

SUBJECT TREE PRESERVATION ORDER ITEM 7
CONFIRMATION REPORTS

REPORT OF Forestry and Countryside Manager

TPO NO.	46/2007
SERVED	12 December 2007
PARISH	Shiplake
WARD MEMBERS	Malcolm Leonard and Robert Peasgood
SITE	Starlings, New Road, Shiplake, Henley on Thames
GRID REF	SU 77217918
CASE OFFICER	Martin Gammie

1.0 INTRODUCTION

1.1 The purpose of this report is to enable councillors to give consideration to confirmation of Tree Preservation Order (TPO) No. 46/2007 whilst taking account of the one objection that has been submitted since the Order was served.

2.0 BACKGROUND

2.1 The tree which is the subject of the Order stands in the frontage of the property known as Starlings, New Road, Shiplake. The council's forestry service received an enquiry from a local tree contractor which suggested that the subject tree may be under threat of removal.

2.2 One of the tree officers visited the site to assess the merits of the tree. The tree is a Deodar Cedar which is considered to be a fine specimen of its species. It appeared to be in good health and of considerable safe useful life expectancy. The tree creates a significant feature on the site and provides amenity value to the landscape of the area.

2.3 Following discussions with the owners of the property, it was ascertained that there was a history of structural problems with the dwelling and the tree was implicated as a possible contributory factor to these problems.

2.4 The site factors suggested it unlikely that tree related subsidence could take place on this site and no evidence was provided to implicate the tree. It was therefore considered that further investigations would be necessary to determine the cause of the structural defects, the details of which are discussed below.

2.5 In the meantime, having concluded that the tree was of significant amenity value and worthy of protection it was considered expedient to serve a provisional TPO. This would afford protection for the tree whilst further investigations took place.

2.6 Tree Preservation Order No. 29/2007 was served on 21 June 2007. The council received only one objection to the TPO, from Mr and Mrs Stone, the owners of the property.

2.7 Regrettably, due to staffing problems within the forestry service, the officer was unable to address the reasons for objection within the provisional period of the TPO. As such, the Order was reserved on 12 December 2007 and the objection has been sustained by Mr and Mrs Stone. The TPO site map showing the location of the tree is attached at appendix 1.

3.0 REASONS FOR OBJECTION

3.1 The reasons for objection received are detailed in the letter of 7 August 2007 from Mr and Mrs Stone which is attached at appendix 2 and summarised below.

- The owners main concern is that they believe the tree is causing damage to the house
- The size of the tree and its proximity to the house
- Tree roots were found in defective drains which had to be re-lined
- The tree does not constitute a significant amenity feature and as such its removal would not be contrary to the Local Plan policies

4.0 APPRAISAL

4.1 When giving consideration to the confirmation of this Order, councillors are advised to take account of the following points which address the concerns raised in the objections above:

Structural defects of the dwelling

4.2 Since the serving of the Order, Mr and Mrs Stone have commissioned reports from a structural engineer and an arboriculturist in an attempt to determine the cause of the structural damage to their property.

4.3 Assessing the cause of such damage is a complex subject and this is demonstrated by the extent of data generated by the engineer's report. However, there is one critical factor required for tree related subsidence to occur i.e. that the underlying soil has a clay content of sufficient plasticity to cause it to shrink when water is extracted from it by tree roots.

4.4 Tree roots can cause 'direct physical damage' to minor structures such as garden walls, but will normally only damage substantial structures such as a house via 'indirect damage', resulting from soil desiccation as described above.

4.5 The engineers report is a 'factual report', recording site data only. It draws no conclusions and makes no reference to any evidence of tree related subsidence. It shows that the soil type is gravel with no clay content. In fact, no plasticity was recorded due to the extremely stable soil type.

4.6 In addition, the report states that evidence of 'some voiding beneath foundation' was found in trial pit 1 (the trial pit closest to the tree).

4.7 The arboricultural report makes statements that suggest the Cedar and other trees at the front of property are influencing the structural movement. These statements are unfounded and conflict with the data referenced in the arboricultural report and that collated in the engineers report. The relevant sections of documents referenced in the bibliography also contradict the findings of the report including those produced by the laboratory at Reading University which is directly connected to the company that produced the report.

