

## **TOWN AND COUNTRY PLANNING ACT 1990**

The Tree Preservation Order DFTPO245 – Clearwell Farm, Clearwell.

The Forest of Dean District Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

### **1. Citation**

This Order may be cited as The Tree Preservation Order DFTPO245, Clearwell Farm, Clearwell.

### **Interpretation**

- 1.1. In this Order “the authority” means the Forest of Dean District Council.
- 1.2. 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.

### **2. Effect**

- 2.1. Subject to article 4, this Order takes effect provisionally on the date on which it is made.
- 2.2. 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, 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.

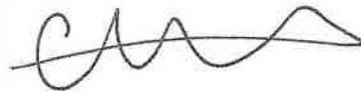
### **3. Application to trees to be planted pursuant to a condition**

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 day 5<sup>th</sup> day April 2019

The Common Seal of the FOREST OF DEAN DISTRICT COUNCIL was hereunto

Affixed in the presence of

A handwritten signature in black ink, consisting of a cursive 'C' followed by several loops and a horizontal line.

**CONFIRMATION OF ORDER**

This Order was confirmed by the FOREST OF DEAN DISTRICT COUNCIL without modification on the 13 day of August 2019

OR

This Order was confirmed by the FOREST OF DEAN DISTRICT COUNCIL, subject to the modifications indicated by broken black line on the map, on the day of

Signed on behalf of the FOREST OF DEAN DISTRICT COUNCIL

*P.M. Wini*

Authorised by the Council to sign in that behalf

**DECISION NOT TO CONFIRM ORDER**

A decision not to confirm this Order was taken by the FOREST OF DEAN DISTRICT COUNCIL on the day

Signed on behalf of the FOREST OF DEAN DISTRICT COUNCIL

.....

Authorised by the Council to sign in that behalf

**VARIATION OF ORDER**

This Order was varied by the FOREST OF DEAN DISTRICT COUNCIL on the day of by a variation order under reference number a copy of which is attached

Signed on behalf of the FOREST OF DEAN DISTRICT COUNCIL

.....

Authorised by the Council to sign in that behalf

**REVOCAION OF ORDER**

This Order was revoked by the FOREST OF DEAN DISTRICT COUNCIL on the day of

Signed on behalf of the FOREST OF DEAN DISTRICT COUNCIL

.....

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	Ash	SO579084 Entrance)	(North of
T2	Ash	SO579084 Entrance)	(South of

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

Reference on Map	Description	Situation
A1	Birch, Alder, Ash, Sorbus, Hawthorn, Hazel, Field Maple	SO574086
A2	Birch, Cherry, Willow, Beech, Alder	SO573085

