

DEVELOPMENT MANAGEMENT PANEL 18th April 2016

- Title/Subject Matter:**
1. Proposed Amendment to the Scheme of Delegation (SoD) in relation to the making and confirming Tree Preservation Orders
 2. Objection to Tree Preservation Order L/TPO/381, 15 Hunts End, Buckden

Meeting/Date: 18 April 2016

Executive Portfolio: Development Manager Panel

Report by: Planning Services Manager (Development Management)

Ward affected: Buckden

Executive Summary:

Recommendations:

1. That Members note the contents of the report and amend the Scheme of Delegation as follows:
 - i. To give delegated powers to the Head of Service (currently Andy Moffat), Planning Services Manager – Development Management (currently Jacob Jaarsma) and Planning Services Manager – Planning Policy (currently vacant) to make *and* confirm Tree Preservation Orders
2. That the Development Management Panel confirms the Tree Preservation Order L/TPO/381 at 15 Hunts End, Buckden

1. PROPOSED AMENDMENT TO THE SCHEME OF DELEGATION (SoD) IN RELATION TO THE MAKING NAD CONFIRMING OF TREE PRESERVATION ORDERS

REASONS FOR THE UPDATE REPORT

Current Situation

Currently the Scheme of Delegation gives delegated authority to the Head of Planning Services to determine applications for the felling or lopping of trees protected by Tree Preservation Orders (TPO) and the making of TPO's. Current practise is to make and confirm a TPO at officer level where there is no objections received, and where objections have been received, refer the application to a Tree Preservation Order Sub-Group (from hereon called the 'Sub-Group'), where the Sub-Group consider objections received, and proposed Tree Preservation Orders in the light of specialist advice received directly from Arboricultural Officers. However, part of this current practise does not appear to accord with the delegation in the Constitution as the Sub-Group does not have the power to confirm TPOs, their role appears to be one that considers objections to TPOs - See excerpt from Constitution below:

Town and Country Planning Act 1990 (S.198 and 201) - To determine applications for the felling or lopping of trees protected by Tree Preservation Orders and the making of Tree Preservation Orders

Head of Development or in his absence, the Planning Service Managers

Proposed Changes

Given that that Sub-Group has previously relied on specialists advice of Arboricultural Officers, it is proposed that the Scheme of Delegation is amended to give delegated powers to the Head of Service (currently Andy Moffat), Planning Services Manager – Development Management (currently Jacob Jaarsma) and Planning Services Manager – Planning Policy (currently vacant) to make and confirm Tree Preservation Orders (following input/specialist advice of Arboricultural Officers).

Given the length of time that has lapsed since the Terms of Reference were devised, and that they have not been refreshed in a while, the Planning Service Manager would like to take this opportunity to proposed amend the Terms of Reference and presented these for approval to DMP.

Recommendations:

That Members note the contents of the report and agreed to amend the Scheme of Delegation as follows:

- i. To give delegated powers to the Head of Service (currently Andy Moffat), Planning Services Manager – Development Management (currently Jacob Jaarsma) and Planning Services Manager – Planning Policy (currently vacant) to make *and* confirm Tree Preservation Order

Objection to Tree Preservation Order L/TPO/381, 15 Hunts End, Buckden

1. PURPOSE OF REPORT

- 1.1 To consider an objection to the Tree Preservation Order (TPO) L/TPO/381 made on 12.11.1015 and determine if the order should be confirmed or confirmed subject to modifications

2. DESCRIPTION

- 2.1 The protected tree is a mature yew tree, which stands within the garden of a semi-detached dwelling. The area is predominantly residential within the Buckden Conservation Area. The tree is an attractive, prominent feature of the area and clearly seen in public views from adjoining roads and houses.

3. REASON FOR TPO

- 3.1 The order was made provisionally following the receipt of a Conservation Area Section 211 Notification on the 1 October 2015 for the felling and removal of a yew, apple and a eucalyptus by the owners of the property.
- 3.2 The emerging Draft Local Plan to 2036 currently under consultation, states that:

"Where specific trees or groups of trees are of particular value (such that their removal would have a significant impact upon the local environment and its enjoyment by the public), and are potentially under threat, the Council will make Tree Preservation Orders to protect them."

The saved Policy EN19 of the Huntingdonshire Local Plan states that:

"The district council will make tree preservation orders where it considers that trees which contribute to the local amenity and/or the landscape are at risk."

- 3.3 An Amenity Evaluation Checklist is used by the Councils Arboricultural Consultant, which provides a systematic approach in determining whether or not a Tree Preservation Order should protect a tree or trees. The yew tree was assessed as having high amenity value to the area and Tree Preservation Order L/TPO/381 was made on the 12 November 2015 to ensure the protection and retention of this tree. A copy of the checklist is appended for information. (The apple and eucalyptus were smaller trees and therefore of less value as an amenity. Consequently these trees were not included in the order and there is no objection to their felling and removal).