- 4.8 As a result it is suggested that the credibility of this report must be questioned. The tree officer has sought an unbiased second opinion from a structural engineer which has confirmed his assessment of the report (see appendix 3).

Size and proximity of the tree

- 4.9 Whilst it is acknowledged that the tree is in close proximity to the house, with appropriate management trees, buildings and their occupants can and must co-exist if we are to have the benefits of trees within the rural, urban and sub-urban environment. There was no outward sign of significant storm damage or branch failure on the tree at the time of the officer's site visit and no evidence has been provided to suggest the tree is not of good health and structurally sound.
- 4.10 The council seeks to promote sound arboricultural management and recommends that all tree owners have their trees regularly inspected by a suitably qualified arboriculturist so as to address their duty of care under Common Law. Such management is the key to compatibility of trees, buildings and their occupants.
- 4.11 The tree stands to the front of the property and immediately to the north. As such any shading has minimal affect on the dwelling and is not considered to impact on the occupant's enjoyment of the house or the large rear garden to the south.

Tree roots found in drains

- 4.12 It is extremely improbable that tree roots will be able to access a sound drainage system. Tree roots will enter cracked or damaged drains and compound the problem by blocking the pipe, thereby accelerating the need for maintenance but not being the primary cause. Mr and Mrs Stone have advised that the drains have been cleared of tree roots and lined. This should prevent any future encroachment.
- 4.13 It should also be noted that the drains appear to run on the far side of the house to that of the cedar and it is therefore suggested that the root encroachment was more likely to be from the conifer hedge located immediately to the NW of the house.
- 4.14 More importantly the presence of damaged, leaking drains, particularly on this soil type, may be associated with the structural damage to the house and the voiding beneath the foundation referred to in para. 4.3. As such, it is strongly recommended that this is the subject of further investigation.

Amenity value

- 4.15 The amenity assessment (appendix 4) shows that the tree provides a significant contribution to the amenity of the area and has the potential to become an excellent specimen of its species and a striking feature of the local landscape. The TPO legislation does not distinguish between species and it must be recognised that exotic tree species are a long established feature of our landscape and our heritage. It is important that fine specimen trees of whatever species, are preserved for the benefit of our future generations. A diverse mix of species, form and attributes will not only enrich our landscape but are much more likely to survive the environmental and climatic changes that are predicted.

5.0 **POLICY & GUIDANCE**

5.1 The South Oxfordshire Local Plan 2011, adopted 2006 recognises the contribution that trees make to the appearance and character of towns and villages within the District and commits the Council to preserving and retaining existing trees. These aims are embodied in Policies C1, C6, C9, CON7 and A1 which seek to underpin the statutory duty of the council to protect trees of amenity value.

5.2 In order to ensure consistent interpretation of the TPO legislation guidance has been sought from the DETR publication “Tree Preservation Orders. A Guide to the Law and Good Practice”.

6.0 **CONCLUSIONS**

- 6.1
- No evidence has been provided to substantiate the claims that the tree is the cause of the structural defects in the adjacent dwelling. Indeed, the data produced by the engineer’s factual report suggest that it is most unlikely that tree related subsidence could occur on this site
 - The claims made in the arboricultural report are not only unfounded but are contradicted by the engineers factual report and by documentation referenced within the arboricultural report itself
 - Previous tree root ingress to the drainage system is unlikely to be from the subject tree. The remedial works that have been implemented to the original, deteriorating drains mean that future tree root ingress is highly unlikely
 - The tree has public amenity value when assessed in line with Government guidance and this is likely to increase as the tree matures
 - The tree has considerable safe useful life expectancy i.e. > 40 years, potentially in excess of 200 years
 - With appropriate management trees, buildings and their occupants can and must co-exist if we are to have the benefits of trees within the built environment
 - The tree is an established feature of the landscape of the area and is worthy of retention