**Groups of trees  
(within a broken line on the map)**

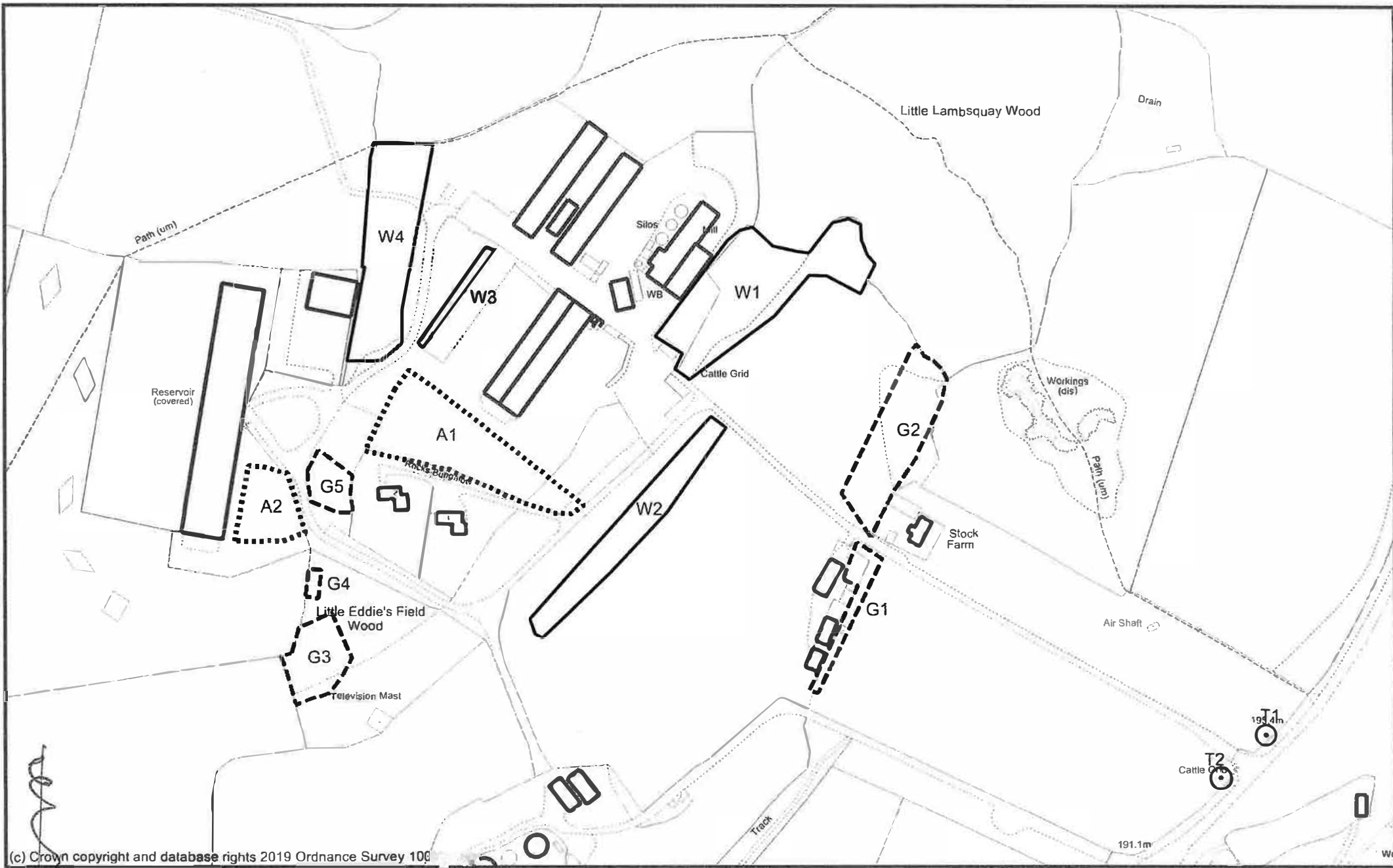
Reference on map	Description (including number of	Situation trees in the group)
G1	2 Elm, 2 Ash, 1 Hazel, 2 Hawthorn	SO577085
G2	3 Beech, 3 Ash, 5 Oak 1 Whitebeam	SO577086
G3	1 Beech, 2 Elm, 2 Ash, 2 Lime	SO574084
G4	2 Ash	SO574085
G5	10 Ash, 1 Elm	SO574085

**Woodlands  
(within a continuous black line on the map)**

Reference on map	Description	Situation
W1	Ash, Cherry, Hazel, Oak, Beech, Yew	S0576086

W2	Crab Apple, Silver Birch, Oak, Cherry, Lime, Ash, Willow	SO575085
W3	Ash	SO574086
W4	Hazel, Sycamore, Oak, Ash, Cherry, Lime	SO574087

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**Tree Preservation Order  
DFTPO245  
Clearwell Farm, Clearwell**

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**Scale: 1:2500**



# Report for a Tree Preservation Order

**DFTPO245, Clearwell Farm, Clearwell**

## Introduction

A Tree Preservation Order is recommended for two individual trees, five groups of trees, two areas of trees and four woodlands at Clearwell Farm (see Appendix A – B for TPO plan and photographs). The trees should be referred to as:

T1 – Ash

T2 – Ash

G1 – 2 Elm, 2 Ash, 1 Hazel, 2 Hawthorn

G2 – 3 Beech, 3 Ash, 5 Oak, 1 Whitebeam

G3 – 1 Beech, 2 Elm, 2 Ash, 2 Lime

G4 – 2 Ash

G5 – 10 Ash, 1 Elm

A1 – Birch, Alder, Ash, Sorbus, Hawthorn, Hazel, Field Maple

A2 – Birch, Cherry, Willow, Beech, Alder

W1 – Ash, Cherry, Hazel, Oak, Beech, Yew

W2 – Crab Apple, Silver Birch, Oak, Cherry, Lime, Ash, Willow

W3 – Ash

W4 – Hazel, Sycamore, Oak, Ash, Cherry, Lime

Tree Preservation Order TPO240 was confirmed in October 2018 covering 2 individual trees, 2 groups of trees and 9 woodlands. A judicial review claim against the TPO on procedural and technical matters has since been brought forward.

It is proposed to make a new Order and simultaneously revoke TPO240, giving opportunity for public speaking at Planning Committee in the event that any objections to the provisional Order are received.

The Claimant requests the cancellation of five woodlands and two groups in a new Order and to reclassify four woodlands as individual or groups of trees.

A further site visit was conducted in light of this.

## Desk Based Assessment

DFTPO240 currently protects two individual trees, two groups of trees and nine woodlands. It was confirmed as a modified Order, in response to some of the objections received to the Order in its provisional form.

