

WARD: RADYR & MORGANSTOWN

TREE PRESERVATION ORDER (TPO 775)

LOCATION: 2 DAN Y BRYN AVENUE, RADYR, CARDIFF

PROPOSAL: FORMAL CONFIRMATION OF THE PROVISIONAL CITY AND COUNTY OF CARDIFF 2 DAN Y BRYN AVENUE (RADYR) TREE PRESERVATION ORDER 2022

1. PURPOSE OF REPORT

1.1 This report seeks formal confirmation of the provisional City and County of Cardiff 2 Dan Y Bryn Avenue (Radyr) Tree Preservation Order.

2. BACKGROUND INFORMATION

2.1 The power to make a Tree Preservation Order (TPO) is contained in the Town and Country Planning Act 1990 (Section 198). A local planning authority may make a TPO if it is considered expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area.

2.2 The reasons for making the TPO with regard to the red oak tree located in the rear garden of 2 Dan Y Bryn Avenue, Radyr, are set out in the statement of reasons included within the attached TPO, and as reproduced below.

Statement of Reasons

This red oak is a fine example of the species, with a well-balanced and relatively upswept crown. Branch and bud density is normal, indicating good health, with no indications of die-back. It occupies a position close to the rear patio at 2 Dan y Bryn Avenue and is close to the boundary with 4 Dan y Bryn Avonuc. Recent pruning operations have resulted in some lifting of the crown away from both properties and should branches begin to encroach excessively on building lines in the future, further pruning should be feasible to abate sources of nuisance.

Although it is a rear garden tree, this oak has an upstanding crown and the tracery of branches presents an attractive backdrop to the street-scape. The property contains a number of fine trees but the red oak, being situated close to dwellings and boundaries is the most likely to come into potential conflict. In serving a Tree Preservation Order the extent and nature of pruning can be controlled to ensure that unsuitable pruning is not undertaken that may impact detrimentally on the health and form of the tree.

2.3 A TPO must be the subject of a minimum 28 day consultation period to allow persons interested in the land to make any objections/representations.

2.4 On 23rd March 2022 the City and County of Cardiff 2 Dan Y Bryn Avenue (Radyr) Tree Preservation Order was made. The Order will lapse if it is not confirmed within 6 months from the date on which it came into effect.

2.5 It is within the power of a Local Planning Authority to confirm a TPO where no objections are received to the Order within the statutory 28 day period, or after consideration of any objections/representations that are received.

4. POLICY FRAMEWORK

4.1 Planning Policy Wales, Edition 10

4.2 Technical Advice Notes (TANs): TAN 10 - Tree Preservation Orders

4.3 Local Development Plan (January 2016):

KP15 Climate Change

KP16 Green Infrastructure

EN8 Trees, Woodlands and Hedgerows

4.4 Supplementary Planning Guidance: Green Infrastructure (November 2017)

5. REPRESENTATIONS

5.1 Two letters of objection have been received in response to the making of the Order. The objections to the Order are summarised as follows:

- (i) The service of the TPO has been pre-determined.
- (ii) The process of serving the TPO has been subject to abuse.
- (iii) The tree owner had the tree pruned prior to the request for a TPO being made.
- (iv) The only reason for the TPO is to interfere with a neighbour request to have overhanging branches lopped.
- (v) The objectors should've been consulted on the TPO prior to it being made.
- (vi) There are other trees in the garden where the protected tree is that haven't been protected.
- (vii) There is no pending or existing threat to the tree.
- (viii) The tree is within 3 feet of the boundary and has a large canopy that casts an impenetrable shadow when in leaf.
- (ix) The tree is not easily visible from the road.
- (x) The tree has suffered extensive poor pruning on one side.
- (xi) Red oak is not native and supports little insect or bird life.
- (xii) There are concerns that the tree is unstable and there is rot in a branch.
- (xiii) The tree is 18feet from a main sewer.

