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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 & 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 & 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 & 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/0099/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 (55, 56 & 57 Lantern Road, Netherton (TPO/0099/QBD))  
Tree Preservation Order 2015***

Tree Preservation Order	TPO/0099/QBD
Order Title	55, 56 & 57 Lantern Road, Netherton
Case officer	James Dunn
Date Served	07/01/15
Recommendation	Confirm

## SITE AND SURROUNDINGS

1. The Tree Preservation Order covers two Lime trees and two Beech trees in the front garden of 57 Lantern Road and a Lime tree and a Sycamore tree in the rear gardens of 55 and 56 Lantern Road respectively.
2. The 4 trees in the front garden of 57 Lantern Road are prominently visible in the street scene of Lantern Road. The trees in the rear gardens of 55 & 56 are publicly visible between the properties in Paint Cup Row.
3. The Tree Preservation Order was served following a request from a member of the public to assess the trees in Lantern Road for protection following works to other trees.

## PUBLIC REPRESENTATIONS

4. This order was previously considered by the Committee on the 21<sup>st</sup> December 2014. At this meeting, the Committee decided to confirm the Order without modifications.
5. However, following this it was noted that not all of the objectors had been informed that the Order was to be considered by the Committee so did not have an opportunity to make representations to the Committee. It was also discovered that when the Legal department has prepared the original Order they has signed and sealed the wrong section thereby invalidating the original order.
6. It was considered that both due to the incomplete public notifications and the error in the signing of the original order that the most appropriate course of action was to re-serve a fresh order and start the process over. 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. No further objections were made after the service of the new order, as such the consideration of this Order should be made on the same basis as the previous order.
8. Following the service of the order, objections were received from the owner of 57 Lantern Road about the 4 trees (T1-T4) in the front of their property and from the

resident at 7a Paint Cup Row regarding the tree (T5) adjacent to their boundary. The objections are based on the following points:

- The tree roots is lifting the pavement in front of 57 Lantern Road;
- The driveway of 57 Lantern Road is being affected by the roots;
- The roots have reached the property of 57 Lantern Road;
- The trees are taller than the house and could cause serious damage to the building in the event of them falling or being struck by lightning;
- The tree blocks the light from the street lamp;
- The trees can cause damage to the street light and telegraph wires;
- The leaves cause safety issues on the adjacent road and pavements;
- The cars parked on the drive get hit by twigs and branches in adverse weather;
- The trees will cover over the main entrance to the property if left un-pruned;
- Branches protrude and damage the fence at the front of the property;
- The owners of 57 Lantern Road have no intention of removing the trees, but merely wish to keep them managed at an appropriate height;
- The resident at 7a Paint Cup Row has concerns about the safety of the tree in the rear of 55 Lantern Road due to previous failure of branches from the tree which has caused damage to the shed and summerhouse.

## RESPONSE TO OBJECTIONS

9. The trees subject to the Tree Preservation Order were all assessed and found to provide a sufficient amount of amenity to the area to warrant protection under the Tree Preservation Order.
10. It was noted that the pavement in front of 57 Lantern Road has been lifted by a root of the westernmost Lime tree (T1). Any root damage to the public highway is the responsibility of the Highway Authority and the Owners of the property are not liable for the cost of repair. Root damage to the public highway is a common occurrence in the urban area and generally the Highway Authority will seek to repair the pavements rather than require the removal of the tree.
11. If the damage to the public highway became sufficiently bad as to warrant works to the tree, then subject to the relevant notices being served by the Highways Authority, permission would not be required to undertake the required works. As such the damage to the highway is not considered grounds to prevent the confirmation of the Tree Preservation Order.
12. On inspection some root traces were observed in the tarmac driveway of the property, but no major damage was noted. If further damage is caused by the roots of the tree, then the Tree Preservation Order provides a mechanism to secure permission to undertake some judicious root pruning to limit the impacts of the trees. If the damage becomes sufficiently bad and there is no reasonable alternative action that could be taken in order to remedy the problems, then permission may be granted to fell the tree. However, it is not considered that the

damage is sufficiently bad enough at present to prevent any of the trees being protected by the Tree Preservation Order.