Objections included, among others, concerns over the use of the woodland classification where it was considered trees could instead be listed individually or in groups, and concerns over the limited visibility of some of the protected trees from public spaces. The Claimant also has concerns regarding grazing within areas

classified in the TPO as woodland, due to the risk of saplings and new growth being grazed.

A proposed plan was submitted to the Council showing a much reduced Order. Some of the changes requested had already been made in the confirmation of TPO240, as agreed by the Planning Committee.

Planning applications P1191/18/FUL for the retrospective erection of a poultry building at Clearwell Farm and P1038/18/FUL for the erection of a poultry house control room, plant room, siting of two feed bins, backup generator, water tank and two gas tanks with construction of a concrete apron and access road at Clearwell Farm (retrospective) are currently pending consideration and are due to be considered by the Planning Committee at the April meeting.

### **Site Based Assessment**

Site visits were conducted for the making and confirmation of DFTPO240. A further site visit was conducted following the judicial review claim against the Order and a request to agree a reduced Order.

The woodland classification was used in TPO240 where it was considered appropriate to support future management in line with generally accepted woodland management practises and protect saplings and new growth emerging within those areas. It was discussed on site however that some of the trees classified as woodland in the TPO could be viewed as providing contribution as groups of trees, rather than having the visual appearance, currently, of a woodland. Two further woodlands have therefore been re-classified as groups.

An attempt to group trees in woodlands W5 and W8 was made, however it was considered that groups in these locations would be more difficult to enforce due to having to specify the numbers of each species. In discounting any trees in a visibly poor condition this would reduce clarity on which trees are actually covered. Using an area classification, whilst recommended in the NPPG only for short term use, allows trees within these areas and of the species listed to be considered as a collective and will not cover any new growth following the making of the Order, abating the Claimant's concerns in these areas over grazing animals.

It was not considered appropriate for any other woodland areas to be re-classified.

Five groups of trees were listed and two areas, keeping four of the woodlands as previously confirmed and the two individual Ash trees at the entrance to the farm.

### **Consultation Responses**

The Claimant's arboricultural consultant was consulted on the Council's proposed provisional TPO plan and species list and comments are summarised below:

The amendments of trees referred to as 'woodland' in TPO240 to groups or areas is appreciated in that it helps the tenant farmer and landowner to avoid accidental contravention of the TPO when grazing animals.

The proposed TPO still contains several elements which are fundamentally opposed:



- W2 and W3 are not woodlands. They could be fairly described as linear groups of trees but their small size and intended purpose mean that it is absurd to refer to them and protect them as woodlands
- W2 is located on grazed land so there are issues of unintentional contravention of the TPO by mammals destroying protected saplings. It is unreasonable to require the landowner and farmer to exclude animals from this area
- W3 has very limited public visibility
- Areas A1 and A2 contain trees that cannot be seen from any public vantage point and lack any kind of merit that would distinguish them as having high amenity value even if visible. The PPG states quite clearly that 'Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public'. It is quite clear these trees do not meet this test.

In light of the above, it is understood the amended TPO will still be objected to so it is urged that the proposed TPO is reconsidered.

### **Discussion**

**Visibility:** Trees and woodlands identified are visible from Lambsquay road and footpaths to the north and west as well as in the wider landscape context.

**Individual Impact:** Trees on site are of mixed ages and species, some of which have been planted and some of which are self-seeded. Trees have on the most part been identified as groups, areas or woodlands, with the exception of T1 and T2 at the entrance to the farm and are considered to contribute significantly and have further potential to contribute to the character of the area.

**Wider Impact:** The trees and woodlands play a key role in landscaping / screening and assimilating the existing permitted development into the surrounding landscape which is in a high quality landscape area.

**Visible infrastructure constraints:** Access road for HGV's. No other observations.

**Expediency:** A judicial review claim has been made against TPO240. In the event that the judicial review goes to trial and the Claimant's case is successful, the TPO may be quashed, leaving the trees without the benefit of protection.

The Council seeks to revoke TPO240 and simultaneously make a new provisional Order, TPO245 Clearwell Farm to cover the same trees whilst re-classifying some of the woodlands as groups or areas of trees to address some of the concerns raised by the Claimant. Public speaking will be allowed at a Planning Committee meeting for the confirmation of the new TPO should any objections be made to the new provisional TPO.

A TPO is considered expedient.

**Conclusion of Discussion:** A Tree Preservation Order is recommended for two individual trees, five groups of trees, two areas and four woodlands in the interests of safeguarding public amenity.

