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**Reason for urgency** - The TPO expires on 15th July, the next committee is 16th July. The site is currently being considered for residential development, with a substantial number of trees being felled prior to the submission of the application. As a result, and due to the history of the site, it was requested that the report be dealt with by way of an urgent item. The reasons for this are that there may be further loss of trees if the TPO is not confirmed.

DEVELOPMENT CONTROL COMMITTEE: –

18 June 2009

REPORT OF THE HEAD OF REGENERATION - DELIVERY AND DEVELOPMENT

**CONFIRMATION OF TREE PRESERVATION ORDER 1 OF 2009 ON LAND BETWEEN RICHARDS STREET AND WHITWORTH CLOSE, DARLASTON. TO REVOKE TREE PRESERVATION ORDER 24 OF 1979.**

**1. PURPOSE OF REPORT**

To seek the confirmation of the Tree Preservation Order No 1 of 2009, and subject to the confirmation of TPO 1 of 2009, to revoke TPO 24 of 1979.

**2. RECOMMENDATIONS**

The Committee is recommended to:

- (i) Confirm the Walsall Tree Preservation Order No 1 of 2009 in an unmodified form. A plan showing the Tree Preservation Order is attached to this report.
- (ii) Support the reason for making the Tree Preservation Order set out in the report detail, paragraph 1.1.
- (iii) Note that one representation has been received in respect of this Tree Preservation Order.
- (iv) To authorise the revocation of Walsall Tree Preservation Order 24 of 1979.

**3. FINANCIAL IMPLICATIONS**

Within budget, in general, new Tree Preservation Orders generate additional applications for consent and increase officers' workload.

**4. POLICY IMPLICATIONS**

Within Council policy – YES

5. **LEGAL IMPLICATIONS**

The owners and future owners of this site will be required to apply for Council permission if they wish to fell or prune any tree protected by the Tree Preservation Order. Failure to do this renders anyone carrying out unauthorised works to trees liable to criminal proceedings.

6. **EQUAL OPPORTUNITY IMPLICATIONS**

NOT APPLICABLE

7. **ENVIRONMENTAL IMPACT**

The management of Walsall's tree cover through the administration of the Tree Preservation Order system has positive implications in protecting trees for their visual and environmental benefits. Removal of protected trees is often necessary because trees have a finite lifespan and may also cause nuisance or damage. In these instances the Council has to decide whether the removal of protected trees is justified. In the event that felling a tree is permitted, the Council can secure replacement planting to maintain tree cover.

8. **WARD(S) AFFECTED**

The Tree Preservation Order 1 of 2009 is located within Bentley and Darlaston North Ward.

9. **CONSULTEES**

Owners and near neighbours were sent copies of the Tree Preservation Order and invited to make representations to the Council in either opposition or support of this Tree Preservation Order. Any response is described within the report.

10. **CONTACT OFFICER**

Cameron Gibson - Extension: 2453

11. **BACKGROUND PAPERS**

File PD1/17/878 relating to Tree Preservation Order No 1 of 2009.  
File PD1/17/232 relating to Tree Preservation Order No 24 of 1979.

**Simon Tranter,**  
HEAD OF REGENERATION – DEVELOPMENT AND DELIVERY

DEVELOPMENT CONTROL COMMITTEE: –

18 June 2009

**CONFIRMATION OF TREE PRESERVATION ORDER 1 OF 2009 ON LAND BETWEEN RICHARDS STREET AND WHITWORTH CLOSE, DARLASTON. TO REVOKE TREE PRESERVATION ORDER 24 OF 1979.**

**1.0 REPORT DETAIL.**

1.1 The Tree Preservation Order No 1 of 2009 was made on 15<sup>th</sup> January 2009. The trees are visually prominent in the street scene and were protected for the following reasons:

- The trees form a prominent landscape feature in the local area and will continue to contribute to landscape quality in the future.
- The trees add to the amenity and visual diversity of the immediate area.
- The trees are the subject of planning application 08/1818/OL for residential development resulting in substantial tree removal.
- The Council's Unitary Development Plan identifies policies for protection of the trees and green spaces

1.2 Reasons revoking TPO 24 of 1979.

- Tree Preservation order 1 of 2009 incorporates the remnants of the trees covered by TPO 24 of 1979. In order to avoid future confusion resulting from having two Orders protecting the same trees I am recommending that Tree Preservation Order 24 of 1979 be revoked once Tree Preservation Order 1 of 2009 is confirmed.

1.3 The minimum six week period allowed for objection to the Order expired on 26 February 2009. One representation in favour of objection has been received on the following grounds;

- Proper procedure was not followed in making the Order.
- The reasons for making the Order are not explained.
- The Council has protected trees that are not worthy of protection.
- The Order is contrary to Government advice.

1.4 The Council's response to this objection is as follows (in bullet point order):

- Proper procedure was not followed in the making of this Order:

The objector states that having 2 TPOs covering the same trees is bad practice. The Council agree with this but at the same time would point out that it would have

been foolish for the Council to revoke TPO 24 of 1979 at the same time as making TPO 1 of 2009 as the new Order was made under a Section 201 Direction (i.e. it is made on a provisional basis only for a period of 6 months). This is to allow the receipt of representations and give the Council time to consider if the TPO should be confirmed or not.

In addition to the above, the objector states that the TPO is not valid as the TPO map and the Order itself were not received at the same time. The map was received one day later after the Council were informed that it had been omitted. The Council considers that the omission of the map in the first instance does not deem the Order invalid, it merely delayed the full service of the TPO by one day.

- The reasons for making the Order are not explained:

The objector refers to the part of the site which has been designated a Woodland and suggests that the area within the Woodland boundary where the trees have been felled (pre-TPO) should not be included in the TPO as it cannot 'form a prominent landscape feature in the local area'. This indicates that the objector has focused on current amenity and not any future amenity which may accrue over years of growth. Indeed, the Government document *Tree Preservation Orders: A Guide to the Law and Good Practice* (hereafter referred to as 'The Blue Book') advises at Section 3.2 that "*The benefit may be present or future ...*" indicating that newly planted trees and self seeded trees would be considered suitable for inclusion in a TPO.

In addition to the above, the Woodland designation has been used in this instance as the purpose of a Woodland designation is to safeguard the woodland unit as a whole which depends on regeneration or new planting. To support this, recent inspections of the woodland area show significant young tree growth, whether they are of a self seeded nature or growing from previously cut stems. The latter could be compared to coppicing, which involves the cutting of a woody plant near to ground level to encourage the development of multiple stems, which is a recognised technique in woodland management situations. Therefore, it is considered that the inclusion of the area where natural regeneration is occurring in the Woodland designation is wholly acceptable and justified.

The objector goes on to suggest that some of the trees included in the TPO would have a higher amenity value than others, due to views into the site from the public realm. The Council agrees with this statement but would add that all the trees included in the TPO have sufficient amenity value to be included in a TPO, even though some of the trees may be more visible, and consequently have a higher amenity value, than others.

As mentioned previously, the Woodland designation safeguards the woodland unit as a whole. That is, it safeguards all tree species within the Woodland boundary as each tree contributes to the collective nature of the woodland. It is immaterial at this stage whether or not it may be appropriate to keep certain tree species within the woodland designation as the future management of the woodland is unclear. The inclusion of Poplar and Sycamore species may be undesirable for certain types of woodland but should not be considered for exclusion based on species alone. Indeed, many amenity woodlands have a vast array of species which may be

considered undesirable for one reason or another but they still contribute to the overall wooded nature and should be included.

