



Oadby and Wigston Borough Council

TO COUNCILLOR:

G S Atwal
T Barr
L A Bentley (Chair)
G A Boulter
Mrs L M Broadley (Vice-Chair)

F S Broadley
D M Carter
B Dave
R F Eaton
D A Gamble

Mrs S Z Haq
J Kaufman
Dr T K Khong
Mrs H E Loydall
R E R Morris

Dear Councillor et al

I hereby summon you to attend a meeting of the **DEVELOPMENT CONTROL COMMITTEE** to be held at the **COUNCIL OFFICES, STATION ROAD, WIGSTON** on **THURSDAY, 14 APRIL 2016** at **7.00 PM** for the transaction of the business set out in the Agenda below.

Yours faithfully

Council Offices
Wigston
06 April 2016

Mark Hall
Chief Executive

AGENDA

PAGE NO'S

1. **Apologies for Absence**
2. **Appointment of Substitutes**
3. **Declarations of Interest**

Members are reminded that any declaration of interest should be made having regard to the Members' Code of Conduct. In particular, Members must make clear the nature of the interest and whether it is 'pecuniary' or 'non-pecuniary'.

4. **Minutes of the Previous Meeting held on 17 February 2016** 1 - 6

To read, confirm and sign the minutes of the previous meeting in accordance with Rule 17 of Part 4 of the Constitution.

5. **Petitions and Deputations**

To receive any Petitions and, or, Deputations in accordance with Rule 24 of Part 4 of the Constitution.

6. **Report of the Planning Control Manager** 7 - 13

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD AT THE
COUNCIL OFFICES, STATION ROAD, WIGSTON ON WEDNESDAY, 17 FEBRUARY 2016
COMMENCING AT 7.00 PM**

<u>IN ATTENDANCE:</u>		
Chair - Councillor L A Bentley Vice-Chair - Councillor Mrs L M Broadley		
COUNCILLORS (11):		
G S Atwal T Barr G A Boulter F S Broadley	D M Carter B Dave D A Gamble Mrs S Z Haq	J Kaufman Mrs H E Loydall R E R Morris
OFFICERS IN ATTENDANCE (4):		
S J Ball	T Boswell S Robshaw	D Gill
OTHERS IN ATTENDANCE(1):		
Ms L Hryniw		

Min Ref.	Narrative	Officer Resp.
51.	<p><u>APOLOGIES FOR ABSENCE</u></p> <p>An apology for absence was received from Councillors R F Eaton and Dr T Khong.</p>	
52.	<p><u>APPOINTMENT OF SUBSTITUTES</u></p> <p>None.</p>	
53.	<p><u>DECLARATIONS OF INTEREST</u></p> <p>In respect of planning application number 15/00398/COU:</p> <ul style="list-style-type: none"> (i) Councillor D A Gamble declared a pecuniary interest insofar as he presently rented a car parking space on the secure section of the site at 17 Mandervell Road, Oadby. The Member stated that he would leave the Chamber during consideration of the same by the Committee; (ii) Councillor J Kaufman declared a non-pecuniary interest insofar as being the Chair of the Health and Wellbeing Board of this Council; and (iii) All Members acknowledged a non-pecuniary interest insofar as the Leisure Development Officer of this Council was known to Members, whose representations are cited in the report (at pages 11 - 12) and in a letter dated 16 February 2016 from Marrons Shakespeares LLP addressed to the Planning Department (as circulated at the meeting). <p>All Members attended the meeting without prejudice and with an open mind.</p>	

