

## Bath & North East Somerset Council

MEETING:	Development Management Committee
MEETING DATE:	13th December 2017
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (Rosemere, Homefield Road, Saltford No.10) Tree Preservation Order 2017
WARD:	Saltford

### AN OPEN PUBLIC ITEM

#### List of attachments to this report:

Tree Preservation Order map

Letter of objection dated 20<sup>th</sup> August 2017

Letter to objector from Tree and Landscape Officer 01<sup>st</sup> September 2017

Letter to objector from Tree and Landscape Officer 30<sup>th</sup> October 2017

Email confirming Objection 16<sup>th</sup> November 2017

## 1.0 THE ISSUE

- 1.1 An objection letter and an email confirming this objection have been received from the owner of the neighbouring Property (Hillcrest) following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (Rosemere, Homefield Road, Saltford No.10) Tree Preservation Order 2017 ("the TPO").
- 1.2 The TPO was provisionally made on the 24<sup>th</sup> July 2017 to protect three trees namely T1 a Copper Beech, T2 a Wellingtonia and T3 a Copper Beech within the grounds of the property shown on the accompanying map. These trees are considered to make a contribution to the landscape and visual amenity of the locality.

## 2.0 RECOMMENDATION

- 2.1 The Development Management Committee is asked to confirm the Tree Preservation Order with a minor modification to the title of the Order to Bath and North East Somerset Council (Rosemere, Homefield Road, Saltford No.11).

### **3.0 FINANCIAL IMPLICATIONS**

- 3.1 Financial: Under the law as it stands the owner of the trees cannot claim compensation from the Council for making them the subject of a tree preservation order. However if a tree is covered by a tree preservation order and the Council refuses an application to fell the tree, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.
- 3.2 Staffing: None.
- 3.3 Equalities: In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.
- 3.4 Economic: None.
- 3.5 Environment: The trees which are the subject of this report make an important contribution to visual amenity and landscape in the local area.
- 3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services. Officers from Development Management will need to take account of the trees when considering any application for development or alterations on the site which might affect it.

### **4.0 THE REPORT**

#### **4.1 Background**

- 4.2 Following a desktop review and visit to the site of planning application 17/03084/FUL on the 17th July 2017 the Tree and Landscape Officer considered that the development proposals represented a foreseeable threat to the trees. He therefore carried out TEMPO assessments on the three Trees (Tree Evaluation Method for Preservation Orders) all of which scored sufficiently highly to indicate that they merited further protection under a Tree Preservation Order (TPO).
- 4.3 The trees are readily visible from adjacent roads and footpaths and are skyline features as a result of the local topography. The trees are located towards the top of the western valley slope of the River Avon.
- 4.4 The trees are therefore considered to provide an important visual amenity and to contribute to the landscape character of the locality.

#### **4.5 Responses to the Tree Preservation Order**

- 4.6 The Council is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.
- 4.7 One letter of objection together with a later confirmatory email have been received from the owner of the neighbouring Property (Hillcrest) stating that they object to the "*Tree Preservation Order TPO in so far as it relates to the copper beech tree identified as T1 on the schedule.*" As a result of this objection the decision on

whether the TPO should be confirmed or not must be made by Councillors. Committee Members are advised to read the letter of objection.

4.8 The main objections are summarised below.

- i) That the TPO would have been made many years ago if the stated reason for the making of the TPO were true namely "*the trees provide important visual amenity and contribute towards the landscape setting and character of the locality*".
- ii) That the Copper Beech tree T1 blights the objector's property and blocks light into their home and garden.
- iii) That the size and proximity of the tree to the objector's home increases their building insurance premiums.
- iv) That the tree affects the view from the objector's property.