- 3.4 In a letter dated 8 December 2015, the property owner, Mr P Witchell, wrote objecting to the order on 2015. This was received on 9 December 2015.

4. OUTLINE OF OBJECTION

The grounds for objection can be summarised as follows:

- 4.1 The yew had been left unmanaged and unkempt for many years and blocked access to the drive and garage of the property.
- 4.2 Failure to provide parking within the property itself would lead to up to four cars being parked on the side of Hunt End itself. Parking is already oversubscribed in the area and congestion is frequent. The local shops would suffer a loss of custom if parking was not available close by.
- 4.3 Mr Witchell considers that the loss of the tree would not have a detrimental effect upon the environment or the enjoyment by the public as Hunts End is not a major route and not regularly used by the general public.
- 4.4 The presence of a large Holme oak also within the garden of 15 Hunts End would limit the impact on the treed appearance of the locality if the yew was removed.
- 4.5 Mr Witchell questions the accuracy of the Local Authority Search undertaken on 25th August 2015 in that a negative reply was made to the question 3.9 which reads: "Do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following-(m) a tree preservation order."

5. RESPONSE TO OBJECTION

- 5.1 The Yew tree is located in the centre of the access into driveway and to the garage. Thus the original access: unused for a long time, meant that the current access could not be used. A Tree Work Application (15/01760/TREE) for the Crown Lifting of the yew was granted on 22 January 2016. This tree work has now been carried out, allowing access to the garage (see Photo 1). Moreover, a Planning Application (16/00270/HHFUL) for replacement of existing garage with new double garage and widening of access while retaining the yew is currently under consideration.
- 5.2 The yew tree is an attractive and significant feature of the local landscape, and makes a significant contribution to the character and amenity value of the area. The loss of this tree would be of detriment to that character and amenity of the area. The tree has additional value in that it is in keeping with the historic character of the surrounding conservation area. The tree is mature and has a safe useful future life expectancy in excess of 40-50 years. An assessment has been made by your Officers of the contribution this tree makes to the amenity of the area using the (TEMPO) amenity evaluation method. The tree was found to be of suitable amenity value for protection by a tree preservation order. The attractive nature of the tree is apparent in the photographs contained in the supporting documentation.

- 5.3 In terms of the Holm Oak, this tree is set back form the frontage of the property. Though a significant tree of value, its location is not sufficiently forward to directly compensate for the loss of the Yew tree.
- 5.4 Tree Preservation Orders are made if the LPA considers that a tree of high amenity value is at risk of damage or loss. A negative response was received to the question 3.9 made in the property search because no intimation of the tree being at risk had been received at that time.

6. CONSLUSION

- 6.1 Having carefully considered and addressed the grounds of objection, it is the view of your Arboricultural Consultant that this yew tree is an attractive tree, appropriate for its location: the loss of which would be of significant detriment to the character of the Conservation Area and the general amenity of the area in which the tree stands. The reasons put forward by Mr Witchell are not considered sufficient to prevent the confirmation of the order.

7. RECOMMENDATION

- 7.1 That the Panel confirms Tree Preservation Order L/TPO/381

BACKGROUND PAPERS

Tree Preservation Order File No 912

SUPPORTING INFORMATION

- 1, Letter of objection
- 2, Tree Evaluation Method for Tree Preservation Orders- TEMPO
- 3, Location Plan
- 4, Tree Preservation Order Plan
- 5, Photographic views of TPO tree, T1 Yew
- 6, Plan showing photograph view points

CONTACT OFFICER

Mr J Jaarsma, Planning Services Manager (Development Management)
Tel No: 01480 388402.

GREEN PAPERS FOLLOW

Huntingdonshire District Council

Pathfinder House

St Mary Street

Huntingdon

PE29 3TN

Mr Paul Witchell

15 Hunts End

Buckden

Cambs

PE19 5SU

Your Ref LS/JG/TPO009136

8th December 2015

BY RECORDED DELIVERY

Dear Sirs,

Re Tree Preservation Order Number: L/TPO/381 15 Hunts End Buckden St Neots PE19 5SU

Please accept this letter as my formal objection to the above reference Tree Preservation Order made in respect of a single Yew Tree at situation "TL 19575 67553" located at the above property. The Objection being made on the following three (3) grounds:

1. Practical considerations as to the location of the tree;

The tree in question has been left unmanaged and unkempt for many years such that it has now grown so big that it blocks access to the drive and garage (and associated off street parking) so as to prevent an vehicular access to the property. The attached photograph demonstrates the situation.

