Crescent
T4	Maple	73 High Park Crescent
T5	Rowan	73 High Park Crescent
T6	Silver Birch	73 High Park Crescent
T7	Laburnum	67 High Park Crescent
T8	Rowan	65 High Park Crescent
T9	Rowan	65 High Park Crescent
T10	Rowan	63 High Park Crescent
T11	Weeping Willow	61 High Park Crescent
T12	Rowan	61 High Park Crescent
T13	Weeping Willow	59 High Park Crescent
T14	Weeping Willow	57 High Park Crescent
T15	Cedar	49 High Park Crescent
T16	Sycamore	47 High Park Crescent
T17	Sycamore	47 High Park Crescent

T18

Cedar

45 High Park Crescent

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

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<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)

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<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)

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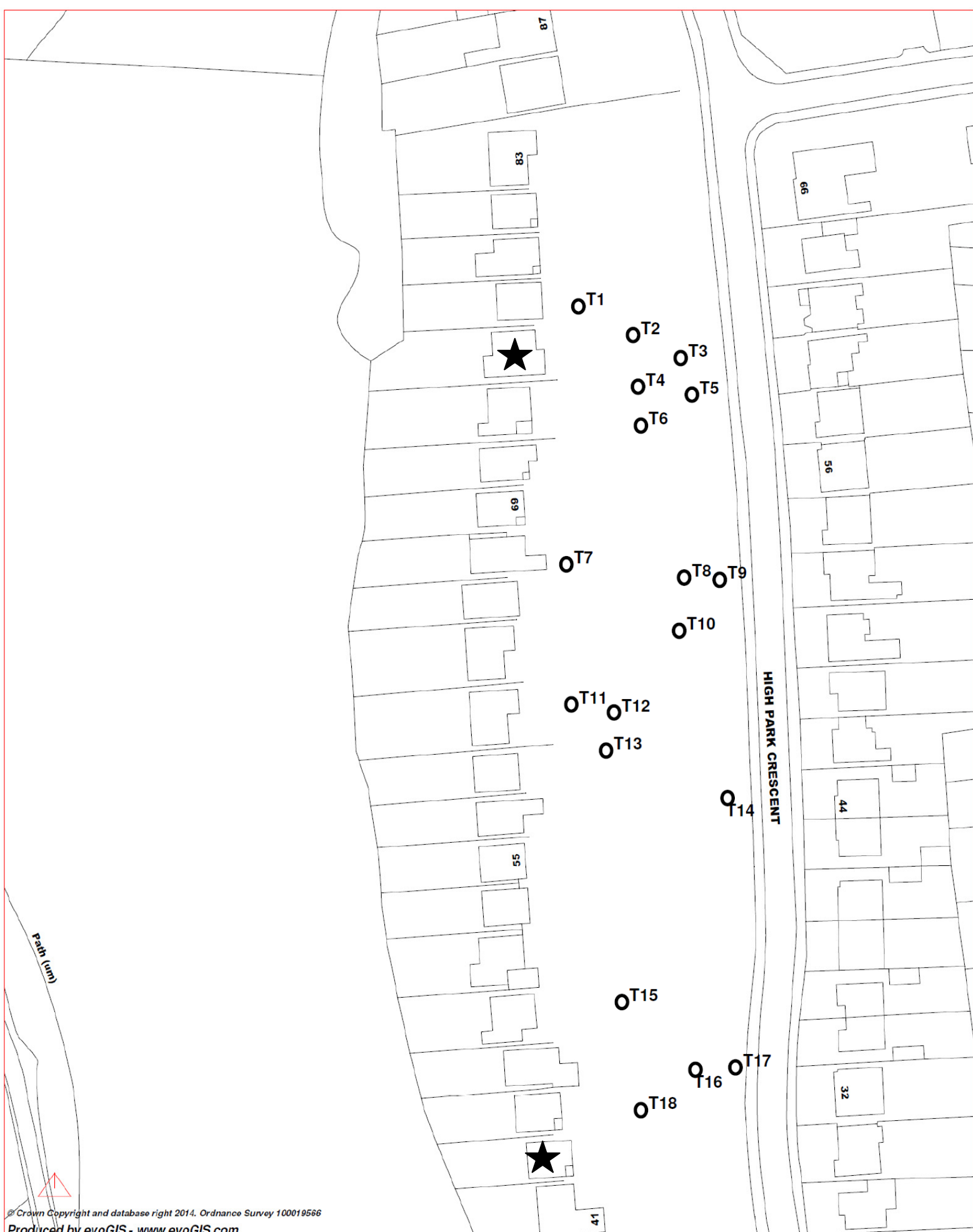
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**NONE**

***APPENDIX 1.3***

***Plan Identifying Objectors Properties***

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



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Map referred to in the Borough Council of Dudley