54.	<p><u>MINUTES OF THE PREVIOUS MEETING HELD ON 21 JANUARY 2016</u></p> <p>RESOLVED THAT:</p> <p>The minutes of the previous meeting of the Committee held on 21 January 2016, as received in the supplementary agenda update (at pages 1 - 15) be taken as read, confirmed and signed.</p>	
55.	<p><u>PETITIONS AND DEPUTATIONS</u></p> <p>None.</p>	
56.	<p><u>CURRENT JUSTIFICATION FOR DEVELOPMENT CONTROL SUB-COMMITTEE (ENFORCEMENT)</u></p> <p>The Committee gave consideration to the report (at pages 1 - 2) as delivered by the Corporate Enforcement Officer which should be read together with these minutes as a composite document.</p> <p>The Corporate Enforcement Officer reported that at a meeting of the Development Control Sub-Committee (Enforcement) on the 11 January 2016, the Chair had expressed a concern as to whether the Sub-Committee continued to serve a useful function in duly discharging its original terms of reference, most notably in managing the backlog of enforcement cases and ensuring that ward Members were adequately furnished with enforcement-related information. Upon review, it was decided that this was not the case and therefore recommended that meetings of the Sub-Committee be suspended for, and subsequently reviewed after, a period of one-year.</p> <p>The Corporate Enforcement Officer reported that since the Sub-Committee's inception, the backlog of enforcement cases had significantly reduced from approximately 200 down to 100 cases. He advised that enforcement cases were ordinarily closed by means of delegated report – in respect of which, and at the present time, the Sub-Committee was merely performing a “rubber-stamping” exercise - and that more complex cases, or those entertaining a particular public interest, were to be reserved for resolution before this Committee. He stated that closed enforcement cases were to be reported to this Committee on a six-monthly basis so that the wider aspect of Member participation and scrutiny was maintained.</p> <p>Councillor Mrs H E Loydall requested that the substantive recommendation as set out at paragraph 2 of the report (at page 1) be amended to reflect the one-year suspension period and, subject to that amendment, moved the recommendation.</p> <p>Councillor D A Gamble seconded the recommendation (as amended).</p> <p>Councillor G A Boulter enquired as to whether the Constitution of the Council required amending.</p> <p>The Chair advised that all the necessary constitutional and governance requirements would be reviewed and implemented, accordingly.</p> <p>UNANIMOUSLY RESOLVED THAT:</p>	

	Meetings of the Development Control Sub-Committee (Enforcement) be herewith suspended for a period of one-year.	
57.	<p><u>REPORT OF THE PLANNING CONTROL MANAGER</u></p> <p>Councillor D A Gamble left the Chamber at 7:11 pm.</p> <p>The Committee gave consideration to the report and appendices (at pages 3 - 17) as delivered by the Interim Planning Control Manager which should be read together with these minutes as a composite document.</p> <p>1. Application No. 15/00398/COU – 17 Mandervell Road, Oadby, Leicestershire, LE2 5LQ</p> <p>Ms Louise Hryniw, Solicitor at Marrons Shakespeares LLP, spoke upon the application on behalf of the applicant.</p> <p>Ms Hryniw stated that the applicant ran the Oadby and Leicester Gymnastics Club (“the Club”) which offered gymnastics activities and disciplines for all ages and abilities. She stated that the Club currently operated from Beauchamp College, Oadby and was at capacity with approximately 300 members and a waiting list of 200 children/young people. In respect of the representations received, citing responses from this Council’s Leisure Development Officer (at pages 11- 12), British Gymnastics (at pages 10 -11) and a further letter dated 15 February received from the Deputy Head Teacher at Brocks Hill Primary School, Oadby “whole heartedly” supporting the application, she said that the levels of support for the same would provide a community use valuable to residents and would extend after-school opportunities available to children.</p> <p>Ms Hryniw said that the Applicant had spent several years looking for a property that would be suitable for the gymnastics facility (viz. high ceilings, large open plan room) and that numerous other properties had not fulfilled the same requirements. The location was said to be ideal given its close proximity to Beauchamp College, allowing existing members to continue to use the facility whilst giving the Club a larger permanent base to grow its membership.</p> <p>With reference to a letter dated 16 February 2016 from Marrons Shakespeares LLP and addressed to the Planning Department, Ms Hryniw surmised that the applicant had:</p> <ul style="list-style-type: none"> (i) viewed numerous properties over a period of years, all of which have been unsuitable for the proposed gymnastics use; (ii) instructed that it would not be viable for the landlord to refurbish the property for modern employment use; (iii) instructed that the site had been marketed by a commercial agent for class B use since December 2014 without any firm interest; and (iv) anticipated that the gymnastics facility will operate entirely satisfactorily within the industrial estate. <p>With reference to the report’s conclusion, citing Officers’ recognition of ‘permission [being] subject to a condition limiting the permission to the applicants use only...’ (at page 16), Ms Hryniw stated that the class B use could be suspended temporarily to allow the gymnastics facility to run,</p>	

subject to a reversion of business use should the Club cease to operate. In summary, given material considerations that existed in favour of granting planning permission, in the form of the health promotion benefits, and the community benefit the gymnastics facility would deliver, she commended the application for approval in the form of a permission subject to a personal condition reverting to a class B use at the point the Club vacated the premises.