Woodlands by their very nature should have various features that help define them. Some of these would be an uneven age structure (young, semi mature, mature and overmature trees), a shrub layer, a vegetation layer, trees with deadwood and standing deadwood although not all these are necessary or desirable. And, depending on the management of the woodland, these features may be present or not. As mentioned previously, coppicing of trees was, and is, a recognised form of woodland management. Naturally, the regrowth from coppiced trees will not attain a height to that of a tree that has not been coppiced although this is dependant on species. However, coppiced trees help create the uneven age structure and layered effect of vegetation necessary for a typical woodland set up. To suggest that tree stumps in a woodland will never achieve a significant amenity value within the wider landscape is true, but it does not mean that regrowing stumps should be excluded for this reason alone.

The objector has indicated that the making of the TPO has imposed a restriction on the landowner in that they have been prevented from enjoying their land or utilising it for any legal use. It is important to consider at this point the size of the area concerned (2.5ha/25 400m<sup>2</sup>) and the position of the trees protected by the TPO. As can clearly be seen by the attached plan, the vast majority of the trees are located around the periphery of the site with no trees protected on the usable internal parts of the site. As such, the Council considers that there has been no net loss of usable area and that the TPO does not place a significant restriction on the landowner as suggested.

The objector comments that the Council have not provided any evidence that it has assessed the amenity of the trees/woodland and, if it had, has not provided the evidence to support the TPO. Any evidence gathered in the process of making a TPO is kept on file for future reference only and the Council are not legally obliged to copy these details to those served with the TPO. However, the Council undertook an assessment of the trees and woodland using the TEMPO (Tree Evaluation Methods for Preservation Orders) system devised by Julian Forbes Laird. This method of evaluating trees and woodlands attempts to provide consistency in the decision making process, but is not considered the definitive guidance in this respect. A copy of the TEMPO assessment is appended to this document however.

If one relies solely on the criteria contained within the TEMPO assessment, it is possible that the wooded area to the south of the site would not be considered worthy of inclusion in a TPO, as is evidenced by the objector's assessment. This is because any key/guidance/assessment has a degree of subjectivity attached to it, which can skew the final answer. The criteria within TEMPO is biased towards 'ideal' sites i.e. those in good condition with native tree species and under some form of formal protection. It appears to be biased away from urban woodlands and does not include other factors which may increase an urban woodlands importance for retention.

The Blue Book advises, at Section 3.2 that '*TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public*' and "... trees may be worthy

*of preservation ... because they serve to screen an eyesore or future development.”*  
The wooded area was created to screen the industrial part of the site from the residential areas to the south, which it does very effectively. In addition to this, it created a green link/corridor between the disused railway line to the east and the open space to the west, contributing to the green infrastructure and wildlife corridors of the Borough, which will only enhance the natural environment aspect of the area.

- The Council has protected trees that are not worthy of protection:

This section relates to the inclusion of the area where tree felling has previously occurred in the TPO, and re-iterates the objectors opinion that the stumps do not merit protection under the TPO Regulations as they have no current amenity value. I refer you to my previous comments in this respect.

- The Order is contrary to Government advice:

The objector suggests that the Council has been overly keen to protect the woodland area without following Government guidance, in that before the woodland classification is used, landowners should be encouraged to bring their woodland into proper management. In this instance, it was clear, through the Outline Planning application (08/1818/OL), that the landowners intention was to fell part of the wooded area for proposed residential development. It would have been foolhardy for the Council to consider that any discussions about the management of the woodland would convince the landowner that the wooded area should be brought into proper management and not felled to facilitate the proposal. Unfortunately, the trend as far as proposed development is concerned, is to identify any site constraints which can be reduced or removed and deal with them before notifying the Council of ones intent to develop. This is certainly true of any tree(s) which pose significant constraints on a site with the consensus that they should be protected first and then discussed later being adopted.

- 1.5 In considering the objectors comments and the comments above, the Committee is therefore recommended to confirm Tree Preservation Order No. 1 of 2009 in an unmodified form.