

Report sponsor: Director of Planning, Transport  
and Engineering  
Report author: Tree Preservation Order Officer

## **Confirmation of TPO No. 612**

### **Purpose**

- 1.1 The Planning Control Committee is asked to consider an objection to the making of TPO No.612.

### **Recommendation(s)**

- 2.1 To authorise the Director of Planning and Transportation to confirm Tree Preservation Order (TPO) No. 612 without modification.

### **Reason(s)**

- 3.1 In the interest of public visual amenity.

### **Supporting information**

- 4.1 On 24th November 2022 we made Derby City Council (130 Duffield Road, Derby) Tree Preservation Order 2022, Number 612.  
A copy of the TPO plan can be seen as appendix 1.  
A copy of the TPO schedule can be seen as appendix 2.  
Photographs of the trees can be seen as appendix 3.  
The amenity evaluation score can be seen as appendix 4.
- 4.2 **Grounds for making the order** – The tree indicated in this Order is proposed for protection in the interests of public visual amenity. The tree can be appreciated from the public realm and contributes materially to the amenities of the area and to the character of the Strutts Park Conservation Area.
- 4.3 **Background information** – A section 211 notification reference, 22/01641/CAT, has been submitted for the felling of a Silver Birch tree within the Strutts Park Conservation Area. The amenity of the tree was assessed as part of the section 211 notification assessment. The tree has accrued sufficient public amenity value to justify inclusion within a TPO. The removal of the tree would have an adverse impact on the character of the conservation area.

## **Public/stakeholder engagement**

- 5.1 One objection to the making of the TPO was received on 2nd January 2023.

The objection is summarised below:

*Firstly our submission was based on the need to remove the tree due to prevent the front wall collapsing onto the raised pavement above Duffield Road, which recently happened a few doors away therefore prohibiting a Health and Safety issue to a member of the public.*

*Secondly on the basis that a number of previous and similar tree felling applications have been submitted and accepted without condition within the last 6 years from residents along the same stretch and same side of the road has set a precedent. These examples include:*

*138 Duffield Rd - 09/18/01412 - Felling of silver birch - Accepted 13 Feb 2019*

*146 Duffield Rd- 03/18/00344 - Felling of Sycamore & Ash tree - Accepted 19 Apr 2018*

*116 Duffield Rd. - 08/18/01289 - Felling of beech tree - Accepted 5 Oct 2018*

*138 Duffield Rd - 02/16/00203 - Felling of Holly & Silver Birch - Accepted 31 Mar 2016*

*Finally a previous application was submitted from 128 & 130 Duffield Rd for the felling of two silver birch and a beech tree which was accepted without condition.*

## **Other options**

- 6.1
- Not to confirm the TPO
  - Confirm the TPO with a modification.

## **Financial and value for money issues**

- 7.1 None.

## **Legal implications**

- 8.1 Before confirming the TPO the LPA must consider valid objections to the making of the TPO.

## **In response to the points raised in the objection**

- 9.1 Point 1: The TPO assessment did take into account the potential influence that the tree is having on the retaining wall. Whilst there could be a negative influence the tree still scored sufficiently to justify inclusion within a TPO. The notification for the removal of the tree (that resulted in the making of the TPO) was precautionary. There is no significant evidence to suggest that the tree is causing the retaining wall to collapse. If the tree is causing structural damage to the retaining wall then mitigatory measures could be implemented by following the TPO tree works application process.

Point 2: Conservation area notifications of tree works (section 211 notifications) are assessed on the individual merits of each notification and take into account the following factors:

- Size.
- Life expectancy.
- Form.
- Visibility.
- The amount of other trees in the area.
- Suitability to the area.
- Future amenity value.
- Tree influence.
- Added factors (screening an unpleasant view, relevant to the local plan, Historical association, considerably good for wildlife and veteran tree status).

The section 211 notifications referenced by the objector were carefully assessed and the trees within the notifications had not accrued that special visual amenity value to justify inclusion within a TPO.

A brief explanation for each referenced section 211 notification decision is given below:

- 09/18/01412: the tree was not wholly appropriate to its location being only 1m from a garage. Only a glimpsed view of the tree could be had from the public realm. We raised no objection to its removal previously (02/16/00203).
- 03/18/00344: poor form of trees, not wholly appropriate to their location, the amount of other trees in the area and influence of the trees on the use of adjacent areas.
- 08/18/01289: poor form (included union), number of other trees in the area and its influence on adjacent buildings and structures.
- 02/16/00203: Holly tree was implicated in structural damage to the property. Birch tree was not wholly appropriate to its location being only 1m from a garage. Only a glimpsed view of the tree could be had from the public realm.
- 128 and 130 Duffield Road (12/11/01488): Trees were not considered of high enough public visual amenity to warrant protection; especially given the potential damage they were alleged to be causing to 128 Duffield Road.