6. ANALYSIS

6.1 The objections to the TPO are considered in turn below.

6.2 Grounds (i) (ii) and (v) : The service of the TPO was pre-determined, as is the case with all TPOs. The expediency of serving the TPO is pre-determined by making an assessment on site. If a consultation process took place prior to the service of a TPO, there is a high risk that unsuitable works or tree removal may be undertaken prior to the service of the TPO. The service of a TPO without prior consultation is consequently not an abuse of the process and the TPO is

provisional until confirmed in any event. In this case consultees were allowed until 16th May to make any representations about the provisional TPO.

- 6.2 Ground (iii) The tree owners were within their rights to have the tree pruned prior to the request for the TPO being made and prior to its service. Based on site observations the works were enacted to a good standard to give clearance from the building line.
- 6.3 Ground (iv) TPOs do not necessarily prevent neighbours from having overhanging branches pruned, they just mean that a formal application for consent needs to be made, whereupon the Local Authority assess the implications of the proposed work and issue a decision notice to give or refuse consent for the works. Applicants have a right of Appeal to the Welsh Government should they be dissatisfied with any decision. Where a TPO does not apply, neighbours have common law rights to prune overhanging branches to the legal boundary. In some cases this can impact badly on tree health and structural integrity. So, in this case the 'threat' to the tree is that overhanging branches may be pruned unsuitably. The TPO controls this process to ensure that the tree receives appropriate management.
- 6.4 Grounds (vi) and (vii) - The TPO was not served on other trees at the property because there is no evidence of a threat to them. The 'statement of reasons' emphasise that the Red oak is being protected as it is closest to dwellings/boundaries and the most likely to come into potential conflict.
- 6.5 Ground (viii) - Whilst it is acknowledged that the tree may present a perceived nuisance in terms of its overhang and shading, pruning can help to alleviate perceived nuisance problems in some cases and perceived nuisance alone is not a reason to remove or unsuitably prune an otherwise well-formed tree. It is noted that the gardens are long, so that whilst the canopy may impact part of the garden, other parts of the garden should be free from the influence of the tree in terms of overhang and shading.
- 6.6 Grounds (ix), (x) and (xi) - Although it is a rear garden tree, its size means it forms a significant component of the treescape locally, with an attractive tracery of branches breaking up the outline of buildings. As a large and long-lived tree it has the capacity to contribute to 'canopy cover' locally, bringing wider environmental benefits in addition to visual amenity. It is not a native species and consequently supports few species, but nevertheless is not entirely barren in terms of biodiversity. For example, the aphid *Myzocallis walshii* has followed this North American tree from its native range, into Europe and has been observed to achieve a significant biomass on leaves.
- 6.7 Ground (xii) No evidence has been presented to show the tree is unstable, or that there are hazardous branches. However, if there are concerns in this regard the tree should be subject to inspection by an arboriculturist. If this then results in a recommendation for work, the report should be used as supporting evidence with any application for consent to prune or remove the tree.

Ground (xiii) The proximity of the tree to a sewer is not a reason to withdraw the TPO. Sewer blockages are the responsibility of the relevant utility provider and there is no guarantee that roots will enter sewers. Roots can enter sewers, typically when they're old and damaged, in which case roots may follow a water gradient and gain access via a crack or weak joint. It is more unusual for roots to initiate damage themselves. If such a situation was to arise in the future it can be dealt with as appropriate.

7. LEGAL IMPLICATIONS

- 7.1 The power to make a Tree Preservation Order is contained in the Town and Country Planning Act 1990, s198. Further statutory requirements are contained in the Town and Country Planning (Trees) Regulations 1999 (as amended). A TPO must be the subject of a minimum 28 day consultation period to allow persons interested in the land to make any objections/representations.
- 7.2 Before confirming any Tree Preservation Order the Local Planning Authority must consider any objection/representation made within the 28 day period which are not withdrawn. Having considered any objection/representation received, if the LPA remain satisfied that the tree merits a Tree Preservation Order then it may confirm the Order.
- 7.3 The LPA must notify the owners and occupiers of the land affected by the TPO of their decision and the date of confirmation together with the time within which a challenge may be made to the High Court and the grounds on which such a challenge may be made.
- 7.4 The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
- 7.5 In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2019-22 <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf> When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
- 7.6 The well-being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the

impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them.

