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| <b>Reference</b>      | TPO/21/00007   |
| <b>Report Title</b>   | Confirmation of Tree Preservation Order No. 7, 2021          |
| <b>Location</b>       | Garage area to the rear of 17 and 18 Glebe Close,<br>Smarden |
| <b>Grid reference</b> | TQ884426   |
| <b>Parish Council</b> | Smarden  |
| <b>Ward</b>           | Weald North  |

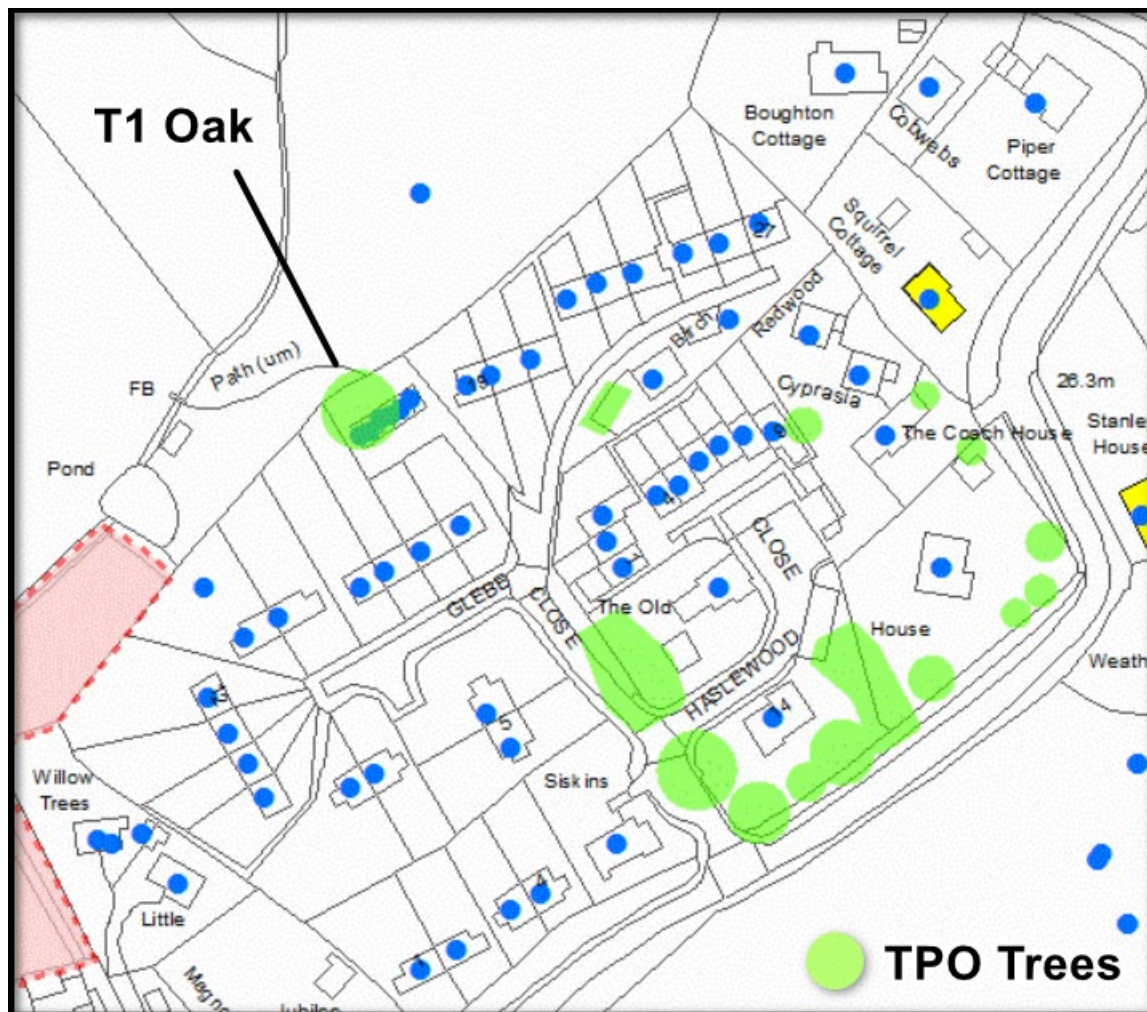
## A. Introduction

1. The Planning Committee have delegated authority to confirm Tree Preservation Orders made by Officers. This report has been prepared for the Planning Committee owing to an objection having been received to the serving of the Order.