Hunts End, whilst a no through road, is relatively busy due to the presence of a row of shops at the top end of Hunts End. The Road is reasonably narrow and on a sweeping bend. 15 Hunts End (the property in question) is located directly opposite the row of shops and on the bend.

15 Hunts End is a 4 bedroom property. Accordingly it is almost certain that any owners of the property will have more than 1 vehicle, particularly given Buckdens poor public transport links (having no railway station). The present owner and his family have 4 cars. Without any access to the space within the property for off street parking (due to the presence of the Yew Tree) any owners of 15 Hunts End will have no choice but to leave their vehicles on the road, outside the row of shops. Given the narrowness of the road, and that vehicles are constantly coming and going (due to the shops including a convince store, barbers, Chinese takeaway and Pharmacy) it is submitted that this is dangerous.

Further, it is submitted that the presence of the owners of 15 Hunts End numerous vehicles on the road, will have a detrimental effect on the trade for the row of shops opposite the property, there being no available parking for perspective customers to those shops.

In summary the Tree Preservation Order prevents access to the otherwise off street parking at the property, forcing any owners to park their vehicles on the road, which is dangerous, increases congestion, and it is submitted will affect trade to the shops.

2. The grounds for the Tree Preservation Order are factually flawed.

Within the Tree Preservation Order the Council claims:

'.....the tree provides an important visual amenity, such that if it were removed or damaged there would be a significant impact on the environment and its enjoyment by the public...and its loss would detract from the sylvan appearance of the locality as well as its enjoyment by the public.'

Such statements are incorrect.

As stated above Hunts End is a no through road, and therefore not a major route through Buckden to be "enjoyed by the public" The loss of the tree would not have any detrimental effect upon the environment or the enjoyment by the public of Buckden, as Hunts End is not routinely visited by the public beyond the top end by the shops. There is no reason for the public to progress further down Hunts End. The Tree is hidden from view due to its location on the inside of a sweeping bend.

It is submitted that the public would not even notice the absence of the tree.

Further the removal of the tree would not have any significant impact upon the "sylvan appearance of the locality" due to the presence of a large Holme Oak tree (also located at 15 Hunts End) which is directly behind the Yew tree when viewed from the road (the only view available to the public). The removal of the Yew would simply allow the Holme Oak to be more apparent (as viewed from the road) and have no effect upon the sylvan appearance of the locality.

Given the presence of the adjacent much larger Holme Oak tree there would be little or no impact upon the visual appearance of the area caused by the removal of the Yew tree.

3. Legal considerations

The property was subject to a very recent purchase by Mr Witchell. As part of this purchase Mr Witchell had a local authority search undertaken. The search was requested by Mr Witchell's conveyancing solicitor Anthony Stockton Solicitors on the 12th August 2015 by way of a Requisition for search and official certificate of search (copy enclosed).

Section CON 29R 'Enquiries of local authority (2007) of that search contains the following question under the heading 'PLANNING AND BUILDING REGULATIONS' under the sub section 'OTHER MATTERS'; Question 3.9 concerns 'Notices orders, directions and proceedings under Planning Acts' and asks;

Do any of the following subsist in relation to the property, or has the local authority decided to issue, serve or commence any of the following:

Item (m) of the list of the 'following' referred to in the question concerns 'a tree preservation order'.

On the 25th August 2015 Huntingdonshire District Council provided their answers to that search (copy enclosed) with the official search reference 1516_01156. In respect of question 3.9 item (m) Tree Preservation Orders, of the search question the council answered 'No' (Page 4 of 5 of the search reference 0516_01156 answers).

It is submitted that in late August 2015 the council advised Mr Witchell that not only was there no Tree Preservation Order present on the property, but further the council was not considering issuing such an order. The question seeks confirmation as to the future intentions of the local authority by way of '*has the local authority decided to issue, serve, make or commence any of the following*'. Accordingly the question is clearly NOT limited to an enquiry of a pre-existing Tree Preservation order, but additionally the (near at least) future intentions of the council.

Mr Witchell relied on those answers provided by Huntingdon District Council within the search process in deciding to proceed with the purchase of the property. As it is submitted would any perspective purchaser.

At this juncture it is worth noting that recent case law has confirmed that councils have a strict liability to prospective purchasers of property to provide correct and truthful answers to search question enquires see *Chesterton Commercial (Oxon) Ltd-v- Oxfordshire County Council [2015]*.

Mr Witchell submits that when answering questions in a property search enquiry the local authority is obligated to answer such questions honestly and to the best of its ability and knowledge.