The Committee gave consideration to the two letters aforementioned dated 15 February and 16 February respectively, as circulated at the meeting.

Councillor Mrs H E Loydall raised a concern as to the references made in the report (at pages 11 - 12) and in the letter dated 16 February citing the representations made by this Council's Leisure Development Officer in that capacity. She further enquired as to whether a conflict of interest arose and, or, consequently, if a declaration of interest should be made.

The Legal Advisor stated that all Members present had a non-pecuniary interest insofar as the Officer in question was known to Members. He advised that as the Officer was not a statutory consultee, Members were to duly consider the representations in their ordinary and proper context on material planning grounds.

The Interim Planning Control Manager summarised the planning application's site and location, proposals, consultations, representations and planning considerations identifying the relevant planning policies as detailed in the report (at pages 3 - 16). He summarised the report's conclusion (at page 16), stating that the application was recommended for clear refusal on policy grounds.

The Interim Planning Control Manager further advised that if Members were minded to approve, that planning permission be subject to a condition limiting the permission to the applicants use only and, subject to reversion to a business use upon their ceasing to use all or any part of the premises. He stated that an express planning purpose required identifying to do so and that Members should balance the application's ad/disadvantages in respect of both safeguarding the use of employment land vis-a-vis the benefits of health and wellbeing promotion.

Councillor J Kaufman enquired as to whether he ought to recuse himself from the meeting insofar as being the Chair of this Council's Health and Wellbeing Board.

The Legal Advisor stated that the Member was entitled to remain at the meeting if he was of an open mind. He reiterated that considerations were on planning grounds.

With reference to the criterion outlined in the report (at pages 13 - 14), Councillor D M Carter described the current application as a positive "community venture" entertaining several merits including the promotion of health and wellbeing and the building's intended refurbishment. He further stated that the applicant had provided ample evidence of alternative site searches and, in his opinion, commended the premises 'suitability. With reference to the Officer's comment in the report (at page 9), citing 'that the building is currently in use for storage and warehousing...', he stated the

apparent use was not consistent with employment purposes and that evidence submitted by the applicant confirmed that the landlord of the premises had been actively marketing the same. The Member opined that it was irreconcilable for Members to refuse planning permission given similarly resolved applications in the nearby vicinity granting a temporary change of use in the past.

Councillor Mrs H E Loydall stated that the application should be properly dealt with on balance and enquired as to whether the premises could practically accommodate a class D2 use.

The Interim Planning Control Manager advised that the building's high-ceilings were considered suitable for a gymnastics use.

The Member stated that the letter dated 16 February resolved a number of planning concerns. She opined that, upon the consideration of the merits of the application, Members ought to be minded to approve planning permission subject to personal use in order to, amongst other things, to bring the building back into use.

Councillor Mrs H E Loydall moved that planning permission be approved subject to a condition limiting the permission to the applicants use only and, subject to reversion to a business use upon the ceasing of use all or any part of the premises.

Councillor G A Boulter enquired as to the application's car parking capacity and the additional volume of site traffic that could be accommodated concurrently with existing industrial uses.

The Interim Planning Control Manager reported that the application provided approximately 50 car parking spaces under a class D2 use. It was said that there was a low probability of a concentrated volume of traffic to/from the site and that the intended opening times of the Club did not enter into competition with other existing industrial uses of the site.

The Chair seconded the motion as moved by Councillor Mrs H E Loydall.

Councillor B Dave agreed with Councillor Mrs H E Loydall insofar as the application was to be considered on balance and that permission, subject to a condition limiting the permission to the applicant's use, should be resolved by Members.

Councillor Mrs S Z Haq enquired as to whether, if Members were minded to approve planning permission, the aforementioned personal condition would subsist in perpetuity and whether the applicant was to implement any security measures to secure the car park.

The Interim Planning Control Manager reported that the drafting of the condition intended the same to run in perpetuity and that, to his knowledge, no security measures were to be implemented by the applicant.

The Legal Advisor stated that the applicant would be liable in respect of any and all health and safety considerations and matters of pedestrian safety arising.