4.9 The objections to the Tree Preservation Order outlined in section 4.8 above have been considered by the Officer and the following comments are made in respect of each point:

- i) The trees were offered a measure of protection under section 211 of the Town and Country Planning Act 1990 which requires, with certain exceptions, six weeks notice to be given to the local planning authority of any intention to carry out works to trees within a Conservation Area whose main stem is over 75mm diameter at 1.5m height above ground level. Tree Preservation Orders on trees within Conservation Areas are therefore often made on a reactive basis to a known or foreseeable treat to the trees in question. In this case planning permission for planning application 17/03084/FUL would have allowed demolition and construction works within the canopy spread and Root Protection Areas of these trees which may have had significant adverse impacts upon them. The fact that the Tree Preservation Order was only recently made therefore has no bearing on the value of the contribution the trees make to visual amenity, landscape setting and landscape character.
- ii) A TPO does not prevent management of the trees to manage light levels but an application would be necessary. Applications for works which are supported with sound arboricultural justification and following the recommendations contained within BS3998:2010 Tree work – recommendations will be favourably received. Any reputable tree surgeon will be familiar with the application process and amount and quality of information required.
- iii) The owner has not provided any evidence or documentation to support their statement that the size and proximity of the tree to the objector's home increases their building insurance premiums. The principle of caveat emptor applies given that the objector states that he has been in the property for eleven years and the tree is considerably older than this.
- iv) Historic aerial photographic evidence (2014, 2006, 2005, 1999, 1991) shows that the tree has been of a substantial size for some time and therefore it has been blocking views from the objectors property for some time. It is a long establish principle of English law that an owner cannot protect the view that they have from their land; the rationale being that it would unduly limit the freedom of

the landowner's neighbours to enjoy the benefits and freedom to develop their own land.

#### **4.10 Relevant History**

- 4.11 17/03084/FUL – Construction of a new dwelling & gate house following the demolition of an existing dwelling -PENDING DECISION

#### **5.0 LEGAL AND POLICY FRAMEWORK**

##### Tree Preservation Order

- 5.1 A Tree Preservation Order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a Tree Preservation Order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

- 5.2 The law on TPOs is in the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England ) Regulations 2012 which came into effect on 6<sup>th</sup> April 2012 .

- 5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

- 5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands. This is in keeping with Government guidance, and takes account of the visual impact of trees and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.

- 5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the trees. The TPO was made on 24<sup>th</sup> July 2017 and took effect immediately and continues in force for a period of six months (24 January 2018).

##### Planning Policy

- 5.6 Bath and North East Somerset Placemaking Plan 2015

272. 'Trees are an important part of our natural life support system: they have a vital role to play not just in the sustainability of our urban and rural areas, but as an important component of green infrastructure networks. They benefit:

the local economy – creating potential for employment, providing a sustainable source of compost and biofuels and the raw materials for businesses, encouraging inward investment, bringing in tourism and adding value to property.

the local environment - by reducing the effects of air pollution by

removing sulphur dioxide, ozone, nitrogen oxides and particulates and reducing storm water run-off and soil erosion, acting as carbon sinks and producing oxygen; reducing energy consumption through moderation of the local climate by providing shelter and shade and reducing glare, reflection and wind speeds. They can provide screening and privacy or emphasize views and architecture. They provide a wide range of wildlife habitats.

the health and wellbeing of our community – by providing shade from harmful ultra-violet radiation and improving the visual quality of our landscape and our sense of wellbeing. Studies have shown that the calming effect of trees can reduce stress levels and improve recovery time after surgery. Trees and woodlands provide opportunities for recreation and education.’

273. ‘Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing.’

274. ‘Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree.’

## 6.0 CONCLUSION

- 6.1 The trees contribute towards the local visual amenity and landscape character.
- 6.2 Confirmation of the TPO would help to support the retention of the trees and would ensure that their contribution is duly considered in the current and any subsequent planning application which may be submitted.
- 6.3 An application supported by sound arboricultural reasons for pruning or felling as the need arose in the future can be made under the TPO. The Council will then be able to condition the quality of the workmanship or replacement planting as appropriate.
- 6.4 In keeping with the Council’s commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO with a minor modification to the title of the Order to Bath and North East Somerset Council (Rosemere, Homefield Road, Saltford No.11).