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

7.7 The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of ‘protected characteristics’. The ‘Protected characteristics’ are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.

8. CONCLUSION

8.1 The representations made with regard to the making of the City and County of Cardiff 2 Dan Y Bryn Avenue (Radyr) Tree Preservation Order 2022 have been considered and it is concluded that the provisional Tree Preservation Order should be confirmed without modifications and the affected parties notified accordingly.

9. RECOMMENDATION

9.1 It is recommended that the City and County of Cardiff 2 Dan Y Bryn Avenue (Radyr) Tree Preservation Order 2022 be confirmed with no modifications.

Background Documents:

City and County of Cardiff 2 Dan Y Bryn Avenue (Radyr) Tree Preservation Order 2022 (Appendix A)

Letter of objection dated 21st April 2022 (Appendix B)

APPENDIX A

CARDIFF COUNTY COUNCIL

TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999

TOWN AND COUNTRY PLANNING ACT 1990

City and County of Cardiff 2 Dan y Bryn Avenue (Radyr) Tree Preservation Order 2022

County Council of the City and County of Cardiff, in exercise of the powers conferred on them by sections 198 [201] and 203 of the Town and Country Planning Act 1990 hereby make the following Order

Citation

1. This Order may be cited as

City and County of Cardiff 2 Dan y Bryn Avenue (Radyr) Tree Preservation Order 2022

Interpretation

2. In this Order "the authority" means County Council of the City and County of Cardiff and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on *23rd March 2022.*

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)(1) [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, 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 Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

5.(1) Nothing in article 4 shall prevent

I HEREBY CERTIFY this to be a true and accurate copy of the original document

Signed

Diana Frie


- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary
 - (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (aa) the cutting down, topping, lopping or uprooting of a tree where
 - that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);
- (ab) the cutting down, topping, lopping or uprooting of a tree where
 - that work is urgently necessary for national security purposes;
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of
 - any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where
 - that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree

by or

at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Development Order) 1995;

(f) the cutting down, topping, lopping or uprooting of a tree
by or

at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991; or

(g) without prejudice to Section 198(6)(b), the felling or lopping of

a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989

(2) In paragraph (1), "statutory undertaker" means any of the following

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
- a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewerage undertaker,
- the Civil Aviation Authority, a body acting on behalf of that Authority or a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000,
- a universal postal service provider in connection with the provision of a universal postal service.

Applications for consent under the Order

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application.

Application of provisions of the Town and Country Planning Act 1990

7.(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

Directions as to replanting

8.(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9.(1) If, on a claim under this article, a person establishes that loss or

damage has been caused or incurred in consequence of

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article

- (a) if more than 12 months has elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the National Assembly for Wales, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the National Assembly for Wales against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application

for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article

"development value" means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

Application to trees to be planted pursuant to a condition

[10.] In relation to the tree[s] identified in the first column of Schedule 1 by the letter "C", being [a tree] [trees] to be planted pursuant to a condition (being 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 that tree/s is/are planted

Dated 23rd March 2022

54193

EXECUTED AS A DEED by affixing
THE COMMON
SEAL OF THE COUNTY COUNCIL
OF THE CITY AND COUNTY
OF CARDIFF
in the presence of -



Shree Gans

.....
AUTHORISED SIGNATORY

CONFIRMATION OF ORDER

This Order was confirmed by the County Council of the City and County of Cardiff without modification on the

.....
Authorised by the Council to sign in that behalf

VARIATION OF ORDER

[This Order was varied by the County Council of the City and County of Cardiff on the under the reference number

.....
Authorised by the Council to sign in that behalf]

REVOCAION OF ORDER

[This Order was revoked by the County Council of the City and County of Cardiff on the under the reference number

.....
Authorised by the Council to sign in that behalf]

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on Map	Description	Situation
T1	Red Oak	Rear garden of 2 Dan y Bryn Avenue close to boundary with 4 Dan y Bryn Avenue.