## B. Site Location



Map 1 – Location Map Showing site of tree and garage block (1:25,000)



### C. Site Description

The tree subject to Tree Preservation Order No. 7, 2021 is within a site comprising a redundant garage block of six units with hard standing to the south with an access road from Glebe close, and to the northern side of the block unsurfaced land with T1 Oak and some smaller trees on the boundary; it is approximately 0.045 ha in size. The site has a permissive footpath running north to south using the access road.



**Map 3 – The redundant garage block and access road**



**Photo 1 – The Glebe Close garage block with T1 Oak behind**



**Photo 2 – T1 Oak viewed from the eastern end of 18 Glebe Close.**

## **D. The Proposed Order**

2. The TPO was made to protect a large mature specimen Oak that enjoys public amenity value when viewed from within Glebe Close and from without the built confines of the village from the well-established informal footpath that bisects the adjacent field.

As 'amenity' is not defined in law, authorities need to exercise judgment when deciding on the qualities of a tree, to show that protection would bring a reasonable degree of public benefit in the present or future and that removal would have a significant negative impact on the local environment and its enjoyment by the public. Authorities are required to assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria: the size of tree; expected age/duration of visual amenity; form; importance/prominence in the landscape; relation and suitability for its setting; tree cover/presence of other trees. Other special factors which may be considered when evaluating amenity values of trees could include whether it is part of a larger composition; whether the tree screens unpleasant views; whether it has exceptional rarity; if it has any cultural or historical associations; importance to nature conservation; and response to climate

change. These main factors in relation to this tree, have been assessed in this report.

3. The tree is approximately 120-150 years old, and, commensurate with a mature oak tree, offers considerable biodiversity benefit. It is also part of a significant landscape feature comprised of a row of adjacent oaks that defines the built edge of the village of Smarden.
4. The confirmation of the order is expedient owing to an enquiry having been made as to whether the tree could be felled by the new owner of the land. It has been indicated that the tree is to be removed as part of the new owner's redevelopment plans for the site. The new owner has been advised that the correct approach is to retain the tree through the planning process pending a decision on any planning application. BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations, provides an approach whereby trees are retained as site constraints and the development is informed by the extant tree cover. The tree meets the criteria for classification as a Category 'B' tree and would merit consideration for retention as a result of this, as part of any planning decision in due course.
5. The purpose of the TPO is to ensure the retention of T1 Oak owing to its amenity value and for it to be assessed as a material consideration in any future submitted planning application.
6. The provisional Order has been served in accordance with S198 of the Town and Country Planning Act 1990 and the retention of the tree is consistent with Policy ENV3a (b) of the adopted Ashford Local Plan 2030.

## **E. Site History**

7. **TPO no. 7, 2021** Garage area to the rear of 17 and 18 Glebe Close, Smarden, Kent

## **F. Ward Member Consultation**

8. The Ward Member Cllr Ken Mulholland has been appraised of the objection.

## **G. Consultation**

9. As required by the 2012 Tree Preservation Regulations, the owner of the land and any 'Interested Parties' as defined by the Regulations were served with the Order. Representations should be made within 42 days of the serving of the Order.