## **Climate implications**

10.1 None

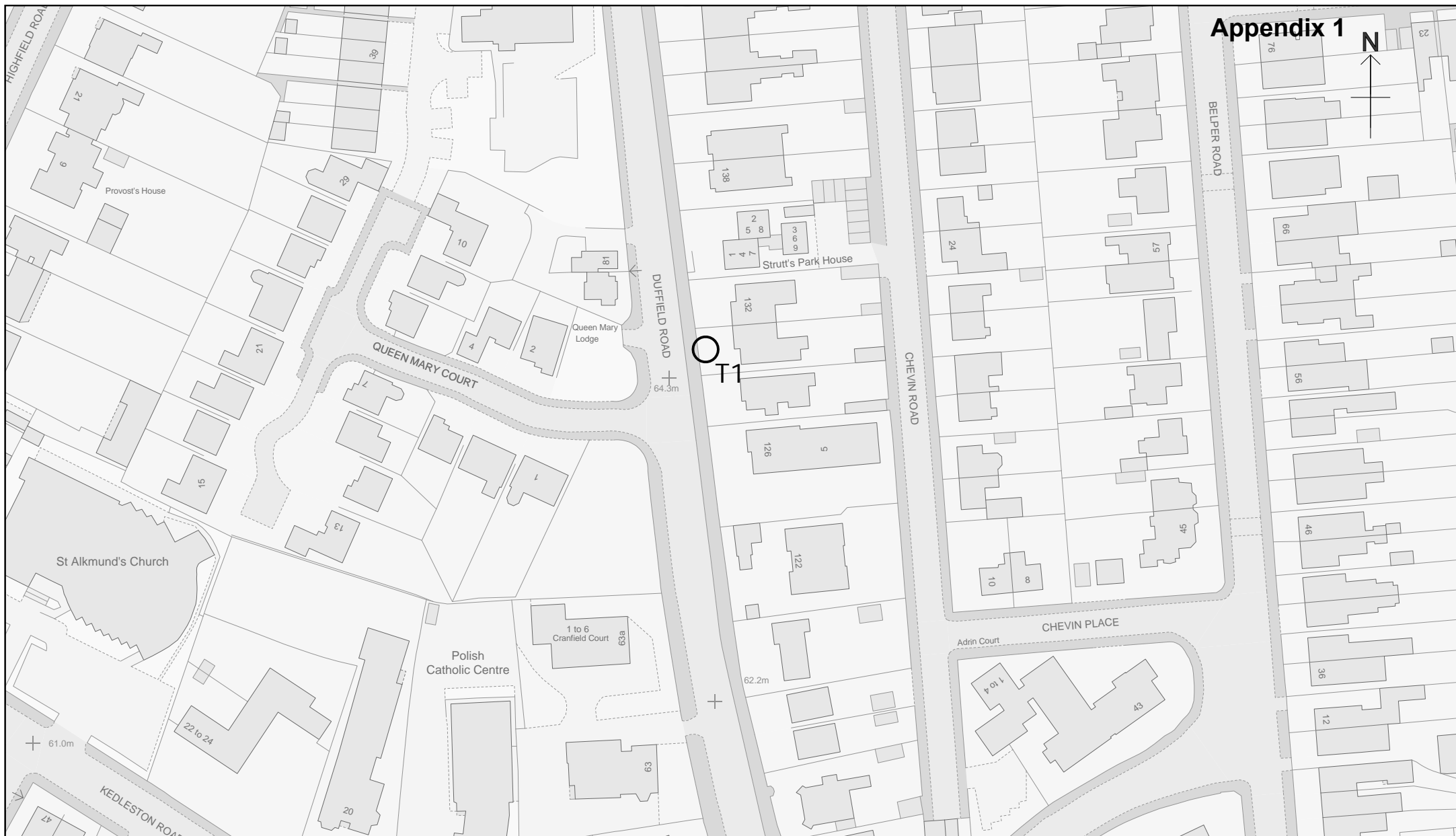
## **Other significant implications**

11.1 None.

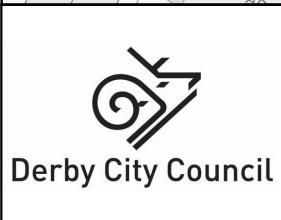
This report has been approved by the following people:

