



Derby City Council

PLANNING CONTROL COMMITTEE
13 February 2020

ITEM 8

Report sponsor: Chief Planning Officer
Report author: Development Control Manager

Confirmation of Tree Preservation Order 591 (Land at Rykneld Road, Derby)

Purpose

- 1.1 To make the temporary Tree Preservation Order 591 (Land at Rykneld Road, Derby) permanent.

Recommendation(s)

- 2.1 To confirm Tree Preservation Order 591 (Land at Rykneld Road, Derby) without modification.

Reason(s)

- 3.1 In the interest of public visual amenity.

Supporting information

- 4.1 On 13th November 2019 we made Tree Preservation Order 591 (Land at Rykneld Road, Derby)
- 4.2 Grounds for making the order - The Oak tree indicated in this Order is proposed for protection in the interests of public visual amenity. The tree is situated within the northeast corner of the field located south of Hollybrook Way and east of Rykneld Road. The tree can be clearly seen and appreciated from the public realm and contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by having a general greening effect on the immediate area. The tree is proposed to be removed to facilitate the construction of a retail unit, which was the subject of a full planning application (ref: 19/01265/FUL); the removal of the tree would have a negative impact on public amenity.
- 4.3 Background information – The tree is located on land allocated for residential development in the Core Strategy under Policy AC20 – Rykneld Road allocation. A planning application, ref 19/01265/FUL, was submitted in August 2019 for the erection of a retail unit with new access and car parking. The tree was shown to be within the footprint of the proposed retail unit and therefore would need to be removed in order to facilitate the proposed construction. Within the tree survey supplied by the applicant the tree was assigned a BS5837: 2012 retention category of B1 (tree of moderate quality: mainly arboricultural qualities). The tree has accrued significant amenity value to justify inclusion within a TPO and it is considered that the proposed development could be amended in order to retain the tree. As there is no guarantee that the developer would retain this visually important tree voluntarily it was expedient to make the tree subject to a TPO.

- 4.4 A copy of the TPO including plan can be seen at Appendix 1.
- 4.5 A photograph of the tree viewed from Hollybrook Way can be seen at Appendix 2.
- 4.6 A decision notice refusing the proposed development (ref 19/01265/FUL) on land at Rykneld Road, Derby, (South Of The Hollybrook PH), for erection of a retail unit (Use Class A1) with new access and car parking was issued on 26/11/2019.
- 4.7 The Oak tree was a material consideration in refusing the proposed development as stated in the decision notice: Part 4: Reasons for Refusal (6):
- In the opinion of the Local Planning Authority, insufficient information has been submitted with the application to satisfactorily demonstrate how the development can be constructed without causing harm to the health and visual amenity value of retained trees on the site. In particular, given the change in land levels close to the western site boundary, the Local Planning Authority questions the feasibility of constructing the site access using no-dig construction methods within the root protection areas of Oak trees (T08 and T09). **The Local Planning Authority also considers that the development, as result of the removal of Oak tree (T05), would cause harm to the visual amenities of the surrounding area through the loss of an important landscape feature on the site.** For these reasons it is considered that the development fails to comply with Policies CP3, CP4 and CP16 of the Derby City Local Plan - Part 1 (Core Strategy).
- 4.8 On the 20th December 2019 we received an objection to the making of the TPO from the developer (Heatherton Developments Ltd). The objection letter and supporting photograph is attached as appendix 3. The grounds for the objection is stated as *'We are objecting to the proposed TPO as the tree has poor public visibility and hence it is not 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands In their area'. This is the justification that must be met for the LPA to make the TPO. The Government advice states 'The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.'*
- The views from Rykneld Road (see attached photo's) show that the tree does not have good public visibility because of its size and distance from the road. Visibility would be improved a little if the hedge was cut lower (as previously) but the tree would still remain a minor feature in the landscape, especially compared to the larger protected oak trees located closer to the road.'*
- 4.9 When considering whether to make the tree subject to a TPO the amenity value of the tree was assessed, as recommended by the government, using a recognised amenity evaluation system. The Oak tree scored sufficient points to justify inclusion within a TPO. The amenity evaluation is attached as appendix 4.
- 4.10 The objector appears to have assessed the view of the tree from Rykneld Road only and does not mention the view of the tree form Hollybrook Way to the north. Nevertheless even with a restricted view from Rykneld Road the tree will still have scored sufficient points within the amenity evaluation to justify inclusion within the TPO.

