



Knowle, Dorridge and Bentley Heath (KDBH)

Neighbourhood Forum

Planning Enforcement
Solihull Metropolitan Borough Council

Dear Mr Wigfield

Ref: EN/2021/00038/TREE: Trees at the Lansdowne / Arden Triangle Proposed Housing Site

Thank you for coming back to us in the promised timeframe with your detailed response regarding investigation into the felling of trees at Lansdowne House, Warwick Road, Knowle. The Forum Team carefully reviewed your response. I consequently asked Gill Griggs to follow up on a few matters with you by phone. Gill noted the points that were discussed, covered below, for further Forum consideration. As a result, the Forum now wishes to raise the matters below for the attention of both the Council's Enforcement team and the Planning Policy team.

From the information provided, the Forum acknowledges that in this instance there are no grounds for action against the landowner in view of the procedure followed by the tree surgeon.

Significant concerns do, however, remain regarding: 1) the process adopted by the Council in dealing with this matter; and 2) the refusal to protect trees on the Arden Triangle site. What follows below reflects our understanding of the Council's position on these points based on the information in your email and subsequent discussion.

1. The 5 Day Notification Process

You advise that the 5 day notice does not specifically require a response; also, that there is no statutory process for checking or verifying the necessity for proposed works. In the absence of a response from the Council within 5 days, the default position is that a protected tree can be removed.

The Forum's understanding from reading the guidance, however, is that a 5 day notice relates to trees or branches **that are dead**. Work on dangerous trees or branches may take place only if there is an **immediate** risk of serious harm, in which case they are permitted to be removed with written notice provided to the local authority as soon as possible thereafter.

You indicate that the Council has no set procedure for dealing with 5 day notices. A notice is usually submitted by email to the administrative department, who then finds someone who can deal with it. By the time it has reached an officer, there is often little time to respond within the 5 days. On most occasions where the notification has been submitted by a tree surgeon (commissioned by the landowner/developer), the Council is happy to accept the tree surgeon's report on the condition of a tree. You advise that independent verification is rarely possible due to the timescales. The potential for a tree to be dangerous is enough for it to be felled.

This being the case, to the Forum the absence of a clear, formal procedure is a major weakness. It means that it is difficult for the Council (or other stakeholders) to establish: when a notice was received, when it was actioned, by whom and whether a decision was made within the 5 day period. While we understand that the Council is not obliged to respond to a notice, it is nevertheless very important to be clear whether lack of response is because: a) no action was considered necessary; or b) there was simply insufficient time to respond and the action was therefore able to proceed by default.



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Where protection of trees is at issue, and removal cannot be reversed, it is surely essential that a robust and streamlined procedure is consistently applied to ensure that trees are not lost simply 'by default' and without first checking on their condition. This case demonstrates a need for urgent review and strengthening of the Council's TPO management processes.

In the light of apparent weaknesses in the system currently, the Forum is extremely disappointed that its offer to support the Council in relation to 5 day notices has been rejected outright. We are aware of the pressure officers are under and so hoped that our local knowledge and willingness to assist would have been helpful. At the very least, for trees accessible or visible from public places, we could provide preliminary observations and take photographs to assist the Council's assessment and rapid response.

2. Lansdowne Trees: Evidence

Turning now to the Lansdowne trees. Thank you for emailing the tree surgeon's photographs (cf. Appendix 1). We understand these were obtained by the Council subsequent to the works taking place.

Photo1 below does indeed show that one tree was dangerous (and felled immediately, in advance of notification). It is unclear, however, how the photographs relate specifically to the group TPO trees and, given they were taken in winter, how they demonstrate conclusively that the trees removed were dead and/or dangerous.

We note the requirement for lost TPO trees to be replaced and welcome your confirmation that the Council has now asked that replacement trees are planted. Please inform us as soon as these works have been undertaken.