7.0 **RECOMMENDATION**

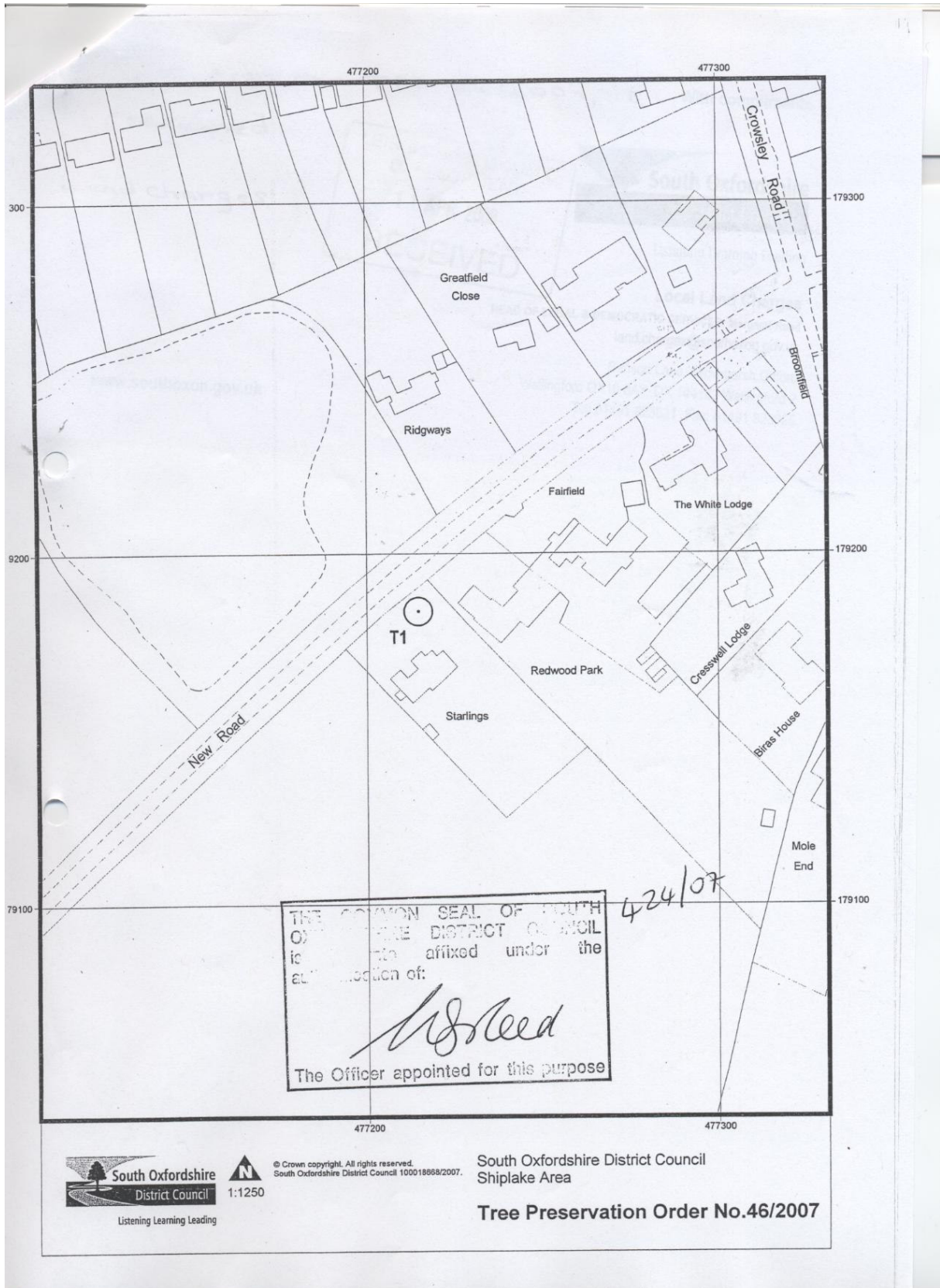
7.1 **That Tree Preservation Order No. 46/2007 be confirmed.**

Author Martin Gammie
Contact No. 01491 823770
Email Add. forestry@southoxon.gov.uk

- APPENDIX 1: TPO No. 46/2007 site map**
- APPENDIX 2: Letter of objection (Mr and Mrs Stone)**
- APPENDIX 3: Independent Engineer’s assessment of reports**
- APPENDIX 4: Amenity assessment**

APPENDIX 1

TPO No. 46/2007 SITE MAP

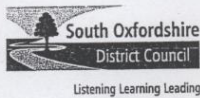


THE COMMON SEAL OF SOUTH
OXFORDSHIRE DISTRICT COUNCIL
is hereunto affixed under the
authority of a resolution of the Council
in pursuance of section 106 of the
Local Government Act 1972.