Role	Name	Date of sign-off
Legal		
Finance		
Service Director(s)		
Report sponsor		
Other(s)	Paul Clarke	07/02/2023

Background papers:	
List of appendices:	Appendix 1 (TPO plan) Appendix 2 (TPO schedule) Appendix 3 (Photos of trees) Appendix 4 (Amenity evaluation)



# Appendix 1



## Derby City Council (130 Duffield Road, Derby) Tree Preservation Order 2022, Number 612 Appendix 1

Drawing No: TPO No.612 Date: 23/11/2022 Map Scale: 1:1250	 Ordnance Survey © Crown Copyright and Database Rights Ordnance Survey 2022. Licence Number: 100024913
Contact: Andy Shervill Department: Communities and Place Telephone Number: (01332) 640666	

**Town and Country Planning Act 1990****The [*Derby City Council (130 Duffield Road, Derby) Tree Preservation Order 2022, Number 612.*]**

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 (130 Duffield Road, Derby) Tree Preservation Order 2022, Number 612.

**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 [24th] day of (November 2022]

*[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]



.....

Verna Bayliss - Director of Planning, Transportation and Engineering

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 Appendix 1)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[T1]	Birch	Located in the front garden of 130 Duffield Road, Derby.

**Trees specified by reference to an area on Appendix 1**

(within a dotted black line on the map Appendix 1)

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

**Groups of trees**

(within a broken black line on the map Appendix 1)

<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 Appendix 1)

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



Looking north.



Looking northeast.





Wall looking south.

## Amenity Evaluation Rating for TPOs

**SITE VISIT DATE:** 10/11/2022

**TREE SPECIES:**

[A]: Birch

[B]:

**ADDRESS:** 130 Duffield Road

**AMENITY VALUE RATING:**

[A]= 15

[B]=

**SURVEYED BY:** A Shervill

		SCORE				SCORE	
		[A]	[B]			[A]	[B]
<b>1</b>	<b>Size</b>			<b>6</b>	<b>Suitability to area</b>		
1	Very small 2-5m <sup>2</sup>			1	Just suitable		
2	Small 5-10 m <sup>2</sup>			2	Fairly suitable		
3	Small 10-25 m <sup>2</sup>			3	Very suitable		
4	Medium 25-50 m <sup>2</sup>	4		4	Particularly suitable	2	
5	Medium 50-100 m <sup>2</sup>						
6	Large 100-200 m <sup>2</sup>						
7	Very large 200 m <sup>2</sup> +						
<b>2</b>	<b>Life expectancy</b>			<b>7</b>	<b>Future amenity value</b>		
1	5-15 years			0	Potential already recognised		
2	15-40 years	2		1	Some potential	2	
3	40-100 years			2	Medium potential		
4	100 years +			3	High potential		
<b>3</b>	<b>Form</b>			<b>8</b>	<b>Tree influence (current or future)</b>		
-1	Trees which are of poor form			-1	Significant		
0	Trees of not very good form	1		0	Slight	-1	
1	Trees of average form			1	Insignificant		
2	Trees of good form						
3	Trees of especially good form						
<b>4</b>	<b>Visibility</b>			<b>9</b>	<b>Added factors</b>		
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	3		1	Screening unpleasant view	1	
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		
<b>5</b>	<b>Other trees in the area</b>			<b>10</b>	<b>Rating</b>		
0	Wooded surroundings (70%)					15	
1	Many (30%)	1					
2	Some (10%)						
3	Few (<10%)						
4	None						

**Typical useful life expectancy of common trees.**

300+ Yew

200-300 Oak, Sweet Chestnut, Plane, Sycamore, Lime

150-200 Scots Pine, Hornbeam, Beech, Tulip Tree, Norway Maple, Lebanon Cedar

100 -150 Ash, Spruce, Walnut, Red Oak, Horse Chestnut, Field Maple, Monkey Puzzle, Mulberry, Pear

70 - 100 Rowan, Whitebeam, Apple, Gean, Catalpa, Robinia, Ailanthus

50 - 70 Poplars, Willows, Cherries, Alders, Birches.

**ADD EACH FACTOR TOGETHER 1+2+3+4+5+6+7+8+9 = Rating**

**(The suitable benchmark rating for inclusion within a TPO is 15)**

## Methods for evaluating the amenity of trees placed under TPOs

### 1. Size of tree

Size of tree is measured as the area when viewed from one side. The height and diameter of the crown itself is estimated omitting the height of any clear stem. Multiply the two together to calculate the total area m<sup>2</sup>.