- 4.11 The Tree Preservation Order Officer emailed the objector on the 23rd December 2019 acknowledging their objection and asked if they were aware of view of the tree from Hollybrook Way and in lieu of this view whether they still wished to object to the making of the TPO. The photograph of the tree as viewed from Hollybrook Way was attached to the email.
- 4.12 The objector did not reply to the Tree Preservation Order officers' email. A further email was sent on the 13th January 2020. Again the objector did not reply.

Public/stakeholder engagement

- 5.1 None.

Other options

- 6.1 Not to confirm the Tree Preservation Order.

Financial and value for money issues

- 7.1 None.

Legal implications

- 8.1 The making of the TPO demonstrates that the LPA is fulfilling its duties as laid out in Section 198 of the Town and Country Planning Act 1990.

Other significant implications

- 9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal Finance Service Director(s) Report sponsor Other(s)	Paul Clarke	05/02/2020

Background papers:

List of appendices:

Appendix 1 – Draft Order and Location Plan
Appendix 2 – Photograph of Tree
Appendix 3 –Letter of Objection
Appendix 4 - Photographs
Appendix 5 – Amenity Evaluation Rating for TPOs

Town and Country Planning Act 1990

The [*Derby City Council (Land at Rykneld Road, Road, Derby) Tree Preservation Order 2019, Number 591*]

The [*Derby City Council*], in exercise of the powers conferred on them by Section 198 of the Town and Country Planning Act 1990 make the following Order –

Citation

1. This Order may be cited as [*Derby City Council (Land at Rykneld Road, Derby) Tree Preservation Order 2019, Number 591*].

Interpretation

2. - (1) In this Order “the authority” means the [*Derby City Council*].
- (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. - (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
- (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall -
 - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. - In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 13th day of *November 2019*

[if the Council's Standing Orders require the sealing of such documents:]

[The Common Seal of [*Derby City Council*]

was affixed to this Order in the presence of –

.....]

[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the [*Derby City Council*]



Authorised by the Council to sign in that behalf]

[CONFIRMATION OF ORDER

[This Order was confirmed by [*Derby City Council*] without modification on the [] day of []]

OR

[This Order was confirmed by the [*Derby City Council*], subject to the modifications indicated by [], on the [] day of []]

[Signed on behalf of the [*Derby City Council*]

Authorised by the Council to sign in that behalf]

[DECISION NOT TO CONFIRM ORDER

[A decision not to confirm this Order was taken by [*Derby City Council*] on the [] day of []]

[Signed on behalf of the [*Derby City Council*]

.....

Authorised by the Council to sign in that behalf]

[VARIATION OF ORDER

[This Order was varied by the [*Derby City Council*] on the [] day of [] by a variation order under reference number [] a copy of which is attached]

[Signed on behalf of the [*Derby City Council*]

.....

Authorised by the Council to sign in that behalf]

[REVOCATION OF ORDER

[This Order was revoked by the [*Derby City Council*] on the [] day of []

[Signed on behalf of the [*Derby City Council*]

.....

Authorised by the Council to sign in that behalf]

Article 3

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]	[1 Oak]	[Located in the northeast corner of the field south of Hollybrook Way and east of Rykneld Road.]