Trees specified by reference to an area (within a dotted black line on the map)

Reference on Map	Description	Situation
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Groups of trees (within a broken black line on the map)

Reference on Map	Description	Situation
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Woodlands (within a continuous black line on the map)

Reference on Map	Description	Situation
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SCHEDULE 2

PART I

PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED

WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
<p>Section 69 (registers)</p>	<p>(a) In subsection (1)</p> <p style="padding-left: 40px;">(i) omit:-</p> <p style="padding-left: 80px;">", in such manner as may be prescribed by a development order,"</p> <p style="padding-left: 80px;">"such" in the second place where it appears, and</p> <p style="padding-left: 80px;">"as may be so prescribed"; and</p> <p style="padding-left: 40px;">(ii) substitute "matters relevant to tree preservation orders made by the authority" for "applications for planning permission".</p> <p>(b) In subsection (2)</p> <p style="padding-left: 40px;">(i) after "contain" insert ", as regards each such order"; and</p> <p style="padding-left: 40px;">(ii) for paragraphs (a) and (b) substitute</p> <p style="padding-left: 80px;">(a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and</p> <p style="padding-left: 80px;">(b) a statement as to the subject matter of every appeal under the order and of the date and nature of the National Assembly for Wales determination of it.".</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
<p>Section 70 (determination of applications: general)</p>	<p>(a) In subsection (1)</p> <p style="padding-left: 40px;">(i) substitute</p>

<p>considerations)</p>	<p>"Subject to subsections (1A) and (1B), where" for "Where";</p> <p>"the authority" for "a local planning authority";</p> <p>"consent under a tree preservation order" for "planning permission" where those words first appear; and</p> <p>"consent under the order" for "planning permission" in both of the other places where those words appear;</p> <p>(ii) after "think fit", insert</p> <p>"(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and</p> <p>(iii) omit "subject to sections 91 and 92, ."</p> <p>(b) After subsection (1) insert</p> <p>"(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting)."</p> <p>(c) Omit subsections (2) and (3).</p>
<p>Section 75 (effect of planning permission)</p>	<p>(a) In subsection (1) substitute</p> <p>(i) "Any" for the words from "Without" to "any";</p> <p>(ii) "consent under a tree preservation order" for "planning permission to develop land";</p> <p>(iii) "the consent" for "the permission"; and</p> <p>(iv) "the land to which the order relates" for "the</p>

	land".
	(b) Omit subsections (2) and (3).
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute</p> <ul style="list-style-type: none"> (i) "the authority" for "a local planning authority"; (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear; (iii) "consent under such an order" for "planning permission" in the second place where those words appear; (iv) for paragraph (c) substitute <ul style="list-style-type: none"> "(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,." <p>(b) Omit subsection (2).</p> <p>(c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute</p> <p>"in writing addressed to the National Assembly for Wales, specifying the grounds on which the appeal is made; and such notice shall be served</p> <ul style="list-style-type: none"> (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the National Assembly for Wales may allow; (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have

	<p>informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”.</p> <p>(d) For subsection (4), substitute</p> <p>”(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).“.</p> <p>(e) For subsection (5), substitute</p> <p>”(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.“.</p>
<p>Section 79 (determination of appeals)</p>	<p>(a) In subsections (1) and (2), substitute ”the authority“ for ”the local planning authority“.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute</p> <ul style="list-style-type: none"> (i) ”section 70(1), (1A) and (1B)“ for ”sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5“; (ii) ”consent under a tree preservation order“ for ”planning permission“; and (iii) ”the authority“ for ”the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of sections 65 or 71.“. <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after ”section 78“.</p>

PART II
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS
ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

- (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.
- (2) The register shall contain, as regards each such order:-
- (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
 - (b) a statement as to the subject matter of every appeal under the order
and of the date and nature of the National Assembly for Wales determination of it.

.....

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order:-
- (a) they may grant consent under the order, either unconditionally
or
subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
 - (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such

felling is carried out in the course of forestry operations (but may give directions for securing replanting).