	<p>The Vice-Chair raised a concern as to potential onus being placed upon the applicant should the condition be granted personally and should he not be in a position in the future to continue to operate the Club. The Member further enquired as to wider planning implications arising for the Club should it wish to continue to operate in such circumstances.</p> <p>The Legal Advisor requested a short recess to consult with the applicant.</p> <p>The Chair permitted the Legal Advisor's request.</p> <p>The Committee went in to recess at 7:56 pm.</p> <p>The Committee came out of recess at 8:01 pm.</p> <p>The Legal Advisor and Interim Planning Control Manager co-advised that the identity of the Club amounted to a body corporate and, as such, the condition ought to be granted in the name of the Committee of the Club as opposed to applicant personally.</p> <p>Councillor Mrs H E Loydall enquired as to the planning implications should the Club's Committee wish to apply for a subsequent, future change of use.</p> <p>The Legal Advisor stated that the Member's enquiry was not material to this Committee's considerations in respect of this application.</p> <p>He further advised that, if Members were minded to approve planning permission, permission should be granted to the Club's Committee subject to a condition limiting the permission to the Club's use only. It was further recommended that delegated authority be given to Officers to determine the exact wording of that condition.</p> <p>The Chair clarified the motion as per the above.</p> <p>Councillor Mrs H E Loydall agreed to the motion as clarified by the Chair.</p> <p>UNANIMOUSLY RESOLVED THAT:</p> <p>(i) The application be PERMITTED planning permission;</p> <p>(ii) The planning permission be granted to the Committee of the Oadby and Leicester Gymnastics Club ("the Club") subject to a condition limiting the permission to the Club's use only and, subject to reversion to a business use upon the ceasing of the Club's use of all or any part of the premises; and</p> <p>(iii) Delegated authority be authorised to Officers to determine the wording of the aforesaid condition.</p>	
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THE MEETING CLOSED AT 8:09 PM



CHAIR

THURSDAY, 14 APRIL 2016

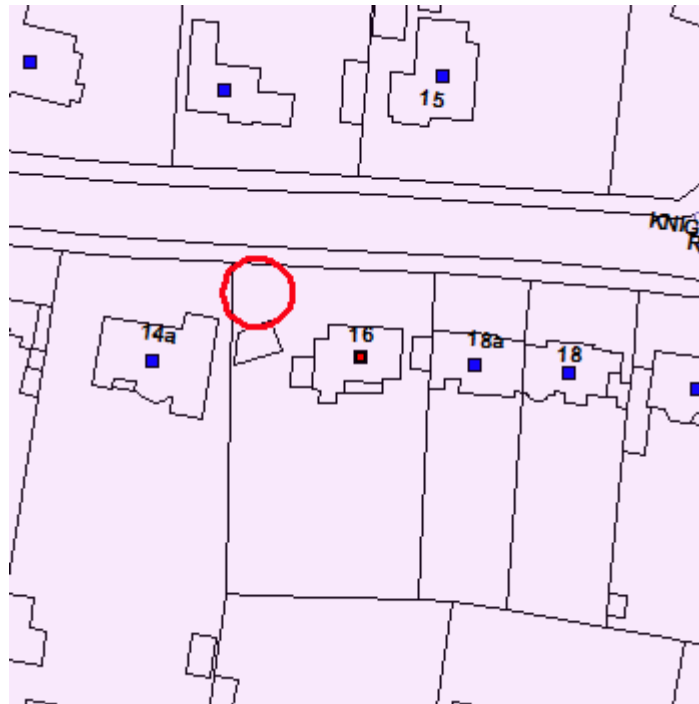
Agenda Item 6

Application Number	Address
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Report Items

- | | |
|-----------------|---|
| 1. 16/00022/TPO | 16 Knighton Rise
Oadby
Leicester
Leicestershire
LE2 2RE |
|-----------------|---|

1.	16/00022/TPO	16 Knighton Rise Oadby Leicester Leicestershire LE2 2RE
	13 January 2016	Fell 1 No. Lime tree (T2).
	CASE OFFICER	Dean Baker



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Site and Location

The application site relates to a detached dwelling on the south side of Knighton Rise, which lies within the Oadby Hilltop and Meadowcourt Conservation Area and is included with others in the street as of local interest as a group. The house is one of the older properties in the street. The lime tree in question is a large specimen, approaching 100 years old, which is sited within the front garden of the property, in close proximity to but elevated from the public footway. The key characteristics of the CA, in relation to trees, are that the area has a wealth of trees, including within the gardens of houses and along the roadsides of all but Knighton Rise, where garden trees and shrubs contribute positively to the appearance of the street.