<b>Contact person</b>	Colm O’Kelly 01225 477485
<b>Background papers</b>	The provisional Tree Preservation Order documentation and correspondence can be viewed by contacting Colm O’Kelly on the above number.

**Scale 1:1000**  
**Date: July 2017**  
**Plan No: 549/10;**  
**17/00004/TPO**  
**Grid Ref: ST 686671**

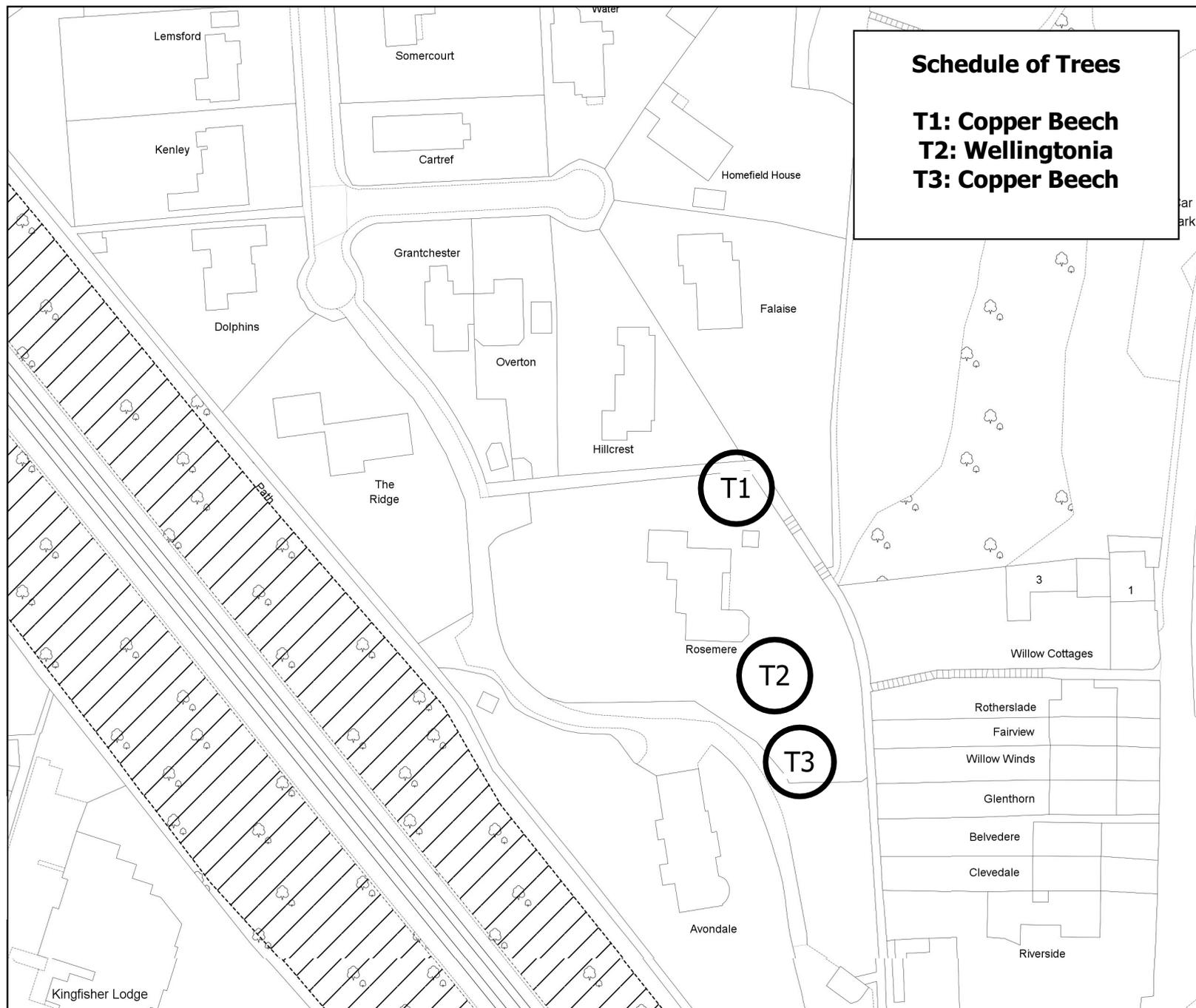
**Title:**  
**TOWN AND COUNTRY**  
**PLANNING ACT 1990**  
**BATH AND NORTH EAST**  
**SOMERSET COUNCIL**