3. Request for TPOs on the Arden Triangle Site

Given the apparent process weaknesses discussed above, the Forum is now even more concerned that the Council is still not willing to place TPO's on the rest of the Arden Triangle site. In contrast, we note that TPOs are in place on the proposed Hampton Road housing development site.

The Council's position remains that there is no threat to the existing trees, and unless there is a threat it is not appropriate to impose TPOs. Having reviewed planning guidance, however, the Forum take material issue with this position. Government guidance on Tree Preservation Orders and trees in conservation areas (March 2014) states that:

'Local Planning Authorities can make Tree Preservation Orders if it appears to them to be expedient in the interest of amenity for the preservation of trees and woodlands in their area.'

The guidance goes on to explain that amenity requires judgement and that:

"Orders should be used to protect selected trees....if their removal would have a significant negative impact on the local environment and its enjoyment by the public."

It then explains what is meant by "expedient", stating:

*"it may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is **not necessary for there to be immediate risk for there to be a need to protect trees**. In some cases, the authority may believe that certain trees are at risk as a result of development pressures and may consider, **where this is in the interests of amenity**, that it is expedient to make an Order" (para 010). (our emphasis)*



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A reasonable reading and interpretation of this guidance is that authorities can indeed apply TPOs beyond a more limited application of 'immediate risk' judgement.

The trees on the Arden Triangle site are hugely important to the **amenity** of the area, both now and if it is to be developed for large scale housing as proposed by the Council. There are many fine trees on the Arden site, including important veteran trees. The Forum's Landscape and Visual Appraisal, commissioned from Crestwood Environmental (available on our website), concluded that:

"Overall, the Site as a proposed housing (and mixed use) allocation has a number of important and highly sensitive landscape features that require protection, in particular the extensive hedgerow and tree cover at the site, Cuttle Brook and the 'parkland' type features around Lansdowne House".

You state that the Council has also undertaken an arboricultural survey, ie. trees worthy of protection should already be known without much, if any, additional effort required. Moreover, the Council as the lead developer on this site has produced a concept masterplan which relies heavily on protecting trees and hedgerows to provide a landscaped setting. In this regard, the view of Forum's Landscape advisors is that:

*'Regardless of the masterplanning process, given the intrinsic landscape value associated with boundary hedgerows within the Site and wider trees cover, **these elements should be protected and a landscape and green infrastructure strategy developed for the site in advance...**'*

Even if the Council regards a TPO as necessary only where there is an immediate risk, the number of trees lost to date should alert the Council to a sufficient risk to meet the conditions determining the need for a TPO: per the planning guidance above, there is **clearly a risk** resulting from development pressure.

The Forum therefore continues to rigorously pursue its request that TPO's are placed on valuable trees across the whole Arden Triangle development site. The reality is that there is no 'perceived threat' until works to remove trees take place - and then it is too late. It seems that the Council is prepared to risk further loss of trees on this site which, bearing in mind that the Council is now responsible for its comprehensive development, the Forum considers totally unacceptable.

4. Conclusion

The Forum has clearly demonstrated sufficient concern regarding both the process and the application of the Council's policy and management of TPOs to warrant a review of this area of planning. While we could seek to address the issues identified in this particular case by a raising a formal complaint, our strong preference is to formally request the Council undertake a full and structured review and advise of changes made to better control and strengthen TPOs. The Forum remains willing to support the Council in effective and efficient management of TPOs in whatever way it can.

We look forward to your early response to these additional comments and the actions requested.

Yours sincerely

Jane Aykroyd, Chair of KDBH Neighbourhood Forum



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Appendix 1

Photo1: Dangerous tree - but not one of those included in group TPO?



Photo2: Two trees marked with red blob fronting on to Warwick Road - part of group TPO? No evidence supporting them being dead or diseased.



Photo5: Unclear what this is showing - presumably the leaning tree? - and whether it relates to a TPO tree.



Photos 3&4: Unclear how these relate to TPO trees or provide evidence of dead or diseased tree.