**High Park Crescent, No.1, Sedgley (TPO/0111/SED)**

Tree Preservation Order 2014

Scale: 1 : 900

**APPENDIX 1.4**

***Tree Preservation Order Plan and Schedule As Recommended for Confirmation***

# 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	Red Maple	77 High Park Crescent
T2	Oak	75 High Park Crescent
T3	Maple	75 High Park Crescent
T4	Maple	73 High Park Crescent
T5	Rowan	73 High Park Crescent
T6	Silver Birch	73 High Park Crescent
T7	Laburnum	67 High Park Crescent
T8	Rowan	65 High Park Crescent
T9	Rowan	65 High Park Crescent
T10	Rowan	63 High Park Crescent
T11	Weeping Willow	61 High Park Crescent
T12	Rowan	61 High Park Crescent
T13	Weeping Willow	59 High Park Crescent
T14	Weeping Willow	57 High Park Crescent
T15	Cedar	49 High Park Crescent
T16	Sycamore	47 High Park Crescent
T17	Sycamore	47 High Park Crescent

~~T18~~

~~Cedar~~

~~45 High Park Crescent~~

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

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<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)

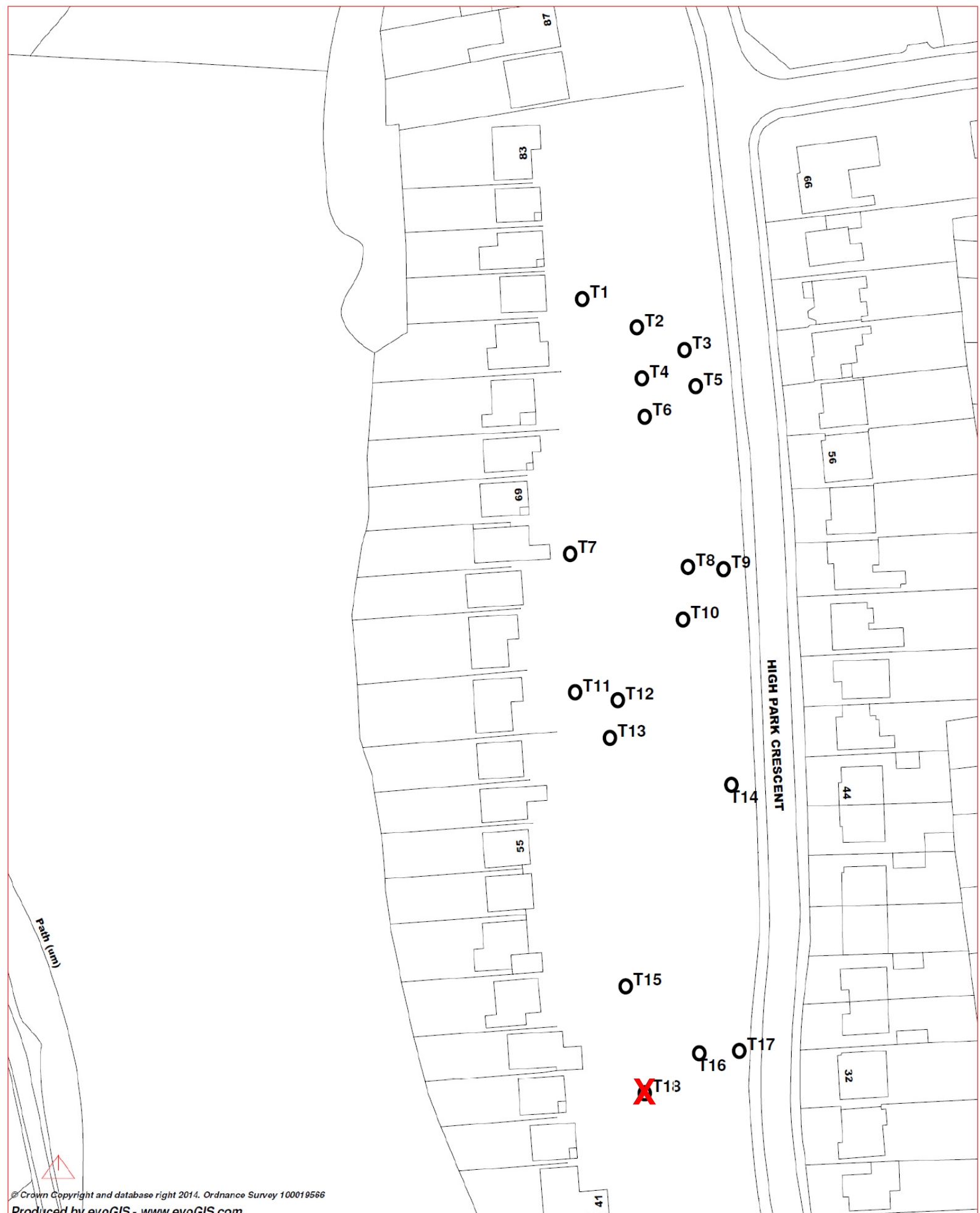
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<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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**NONE**





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Map referred to in the Borough Council of Dudley

**High Park Crescent, No.1, Sedgley (TPO/0111/SED)**

Tree Preservation Order 2014



Scale: 1 : 900