.....

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) ensure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

- (1) Where the authority:-
- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
 - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
 - (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
 - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of eight weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the National Assembly for Wales

.....

- (3) Any appeal under this section shall be made by notice in writing addressed to the National Assembly for Wales, specifying the grounds on which the appeal is made; and such notice shall be served:-
- of (a) in respect of a matter mentioned in any of paragraphs (a) to (c) subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the National Assembly for Wales may allow;
 - that (b) in respect of such a failure as is mentioned in paragraph (d) of subsection, at any time after the expiration of the period

mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

Section 79

(1) On an appeal under section 78 the National Assembly for Wales may:-

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to it in the first instance.

(2) Before determining an appeal under Section 78 the National Assembly for Wales shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the National Assembly for Wales for the purpose.

.....

(4) Subject to subsection (2), the provisions of Section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the National Assembly for Wales under Section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the National Assembly for Wales on such an appeal shall be final.

.....

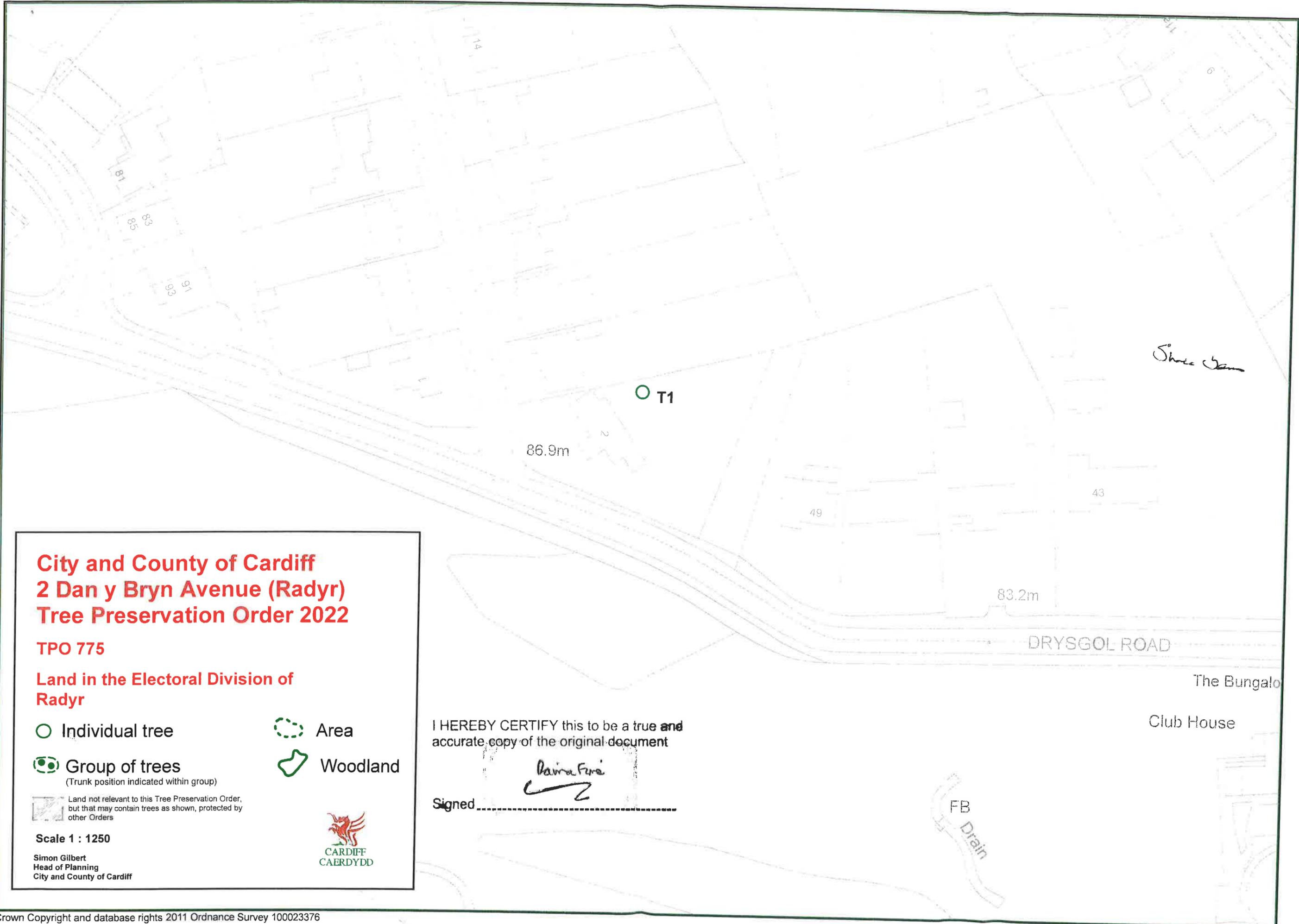
(7) Schedule 6 applies to appeals under Section 78