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>
None		

Groups of trees

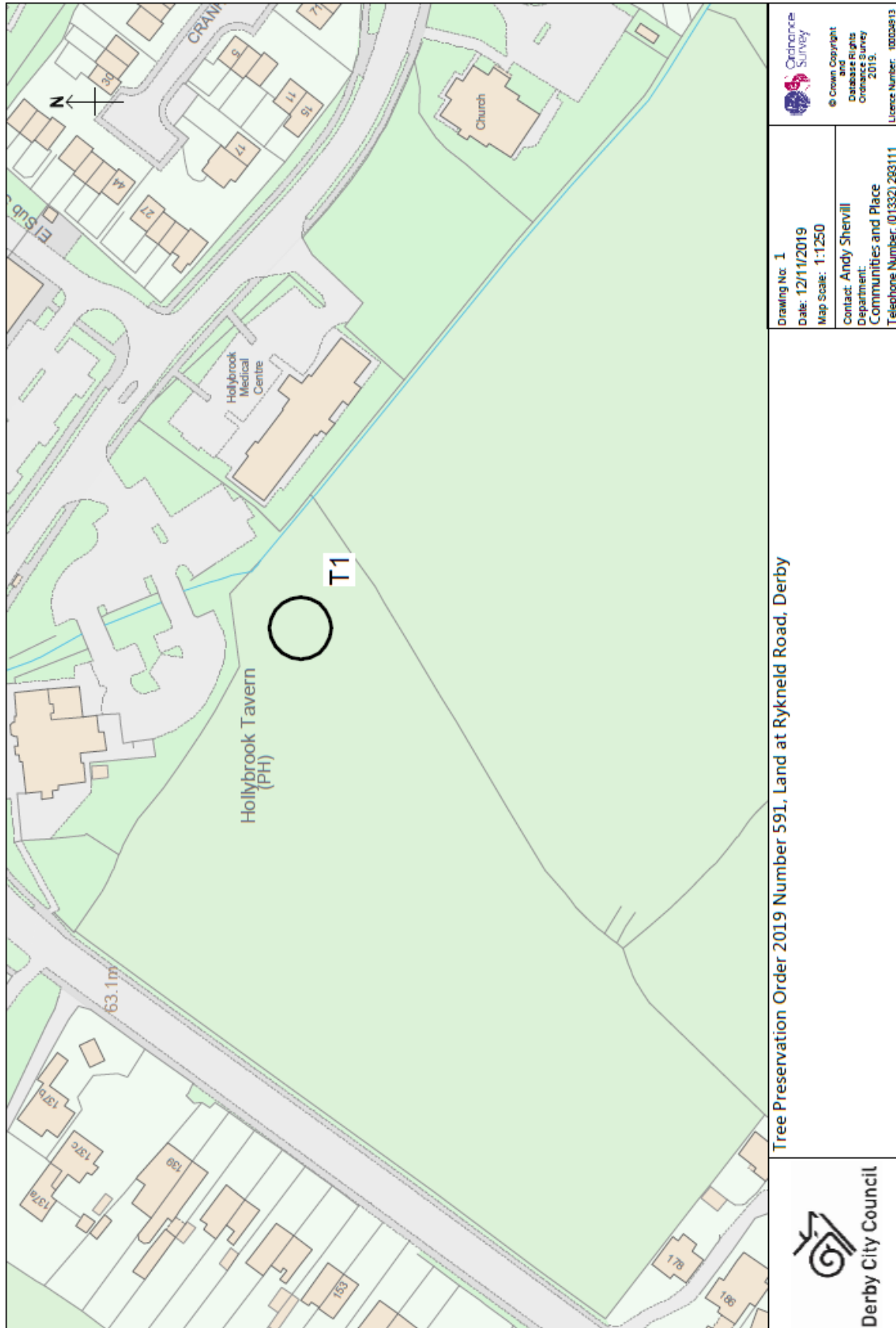
(within a broken black line on the map)

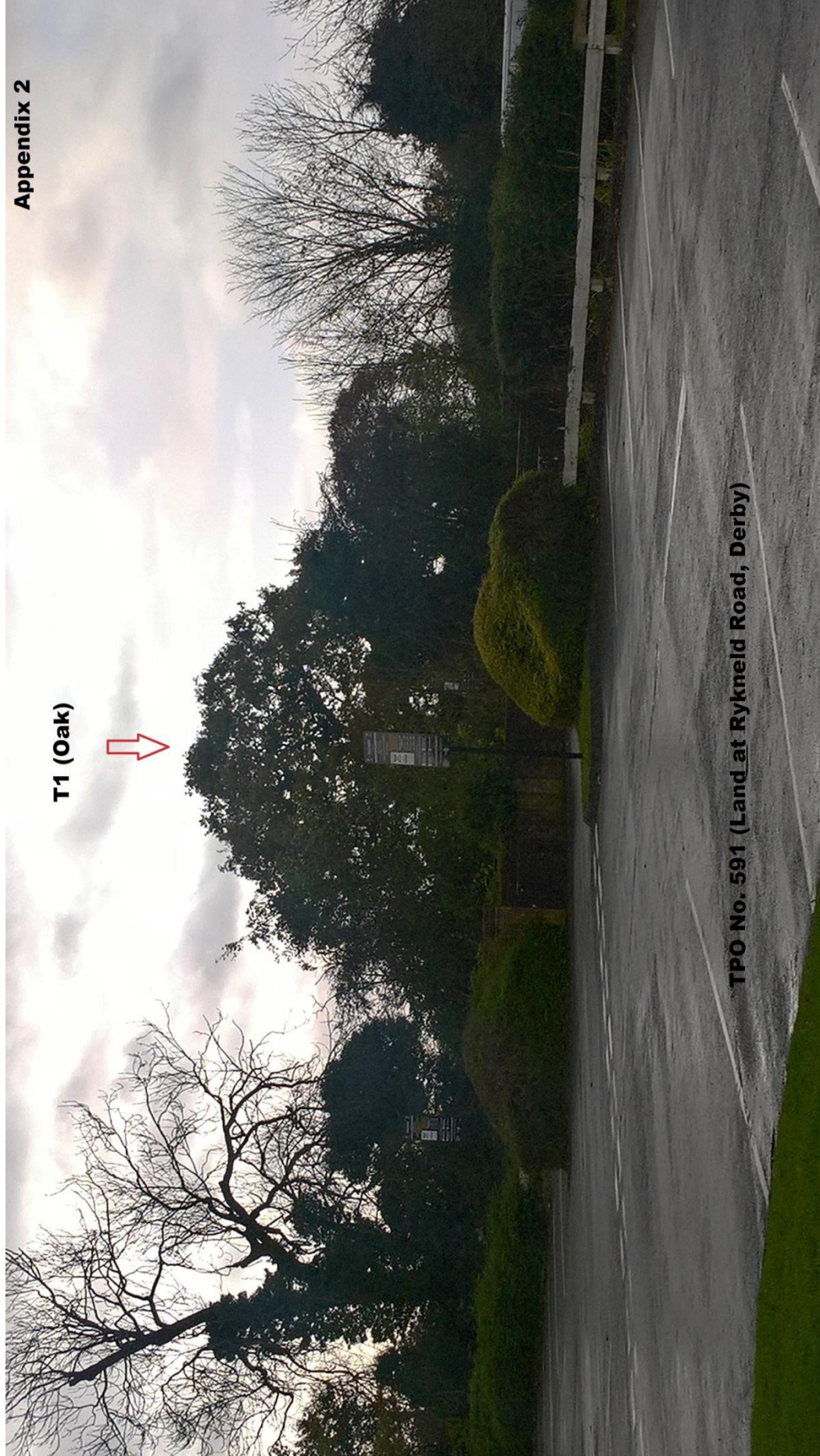
<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
None		

Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None		





20 December 2019

Mr A Shervill
Tree Preservation Order Officer
Natural Environment
Derby City Council
The Council House
Corporation Street
Derby
DE1 2FS

Dear Sirs

PROPOSED TPO AT LAND AT RYKNELD ROAD, DERBY
YOUR REF : AS/TPO/591

Further to your letter dated 13 November 2019 we wish to object to the provisionally placed TPO on the oak tree in the northeast corner of the field of Rykneld.

We are objecting to the proposed TPO as the tree has poor public visibility and hence it is not 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. This is the justification that must be met for the LPA to make the TPO. The Government advice states 'The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.'
(www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas).

The views from Rykneld Road (see attached photo's) show that the tree does not have good public visibility because of its size and distance from the road. Visibility would be improved a little if the hedge was cut lower (as previously) but the tree would still remain a minor feature in the landscape, especially compared to the larger protected oak trees located closer to the road.

Should you have any queries please do not hesitate to contact us.

Yours faithfully

Heatherton Developments Ltd







Amenity Evaluation Rating for TPOs

TPO: TREE SPECIES: Oak ADDRESS: Land at Rykneld Road AMENITY VALUE RATING: 19 REASON FOR TPO: Tree is under threat from development	SITE VISIT DATE: 11/11/2019 EFFECTIVE DATE: TPO DESIGNATION: T1 SURVEYED BY: Andy Shervill
--	--

1	Size	SCORE		6	Suitability to area	SCORE	
1	Very small 2-5m ²	6		1	Just suitable	3	
2	Small 5-10 m ²			2	Fairly suitable		
3	Small 10-25 m ²			3	Very suitable		
4	Medium 25-50 m ²			4	Particularly suitable		
5	Medium 50-100 m ²						
6	Large 100-200 m ²						
7	Very large 200 m ² +						
2	Life expectancy	4		7	Future amenity value	1	
1	5-15 years			0	Potential already recognised		
2	15-40 years			1	Some potential		
3	40-100 years			2	Medium potential		
4	100 years +			3	High potential		
3	Form	1		8	Tree influence (current or future)	0	
-	Trees which are of poor form			-1	Significant		
1							
0	Trees of not very good form			0	Slight		
1	Trees of average form			1	Insignificant		
2	Trees of good form						
3	Trees of especially good form						
4	Visibility	2		9	Added factors	1	
1	Trees only seen with difficulty or by a very small number of people			If more than one factor relevant maximum score can still only be 1			
2	Back garden trees, or trees slightly blocked by other features			1	Screening unpleasant view		
3	Prominent trees in well frequented places			1	Relevant to the Local Plan		
		1	Historical Association				
		1	Considerably good for wildlife				
		1	Veteran tree status				
5	Other trees in the area	1		10	Rating	19	
0	Wooded surroundings (70%)						
1	Many (30%)						
2	Some (10%)						
3	Few (<10%)						
4	None						