Description of proposal

The lime tree the subject of this application is sited to the north west corner of the plot, adjacent to no.14A and the public footway. It is a substantial deciduous tree, with three stems. The application proposes the felling of the tree.

The application is supported by an Arboricultural Consultancy report, Engineer's Reports from Jan 2014 and December 2015, Level Monitoring, Drainage Investigation, and Geotechnical Reports dated April 2014 and September 2015. The reports demonstrate that seasonal dessication of the

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clay soils is the cause of movement of the property. Trials indicate the presence of roots from the lime tree and, although it is not conclusive, it is likely that this tree, because of its size and nature, would be the most likely candidate for the cause of dessication. However, the ground surface in the vicinity of the building is covered in non-permeable macadam and no comment has been made as to whether a more permeable surface here, through percolation, might have a positive effect on moisture/water levels within the subsoil.

Although the statutory determination period for this application has passed, the applicant supports the decision for the committee to determine this application. It is intended to issue a decision as soon as practicably possible after the committee meeting.

Relevant Planning History

As a result of concerns about property movement, the Council received a s.211 Notice (notice of works to trees in a conservation area) in 2014. At that time, no proper assessment of the cause of movement had been undertaken and, as a result, some trees were allowed to be felled and others were made the subject of Tree Preservation Order 302, confirmed on 21 August 2014, which relates solely to three trees in the front garden of 16 Knighton Rise. The rationale behind the Order was that it would have been a significant loss to the amenity of the area if the trees had been allowed to be felled prior to determining whether or not they were responsible for the movement of the property.

Subsequent to this, other trees which were not subject to the TPO have been allowed to be felled.

Consultations

Leicestershire County Council (Forestry) – *notes the shallow foundation to the building and that the underlying soils are susceptible to shrinkage and expansion through water extraction or replenishment.*

The engineers report (Jan 2014) described damage as 'very slight', which increased to 'slight' in the report of 18/12/15. The surveys indicate movement of a seasonal nature, indicating the influence of vegetation. The movement is greatest closest to tree group TG1 and mature lime T2 on the frontage. Tree roots identified in the trial pits included lime ...; the discovery of roots in a trial pit does not automatically imply that the parent tree is responsible for the alleged damage, although in the case of lime T2 its age and size as well as the shallow foundation make it quite likely.

The estimated safe life expectancy is perhaps another 40 years or so, and there is nothing to suggest that the tree would require removal now, were it not for the alleged property damage. The tree has likely reached its maximum size, so moisture uptake should remain stable, but seasonal activity/movement will still take place and a moisture deficit could develop – resulting in an increasing divergence from the datum measurement.

Consideration of this application might turn on the established amenity value of the tree versus the cost of the necessary repairs, and the willingness of the insurance company to fund those repairs. From the evidence supplied, it is probable that lime T2 is having an influence on this corner of the building. T2 is a large and conspicuous tree in the street scene, which enhances the CA. It is clear that if the tree were retained, the costs of improving the building by partial underpinning would be considerably more than removing the tree and carrying out essentially more cosmetic repairs. A root barrier would not be feasible due to inadequate space between the tree and the house to accommodate the depth and volume of excavation required. If consent were given, it would be prudent to specify a much smaller-growing species for replacement planting, which unfortunately would never contribute the same ultimate public amenity.

Legal advice in respect of potential liability for compensation suggests that:

*if the Council refuse to allow the tree to be felled, the landowner or their insurers may be entitled to claim from the Council any losses incurred **as a direct result of their refusal** to grant consent. Any*

claim must be made within 12 months of the Council's decision or of final determination of an appeal made to the Secretary of State should the applicant have appealed the council's refusal.

In such circumstances the landowner would be expected to remedy any damage to the property and then submit claims to the Council of any losses incurred. There would be limits to the Council's liability for compensation: the Council would not be liable to pay compensation for loss or damage that occurred before the application was made and would only be liable for damage occurring within 12 months of the date of decision.