City and County of Cardiff 2 Dan y Bryn Avenue (Radyr) Tree Preservation Order 2022

Statement of Reasons

This red oak is a fine example of the species, with a well-balanced and relatively upswept crown. Branch and bud density is normal, indicating good health, with no indications of die-back. It occupies a position close to the rear patio at 2 Dan y Bryn Avenue and is close to the boundary with 4 Dan y Bryn Avenue. Recent pruning operations have resulted in some lifting of the crown away from both properties and should branches begin to encroach excessively on building lines in the future, further pruning should be feasible to abate sources of nuisance.

Although it is a rear garden tree, this oak has an upstanding crown and the tracery of branches presents an attractive backdrop to the street-scape. The property contains a number of fine trees but the red oak, being situated close to dwellings and boundaries is the most likely to come into potential conflict. In serving a Tree Preservation Order the extent and nature of pruning can be controlled to ensure that unsuitable pruning is not undertaken that may impact detrimentally on the health and form of the tree.



**City and County of Cardiff
2 Dan y Bryn Avenue (Radyr)
Tree Preservation Order 2022**

TPO 775

**Land in the Electoral Division of
Radyr**

 Individual tree

 Area

 Group of trees
(Trunk position indicated within group)

 Woodland

 Land not relevant to this Tree Preservation Order,
but that may contain trees as shown, protected by
other Orders

Scale 1 : 1250

Simon Gilbert
Head of Planning
City and County of Cardiff



I HEREBY CERTIFY this to be a true and accurate copy of the original document

Raina Fera

Signed _____

APPENDIX B

4 Danybryn Avenue
Radyr
Cardiff, CF15 8DB

21st April 2022

Development Management

County Hall

Cardiff CF10 4UW

Dear Sir/Madam ,

Tree Preservation Order, 23rd March 2022

2 Danybryn Avenue Radyr. Ref EB/TPO/775

Objection to order

This letter supersedes our email of the 14th April 2022

We refer to your notice of 12 April 2022. We object to the making of the above order in respect of the tree described in the order marked T1 on the plan.

We believe that the LPA have not acted properly in making this order and that the process has been subject to abuse.

The owners of no 2 had carried out significant pruning to the tree (Dec 21 2021) in question before applying for a TPO. The correct procedure (if they had any true concern for the tree) would have been to apply for the TPO initially and then requested permission to prune. As it is, the only reason to apply for the TPO was to interfere with our request to have some of the branches overhanging

trimmed. A fraction of the work carried out by no 2. We believe that this is an abuse of the system. It also raises the question of independence and our statutory right to prune branches overhanging our boundary.

The Statement of Reasons suggests that pruning of the tree was undertaken to benefit both properties. This was not the case. No pruning was undertaken on the branches of the tree overhanging our property, even though we had previously requested that this be carried out. We were surprised that this went unnoticed by the LPA. We were told by no 2 that we would be denied access to no 2 for trimming.

We would have expected to have been consulted prior to any order being made. We have lived at no 4 since the mid seventies, during which time there have been five different owners at no 2. The tree has grown significantly during the almost 50 years we have lived at this address. At no time have we requested that the tree be felled. We have in recent years requested that certain branches overhanging our property be shortened. In view of the fact that neither we nor any others in the neighbouring properties have requested its removal and presuming that the owners of no 2 also do not wish to see its removal, we maintain that there is no need or requirement to issue a TPO at this time.