**( Rosemere, Homefield**  
**Road, Saltford No.10)**

**TREE PRESERVATION**  
**ORDER 2017**



**Mark Reynolds, Group Manager**  
**Development Management**





*"Hillcrest"*  
Homefield Road  
Saltford  
Bristol  
BS31 3EG



Mark Reynolds Esq  
Group Manager (Development Management)  
Bath and North East Somerset Council  
Lewis House  
Manvers Street  
Bath  
BA1 1JG

20<sup>th</sup> August 2017

Dear Sir

Re: Bath and North East Somerset Council (Rosemere, Homefield Road Saltford No 10)  
Tree Preservation Order 2017

I am the owner and resident of Hillcrest, Homefield Road, which is the property immediately next door to Rosemere.

I object to the above Tree Preservation Order (TPO) in so far as it relates to the copper beech tree identified as T1 on the Schedule.

It is suggested that the TPO is sought because "the trees provide an important visual amenity and contribute towards the landscape setting and character of the locality". If that were true, such an order would have been sought many years ago. It is clear that the application is wholly or in the main – simply to frustrate the proposed development of Rosemere. I, and other residents, are objecting to the detail of that proposed development as well.

Rosemere is on a very large plot and the copper beech T1 is in the very corner of that plot adjacent to my property. The tree blights my property in that it blocks light into my home and garden. Indeed, the whole of my back garden is now continually in the shade solely because of the tree.

I am advised by my tree surgeon that T1 is not yet fully mature and will continue to grow further. Even now, it significantly overhangs beyond the public footpath over my garden and that of my neighbours at Falaise.

Its size and proximity to my home increases the buildings insurance premiums which I pay for my property because of this.

It also affects the view from my property and is like a permanent black cloud towering over my house and garden. In the 11 years I have been in this property the tree has continued to grow – unchecked – and this is on-going.

The tree may be attractive from a distance but it is considerably less so when you live in its constant shadow.

In the circumstances, I would welcome a visit from you to see the impact which this tree has upon the enjoyment and light at my property.

I trust that the above representations will be taken into account and that the Council will decline to make the order- at least in respect of T1.

Yours faithfully

  
Kevin Withey

**IMPORTANT - THIS COMMUNICATION  
MAY AFFECT YOUR PROPERTY**

Mr Kevin Withey  
Hillcrest  
Homefield Road  
Saltford  
BS31 3EG

Dear Sir/Madam

**Bath and North East Somerset Council (Rosemere, Homefield Road  
Saltford No.10) Tree Preservation Order 2017**

Thank you for your letter of the 20 August 2017 regarding the above Tree Preservation Order.

Your objection to the inclusion of the Copper Beech T1 has been noted.

I would note that the statement in my previous letter that "*the trees provide an important visual amenity and contribute towards the landscape setting and character of the locality*" is based on a Tree evaluation Method for Preservation Orders (TEMPO) assessment which I carried out on the 17 July 2017 a copy of which I enclose for your information.

In the UK Governments Guidance '*Tree Preservation Order and trees in conservation areas*' it notes that "*'Amenity' is not defined in law, so authorities need to exercise judgement when deciding whether it is within their powers to make an Order*" it also notes 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.*"

The guidance notes that "when considering whether trees should be protected by an Order authorities are advised to develop way of assessing the amenity value of trees in a structured and consistent way" and that this should take into account visibility, individual, collective and wider impact and other factors. This is why we carried out a TEMPO tree assessment.

As I'm sure you will appreciate given the geographical area of Bath and North East Somerset it is not practical or possible for the Council to identify and protect all trees which may be worthy of protection. In addition the Town and Country Planning (Tree Preservation) (England) Regulations 2012 recognises this in that it makes clear that Local Planning Authorities can make a Tree Preservation Order if it appears to them to be "*expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area*".