Where two or more trees grow close together or as a group, they form a single visual unit and are valued as one tree.

### 2. Life expectancy

All identifiable problems surrounding the trees should be considered in order to assess the potential life expectancy, such as localised conditions and the proximity of the tree to obvious factors that may have a bearing on its future health. The score rating in this category must be made on arboricultural grounds by a suitably qualified professional.

#### Typical useful life expectancy of common trees:

300+ Yew

200-300 Oak, Sweet Chestnut, Plane, Sycamore, Lime

150-200 Scots Pine, Hornbeam, Beech, Tulip Tree, Norway Maple, Lebanon Cedar

100 -150 Ash, Spruce, Walnut, Red Oak, Horse Chestnut, Field Maple, Monkey Puzzle,

Mulberry, Pear

70 - 100 Rowan, Whitebeam, Apple, Wild Cherry, Catalpa, Robinia, Ailanthus

50 - 70 Poplars, Willows, Cherries, Alders, Birches.

There are of course exceptions to the list and each tree must be judged on its merits, but these figures do give guidance.

### 3. Form

The form of the tree is difficult to define precisely, but one should consider what is being offered in terms of its physical and structural attributes and how highly pleasing that may be in the aesthetic sense. Trees with good natural characteristics or trees that contrast well with their location can be examples of trees with good form. The judgements for these characteristics must be made by professionally qualified arboriculturalist.

### 4. Public amenity assessment

The public amenity assessment is based on how much of the tree or trees can be seen, and from which point. The appropriate criteria are identified within the rating form.

### 5. Other trees in the area

The percentage of tree cover within the visual area considers the overall contribution of trees in the nearby surrounding area. It is intended to represent a visual impression as seen from ground level from different public viewpoints. The lower the surrounding tree population, then the higher the amenity value and vice-versa.

**Woodland surrounding** More than 70% of the visual area covered by trees, & at least 100 in total

**Many** more than 30% of the visual area covered by trees and at least 4 trees in total

**Some** more than 10% of the visual area covered by trees, and at least 4 trees in total

**Few** Less than 10% of the visual area covered by trees, but at least one other tree present

**None** No other trees present in the area under consideration.

## 6. Suitability to the area

As a general rule, one should aim to have the most suitable tree, or group that the available space will conveniently contain or maybe one with a suitable growing habit. Sometimes a tree or group of trees is particularly suitable to a certain setting or area with a particular character i.e. Weeping Willows hanging down over water or a row of oak trees in a country lane.

## 7. Future amenity value or potential to contribute

An assessment must be made on the tree's future, i.e. does the tree or group have room to develop, will it develop into a potentially large tree or group and will it eventually be seen by many to offer a reasonable degree of amenity value. There are several things to consider here, and knowledge of the tree's potential growth under various conditions is necessary to reach a reasonably accurate rating.

**0 Potential already realised** - If the tree or trees are of considerable size their amenity value is likely to have been realised, therefore it is fair to assume no rating is necessary

**1 Some potential** - The tree or trees will develop to contribute some amenity in the future but are possibly blocked by lots of other features i.e. building or other trees

**2 Medium potential** - The tree or trees will develop to contribute significantly to amenity in the future but are possibly blocked by some other features i.e. buildings or other trees

**3 High potential** - The tree or trees are in an appropriate place where they will develop well and eventually contribute well to the local amenity and landscape.

## 8. Tree influence

Trees in urban situations are often found in close association with existing buildings and structures. This can lead to a perceived conflict between the differing features which can be difficult to quantify, but is, none the less real. For the purpose of this assessment what is being considered is the relationship between the tree and nearest inhabited building.

**-1 Significant** - The tree or trees are medium to large or have potential to become so and have a significant influence over a nearby inhabited building

**0 Slight** - The tree or trees are small to medium, or they only have potential to become so, and so have only a slight influence on inhabited buildings nearby

**1 Insignificant** - The tree or trees are either too small or far enough away from an inhabited building to be a significant influence.

## 9. Added factors

Where there is some special value to the tree which has not been considered by the previous factors additional value ratings can be used. The factors included on the rating form include important screening value, relevance in The Local Plan, wildlife potential and historical association. Other factors may be suggested by individual circumstances, but it is important to be clear that such factors really do add an extra value to the trees under consideration.

It is important that if more than one factor is relevant, then it should still score just one point. It is considered that the amenity value should have already been recognised in the other eight factors and that this extra score is only help maintain its importance and not to help it reach the benchmark.