In respect of Tree Preservation order the local authority itself is the certifying authority, ie it is the Council who issues the TPO. Accordingly if the answers provided by Huntingdonshire District Council in respect of TPO's cannot be relied upon, from whom was Mr Witchell expected to obtain such information?

As the certifying authority in respect of TPO's, when answering question 3.9 (m) of the search enquiry the Council was not only obligated to check the existence of existing TPO's but ask itself the following question;

'Is it likely that the council would decide to issue a TPO upon the property in the near future?'

When providing answers to the search enquiry the Council ought to have, and in any event is deemed to have considered the site, the presence of existing trees, and the possibility and likelihood of the Council themselves applying a TPO to the property in the near future.

When deciding to purchase the property at 15 Hunts End, Mr Witchell not only relied upon the answers provided by Huntingdon District Council in the search, but further in respect of Tree Preservation Orders, such answers were fundamental to Mr Witchell's intentions with the property.

Mr Witchell completed the purchase of 15 Hunts End on the 19th September 2015. On the 1st October 2015 Mr Witchell submitted, via his agent Leslie Dickinson, an application to remove a number of trees, including the Yew tree now the subject of the TPO in question, under a notification of proposed works to trees in a conservation area, Town and Country Planning Act 1990 (copy enclosed).

It is clear that such an application, submitted but a few days after he completed his purchase demonstrates the essential nature of the answers given by the council in the search concerning TPO's in relation to Mr Witchell's intentions with the property.

It was not until the penultimate day of the 6 week period under which the council has to respond to the application of tree works in a conservation area, that Huntingdonshire District Council issued its TPO in respect of the Yew Tree on the 12th November 2015.

In respect of these events Mr Witchell makes the following points.

Firstly either the Tree Preservation Order is wrong and misconceived or the property search answers provided by Huntingdonshire District Council on the 25th August 2015 are incorrect. Given that they are contradictory, they both cannot be correct and or valid. Given that the council confirmed they had no intention of issuing any TPO's in respect of the property on the 25th August 2015, how can the council justify its decision to issue such an order on the 12th November 2015 in respect of an application made 1st October 2015? It cannot.

It is submitted that it is more likely that the Councils decision to issue a TPO is erroneous. It is noted that the TPO is has been decided by an Arboriculture Assistant; Mr Mike Barber. It is submitted that Mr Barber has clearly reached an incorrect and conflicting decision to the same question the council must have, and in any event is deemed to have asked itself when answering the property search questions on the 25th August 2015- ie- Do any of the trees on the property warrant a TPO?

It is contended that for the reasons set out in the first part of this letter (issues 1 and 2) the TPO is incorrect and wrong and has been decided by an in experienced overzealous Assistant who has failed to consider all of the relevant factors. Mr Barber has therefore reached a conflicting answer to what was the same question considered by the local authority when providing its search answers in respect of TPO's.

The Yew tree is clearly very old. Accordingly it did not suddenly become a *tree that provides an important visual amenity, such that if it were removed or damaged there would be a significant impact on the environment and its enjoyment by the public...and its loss would detract from the sylvan appearance of the locality as well as its enjoyment by the public*, as claimed upon the TPO by Huntingdonshire District Council. If such a statement is claimed to be true on the 12th November 2015, then it must also have been true on the 25th August 2015. The tree has not suddenly sprung up in a little over 2 months! The simple truth is that the tree is NOT a tree that provides *an important visual amenity, such that if it were removed or damaged there would be a significant impact on the environment and its enjoyment by the public* [emphasis added]. If it was it would have already been the subject of a TPO in August 2015, or at the very least the council would have provided a positive response to question 3.9 (m) of the property search enquiry made in August 2015.

The alternative being that the property search answer in respect of Tree Preservation Orders provided by Huntingdon District Council on the 25th August 2015 is incorrect. If that is the case then the ramifications for the local authority are far reaching and wide ranging. It is reiterated that Mr Witchell relied upon those answers when purchasing the property. The removal of the Yew tree is fundamental to Mr Witchell plans, enjoyment and use of the property to such an extent that had he been made aware that he would not be able to remove it, and it would be the subject of a TPO

(which if the Council maintain the TPO is correct and valid he should have been made aware of by virtue of the Local Authority "correctly" answering the property search enquiry) Mr Witchell would not have purchased 15 Hunts End at all. Accordingly in such circumstances Mr Witchell will have no alternative but to hold the Council liable for his losses in purchasing a property based upon reliance of an incorrect local authority search answer being provided by Huntingdonshire District Council. In this regard legal authority is with Mr Witchell – see *Chesterton Commercial (Oxon) Ltd-v- Oxfordshire County Council [2015]*.