10. An Objection was received on 1<sup>st</sup> December 2021 from the landowner of the site and Garages at Glebe Close Smarden, this was 98 days from the date that the Order was served.
11. The material objections to the Order are set out below in the Objections section and may be viewed in full via the Ashford Borough Council website using reference TPO/21/00007, the documents also include the letter to Smarden Parish Council of 29<sup>th</sup> January 2022 from Gilmit Property (the owner of the site and the Objector) <https://planning.ashford.gov.uk/>
12. One letter of support was received within the 42 day representation, but subsequently, six further emails of support have been received. The initial letter of support cites the wildlife value of the tree and the supporting ground flora as being of significance. The later support comments include the following points:
  - that the Order will not be Confirmed within the requisite timeframe leaving the tree vulnerable to removal;
  - That trees should be retained within development proposals;
  - its amenity value;
  - The respiration cycle;
  - Carbon sequestration;

## **H. Objections to TPO no. 7, 2021**

13. The Objector, who is also the owner, has set out the following points of objection within his correspondence dated 30<sup>th</sup> November 2021:
  - a) The Objector contacted the council on 8<sup>th</sup> July 2021 enquiring as to whether or not the tree could be removed and a protracted period went by where he could not obtain a response from the Planning Department.
  - b) The Objector contends that Corporate Property sold the site knowing that it was a redundant site with garages that had been severely damaged by the oak tree, that ABC could have imposed a TPO on the Oak tree whilst it was in their ownership and that any potential purchaser would then have been aware of this constraint.
  - c) The Objector has stated that the Council has served the TPO in the full knowledge that the tree would have to be removed in order to properly redevelop the site.
  - d) The Objector advises that the garages may be rebuilt without planning permission and that owing to the proximity of the tree the depth of

foundations required would kill or seriously damage the tree and render it unstable and unsafe.

14. These points are addressed later in this report but it is pertinent to note that none of the objections raised relate to either the legal process of serving the Order or any assessment against the criteria found in the Planning Guidance, in particular, the primary consideration of ‘amenity’, in this respect the Order is not challenged on a material level.

[Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/tree-preservation-orders-and-trees-in-conservation-areas)

## I. Assessment

### Overview of T1 Oak.

15. T1 Oak is approximately 18 metres in height and forms part of a landscape feature that includes mature Oak and Ash trees providing the northern boundary of Glebe Close adjacent to the edge of the built confines of the village. Photo 3. Below demonstrates how T1 Oak sits within the landscape feature and its relationship between Glebe Close and the countryside beyond.



Photo 3 – Google Earth Image showing T1 Oak in relation to surrounding features

16. The amenity value may be appreciated from within Glebe Close to the south as it overtops the terrace of houses in Glebe Close by some eight metres and as such is visible in wider views.
17. In addition to its amenity value, the oak provides biodiversity attributes in wildlife and invertebrate habitat as well as the broader natural capital of carbon capture and rainwater interception.

### **Event and Communication Timeline**

18. Owing to some of the events and communication being cited in the objections lodged by the site owner, for clarity, the salient events are listed below:

- 16<sup>th</sup> June 2021 – the site is purchased at auction by the present owner (for information, the seller at the auction was the Council, although the identity of the previous owner is not relevant to this report or the decision on confirming the Order);
- 8<sup>th</sup> July 2021 – the new owner advises the Tree Officer that the sale is about to complete and enquires as to whether the tree may be removed as part of a redevelopment plan;
- 8<sup>th</sup> July 2021 - the Tree Officer advises the new owner that the tree should not be removed prior to any planning application having been determined and that the new owner should seek advice from a planning agent;
- 8<sup>th</sup> July 2021 - the new owner reiterates the request as to whether the tree may be felled in a forwarded email to Planning Help;
- 14<sup>th</sup> July 2021 – the sale completes;
- 4<sup>th</sup> August 2021 – the owner chases a response from Planning Help regarding his email of 8<sup>th</sup> July 2021;
- 22<sup>nd</sup> August 2021 – the owner advises that a response as to whether or not the tree may be removed has not been received and that the felling of the tree will now be organised;
- 25<sup>th</sup> August 2021 – in response to the direct threat of the tree being removed, the Tree Officer has the TPO served.