In the UK Governments Guidance ‘*Tree Preservation Order and trees in conservation areas*’ notes that “it may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.” We believe that the development proposals contained in planning application 17/03084/FUL presented such a risk and after carrying out a TEMPO assessment we believed that the Copper Beech tree T1 was worthy of such protection and that it was expedient to make a Tree Preservation Order to protect it from harm.

There is no intention on the Part of the Council to “frustrate the proposed development of Rosemere” we would have no arboricultural objection to development proposals provided they did not present a risk to the trees now protected by TPO 549/10.

While I can see from recent aerial photography (2014) that the Copper Beech Tree T1 does indeed shade the south eastern corner of your garden at certain times of day I am surprised by your assertion that “*the whole of my back garden is now continually in shade*”.

I note that you say the tree overhangs your boundary and the reported advice of your tree surgeon that it will grow further but would wish to make clear that a Tree Preservation Order does not preclude works to the trees so protected it only requires an application to be made and the local planning authorities written consent to be gained before any works can be carried out.

As such there is nothing in the order that precludes you or your neighbours making an application to carry out works to the tree in question and subject to the written consent of the local planning authority and in most instances the consent of the owner carry out such works.

I Hope the above makes clear that the Tree Preservation Order TPO 549/10 was made after due consideration and in the interests of public amenity and clarifies the situation with regards to the future management of the tree.

I would note for your information that The Government Guidance I mentioned above can be found at the following link

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

I am also more than happy to arrange to visit your property and to take the opportunity to see the impact which this tree has upon the enjoyment and light at your property and would be grateful if you could let me know when it would be convenient to do so.

However if in the meantime you require any other information or wish to discuss matters further please do not hesitate to contact me.

Yours sincerely,

Colm O’Kelly

Tree and Landscape Officer  
Bath and North East Somerset Council

Date: 30 October 2017  
Our Ref: 549/10  
Direct line: (01225) 477485  
E Mail: colm\_okelly@bathnes.gov.uk

Mr Kevin Withey  
Hillcrest  
Homefield Road  
Saltford  
BS31 3EG

Dear Mr Withey

## **Bath and North East Somerset Council (Rosemere, Homefield Road Saltford No.10) Tree Preservation Order 2017**

Further to your letter of the 20 August 2017 regarding the above Tree Preservation Order and my response (copy enclosed).

I am in the process of arranging for the Tree Preservation Order to be confirmed by the Development Management Committee. I would therefore be grateful if you could let me know if after having received my letter you wish to maintain or withdraw your objection.

Should you require any further information or wish to discuss matters further please do not hesitate to contact me.

Yours sincerely,

Colm O'Kelly

Tree and Landscape Officer

Environment and Design Team  
Bath and North East Somerset Council

## Colm O'Kelly

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**From:** Kevin Withey [REDACTED]  
**Sent:** 16 November 2017 17:03  
**To:** Colm O'Kelly  
**Subject:** Your ref 549/10

Dear Mr O'Kelly

Thank you for your letter dated 30th October 2017.

Apologies for the delay in replying to you.

I wish to maintain my objection to the TPO on the grounds and reasons set out previously .

In response to your observations I would add that I do not doubt that the tree has some amenity value for the area .

However , that may need to be balanced against the very significant impact it has upon my property and the daily enjoyment thereof . I live in the constant shadow of a large tree growing on a neighbours property.

I appreciate that the TPO does not preclude applications being made to carry out work on the tree in the future but that is a cumbersome and time consuming process relying in any event upon the co-operation of the owner of the tree and with no guarantee that any application might be successful .

There is an inevitability I am afraid that the perceived amenity to the greater area will be at the expense of my interests .

I trust that the above will at least be noted when the Order is confirmed.

If you believe that there is any potential benefit in visiting to discuss the matter on site I would be happy to arrange a mutually convenient time and date.

Yours Sincerely

Kevin Withey

Sent from my iPad