Conclusion

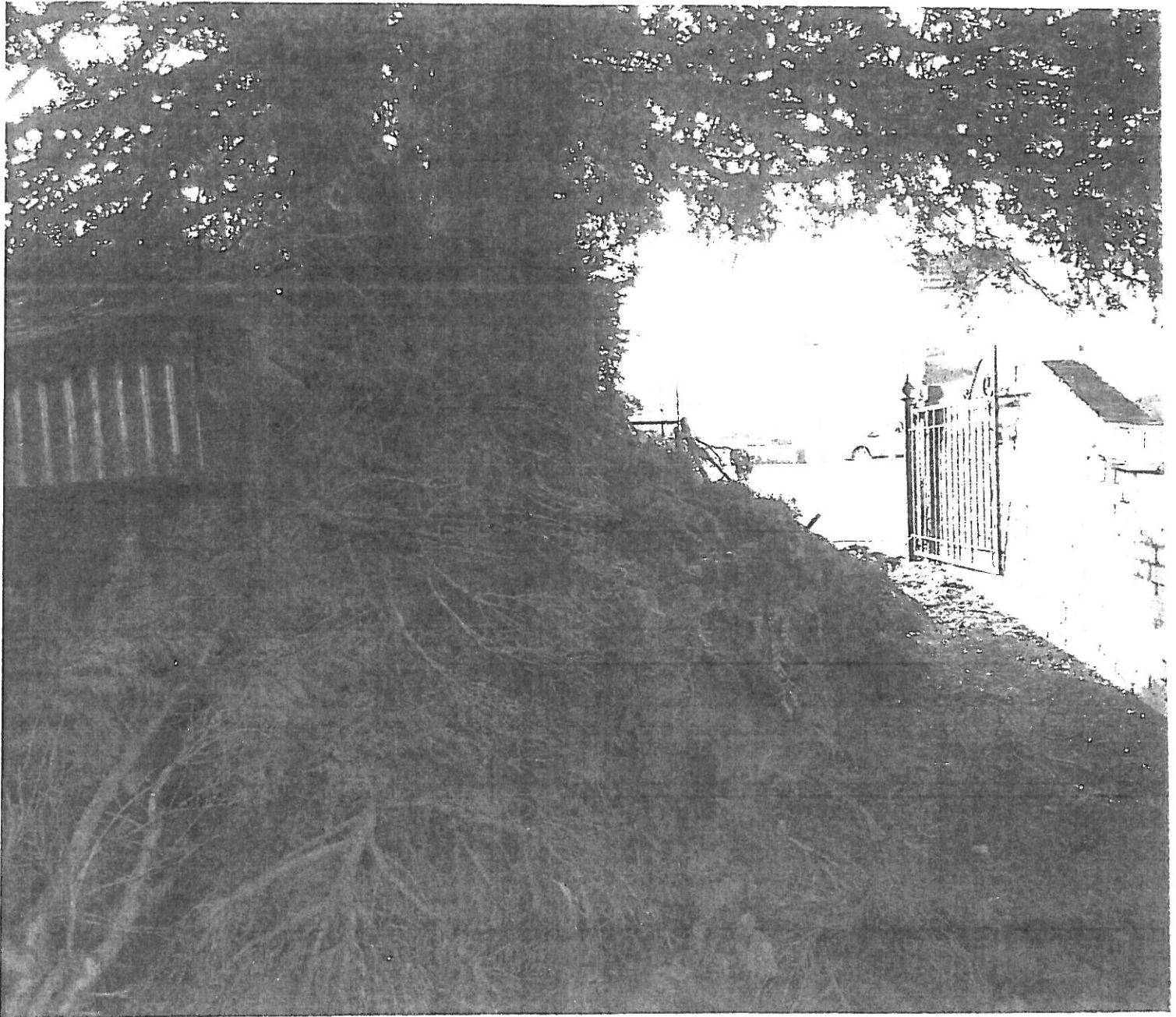
For the reasons set out in this letter it is submitted that tree preservation order L/TPO/381 15 Hunts End Buckden St Neots PE19 5SU in respect of Yew Tree at situation "TL 19575 67553" is misconceived, incorrect and wrong, and is hereby formally objected to on the grounds set out herein.

Yours faithfully,



Paul Witchell

double gates for
driveway
almost half drive
blocked by yew



SURVEY DATA SHEET & DECISION GUIDE

Date: 4-11-15	Surveyor: RAS
Tree details TPO Ref (if applicable): _____ Tree/Group No: T1 Species: Yew Owner (if known): _____ Location: _____	

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

* Relates to existing context and is intended to apply to severe irremediable defects only

Score & Notes

5 - Good condition, no obvious defects.