### **Assessment of the Objections**

- 19. (a) *The Objector contacted the council on 8<sup>th</sup> July 2021 enquiring as to whether or not the tree could be removed and a protracted period went by where he could not obtain further details from the Planning Department as to whether or not the tree could be removed.***



20. Response to (a): The Objector sent an email asking if the tree could be removed as part of a redevelopment plan as it was not within the Conservation Area or subject to a TPO. The Objector received a response to his email of 8<sup>th</sup> July 2021 within five hours of sending it. The Tree Officer advised that he should not undertake clearance of the site or remove the tree until planning permission had been granted – he was also strongly advised to speak to his planning agent. The response sent by the Tree Officer was unequivocal in that he should not remove the tree. Subsequently, the Objector sent a further email chasing the information requested on 8<sup>th</sup> July 2021 as to whether or not the tree could be felled. On 22<sup>nd</sup> August 2021 the owner stated that the felling of the tree was to be organised owing to no response having been received. The Tree Officer would advise Members that this direct threat to remove the tree was an important factor in the decision that a TPO be served.
- 21. (b) *The Objector contends that the Council's Corporate Property service sold the site knowing that it was a redundant site with garages that had been severely damaged by the oak tree, that ABC could have imposed a TPO on the Oak tree whilst it was in their ownership and that any potential purchaser would then have been aware of this constraint.***
22. Response to (b): the lot was entered by Corporate Property for the 16<sup>th</sup> June 2021 Clive Emson auction. Prior to the auction no approach was made to Planning and Development officers as to the suitability of the site for redevelopment and/or the impact of any site constraints on any such proposals. In view of the fact that there was no known threat to the tree from any redevelopment proposals, it would not have been appropriate to serve a TPO at that point. Had the Objector made an approach to Planning and Development officers at that juncture setting out his redevelopment aspirations, an assessment would have been made which would have included outlining the developmental constraint that the Root Protection Area of T1 oak would impose.
- 23. (c) *The Objector has stated that the Council has served the TPO in the full knowledge that the tree would have to be removed in order to properly redevelop the site.***
24. Response to (c): Planning decisions in relation to trees are informed by BS5837:2012 Trees in relation to design, demolition and construction – Recommendations. Within section 5 of the document a pathway is shown which sets out the considerations informing the design process. Fundamentally, this does not preclude construction within the RPA of a tree when underpinned by appropriate design (e.g. piling and sensitive building configuration), and furthermore, in the case of a brownfield site there are enhancements to the rooting environment that may make for an improvement

to a tree's general outlook. However, in the absence of any clear development proposal, other than the Objector suggesting in emails that either two houses could be built or the garages rebuilt, the assessment of what is feasible cannot be substantively made.

**25. (d) *The Objector advises that the garages may be rebuilt without planning permission and that owing to the proximity of the tree the depth of foundations required would kill or seriously damage the tree and render it unstable and unsafe.***

26. Response to (d): Foundation depths and design are informed by the NHBC Section 4.2 of the Technical Standards – Building near Trees. There are solutions such as piling that are less intrusive than strip foundations that may be employed to safeguard nearby trees. Any foundation depths need to be calculated following an assessment of the soil type and reference to the relevant NHBC Foundation Depth Tables. Thus, with careful design, an approach may be undertaken that can safeguard the tree and provide a robust structure. It should be noted that there are additional trees within the locale that may be within the zone of influence of the garages and that only a full arboricultural survey can determine any potential impact and methodology.