W. Reed

The Officer appointed for this purpose

424/07



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South Oxfordshire District Council 100018668/2007.

South Oxfordshire District Council
Shiplake Area

Tree Preservation Order No.46/2007

APPENDIX 2

LETTER OF OBJECTION

(Mr and Mrs Stone)

7th January 2008

Ms S Ebsworth
Legal and Democratic Services
South Oxfordshire District Council
Benson Lane
Crowmarsh
Wallingford OX10 8QS

Starlings
New Road
Shiplake
Henley on Thames
RG9 3LA

0118 940 2762



Dear Ms Ebsworth

**Temporary Tree Preservation Order Shiplake Area No. 46/2007 and No. 29/2007 at Starlings, New Road, Shiplake.
Town and Country Planning Act 1990; Town and Country Planning (Trees) Regulations 1999**

I am writing on behalf of my husband and for myself and wish to appeal against Tree Preservation Order; Shiplake Area No. 46/2007 which you have made to protect a Deodar Cedar in our front garden and have served because you have failed to determine the previous temporary TPO notice within the required six month period.

We did not take the decision to remove this tree lightly. We believe the tree is causing damage to our house and it is for this prime reason that we object to the Order. We are awaiting reports from both our structural engineers and consultant arborist which should be with us shortly and which will then forward to you.

With regard to the reasons that you have stated in the Notice for the serving of the Order, I must make the following objections and comments.

The tree may be in reasonable health at the present time, but the fact that the tree is limited for space by the house may cause it problems in the future. The tree in question is only 13 feet from the house and has a trunk diameter of 10 feet and is at least twice as tall as the house. The root protection zone of the tree extends well under the house. We recently had the drains re-lined, as these were affected by tree roots which had caused cracks and movement. Following these repairs the subsequent removal of this source of water from the tree will no doubt have further effect in the future.

Both we and our immediate neighbours have concerns about the proximity of the tree to our houses, particularly in storm conditions. The plan attached to the Order does not show the correct location of the tree as it is significantly closer to the house than shown on the plan, and may reflect the fact that the Order was drawn up before any site visit.

I accept that you have an important duty to protect trees which are important landscape features and biodiversity resources within the South Oxfordshire Local Plan, and concur with such aims, but this tree does not fall into either category.

Regarding the stated Policy C9, removal of the tree would not go against this policy. The tree does not make 'an important contribution to the local scene' as it is only visible from the far boundary of our immediate neighbour's property and the immediate environs of our house, due to other native trees in our garden (including a Beech tree; Douglas Fir; Plum-cherry and Cherry) and New Road. The Deodar is more visible at the present time than it will be when our neighbours complete the landscaping of their frontage by planting trees and boundary hedges. The area is currently completely devoid of any

vegetation. The view along the road of a tall conifer, which I think Mr Gammie mentioned to my husband, is of our Douglas Fir, which may have been confused with the Deodar by your officer, due to him only having viewed this part of New Road when driving his vehicle to deliver the order. New Road is a very quiet private un-adopted and unmade-up road which is only used by those requiring access as it has a very poor road surface. The tree is therefore not viewed by many due to its location in this infrequently used part of Lower Shiplake.

The Deodar does not provide 'an important wildlife habitat' primarily because this tree is not a native species which would support far greater numbers of invertebrates, lichens, mosses, liverworts, fungi and are thus important to birds and mammals etc. Still referring to C9 the tree does not have important historical value as it was planted at the same time as the house was built, about 70 years ago, probably to provide an ornamental tree for the garden and due to the short sighted nature of previous gardeners has become out of hand as agreed by Mr Gammie, who also stated to my husband "This is the sought of tree you have in stately homes".