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes

5 - long lived species

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes

3 - medium tree

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | | |
|--|-------------------------------|
| 5) Principal components of arboricultural features, or veteran trees | Score & Notes
1 |
| 4) Tree groups, or members of groups important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features | |

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | | |
|-------------------------------|--|
| 5) Immediate threat to tree | Score & Notes
5 - Tree to be removed if no TPO |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| 15+ | Definitely merits TPO |

Add Scores for Total:

19

Decision:

TPO.

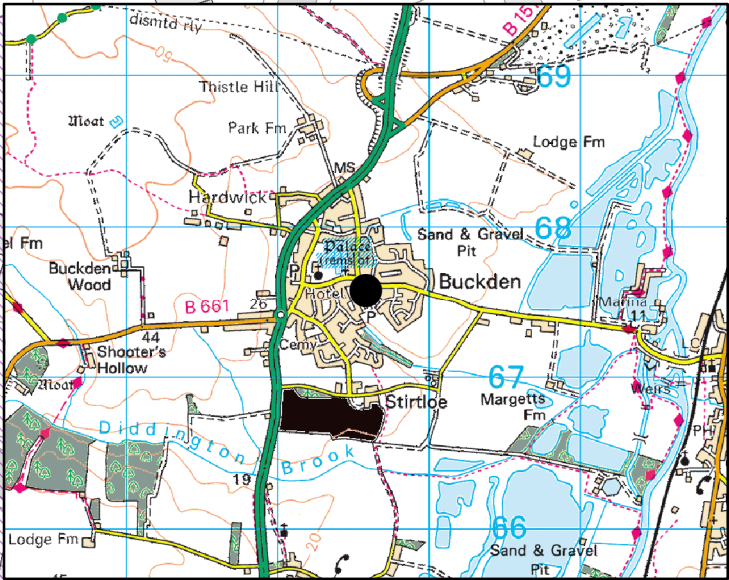
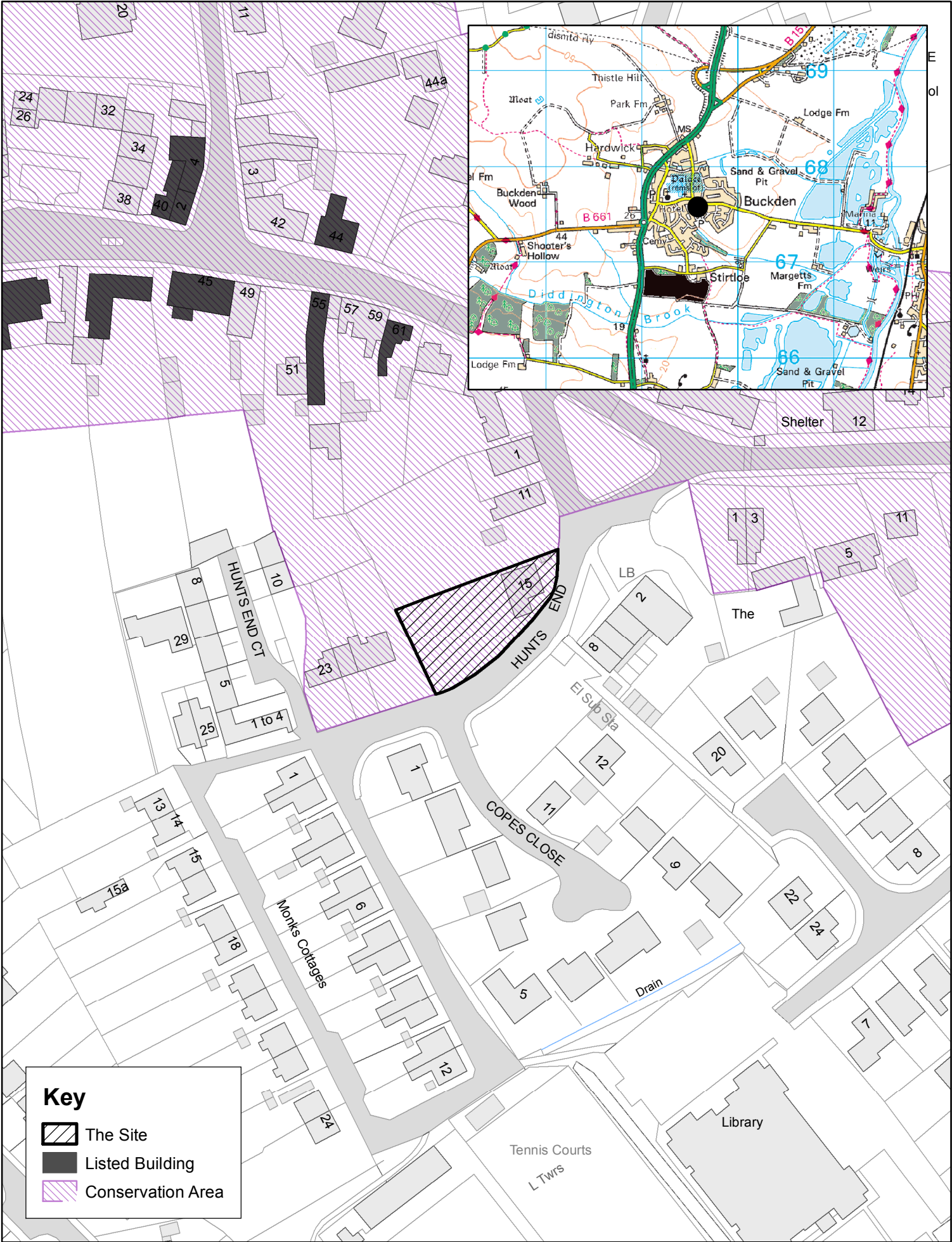
Development Management Panel