27. In summary, the matters raised by the Objector relate solely to the process of sale and acquisition of the site by him and the enquiries he made of Planning & Development after he had contracted to purchase the site. It would appear that the new landowner acquired the site on a speculative basis, perhaps with an intention to redevelop it for two dwellings. At no point in the acquisition process was the advice of planning officers sought on the potential acceptability of such a proposal and advice from the Tree Officer was only sought following the auction at which point it was suggested to the new owner that more specific planning advice should be sought from his planning agent.

28. The LPA in exercising its duties under S198 of the Town and Country Planning Act 1990 (Tree Preservation), may make a TPO where it is ... "expedient in the interests of amenity to make provision for the preservation of trees". In this case, it is clear that the Order has been served appropriately with the intention of preserving amenity, and with The knowledge that a 120-150 year old oak tree with public amenity value was subject to a direct threat. The background and process of sale is outside the remit of Planning and Development and is not a material consideration in determining whether to confirm the Order.

29. It is noted that in an email dated 20<sup>th</sup> January 2022 addressed to the Tree Officer, the Objector has asserted that with rebuilding the garages or constructing two dwellings ... "either way the tree has to go". NPPF para 174 (b) (see annex B) recognises the benefits of 'natural capital' and 'ecosystem

services' that trees provide, whilst Ashford Local Plan 2030 Policy ENV 3a (b) (see annex C) provides similar emphasis to that found in the NPPF with regard to the 'pattern and composition' of trees. In this case, it is extremely unlikely that as part of a planning application the removal of a mature oak that is part of a wider landscape feature would be countenanced (although of course all applications must be considered on their merits at the time they come forward). A pre-application request would have given this advice to the Objector.

## **J. Conclusion**

30. TPO/21/00007 has been served in accordance with the Planning Guidance relating to serving an Order in that both amenity and expediency have been demonstrated. The relevance of the order Tree in any future planning decision is supported by the NPPF para 174 (b) and ALP 2030 Policy ENV3a (b).
31. The removal of the tree would cause harm to the amenity of the area – reference to photo 2 demonstrates the significant impact that the removal of the tree would have to the local area.

## **Recommendation**

**To confirm TPO no.7/2021 unmodified, notwithstanding the objection.**

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**Email:** phil.cook@ashford.gov.uk

TPO no.7 2021 Copy of Served Order

TOWN AND COUNTRY PLANNING ACT 1990

ASHFORD BOROUGH COUNCIL  
TREE PRESERVATION ORDER NO. 7,2021  
Garage area to rear of 17 and 18 Glebe Close Smarden, Kent

Ashford Borough 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 Ashford Borough Council Tree Preservation Order No 7,2021 - Garage area to rear of 17 and 18 Glebe Close Smarden, Kent

Interpretation

2. (1) In this Order "the authority" means Ashford Borough 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 regulation 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 25<sup>th</sup> August 2021