We note with interest your comment that there are a number of other fine trees on the property of no 2 (eg a cedar and a ginkgo. Prominent on street scape). How is it that the Coalters have chosen to place an order solely on this tree (rear garden) and not any of the other trees on the property of the same age. This appears very selective.

In view of the fact that there was no pending or existing threat to the oak at no 2 we cannot understand why you chose not to consult with us prior to the order. If you had done so then you could have viewed the tree from our garden. We would also have been able to copy you in on our email of the 10 January 2022 addressed to yourselves regarding pruning of the tree and hedge etc which remained unanswered until 14th April!

When we first came to live in our house in the 1970's the trees in no 2 were much smaller and did not overhang our property at all, with no reduction in sunlight for the first 25 years. The trees in no 2 were all planted in the 1950's when the house was built. The tree now casts an impenetrable shadow when in leaf over our garden for much of the day and the amount of sunlight we are able to enjoy is much reduced, which has a negative effect on our wellbeing and enjoyment of our garden. The tree is within 3 feet of our boundary with a large canopy (see Google Earth photo). There is no historical footprint of the tree predating the house.

We take issue with remarks in the Statement of Reasons regarding the street-scape. As you rightly point out the tree is in the rear garden and is not easily visible from the road. We also take issue with remarks concerning the upstanding crown in that the tree has suffered from extensive poor pruning on the one side (ie no 2). Red oaks are not native to the UK. The tree supports little insect or bird life and no nests have ever been seen in the tree. (G R Clyne long time member of RSPB). If you have contrary information please advise.

Mrs Coalter who, previously, worked for Cardiff Council, as part of the Cardiff Management team (housing Development) is inappropriately using the TPO system to prevent reasonable trimming of this tree, whilst she has had the branches chopped in her

garden. I do not believe that the TPO system is designed for this misuse. We appreciate that the Coalters did not plant the tree, but obviously the tree is in the wrong place as it on their northern boundary, whereas this type of tree should be planted on the southern boundary to create shade. All the shade created by this tree is cast onto our garden and not that of no 2.

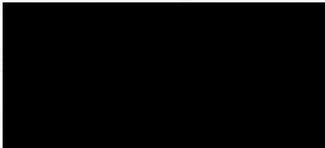
Was the pruning at no 2 undertaken because the branches were diseased/dangerous? What about branches falling on our garden? We are concerned that the unbalanced pruning of the tree may have made it unstable. It needs to be viewed by an independent expert to advise on balance. One of the pruned branches shows obvious signs of rot. This has not been picked up by the LPA officer. The tree has not yet reached maturity and we are concerned as to its ultimate size and proximity to the main sewer (18ft). The sewer is well within the tree's canopy. Red oak appears to be one of the trees most likely to cause problems with drains.

We would like to know how you failed to respond to our email voicing concerns (email acknowledged by yourselves) yet managed to make the TPO (with all the time and effort that took). And why did it take so long to notify us of the passing of the order (3 weeks, which coincided with Easter?). Please inform us as on what date did you receive the request to issue the TPO. We received notice on the 13th April and therefore require statutory notice of 28 days from the 13th. I understand that the LPA should apply good practise by considering establishing non-statutory procedures to demonstrate that their decisions at the confirmation stage are taken in an even handed and open manner.