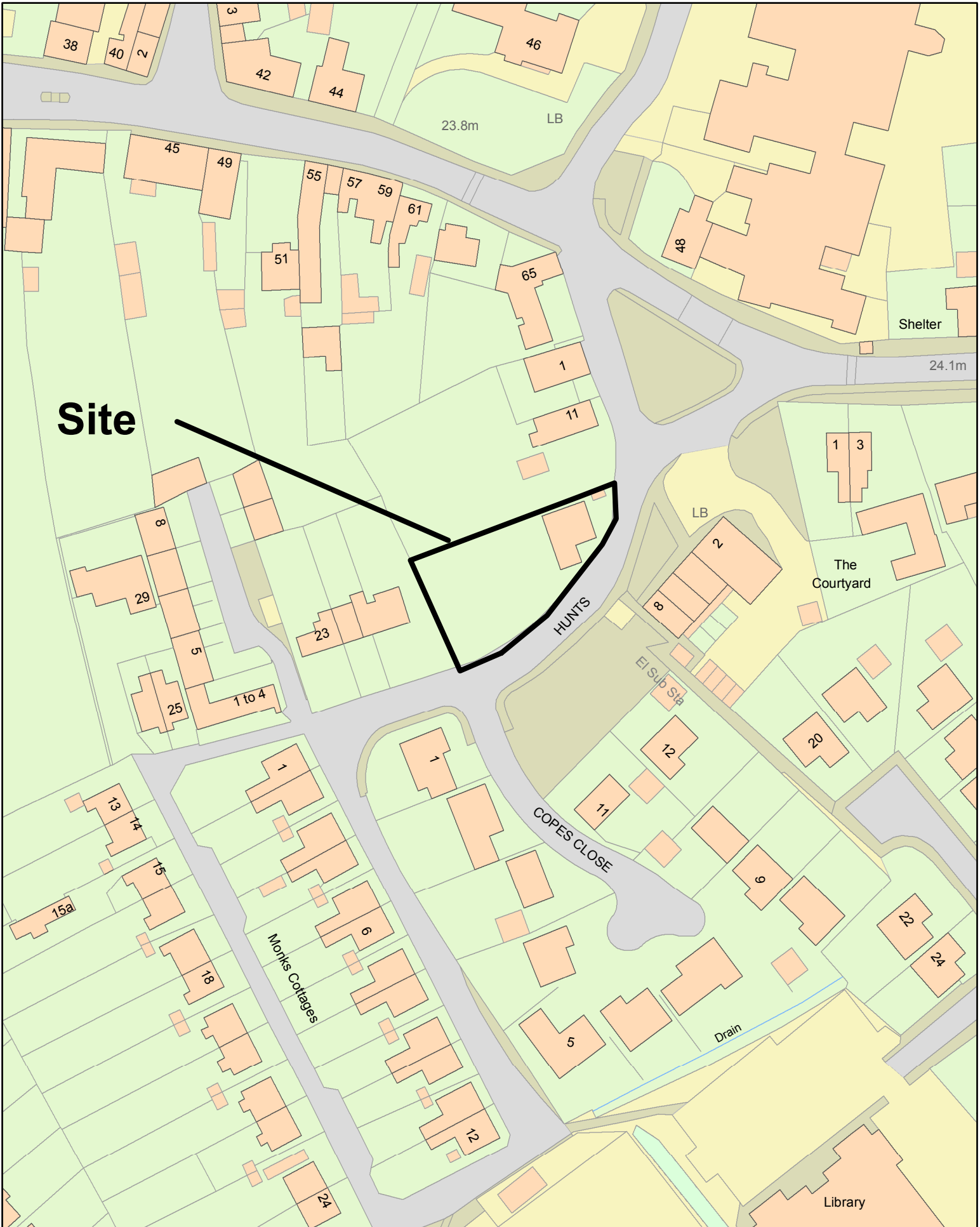


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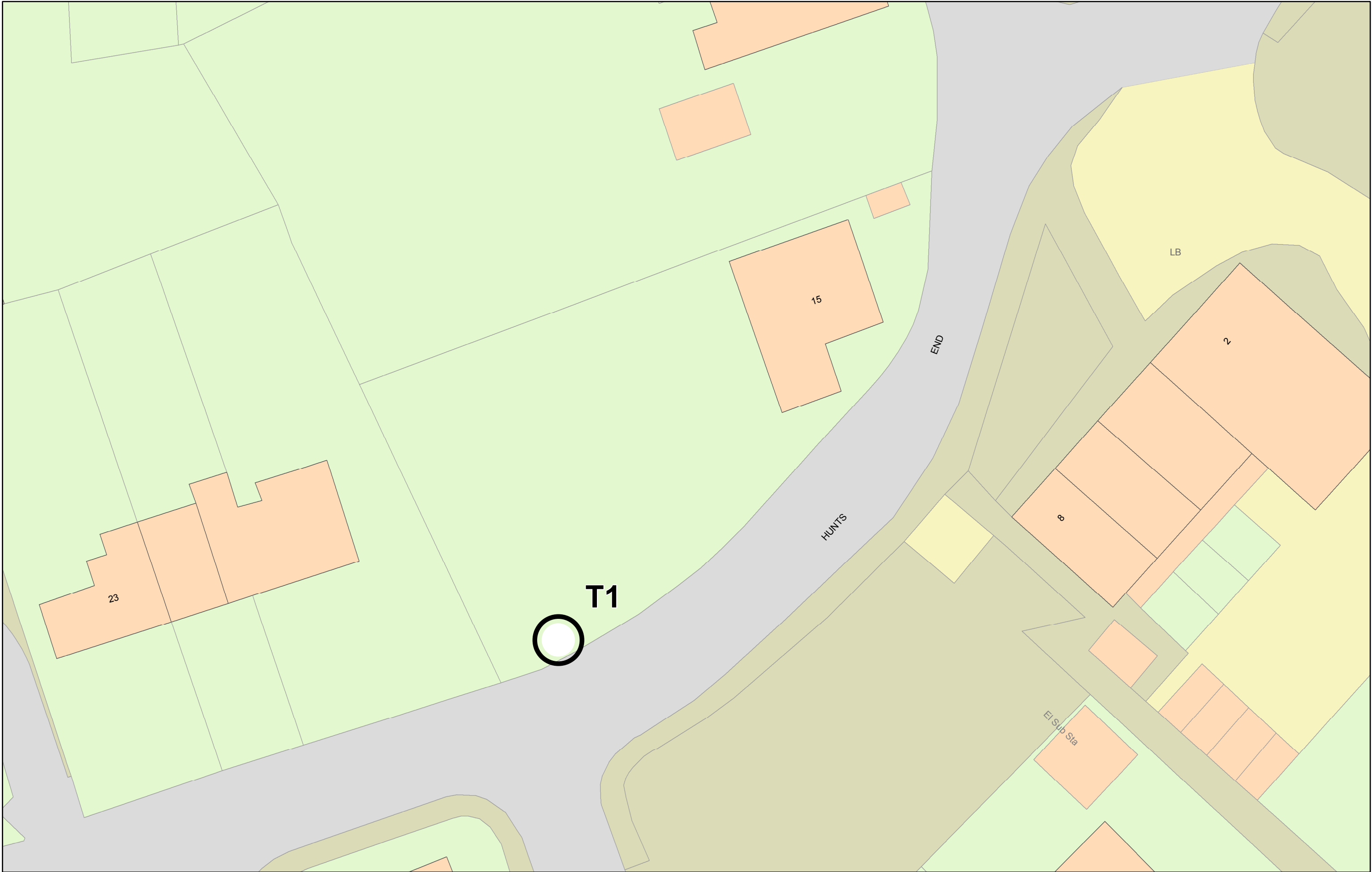
Application Ref:L/TPO/381
Location:Buckden

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Tree Preservation Order L/TPO/381
15 Hunts End
Buckden

Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN

Planning Services

Tree Preservation Order L/TPO/381

15 Hunts End

Buckden



Photograph 3



Photograph 4



Photograph Location Points