Regarding Policy C6 removal of the Deodar tree would not go against this policy as loss of biodiversity would not seem to be an issue here. It is not a unique specimen in Shiplake and in fact if a native replacement tree was planted the biodiversity of the area could be significantly enhanced through the creation of new natural habitat.

Considering policy CON7 you can now show by the serving of this Order as a temporary measure that you have 'considered' the contribution made by this tree and taken views into account, and will still be complying with this policy when the Order is not confirmed.

Considering policy A1 which is for developments I can only assume that this has been mentioned for the part where it refers to 'important trees' or 'harm the amenities of the area'. I direct you again to the comments made elsewhere in this letter. I struggle to see how the tree can be viewed as 'important' or being of great amenity value as it is not unique; is not native and certainly does not provide a great biodiversity resource; is located in a spot which is not visible to many (being in a quiet un-made rarely frequented private road); does not seem to be suitable for its current setting; does not provide a dominant feature of the landscape as it is only visible from our neighbours boundary and is itself 'damaging the amenities of the occupants of nearby properties'.

Repeating myself and dealing with your last statement the tree is not a significant feature in the landscape nor does it provide extensive public visual amenity to the area of Shiplake, as you have stated. The Deodar in question is only visible from our immediate neighbour's boundary, along a private road which is not accessed by many due to the poor quality road surface. The tree is not a unique specimen in terms of its species or size in the Shiplake area. We appreciate that the tree is a large specimen, but it is not unique in this area and does not have enough space where it is growing and is causing damage to our property. We are only too happy to plant a replacement tree, preferably a native, in our frontage further away from the house, which would be allowed to grow to maturity and would meet the above Policy statements more appropriately.

Please find enclosed further copies of our consultants' reports in support of this appeal and we would be grateful if you could keep us informed of your considerations.

Yours sincerely,



Joanne Stone, BSc MSc CBIol MIBiol
For Mr and Mrs M. J. Stone

cc. Mr A Potter, Bartlett Tree Experts

APPENDIX 3

INDEPENDENT ENGINEERS ASSESSMENT OF REPORTS

Martin Gammie
Forestry and Countryside Manager
South Oxfordshire District Council,
Benson Lane,
Wallingford,
Oxon

Your Ref TPO 46/2007
15 April 2008

Dear Martin

Report on TPO / Subsidence Claim – Starlings, New Road, Shiplake

I have read the Engineer and Arboriculturalist's reports on the subject of the TPO / Subsidence Claim at Starlings, New Road, Shiplake and have the following comments to make:

The Engineer appears to have gathered suitable samples and carried out appropriate tests to establish the ground conditions in the vicinity of the tree and house. The results of the tests indicate that the soil type is gravel. This type of soil is not subject to changes of volume with changes of moisture content. The soil volume will therefore not be affected by trees. It was also noted that some voiding was observed under the foundations in trial pit 1. Voiding in gravel normally occurs when water flows through the material washing the fines away. This normally happens when faults have developed in adjacent water pipes or drains. It is noted that there have been problems in the past with the pipes on the site and this is likely to be linked to the voiding.

The author of the arboricultural report does not appear to have read the report by the Engineer. The report indicates that the Plasticity Index (PI) is unknown, whereas it has clearly been established by the Engineer that the soil is gravel with no clay content which would mean that the PI is 0%. Sub-soil desiccation is also mentioned which is not possible with this kind of soil. It is our opinion that the paragraphs of the discussion part of the report draw inappropriate conclusions and should be discounted.

Assuming that the Engineer's report is correct then it is our opinion that the trees are not affecting the foundations in any significant way. However since voids have been found below the foundations it is likely that the structure will continue to move until the voids are closed. If all of the pipes/drains have been successfully repaired then the cause of the voiding is likely to have been removed and the building should stabilise after the voids close.