13. Whilst the roots may have reached the property, this in itself is not considered reasonable grounds to prevent the confirmation of the Tree Preservation Order. In terms of potential damage to the property due to the presence of roots; tree related subsidence is dependent on many factors and not just the presence of tree roots. Given that it is, at present, impossible to predict the likelihood of such damage, it is considered inappropriate to prevent the confirmation of the order on a speculative basis.
14. On inspection no major defects were observed in the trees. It was noted that the trees have been pollarded in the past, and have since had their canopies pruned. Overall subject to reasonable maintenance to the trees it is not considered that they are in any way pre-disposed to failure. Also given the limited chances of the trees being struck by lightning, is it not considered that the possibility of failure can, in this instance, be used as a justification to prevent the confirmation of the Tree Preservation Order.
15. It was noted that the crown of trees 3 and 4 hangs low around the top of the adjacent street lamp and may be blocking some of the light from the street lamp. Given that the Highways Act 1980 requires that trees be pruned to keep clearance from street lights, then permission is not required in order to maintain a reasonable clearance from the street light. As such it is not considered that the current obstruction of the street lamp is sufficient grounds to prevent the confirmation the Tree Preservation Order.
16. As discussed above permission is not required to provide an adequate clearance from the street light. This should prevent any damage to the street light. On inspection no telegraph wires were seen to pass through the trees and therefore the chances of damage are considered minimal.
17. The issues relating to leaf fall from the trees are not considered to be sufficient grounds to prevent the confirmation of the Tree Preservation Order. Whilst leaf fall can sometimes cause issues, it is a natural process that must be tolerated if we are to enjoy the benefits of having mature trees in an urban area.
18. Mature trees and Lime trees in particular are prone to losing small twigs throughout the year. Lime trees are also known for producing a reasonable amount of deadwood within their crowns. This deadwood is prone to falling in unsettled weather. Normally such branches do not cause any damage, although some of the larger deadwood can.
19. Under the Tree Preservation Order permission is not required to remove deadwood and as such this can be removed on a regular basis in order to prevent it falling of the tree. As such the presence of the Tree Preservation Order is not

considered to present an obstacle to the removal of deadwood in order to prevent it from falling on the cars on the drive.

20. It is accepted that the two Lime trees will need to be pruned on a reasonably regular basis in order to ensure the reasonable access to the driveway. It is not considered that permission would be required in order to provide the minimal required for both pedestrian and vehicular access to the property. If further pruning is required then, subject to an application, ongoing permission could be granted for a regular programme of works to ensure the required clearances.
21. If there are any branches that are likely to cause damage to the adjacent fence, then permission could be sought to remove these branches. It is considered unlikely that permission would ever be refused for such a request, where the works are required in order to prevent damage.
22. The purpose of a Tree Preservation Order is not to prevent reasonable works to protected trees, but to prevent the felling or significant works that, with a view to the amenity value of the trees, have not been justified. Given the pruning history of the trees at 57 Lantern Road, permission is likely to be granted for the re-pruning of the trees at appropriate intervals to ensure that the trees are maintained in a condition appropriate to their structure and location.
23. In relation to the tree adjacent to the garden of 7a Paint Cup Row, no obvious defects were observed in the tree at the time of inspection. It is likely that previous branch failures have been limited to the shedding of deadwood. Given the lack of obvious defects, it is not considered that the condition of the tree should be grounds to prevent the confirmation of the Tree Preservation Order. However, should any works be required in order to keep the tree in an appropriate condition, then an application could be made to secure permission.
24. Having considered the grounds of objection, it is not considered that there are sufficient grounds to prevent the confirmation of the order.

## **CONCLUSION**

25. The trees subject to this Order provide a sufficient amount of amenity to the surrounding area to warrant their inclusion within the Tree Preservation Order. It is not considered that the grounds for the objections are sufficient to prevent the Tree Preservation Order from being confirmed and whilst the trees will need managing in the future, it is not considered that the presence of a Tree Preservation Order would create any unreasonable obstacles to the appropriate management of the trees.