Representations

Neighbours have been informed and a site notice placed with no letters of representation being received at the time of writing this report. The date for the receipt of comments expired on the 15 February 2016.

Relevant Planning Policies

The National Planning Policy Framework and the Development Plan are not relevant to the consideration of this application.

Planning Considerations

The main issues to consider in the determination of this application are as follows:

- The impact of the proposal on the street scene and character of the conservation area
- Weighing the monetary value of the tree against the cost of remedial works to the property
- The liability for compensation in the event that the application is refused

The impact of the proposal on the street scene and character of the conservation area

As is noted above, trees form an important part of the character of the conservation area and in Knighton Rise it is garden trees such as this that make that contribution as there are no street trees. The lime tree the subject of this application is one of the largest and most prominent trees within the street. It is also in a minority of deciduous trees. As such it makes a very significant contribution to the amenity of the street scene generally and to the character of the conservation area.

The Financial Assessment

The applicant has submitted information as to the likely costs of remedial works in the event that the tree is removed or retained. With removal there would be the removal costs and then limited more cosmetic repair work to the property. It is estimated that the overall costs of this would total £12,019.

If the tree is retained then there would be no felling costs, but part of the property would then require more extensive work including some underpinning which would cost approx. £25,000. To this would be added the cost of decanting of the occupier to temporary accommodation and storage of furniture etc, estimated to be £11,000, giving a total cost of £36,000. Thus, the difference in repair costs between felling and repair or keeping and more extensive repair would be £24,000.

The Council's Arboricultural Officer advises that the costs need to be compared to an assessment of the monetary value of the tree. The London Tree Officers Association has produced a formula for assessing the capital asset value of amenity trees (CAVAT), which provides a method for managing trees as public assets rather than liabilities. It is designed not only to be a strategic tool but also to be applicable to individual cases, where the value of a single tree needs to be expressed in monetary terms.

Based on conservative values for its accessibility and life expectancy, the tree has a monetary value in excess of £50,000. This would increase to £90,000 if higher but not unrealistic values were given to these factors.

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Having assessed the monetary value, it can be seen that the tree value outstrips the estimated costs of the underpinning works.

Liability for Compensation

There is a risk that if the application were to be refused, the applicant seek to would make a claim for compensation in respect of the cost of additional works for the remediation of the property. However, it should be noted that any such claim would be limited to compensation for loss or damage that occurred after the application was made or occurring within 12 months of the date of decision.

Conclusion

The monetary value of the tree exceeds the cost of the works. It is unlikely that the level of amenity provided by the tree could be replicated by replacement planting and the loss of the tree would therefore result in a permanent detraction of amenity within the area, even if replacement planting was provided.

Implications Statement

Health	No Significant implications
Environment	No Significant implications
Community Safety	No Significant implications
Human Rights	The rights of the applicant to develop his property has to be balanced against the rights of neighbours.
Equal Opportunities	No Significant implications
Risk Assessment	No Significant implications
Value for Money	No Significant implications
Equalities	No Significant implications
Legal	Legal and financial implications have been set out in the body of the report.

RECOMMENDATION: REFUSE

The Reason(s) for refusal are:

- 1 The lime tree provides a high level of amenity to the area and contributes significantly to the character of the conservation area in which it is located. No replacement planting would provide an equivalent level of amenity. The applicant has failed to put forward any justification for felling based on arboricultural grounds; - the tree appears in good health with an estimated safe life expectancy of 40 years or so, and there is nothing to suggest that the tree would require removal now, were it not for the alleged property damage. The applicant suggests that the tree should be felled on the basis of reducing the cost and extent of repairs to the property. However, the monetary value of the tree, based on CAVAT methodology, far exceeds the cost of the extended works which would be required if the tree is retained.

Note(s) to Applicant :

- 1 **Appeals to the Secretary of State**
If you are aggrieved by the decision of your local planning authority to refuse consent for the works to a tree or trees subject to a Tree Preservation Order or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision then you must do so within 28 days of the date of the decision notice.

Appeals must be made using a form which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Telephone 0303 444 5000) or online at www.gov.uk/appeal-decision-about-tree-order/how-to-appeal

The Secretary of State can allow a longer period for giving notice of an appeal, but he/she will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