**Alternatives to placing a Tree Preservation Order**

Do nothing. The existing Order, TPO240 currently protects the trees in question. There is a potential for the current TPO to be quashed if the Claimant's case is to be considered favourably at trial. In such a case, the Council's permission will not be required prior to works to or the removal of the trees if the TPO is not replaced. A felling license would be required however for the removal of larger quantities of timber.

**Recommendation**

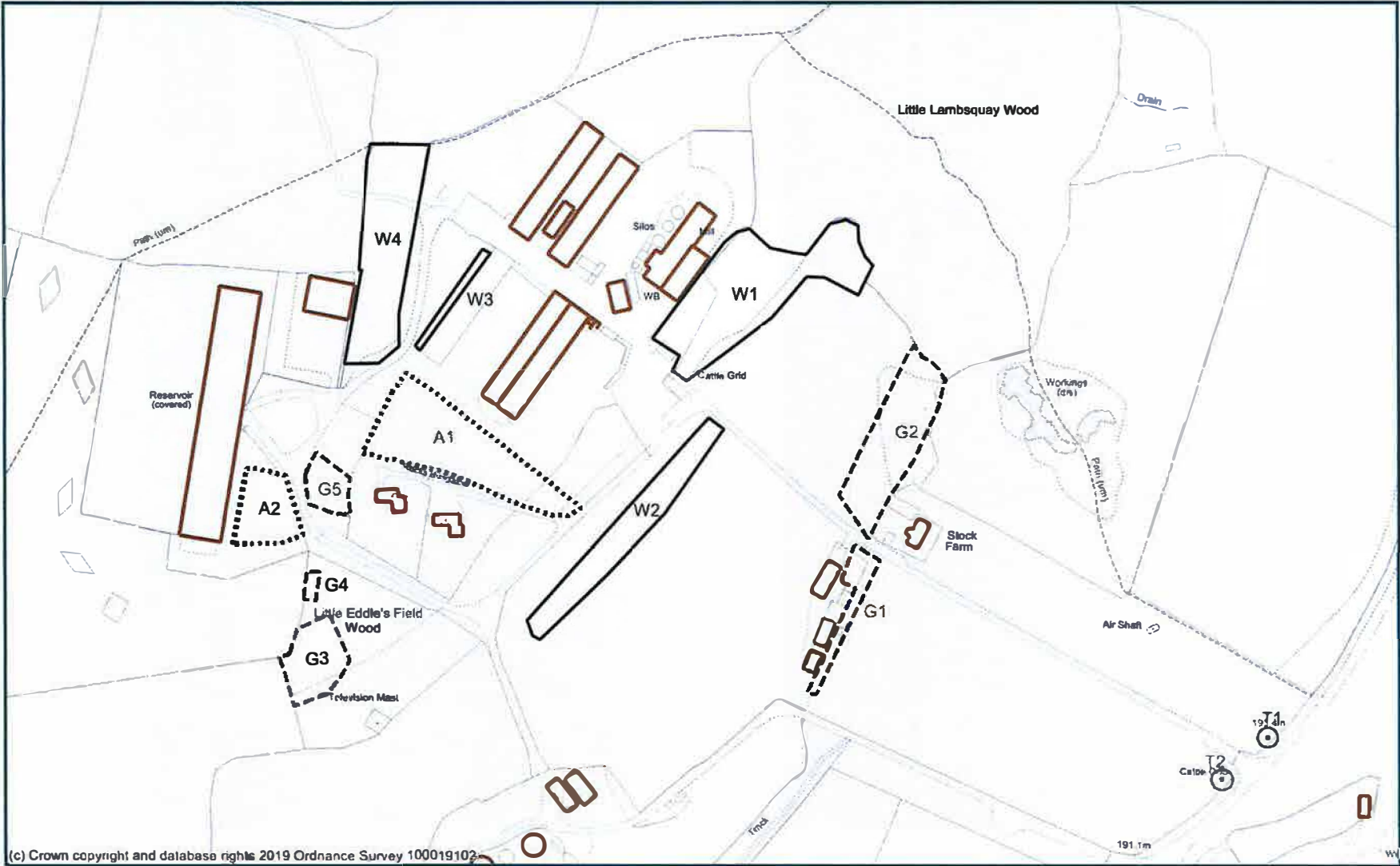
That provisional Tree Preservation Order DFTPO245 Clearwell Farm, Clearwell is made and TPO240 Clearwell Farm, Clearwell is revoked.

Signed: *E. J. Hughes* .....

Printed: *Emma Hughes* .....

Agreed / ~~Disagree~~\*: ..... Date: *2 April 2019* .....

Appendix A – TPO Plan



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**Tree Preservation Order  
DFTPO245  
Clearwell Farm, Clearwell**

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Appendix B – Photographs



Part of A1



Part of A1



A2



G2



G2



G3



G4