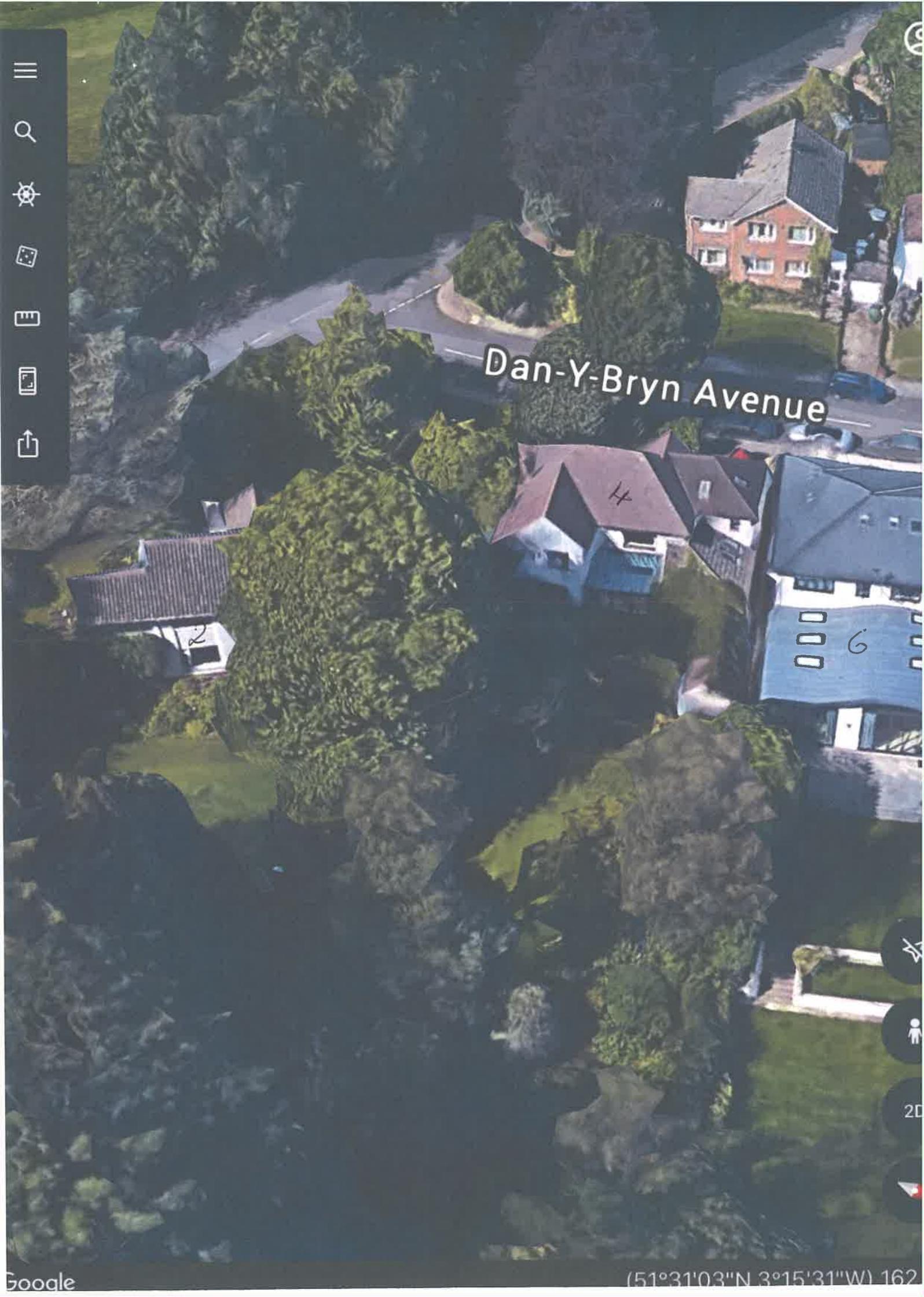
We further appreciate that we have raised a number of issues as regards the tree but would point out our interest has been raised by

the making of this order. We were surprised and offended by the actions our neighbours who have only recently taken up residence. This matter could have been resolved quickly and amicably if our neighbours had consulted with us in advance – all we were requesting was a very limited amount of trimming. We believe that the TPO should be withdrawn until you have visited the tree and gardens in summer so that you can make an informed and unbiased judgement

Yours faithfully


G R Clyne and S M Clyne

PS Please be good enough to let us know whether the tree in question is a Northern red oak or a Southern red oak. We have not noticed any acorns falling from this tree.



Dan-Y-Bryn Avenue

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