THE COMMON SEAL OF ASHFORD BOROUGH COUNCIL

was affixed to this Order in the presence of -

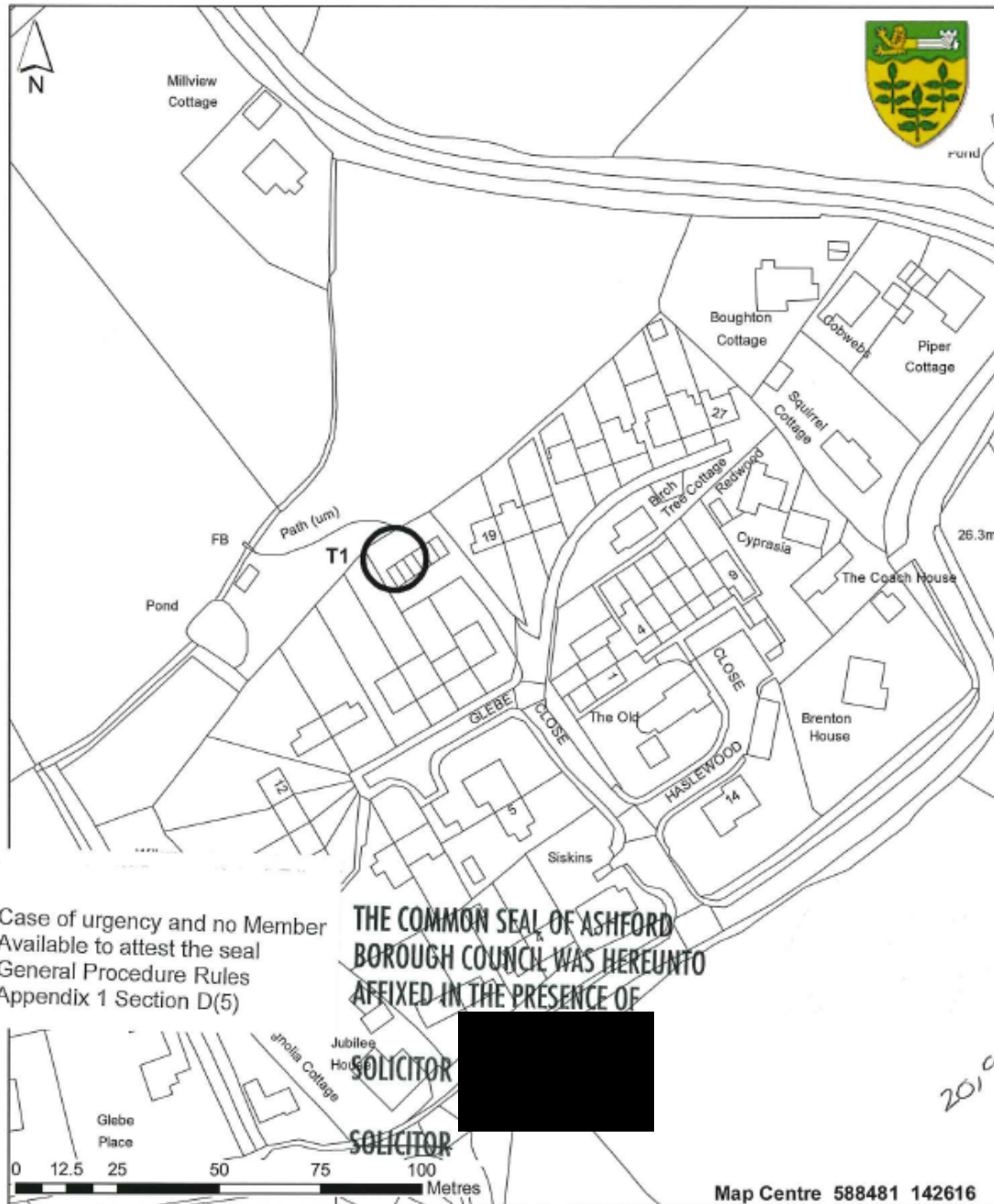
Solicitor

Solicitor

Case of urgency and no Member  
Available to attest the seal  
General Procedure Rules  
Appendix 1 Section D(5)



**Annex A**



**ASHFORD BOROUGH COUNCIL**  
**TREE PRESERVATION ORDER NO 7 2021**  
Garage area to rear of 17 and 18 Glebe Close  
Smarden, Kent  
August 2021      Scale: 1:1250

**Planning and Development**  
**Civic Centre**  
**Tannery Lane**  
**Ashford**  
**Kent**  
**TN23 1PL**

## **Annex B**

### **NPPF para 174, Extract.**

**174.** Planning policies and decisions should contribute to and enhance the natural and local environment by:

(b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

## **Annex C**

### **ALP 2030 Policy ENV3a (b), Extract.**

#### **Policy ENV3a - Landscape Character and Design**

**All proposals for development in the borough shall demonstrate particular regard to the following landscape characteristics, proportionately, according to the landscape significance of the site:**

- a) Landform, topography and natural patterns of drainage;**
- b) The pattern and composition of trees and woodlands;**