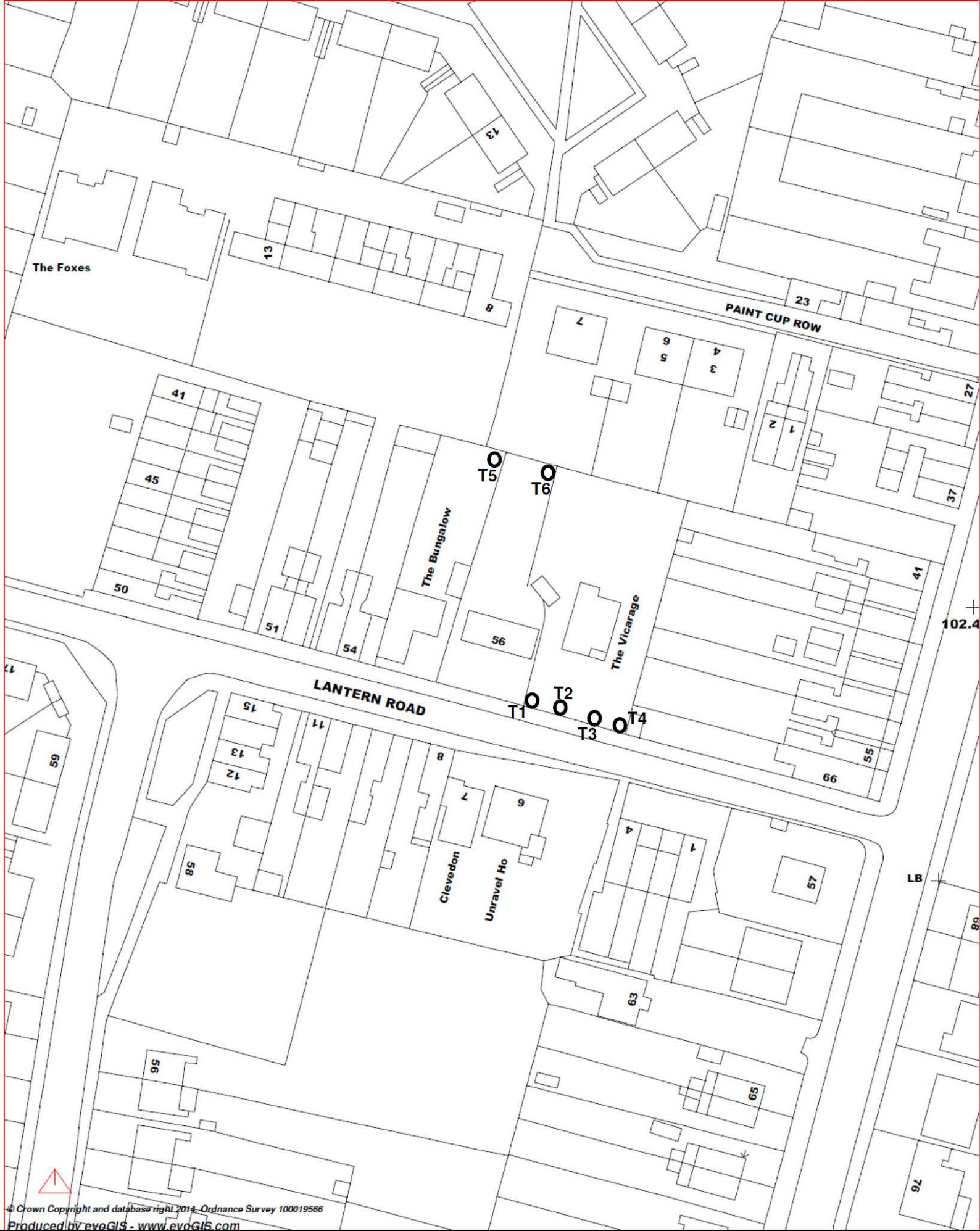
## **RECOMMENDATION**

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



***APPENDIX 1.2***

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



Map referred to in the Borough Council of Dudley

55,56 & 57 Lantern Road, Netherton (TPO/0099/QBD)



Scale: 1 : 850

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	Lime	Front Garden of The Vicarage, 57 Lantern Road, Netherton.
T2	Lime	Front Garden of The Vicarage, 57 Lantern Road, Netherton.
T3	Copper Beech	Front Garden of The Vicarage, 57 Lantern Road, Netherton.
T4	Copper Beech	Front Garden of The Vicarage, 57 Lantern Road, Netherton.
T5	Lime	Rear Garden of The Bungalow, 55 Lantern Road, Netherton.
T6	Sycamore	Rear Garden of 56 Lantern Road, Netherton.

### **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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 Produced by evoGIS - www.evoGIS.com

Map referred to in the Borough Council of Dudley

55,56 & 57 Lantern Road, Netherton (TPO/0099/QBD)



Scale: 1 : 850

Tree Preservation Order 2014