If you have any queries please call me

Yours sincerely

Charles Taylor

Charles Taylor
For and on behalf of Monson Engineering Ltd
Wallingford Office

APPENDIX 4

AMENITY ASSESSMENT

TREE PRESERVATION ORDER ASSESSMENT – PART I

Species of Tree(s): CEDAR	Inspected By: M.P.	Date of Inspection: JUNE 07
Site Address: STALLING 3 NEW RD SMILAX	Location of Tree on Property: FRONT GARDEN	
Parish: SMILAX		

Describe the reasons for serving a TPO on this tree, group or woodland of trees in terms that justify the serving of a TPO. (i.e. similar to wording for Schedule 1.)

INDIVIDUAL

Tree Hazard Assessment Checklist

	Significant	Present	None Seen	Notes
Abrupt bends in branches			✓	
Brittle decay			✓	
Bottle-butt			✓	
Excessive sinking down of branches			✓	
End loading due to poor pruning			✓	
Exposure of previously sheltered tree			✓	
Forks with included bark/Compressed Fork			✓	
Graft incompatibility			✓	
Fibre buckling			✓	
Root instability			✓	
Neglected Pollard			✓	
Poor crown condition			✓	
Ribs and open cracks in stems or major branches			✓	
Target cankers			✓	
Wounds & Cavities			✓	
Decay fungi present			✓	
Other...			✓	

Risk to Tree(s)

Under good, active arboricultural or silvicultural management	YES	NO
This tree is at risk from development, change of property ownership, pruning or felling.	YES	NO

Other Comments:

If the tree cannot be safely retained, give reasons:

TREE PRESERVATION ORDER ASSESSMENT – PART II

Preliminary Selection: Tree Health & Tree Safety

A	(SULE) Life expectancy is more than 10 years?	YES	NO	NB: Do not TPO trees if: • Safe Useful Life Expectancy is less than 10 years. • It is not economic to retain the tree in a safe condition. Economic assessment: evaluate the amenity value of the tree against the cost of re-planting. See overleaf for checklist for Tree Hazard Assessment.
B	Good biological health for age	YES	NO	
	If NO, can the problem be treated economically (see notes opposite)	YES	NO	
C	The tree(s) appears to be structurally safe	YES	NO	
	If NO, can the tree be made safe using recognised arboricultural methods?	YES	NO	
	If YES, will it be economical to restore and maintain this tree in a safe condition?	YES	NO	
	If NO, is replacement planting desirable in this location	NO	NO	

Amenity Assessment: Consider as individual tree, group OR woodland.

D	TPO Type	INDIVIDUAL	GROUP	AREA	WOODLAND
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Visibility & Visual Impact		Yes/High	Rating (circle a number)					No/Low	Notes
1	Extent of visibility	5	4	3	2	1	0		
2	Frequency of viewing	5	4	3	2	1	0		
3	Importance to the viewers	5	4	3	2	1	0		
4	Extent of 'Restricted' public visibility	5	4	3	2	1	0		
5	Aesthetic merits close by	5	4	3	2	1	0		
6	Aesthetic merits at a distance	5	4	3	2	1	0		
7	Importance to landscape/treescape	5	4	3	2	1	0	Sub total A = 20	

Size, Form & Future Potential

8	Size: is or will become appropriate to the site	5	4	3	2	1	0	
9	Form: allowing for species (inc. 'interesting')	5	4	3	2	1	0	
10	Future amenity potential	5	4	3	2	1	0	Sub total B = 9

Special Factors

11	Habitat value	5	4	3	2	1	0	
12	Rarity of species	5	4	3	2	1	0	
13	Tree is characteristic of this area	5	4	3	2	1	0	
14	S.S.S.I. or other designated area	5	4	3	2	1	n/a	
15	Historical significance	5	4	3	2	1	0	
16	Contribution to local air quality	5	4	3	2	1	0	
17	Shading value	5	4	3	2	1	0	
18	Screening value	5	4	3	2	1	0	
19	Contribution to character of Conservation Area	5	4	3	2	1	n/a	Sub total C = 11

Potential to Impact Other Features

20	Highway	5	4	3	2	1	0	
21	Services	5	4	3	2	1	0	
22	Walls	5	4	3	2	1	0	
23	Buildings	5	4	3	2	1	0	Sub total D = 4

Other Factors

24	Other Factors (describe)...	5	4	3	2	1	0	Sub total E = 0
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TOTAL (A+B+C-D+E) = 36